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MONITORING HOUSE ARREST IN THE SLOVAK REPUBLIC

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ABSTRACT

The paper deals with the house arrest punishment as one of the alternative penalties that may be imposed on the offender under the Criminal Code effective. In this paper, the author focuses on the analysis of substantive provisions of the sentence under house arrest in the Slovak Republic. In particular, the author deals with a very topical issue of electronic monitoring of persons in the Slovak Republic, which is closely linked with the sentence of house arrest.

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INTRODUCTION

Punishments have been here during the whole existence of mankind. At first, they represented a tool through which order was imposed. In the most ancient times, criminal law followed the principle of reward – *talio*. This principle was adopted by almost all of the codes of laws at that time. Since then, though, punishments have evolved significantly.

Every country strives to sentence criminals in order to ensure protection of the society from considerable illegal acts of natural entities.

The means of punishing the criminals vary across the nations. Some countries prefer rather radical ways of sentencing such as capital punishment or life sentence. Mainly in developed countries, however, alternative ways of punishment are currently preferred. Alternative punishments are “more human” as in case of these, the aim of the punishment is not to separate the criminal from the society but rather than that, to rehabilitate the criminal through other methods. The house arrest punishment represents one of the alternative punishments, having been implemented in the Slovak legislation along with other alternative punishments. Having done so, the Slovak Republic expressed its willingness to use more democratic and human punishments¹.

HOUSE ARREST PUNISHMENT

The house arrest punishment already existed in our legal order in the Penal Code in 1852, having been an alternative to the first stage punishment. Subsequently, it vanished from our legal order but despite that, it extended the system of punishment once again, having come into effect on January 1, 2006. The house arrest punishment represents one of the kinds of alternative punishments. It is an important substitution to mandatory sentence of imprisonment. It is used when there is a need to restrict the criminal on personal liberty, yet this restriction is not realized in prison, but in the criminal’s place of dwelling. The house arrest punishment is classified as a milder form of restricting personal and private liberty of offenders. It affects the essential rights and liberties in a less significant way as it is realized in home environment. Convicts are not separated from their families, they get to stay in touch with them and emotional bonds remain tight. The sentence is served in their own homes so they can keep working and thereby avoid negative effects of being imprisoned. The fact that this kind of punishment is not related to loss of freedom contributes to the decrease of recidivism. In prison, convicts no longer bear the responsibility for themselves and for their behaviour which may lead to released prisoners losing their ability to live by themselves and not being able to integrate into a non-criminal society and that is why they often seek the criminal environment as that is where they know how to exist.

¹ T. Strémy, L. Kurilovská, M. Vráblová, *Restoratívna justícia*, 1st edition, Leges, Prague 2015, p. 344.

EFFECTIVE LEGAL PROVISIONS

The house arrest punishment was implemented into our legal order on the occasion of re-codifying the Penal Code effective since January 1, 2006. It was directly implemented into the Provision § 32 of the Penal Code as a separate punishment. Its position in the hierarchy suggests that this punishment should become an important alternative to mandatory sentence of imprisonment.

The substantive adjustment of the house arrest punishment itself is dealt with in the Provision § 53 of the Penal Code and based on paragraph 1 of this article, the house arrest punishment of up to 2 years may be imposed on the offender provided:

- Imposition of this sentence is considered as sufficient with regard to the character and seriousness of the offense committed as well as on the person and situation of the offender,
- The offender promised in writing that s/he will be staying at the place of dwelling at the address defined and that s/he will provide all the necessary assistance,
- The conditions regarding the realization of supervision through technical means have been met.

Based on the Provision § 10 of the Penal Code, the following is considered to be an offence:

- A crime committed as a result of negligence or
- An intentional crime punishable by a maximum sentence of five years as defined by a separate section of this law.

This implies that this punishment may be imposed for less serious crimes whereas the range of crimes it may be imposed for is rather wide. § 53 paragraph 1 of the Penal Code does not cover actual situations in case of which the court should prefer imposition of the house arrest punishment. It is up to the court to consider whether the crime potentially punishable with the house arrest punishment shall be punished with this kind of punishment or with mandatory sentence of imprisonment.

The second paragraph of § 53 of the Penal Code states that while serving the sentence of house arrest, the convict is obliged to stay at the place of his/her dwelling including exterior areas belonging to it at times defined by the court, to lead a solid life and to submit to supervision by technical means.

The time the convict must spend staying at the place of his/her dwelling represents a significant part of the decision by means of which

the punishment was imposed on the offender. The exact time is to be determined by the court based on particular circumstances related to the case. The law does not deal with time limits; that falls under the exclusive competence of the court. For instance, the convict should be enabled to commute to and from work or to take part in religious ceremonies. The convict serves the sentence at his/her place of dwelling including exterior areas belonging to it. In relation to the house arrest punishment, the Penal Code does not exactly define the term *place of dwelling*. However, the definition may be found in the Provision § 122 paragraph 5 of the Penal Code in relation to commitment of a crime. Based on this provision, the place of dwelling may be interpreted as a house, flat or other areas serving the purposes of housing as well as areas and premises belonging to those, yet they must be part of a closed place of dwelling. A hotel room or a dormitory may also be considered as places of dwelling. As we can see, the concept of *place of dwelling* is a rather broad one so when imposing this punishment, a place where the convict actually stays should be considered as the place of dwelling. Also, the convict is obliged to lead a proper life, to comply with the conditions of house arrest as well as with other prohibitions resulting from the sentence. The law also covers the obligation of the convict to submit to the supervision through technical means.

The third paragraph of § 53 of the Penal Code states that while serving the sentence, the court may impose restrictions or duties on the offender in order to make him/her lead a proper life. The restrictions mainly refer to the following prohibitions:

- To take part in public events,
- To consume alcoholic beverages and other addictive substances,
- To meet persons having negative impact on the offender or those who were assisting offenders or directly participated in the crime,
- To enter selected places or areas where the crime was committed,
- To gamble, play slot machines and bet,
- To contact certain persons in any way including e-mail or through other similar means.

The duties mainly lie in the following restrictions:

- Not to approach certain persons within distance of less than five meters and not to stay close to the place of dwelling of a certain person or in a certain place at which this person stays or which s/he visits,

- To move out of the flat or house s/he occupies without authorization or which s/he occupies illegally,
- During the trial period, to compensate for damages incurred,
- During the trial period, to pay debts or delayed alimony,
- To apologize to the aggrieved party personally or publicly,
- To acquire a certain job qualification or to take part in a requalification course during the trial period,
- To submit to probation and mediation workers or other professionals of the social training program or other educational program,
- To undergo treatment of addictions to addictive substances if this was not ordered,
- To undergo psychotherapy or attend psychological counselling services,
- To find a job or to provably apply for one during the trial period,
- To make an appearance at a particular police station based on the place of residence at a specified time, even repeatedly in justified cases.

The fourth paragraph of § 53 of the Penal Code states that while serving the sentence of home arrest punishment, the convict may only leave the place of dwelling after having received the permission of the probation and mediation worker, only in urgent events and for the period of time necessary. This time, however, counts as serving the sentence. The Penal Code does not define the term *urgent event*, but it may refer to cases sporadic or exceptional. It may refer to the attendance of various courses, external studies, appointment at the doctor's, funerals etc. Anyway, the period of time necessary is highly individual.

The fifth paragraph of § 53 of the Penal Code states that on condition that the convict fails to comply with the restrictions or duties resulting from the house arrest punishment, the court shall change the punishment into mandatory sentence of imprisonment in such a way that an unserved day of house arrest equals one day of mandatory sentence of imprisonment and it shall decide how the sentence is to be served, too.

SERVING THE HOUSE ARREST PUNISHMENT

In Slovak legislation, serving the house arrest punishment is dealt with in the Provision § 435 of the Law No. 301/2005 Coll. of the Penal Code as amended as well as in the Law No. 78/2015 Coll. about controlling the realization of some decisions through technical means as amended and in the Decree of the Department of Justice of the Slovak Republic about Processing and Office Order for District Courts, County Courts, the Special

Court and Military Courts No. 543/2005 Coll., specifically in the Provision § 79a. This provision deals with the process position of probation and mediation workers in cases of serving the house arrest punishment.

Based on the Penal Procedure Code, the court in the district of which the house arrest punishment is to be served is relevant to realize the decision through which the house arrest punishment is imposed including the decisions and measures as defined in § 406. As soon as the decision through which the house arrest punishment was imposed becomes realizable, the head of the senate shall immediately send its original copy to the court.

The court orders serving the house arrest punishment without any delay right after the judgement through which it was imposed becomes realizable. At the same time, the court must call the attention of the convict to restrictions and duties resulting from the sentence imposed as well as the threats of changing this sentence into mandatory sentence of imprisonment. The supervision over serving the house arrest punishment is performed by probation and mediation workers.

Should the probation and mediation worker announce any violation of duties or restrictions resulting from the house arrest punishment to the head of the senate, the court shall change this sentence or the rest of it into mandatory sentence of imprisonment at a public meeting through a resolution. Before this decision is made, though, the convict must be interrogated as not all of the cases suggest intentional violation of duties or restrictions: there might be situations in which the violation is not intentionally initiated by the convict's behaviour, such as sudden worsening of the health condition or an accident that happens while commuting to the workplace. Similar reasons could be discovered by the court during the interrogation of the convict.

After having served half of the house arrest punishment, the convict may apply for withdrawal from serving the rest of this sentence; the court shall decide about it by means of a resolution within 3 days at most. The probation and mediation workers prepare the source materials regarding the decision about the interruption of serving the house arrest punishment and about withdrawal from serving the rest of the house arrest punishment for the head of the senate.

Against the resolution of the court, a complaint having suspensory effects is acceptable based on paragraphs 3 and 4 of § 435.

On a proposal from the convict, the probation and mediation workers may authorise an exception from the sentence to the convict for a period

of time necessary, though for 48 hours at most. In case of such a permission, it is the officer who decides whether the convict is to be granted the exception from the sentence or not. It can only be permitted in case of urgent reasons and for a period of time necessary. The supervising office shall consider the authorisation individually in each and every case, based on particular requests. Such cases involve the following: health assessment or arranging certain issues in case of which the convict's presence is required. These exceptions should bear the hallmark of urgency as well as exceptionality².

There is also the possibility of changing the rest of mandatory sentence of imprisonment into house arrest punishment. The court may do so on a proposal from the head of the prison where the sentence is served in case of a convict who:

- Has been serving a penalty involving deprivation of liberty for an offence, having considered the character and seriousness of the offence committed, the person and situation of the convict, his/her promise and willingness to submit to such a punishment and meeting the material-technical conditions necessary to realize it,
- Has shown improvement, has served one third of the imposed penalty involving deprivation of liberty and whose remaining sentence does not exceed 2 years,
- Had not served the penalty involving deprivation of liberty before the crime was committed, whose house arrest punishment was not changed into mandatory sentence of imprisonment or who is not serving a sentence ordered as a result of a failure during the trial period.

The supervision over the realization of a decision in criminal proceedings is dealt with in the Penal Code in a general way, whereas the methods and procedures of its realization are defined by the competences of probation and mediation workers representing the organs performing the supervision over the realization of the decision. Supervision using technical means represents one of the methods of supervision of the realization of a decision in criminal proceedings and its application does not exclude the application of other methods of supervision over the realization of the same decision³.

² V. Cehlár, *Trest domáceho väzenia a aplikácia elektronického monitoringu s akcentom na probáciu*, „Justičná revue“, 2013, Vol. 2, p. 241–251.

³ J. Čentés, *Trestný poriadok- Veľký komentár*, Eurokódex, Žilina 2014.

INTERRUPTION OF THE HOUSE ARREST PUNISHMENT

With regard to the current legislation, serving the house arrest punishment is considered as interrupted after having imprisoned the convict or him/her starting mandatory sentence of punishment as a result of another crime. The head of the senate can, however, interrupt serving the house arrest punishment for a period of time necessary in case of important reasons preventing the convict from serving the sentence properly. A complaint against such decisions is acceptable, though. In case the above mentioned reasons no longer apply, the head of the senate shall order the convict to continue serving the house arrest punishment.

What is important is the fact that the time during which serving the house arrest punishment was interrupted does not count as serving the sentence.

THE PENAL CODE AND CODE OF CRIMINAL PROCEDURE AMENDMENT

The Penal Code and Code of Criminal Procedure Amendment effective since January 1, 2016 affected the house arrest punishment in a major way.

In short, the changes it introduced are as follows:

- Prolongation of the period of time regarding the imposition of the house arrest punishment for 2 years,
- Completion of the sentence imposition conditions – seriousness, the convict’s person and situation + his/her promise and willingness to submit to it,
- Obligatory supervision through technical means,
- Possibility to impose the house arrest punishment on juvenile offenders (1 year maximum), with the permission of his/her legal representative only,
- Supervision over serving the sentence by probation and mediation workers rooted in the law (without authorization),
- Withdrawal from the influence of “the organ administrating the technical supervision over the convict” as an alternative to the activities of probation and mediation workers,
- Implementation of the option to change the rest of the mandatory sentence of imprisonment into house arrest punishment,
- Changes regarding the reduction when changing the sentence into mandatory sentence of imprisonment in case the convict fails to comply with the house arrest punishment conditions: an unserved day of house arrest punishment equals one day of mandatory sentence of imprisonment.

ELECTRONIC MONITORING

Electronic monitoring is the most important element to ensure effective supervision of serving the house arrest punishment. The usage of this kind of sentence has proved that supervision performed exclusively by means of probation and mediation workers is unreasonable and impossible. These workers cannot ensure as effective supervision over the convicts as technical means can provide. The first time electronic monitoring as such was used was in 1980s. It was used to supervise over serving the house arrest punishment in the United States of America and it turned out to be effective. In some countries of the world, the supervision is realized by the public sector and in others, on the other hand, this is done by the private sector. However, there are also countries where both sectors participate in the supervision together⁴.

Electronic monitoring serves three basic functions. Firstly, it is the function of imprisonment in case of the house arrest. In this case, it is important to ensure that the convict stays at the very same place as s/he is serving the sentence to which restriction of liberty is related and as a result of that, the convict is obliged not to leave his/her own place of dwelling for a certain period of time. Secondly, monitoring restricts. In case of these restrictions, the offender is forbidden to enter specific places or approach certain persons. Thirdly, monitoring serves the function of supervising over the offender which can be constantly done by organs without having to restrict his/her movement.

ELECTRONIC SYSTEM OF MONITORING PERSONS (ESMP)

The main reason for the realisation of the ESMP project was the commitment of the Ministry of Justice of the Slovak Republic defined by the Policy Statement of the Slovak Republic 2012 – 2014 based on which the resort shall particularly focus on the options of imposing alternative punishments and emphasize crime prevention. The project is financed through the European Union resources (approximately 22.04 million EUR excluding VAT) and it enables to monitor 2,000 persons electronically. Technical means for this particular project are provided by ICZ Slovakia a.s. which was selected based on a public competition⁵.

⁴ J. Mendelský, *Súčasnú uplatňovanie prvkov restoratívnej justície*, 1st edition, Eurokódex, 2013, p. 228.

⁵ Ministry of Justice of the Slovak Republic. *Elektronické služby monitoringu obvinených a odsúdených osôb (ESMO)*, 3 March 2016, <http://www.justice.gov.sk/Stranky/Nase-služby/Naseprojekty/Elektronicke%20sluzby%20monitoringu>.

The essentials are included in the legislation covered by the Penal Code and Code of Criminal Procedure following the Law No. 78/2015 Coll. about the supervision over the realisation of some decisions through technical means as amended.

PROCESS OF ELECTRONIC MONITORING OF THE HOUSE ARREST

The house arrest serving device consist of two parts. The first one is a home monitoring station that is to be placed in the household or somewhere else where the monitored person is to stay. It is not allowed to manipulate with the station.

The second part consists of a personal identification device, laically called “a bracelet”. Typically, it is to be installed onto the ankle. The battery of this device shall work for 4 years approximately. The personal identification device – the bracelet – is a small radio frequency transmitter that is constantly sending information such as whether or not it is turned on, whether the particular person is moving or whether s/he is present and it also sends information about closing the case and loads of other necessary data.

These data are sent to the home monitoring station. This station sends the messages to the central monitoring system. Should a particular mode be violated as a result of any causes – either objective or intentional – the central monitoring system will record the incident which is to be further dealt with by operators. If it turns out that the device was damaged intentionally, the incident will be delegated to probation and mediation workers.

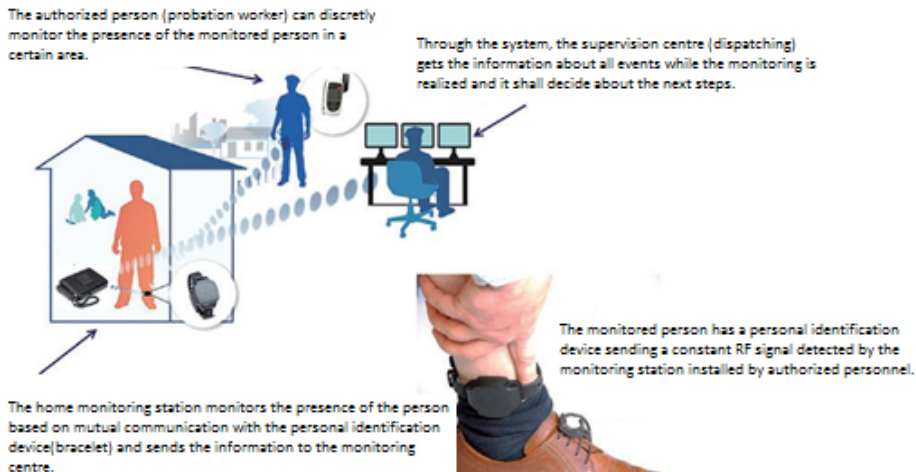


Figure 1 [The Electronic System of the House Arrest Monitoring]

TECHNICAL MEANS

The following devices are classified as technical means:

- Personal identification devices, also known as bracelets,
- Devices controlling the presence of the controlled person,
- Devices locating the controlled person,
- Devices notifying about nearness and controlling the consumption of alcoholic beverages,
- Devices checking the presence of the controlled person through voice checks,
- Devices assigned for probation and mediation workers.

All of these devices communicate with the central monitoring device so a complete overview about potential violations of conditions regarding serving the sentence is ensured.

All technical means are owned by the state. Ministry of Justice of the Slovak Republic administrates them.



Figure 2 [Electronic Bracelet]⁶

CONTROLLING THE TECHNICAL MEANS

The probation and mediation worker assigned by a particular court based on § 13 article 1 is in charge of the control of means related to the house arrest punishment, that is to say the home monitoring station and the personal identification device.

Under the term *control*, we understand:

- Installation and uninstallation of the device,
- Activation and deactivation of a particular mode,
- Dealing with all incidents related to objective causes or intentions,
- Checking the functionality of the device and maintenance.

⁶ TV noviny, *Takéto náramky čoskoro uvidíte na ulici*, 4 March 2016, http://www.tvnoviny.sk/domace/1782338_taketo-naramky-coskoro-uvirate-na-ulici.

CENTRAL MONITORING SYSTEM

The central monitoring system is used as an information system that controls the technical means. Also, it communicates with all of the technical means and notes the occurrence of security and operational incidents and doing so, it monitors the supervision process.

SECURITY INCIDENT

The identification of a security incident represents an exceptionally important element of the supervision through technical means as it shows the violation of duties, restrictions or prohibitions resulting from the decision.

In case a security incident is identified, probation and mediation workers shall assess it and delegate it to the judge who is to decide whether the convict has violated the conditions, duties or restrictions resulting from the law or not. This can lead to the change of the house arrest punishment into mandatory sentence of imprisonment.

OPERATIONAL INCIDENT

An operational incident is the other incident that might be identified by the central monitoring system. However, this kind of incident mostly does not lead to the detection of violation of conditions or duties resulting from the realization of the decision. As the name of the incident implies, it is an operational breakdown of technical means, such as a breakdown or a discharge of the battery. Yet in some cases it may turn out that an operational incident is actually a security incident. By damaging the device intentionally, the convict may aim at avoiding being monitored.

It is also necessary to mention that the central monitoring system is assigned for the identification of both operational and security incidents, so only this information will be available to the centre. This is how the law determines the range of the data about the convict processed. In other words, the monitor of the workers of the operation centre remains inactive unless there is an operational or security incident.

OPERATION CENTRE

The operation centre is a centre thanks to which probation and mediation workers can realize their authorizations and duties and it also operates the central monitoring system. The activity of the operation centre is ensured by the Ministry of Justice. It is in non-stop service (24 hours a day,

7 days a week). The main task of the operation centre is related to probation and mediation workers and its technical support when controlling the technical means as well as checking the compliance with the conditions of the realization of the control of technical means. In case of a life endangerment or a suspicion of a commitment of a crime, it also reports the security incident to police forces.

DISCRETIONS AND DUTIES OF CONTROLLED AND PROTECTED PERSONS

While the control is in process, the controlled or protected person can ask the probation and mediation worker as well as the operation centre for help. They can ask them for help when dealing with situations related to the control of technical means as well as situations influencing the course of the control through technical means.

Duties of controlled and protected persons:

- To comply with the exact orders of using the technical means,
- To protect all technical means from being broken, stolen, lost or damaged,
- To report any breakage, stealth, loss or damage of technical means to the probation and mediation worker,
- Not to manipulate with the technical means,
- To let the probation and mediation worker know about one's journey abroad within at least five work days before leaving,
- To announce any changes to probation and mediation workers,
- To enable the installation and uninstallation of technical means, their maintenance and entering one's place of dwelling for these purposes,
- To participate in the compensation for the realization of the supervision (1.50 EUR/day),
- Many other duties defined by the law.

The conditions specified in 1 to 4 as well as in 7 also apply in case of persons living in the same household with the controlled person.

Provided the protected person is juvenile, the duties specified in 5 and 6 shall be realized by his/her legal representative or by the person entrusted with the care for the juvenile child as a result of a decision of the court.

In case of any violation of the duties, the probation and mediation worker must immediately inform the one who made the decision. Subsequently, s/he shall inform the operation centre with regard to the seriousness of the violation and the consideration of the probation and mediation worker.

Item No. 5 states that the convict is obliged to let his/her probation and mediation worker know about a journey abroad within at least 5 days be-

fore leaving. Whether it is a protected or controlled person, except for his/her name and surname, also the actual place of stay and expected length of the stay shall be mentioned.

CONCLUSION

The paper focuses on the house arrest punishment and its monitoring. As it has already been mentioned, it is an alternative sentence. That means it is an alternative used instead of mandatory sentence of imprisonment. Only those who have committed an offence may be sentenced to house arrest. That means that those who have committed a rather serious crime cannot be sentenced to house arrest. In case of this punishment, there are conditions and restrictions defined that the convicts must comply with. Even though they are sentenced to house arrest, they can keep going to work. They only have to stay at home in the night time and during weekends. At the time when the convict is prohibited from leaving his/her place of dwelling, s/he is only allowed to violate the prohibition in emergency situations, such as in case of an appointment at the doctor's. From the perspective of the convict, one of the advantages of this kind of sentence is the possibility to stay in touch with his/her family. S/he can keep carrying out his/her parental responsibilities, taking care of the household, spending time with his/her partner and kids and, last but not least, to contribute financially. On the other hand, there is a great advantage to the state, too. As we know, prisons are full. Some of them are even 100% full.

The main reason for the realization of the electronic monitoring system project was the commitment of the Ministry of Justice of the Slovak Republic defined by the Policy Statement of the Government of the Slovak Republic 2012–2014 based on which the resort shall particularly focus on the options of imposing alternative sentences and emphasizing crime prevention. The essentials are included in the legislation covered by the Penal Code and Code of Criminal Procedure following the Law No. 78/2015 Coll. about the supervision over the realisation of some decisions through technical means as amended.

The greatest advantage is probably represented by financial resources spent in case of the house arrest punishment compared to those spent in case of mandatory sentence of imprisonment. In case of brick-and-mortar prisons, the costs spent on a single convict per day are approximately 39 EURO. On the contrary, in case of the house arrest punishment, the costs are almost incomparable. It is approximately 3 EURO,

with almost half of it being paid by the convicts themselves. The state spent almost 27 000 000 EUR on buying new electronic means to monitor the convicts, although part of it was financed through Euro Funds.

The payback period of these finances is estimated at 6 years at most. The house arrest punishment should be used more and more often by the court so the financial resources return as soon as possible. The already mentioned electronic means are a novelty in our country. They have been used since January 2016. Up to now, the convicts were only monitored during occasional controls of probation and mediation workers. The electronic means had to be tested first to make sure they are “viable”. 220 people took part in the experiment which lasted for 5 weeks. During the experiment, minor errors had occurred that were eliminated. The electronic means can also be used in case of other sentences. For instance, they are used in case of the prohibition to contact certain persons, the prohibition to consume alcohol, the prohibition to stay or attend public events, voice monitoring or discrete zone.

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