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House arrest as a preventive measure

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Abstract. Judges have applied house arrest as an alternative to imprisonment since the 17th century. Authorities have often used house arrest to detain political leaders ousted from power following a coup, but this method has been rarely used against common law offenders. The introduction of house arrest into Romanian legislation, with the entry into force of the New Criminal Procedure Code, has sparked numerous debates regarding the preventive nature of this measure and its implications on the restriction of rights such as liberty, free movement, or the presumption of innocence. Considering that in the criminal process, the means of administering justice, such as the administration of evidence, also involve the application of preventive measures aimed at ensuring the proper administration of evidence, preventing the commission of new crimes, and achieving the purpose of the criminal process, house arrest emerges as a necessary, less severe alternative to preventive detention. Currently, compared to other European criminal procedural legislations, house arrest in the Romanian legal framework is regulated and implemented in one of two ways. In Romania, house arrest is exclusively regulated as a preventive measure involving the deprivation of liberty during criminal proceedings, and not as an alternative method of serving a prison sentence. The year 2020 brought the popularization of the term "pandemic," naturally in reference to SARS-CoV-2, while simultaneously creating new legal scenarios. The "state of emergency" imposed restrictions similar to those of preventive measures involving the deprivation of liberty. The significant difference, however, was that the restrictive measures during the state of emergency applied to the entire population and aimed to protect the public from mass infection. Although both ironic and harsh, the state of emergency led to an unintended practical experiment with some of the restrictions imposed by house arrest as a preventive measure. Moreover, since the entry into force of the New Criminal Procedure Code and up to the present, the preventive measure of house arrest has included only in theory the possibility of electronic monitoring. New possibilities in this regard emerged with the adoption of Law no. 146 of May 17, 2021, concerning electronic monitoring in judicial and penal enforcement procedures. This law provides clarifications regarding electronic monitoring devices and addresses a legislative gap regarding the failure to comply with the obligation not to leave the domicile, except in expressly provided situations, now classified as the offense of escape. Finally, I aim to support the legal nature of house arrest by categorizing it, if further confirmation were needed, as a measure involving deprivation of liberty, as recognized by the jurisprudence of the European Court of Human Rights (ECHR), particularly in the cases of *Manzoni v. Italy* and *Lavents v. Latvia*.

Keywords. preventive measures, criminal investigation bodies, suspect, investigations, police investigation

House Arrest of the Defendant

House arrest is one of the judicial supervision measures that can be applied during criminal proceedings. At the European level, developments in this area led to the adoption of a legal act in 2009 designed to ensure the implementation of the principle of mutual recognition in judicial supervision decisions as an alternative to preventive detention—commonly referred to as the Framework Decision on the European Supervision Order¹. In practice, this principle is implemented as follows:

- Commission of the offense within the territory of a Member State;
- Issuance of the judicial supervision order;
- Transmission of the order to the executing state;
- Recognition of the judicial decision in the executing state;
- Transfer of the judicial supervision measure;
- Execution of the measure.

Over time, the definition and regulation of house arrest at the international and European levels have been addressed under various terms, such as "electronic monitoring," "house arrest with electronic supervision," "permanent localization," "home confinement," or "custody under house arrest."

In Italian law, regulated by Article 284 of the Italian Code of Criminal Procedure, house arrest (*arresti domiciliari*) specifies that the defendant is obligated not to leave their home, residence, or the place where they are cared for or receive public assistance. The judge determines where the house arrest will be executed, taking into account the need to ensure the victim's protection.

Regarding the comparison between house arrest and preventive detention, it is worth noting that the Italian Court of Cassation consistently holds that there is full equivalence between the two measures. The purpose of liberty deprivation through house detention has a dual significance: preventing contact between the defendant and other participants in the offense or other relevant individuals and facilitating police checks. Upon imposing the measure, the judge will determine how compliance with the obligations will be monitored: through human verification, electronic means, or other technical methods. If the defendant refuses, preventive detention will be imposed.

Additionally, it should be mentioned that Article 47 of Law No. 354 of July 26, 1975 (Italian Enforcement Law) provides that house arrest can also serve as an alternative method of penalty execution in a non-penitentiary regime—a situation that is still absent in Romanian legislation.

In French law, another source of inspiration for the Romanian New Criminal Procedure Code (NCP), the preventive measure of house arrest with electronic surveillance (*assignation à résidence avec surveillance électronique*) can only be imposed on a defendant. Introduced into legislation by Law No. 1436 of November 24, 2009, this measure partially reflects earlier procedural criminal regulations. It was previously applied under judicial control, where one obligation was to remain within the residence for a specific period.

A particular feature of this measure in French legislation is that when the maximum sentence provided by law is up to seven years of imprisonment, enforcement of the measure is monitored via a system that allows remote detection of the defendant's presence or absence from the premises. For offenses with sentences exceeding seven years, the defendant is placed under

¹ <https://eur-lex.europa.eu/legal-content/ro/TXT/?uri=CELEX:52014DC0057>

a mobile electronic surveillance regime, requiring the individual to wear a device incorporating a transmitter, enabling remote tracking throughout the national territory at any time.

Whether understood and regulated as a preventive measure involving deprivation of liberty or as an alternative method of penalty execution, depending on the procedural moment of its imposition and the existing legal and functional possibilities in each state, house arrest includes a diverse range of measures aimed at ensuring individuals suspected, accused, or convicted of crimes remain under supervision (human or electronic) at home.

One of the initial controversies surrounding house arrest concerned its classification: whether it is a measure of deprivation of liberty or a restriction of the right to free movement.

The European Court of Human Rights (ECHR) has played an essential role in understanding the mechanisms for implementing and enforcing house arrest. Over time, the ECHR has ruled on various cases concerning house arrest², primarily addressing Article 5 of the European Convention on Human Rights (ECHR).

The ECHR has determined that the level of constraint imposed by house arrest is sufficient to consider it "a deprivation of liberty" under Article 5 of the ECHR.

According to ECHR jurisprudence, the deprivation of liberty of a suspect or accused person in criminal proceedings can take different forms, and it is unnecessary for the place of enforcement to be a detention institution in the strict sense.

As some authors note³, "The ECHR has analyzed the incidence of the notion of deprivation of liberty by considering the space that could not be left, the physical or psychological coercion imposed on an individual by authorities, or the period during which one could not freely leave a given space, in cases involving preventive detention, imprisonment after conviction, house arrest, etc."

European and other international jurisprudence demonstrates that magistrates have imposed mandatory home isolation measures for individuals accused of crimes, in the form of house arrest, as an alternative to imprisonment, since the early 1900s. Evidence shows the issuance of the first house arrest sentence using an electronic monitoring system, the "electronic bracelet," as early as 1983.

Developments in legal regulations and the experimentation with best practices in this area have naturally led to the evolution of electronic monitoring systems for individuals under house arrest. These systems also allow individuals to leave their homes in legally determined situations.

According to Wikipedia⁴, "In the context of implementing preventive measures during criminal proceedings, imposing house arrest offers an alternative to preventive detention and aims to reduce recidivism and the costs of maintaining the defendant during preventive detention or the overcrowding of the penitentiary system. Moreover, this measure enables eligible offenders to retain employment or seek work, maintain family relationships and responsibilities, and participate in rehabilitation programs that aid reintegration and reeducation."

Since 2014, under procedural regulations in Romania, preventive measures include detention, judicial control, judicial control on bail, house arrest, and preventive detention.

² http://www.mpublic.ro/appeals/2009_criminal/r_27_05_2009_2.htm#_ftn4

³ M. Udroui, O. Predescu, *European Protection of Human Rights and the Romanian Criminal Process*, C.H. Beck Publishing House, Bucharest, 2008

⁴ http://en.wikipedia.org/wiki/House_arrest

Given that house arrest as a legal institution is relatively new in Romanian criminal procedural law, the professional expertise of specialized judicial authorities, lawyers, and other criminal law professionals remains limited. It would be fair to start by acknowledging that the regulation of this measure has been and remains incomplete, subject to criticism regarding its implementation. Furthermore, specialized literature, beyond empirical research and documentary studies, presents similar gaps, with no integrated hypothesis addressing the issue of house arrest comprehensively, leaving ample room for supplementation and improvement.

Although the electronic monitoring system has been regulated since the entry into force of the NCPP, in Romania, compliance with house arrest as a preventive measure is still ensured only through direct verification methods by police officers. This contrasts with some countries that have implemented house arrest through electronic monitoring systems inspired by the legislation on which the NCPP was based.

This issue is widespread across the country. At the European Union level, a lack of uniformity in using electronic bracelets has been observed. Specifically, 16 states use them, 11 states do not, with 5 of these having no explicit legislative provision, while 6 states include them in law but have found, through pilot projects, that the budgetary effort is too high. For instance, in Italy, between 2003 and 2010, €80 million was spent on electronic bracelets, yet only 14 individuals were monitored.

It is essential to note that electronic monitoring is merely a means for the state to ensure compliance with house arrest, specifically the obligation for the defendant not to leave their domicile except in legally permitted circumstances⁵.

The recent legislative amendment promises to align national criminal and criminal procedure legislation with European standards, particularly by implementing the electronic monitoring system. This system would facilitate police supervision of compliance with the obligation to remain at home during house arrest and could also be used in other judicial or penal enforcement procedures.

Thus, the provisions of Law No. 146/2021 regarding electronic monitoring in judicial and penal enforcement procedures amend the Penal Code to clarify the situation when a person under house arrest fails to comply with the obligation to remain at home or violates the itinerary or travel conditions established by law. Such acts are classified as a form of the offense of escape, under Article 285 of the Penal Code.

Moreover, regarding the electronic surveillance system, amendments to both the Penal Code and the NCPP create a legal framework conducive to its implementation. Specifically:

- The destruction of the electronic monitoring system has been introduced as a form of the offense of destruction, under Article 253 of the Penal Code.
- One of the obligations for a defendant under judicial control or house arrest could be to wear an electronic monitoring system permanently.

In criminal justice activities, the primary scenarios for applying house arrest in the legislation and practices of various states involve it as a preventive measure depriving liberty during the criminal process (until the issuance of a final judgment of conviction) or as an alternative method of serving a prison sentence established by a final criminal judgment.

As previously mentioned, house arrest as a preventive measure has no tradition in Romanian criminal procedural law. It was introduced as a novel concept in the NCPP and is regulated under Section V (Articles 218–222 NCPP) of Title V, titled "Preventive Measures

⁵ Ivan Anane, *Elements of Theory and Tactics of Criminal Investigation Bodies*, Pro Universitaria Publishing House, Bucharest, 2014

and Other Procedural Measures." Inspired by European legislation, particularly the Italian Code of Criminal Procedure, with a similar regulation found in the French Code of Criminal Procedure⁶, house arrest involves obliging the defendant, for a specified period, not to leave their residence without permission from the judicial body that imposed the measure or before which the case is pending, and to comply with restrictions established by this body.

Some authors opine that the introduction of this institution increases the possibilities for individualizing preventive measures based on the severity of the offense, the purpose of the measure, and the personal circumstances of the offender.

It is worth noting from the outset that, unlike preventive detention, house arrest does not impose daily schedules determined by the regulations of a detention facility. The defendant faces no restrictions on access to material resources, communication, or information means and is under supervision rather than custody. They do not require permission for visits and are not bound by specific visiting schedules, except for exceptions imposed by individual circumstances.⁷

Regarding the nature of house arrest as a preventive measure, the Constitutional Court has analyzed it constitutionally, determining that it constitutes a preventive measure depriving liberty, an aspect confirmed by ECHR jurisprudence. The Court held that house arrest constitutes a deprivation of liberty under Article 5 of the Convention, with no grounds to conclude otherwise.

The preventive nature of house arrest requires it to be accompanied by all guarantees recognized for preventive detention. Consequently, the Constitutional Court determined that measures depriving liberty constitute a restriction on individual liberty, as permitted by Article 23 of the Constitution and Article 5(1)(c) of the European Convention on Human Rights. Measures depriving liberty must respect the principle of legality, general rules of the rule of law, legal security, proportionality, and protection against arbitrariness.

House arrest is ordered by the judge for rights and freedoms, the preliminary chamber judge, or the court, depending on the procedural stage. It is an intermediate measure between preventive detention and judicial control. It is not imposed on individuals definitively convicted of escape or those reasonably suspected of committing a family member offense or having previously committed the offense of escape.

Throughout house arrest, the defendant is prohibited from communicating with the victim or their family members, other participants in the offense, witnesses, experts, or individuals specified by the judicial body. They are also barred from leaving their residence without judicial permission. The defendant must adhere to established restrictions and appear before judicial authorities when summoned.

In urgent cases, for justified reasons, the defendant may leave their residence without prior judicial permission, provided they immediately inform the designated supervisory institution and the judicial body that imposed the house arrest.

Judicial authorities may require the defendant to wear an electronic monitoring device during house arrest. Any attempt to leave the residence would trigger the GPS-equipped electronic monitoring system, allowing real-time tracking of the defendant. Implementing this provision would significantly benefit the supervision of individuals under house arrest, currently performed only through unannounced police visits, which lack full efficiency.

⁶ I. Neagu, M. Damaschin, *Treatise on Criminal Procedure, General Part*, Universul Juridic Publishing House, Bucharest, 2014

⁷ Ivan Anane, *Management of Criminal Investigation Bodies*, Pro Universitaria Publishing House, Bucharest, 2014

Based on the experience of other states that have implemented technical monitoring systems to ensure compliance with house arrest, authorities in our country have two main methods to achieve this objective: the implementation of such technical solutions at the level of the operational units of the Ministry of Internal Affairs (these systems could also be connected through the National Emergency Call System 112) or outsourcing the supervision of individuals under house arrest to companies specializing in the security and surveillance of goods and persons.

As a first observation regarding the duration of house arrest, the days spent under house arrest are deducted from the final sentence, similar to preventive detention days, unlike judicial control days, which are not deducted from the final sentence.

To ensure the inherently preventive nature of house arrest imposed during ongoing criminal proceedings, the new code, inspired by the Italian Code of Criminal Procedure, introduced a maximum duration for house arrest, which was initially absent in the NCPP.

On May 7, 2015, the Constitutional Court declared the provisions of Article 222 of the Criminal Procedure Code unconstitutional because they failed to regulate the maximum period for which house arrest could be imposed. On June 30, 2015, through an emergency ordinance, this period was set at a maximum of 180 days during the criminal investigation, allowing house arrest to be reinstated. In the preliminary chamber procedure and during the trial, the house arrest period cannot exceed half of the maximum penalty provided by law for the offense for which the charges are brought and cannot exceed five years.

As mentioned earlier, to extend the measure of house arrest during the criminal investigation, the following conditions must be met cumulatively: • The extension of the measure must be necessary to achieve the purpose for which it was imposed; • The grounds that led to the imposition of the measure must still justify the deprivation of liberty, or new grounds must have arisen to justify it; • The total duration of the measure must not exceed a reasonable period and must not exceed 180 days; • There must be no cause preventing the initiation or continuation of criminal proceedings.

As reason gives birth to monsters, we must mention the situation during the 18 days (June 12–30, 2015) when house arrest was unconstitutional. In practice, this legislative vacuum exposed anomalies in the system of alternative measures to preventive detention and simultaneously highlighted public opinion on this issue, as seen in the unfortunate case known in the media as the “Vaslui rape case.”

What this case revealed, beyond the anomalies caused by a legislative vacuum, is that Romanian society—media, politicians, and the public—is still not ready to discuss issues related to preventive detention or house arrest in a balanced, rational, and decent manner.

To impose house arrest, the general conditions provided in Article 202 of the NCPP, as well as the specific conditions for preventive detention provided in Article 223 of the NCPP, must be met.

The NCPP establishes the obligation of the judicial body, when selecting the preventive measure, to analyze cumulatively the following general conditions: there must be evidence or reasonable indications suggesting a person committed an offense, the chosen measure must be proportional to the severity of the accusation, the preventive measure must be necessary to achieve its purpose—the necessity of liberty-depriving or liberty-restricting measures being expressed as an exceptional condition—and at the time of imposition, confirmation, extension, or maintenance of the preventive measure, there must be no cause preventing the initiation or continuation of criminal proceedings.

According to the doctrine, the purpose of the preventive measure is understood as preventing or eliminating a certain danger, with the judicial body being obligated to choose the appropriate and sufficient measure to achieve that purpose. Thus, the danger may manifest in the concealment, destruction, or alteration of evidence, evasion from investigation, trial, or sentence execution, or obstruction of truth-finding by influencing witnesses or experts. Additionally, the literature has established that the proper conduct of the criminal process could be affected by the suspect's or defendant's improper conduct—attempting to influence co-defendants, witnesses, victims, or experts, destroying or altering material evidence, obstructing the administration of necessary evidence, or engaging in similar activities.

The imposition of the preventive measure to ensure the proper conduct of the criminal process aims to prevent the influencing of statements by other participants in the crime—whether or not they are accused in the criminal process, have procedural standing, or are witnesses—whether requested by the prosecution or defense, regarding the criminal or civil aspects, the facts, or the circumstances of the act. It also seeks to prevent the destruction, alteration, concealment, or removal of material evidence—whether or not taken from the crime scene, in the custody of judicial authorities, or previously discovered by them.

It is noted that ensuring the proper conduct of the criminal process involves preventing situations where the defendant, directly or through intermediaries, exerts pressure on the victim—directly or indirectly (on a relative), through threats, intimidation, persistent suggestions, threats of physical violence against the victim or their family members, blackmail, or false public statements about the act, intending to influence or intimidate—or attempts to fraudulently reach an agreement with the victim—through requests, offering benefits, or other similar means, misleading the victim, or imposing improper procedural conduct on the victim, such as retracting statements, refusing to testify, or affirming untruthful facts, aiming to interfere with the criminal process, delay prosecution, or ensure liability for a less severe act.

Thus, it is found that the phrase “proper conduct of the criminal process” could mean preventing situations where the defendant might severely interfere with the proper and correct conduct of the criminal process by attempting to alter the evidence on which judicial authorities⁸ are to establish the truth; in this context, we can speak of the proper conduct of the criminal process when concrete activities are prevented in which the defendant, directly or through another person, attempts to influence the criminal process by dishonest means, other than those procedurally permitted by the right of defense.

We can mention that in the jurisprudence of the Strasbourg Court, four fundamental acceptable reasons have been outlined for imposing the preventive measure of house arrest on a person suspected of committing an offense: the risk of the accused fleeing; the risk that, once released, they will obstruct justice, commit new offenses, or disturb public order (*Letellier v. France*). The Strasbourg Court has ruled that the danger of obstructing the proper conduct of criminal proceedings cannot be invoked abstractly by authorities but must be based on factual evidence. The need to maintain public order and ensure the proper conduct of the investigation has also been recognized by the European Court as grounds justifying the extension of liberty-depriving measures.

Regarding Article 202, paragraph 5 of the NCPP: “There must be no reasonable suspicion that the defendant committed an offense against a family member,” examples include offenses such as rape against a spouse or direct relative, sexual assault, sexual acts with a minor, child abuse, or human trafficking involving family members. In all these cases, considering that

⁸ Ivan Anane, *Investigation by Criminal Investigation Bodies*, Pro Universitaria Publishing House, Bucharest, 2014

the qualified passive subject of these offenses is a family member, the prohibition of house arrest applies when an offense is committed against a family member. Regarding this negative condition, in practice, the following situation may arise: in the case where house arrest is proposed, there is no reasonable suspicion of an offense against a family member, but in a related case, the defendant is investigated for an offense against a family member. In this latter case, the prohibition of house arrest persists.

Referring to the condition that the defendant must not have been previously convicted for the offense of escape, it can be noted that regarding the offense of failure to execute criminal sanctions provided under Article 288 of the Penal Code, we strictly refer to paragraph 2 of this article, which states: “evasion from the execution of an educational measure involving deprivation of liberty by unlawfully leaving the educational or detention center, or failing to return after the expiration of a period during which the individual was legally at liberty.” This too constitutes an escape. Professor Nicolae Volonciu asserts that if the defendant has been rehabilitated for a previously committed escape offense, the effect of rehabilitation would prevent the denial of access to the preventive measure of house arrest. According to Article 169, paragraph (1) of the Penal Code, “rehabilitation terminates disqualifications, prohibitions, and incapacities arising from the conviction.”

Additionally, with the entry into force of Law No. 146/2021 regarding electronic monitoring in judicial and penal enforcement procedures, particularly the amendment to Article 285, paragraph 3, letter c of the NCPP, a defendant who leaves their domicile without being in one of the exceptional circumstances will be prosecuted for the offense of escape. Consequently, this will automatically result in replacing house arrest with preventive detention. This differs from the situation before the entry into force of this law, where, upon noting a breach of the obligation not to leave the domicile, the designated supervising authority would submit a substantiated report to the court, including reasons and a proposal to change the measure. In practice, such reports often failed to produce the requested legal effect.

One criticism of the preventive measure of house arrest, concerning its characterization as not being a deprivation of liberty comparable to preventive detention, is the lack of a warrant, which is the procedural act through which the disposition contained in the ruling is executed.

The substantiated order represents the document through which the criminal investigation body or the prosecutor decides on preventive measures, while the substantiated ruling is the act resolving, during the criminal investigation and preliminary chamber procedure, requests, proposals, complaints, and appeals related to preventive measures and the act through which the court rules on preventive measures.

Unlike preventive detention, the legislator does not regulate the territorial competence of the court in whose jurisdiction the place of detention, namely the domicile of the person under house arrest, is located. Although this is an omission by the legislator, it is known that house arrest can also be ordered for a defendant in custody. The prosecutor refers the matter to the judge for rights and liberties for the imposition of house arrest through a report, and the court is seized when the prosecution considers that the conditions stipulated in Article 218 of the NCPP are met. The prosecutor may submit the request *ex officio* or based on a proposal from the criminal investigation authorities.

Moreover, the judge for rights and liberties may also impose this measure in the following situations:

- When the prosecutor’s proposal for preventive detention is rejected, the judge orders, *ex officio*, a less severe preventive measure, in this case, house arrest;

- When the prosecution's proposal or ex officio action involves replacing judicial control or judicial control on bail with house arrest;
- When the defendant submits a request to revoke or replace preventive detention;
- During the resolution of an appeal against decisions imposing preventive measures during the criminal investigation.

For imposing house arrest, the law prescribes the following procedure: the prosecutor drafts a report proposing house arrest and submits it, along with the case file, to the competent judge for rights and liberties⁹.

The judge for rights and liberties sets a deadline for resolving the matter in the council chamber within a maximum of 24 hours from the registration of the prosecutor's proposal in court, during which the defendant must be summoned for the hearing, with mandatory notification of the chosen or appointed legal counsel, as legal assistance is obligatory.

The competent prosecutor must also be notified to participate in the hearing. While the presence of the defendant's counsel and the prosecutor is mandatory, the defendant's absence does not prevent the resolution of the proposal. However, if the defendant appears at the scheduled hearing, their hearing by the judge for rights and liberties is mandatory. Before the hearing, the defendant must be informed of their procedural rights and obligations, the offense they are accused of, and the reasons for requesting house arrest.

After deliberating on the preventive measure, the judge for rights and liberties records the deliberation in the minutes, as per Article 400, paragraph (2) of the NCPP. The minutes must be prepared in two original copies. The decision will be pronounced in the council chamber, and the judge for rights and liberties may admit or reject the prosecutor's proposal through a substantiated ruling. If the prosecutor's proposal for house arrest is rejected, the judge for rights and liberties may, ex officio or without an explicit request from the defendant or prosecutor, impose a less severe preventive measure, such as judicial control or judicial control on bail. Conversely, if the proposal for house arrest is accepted, the ruling must specify the duration of the measure, the obligations the defendant must observe during it, and the authority responsible for supervising compliance.

The imposition of house arrest will be communicated to the defendant in writing under signature, along with the rights granted under Article 83 of the NCPP. If the person cannot or refuses to sign, a report will be prepared. A copy of the judge's ruling imposing house arrest must be immediately communicated to the defendant, the designated supervisory authority, the police authority in the jurisdiction where the defendant resides, the public community record service, and border control authorities. Both the defendant and the prosecutor may contest the judge's ruling on house arrest within 48 hours of the decision being pronounced for those present, or from the time of communication for those cited. Under Article 219, paragraph (8) of the NCPP, the case file must be returned to the criminal investigation body within 24 hours after the contestation period expires.

In the preliminary chamber phase, the imposition of house arrest becomes the prerogative of the preliminary chamber judge handling the case, based on the indictment issued by the prosecutor. The preventive measure may be requested by the prosecutor directly through the indictment or a separate application after the initiation of the preliminary chamber procedure, or the preliminary chamber judge may act ex officio regarding the necessity of imposing this preventive measure on the defendant.

⁹ Ivan Anane, *Elements of Criminal Procedural Law*, Pro Universitaria Publishing House, Bucharest, 2015

Also, the preliminary chamber judge, when seized with an indictment in which the defendant has been sent to trial while under house arrest, is required to verify the legality and validity of this measure and may order its continuation, revocation, or replacement with another preventive measure. During the preliminary chamber procedure, house arrest is imposed following the same procedure as in the criminal investigation phase. In this phase, house arrest is not extended but is periodically reviewed *ex officio* at intervals not exceeding 30 days. During the trial phase, the body responsible for ruling on house arrest is the trial panel at the court of first instance or, as applicable, on appeal. In principle, during the trial phase, the procedure for imposing house arrest follows the same steps as previously described for the criminal investigation phase. The difference lies in the fact that requests, proposals, and referrals concerning house arrest are resolved in public court sessions.

According to Article 221, paragraph (1) of the NCPP, house arrest consists of prohibiting the defendant from leaving their residence without the permission of the competent judicial body that ordered the measure or before which the case is pending and obliging the defendant to comply with restrictions imposed by that body. The legislator also established a series of obligations that the defendant must respect during house arrest: to appear before the criminal investigation body, the judge for rights and liberties, the preliminary chamber judge, or the trial court whenever summoned, and not to communicate with the victim or their family members, other participants in the offense, witnesses, or experts, as well as with other persons identified by the judicial body.

For the second obligation to be respected in good faith, the individuals with whom the defendant is prohibited from communicating must be specifically named in the ruling ordering house arrest.

As an alternative obligation, the court may require the defendant to wear an electronic monitoring system throughout the duration of house arrest. This system would allow continuous and real-time verification of compliance with the obligation not to leave the residence and immediate notification of the supervisory body regarding any breach of this obligation. However, as previously stated, no system is currently in place to ensure electronic monitoring of individuals under this form of investigation or penalty execution.

Leaving the residence designated in the ruling may occur with the permission of the judicial body or, in exceptional circumstances, without such permission. This exception allows the defendant, depending on the situation, to maintain employment (if permitted to travel to and from work), study (if enrolled in an educational institution), thereby demonstrating the legislator's intention to facilitate the defendant's reintegration into society. Leaving the residence occurs only after the supervisory body establishes the itinerary and the timeframe within which the defendant is permitted to travel. Except in urgent cases with valid reasons for leaving strictly within a necessary timeframe, any deviation from these provisions constitutes the offense of escape.

The exceptional circumstances include situations where the defendant leaves the residence to save their own life, physical integrity, or health or that of another person, protect significant property belonging to themselves or another, or safeguard a general interest. The supervisory body is obliged to verify the validity and reasonableness of the reasons cited, and the defendant must immediately inform the supervisory institution, body, or authority and the judicial body that ordered house arrest or before which the case is pending.

House arrest is supervised by specialized institutions designated by the judicial body that imposed the measure. Upon receiving a copy of the ruling ordering house arrest, the supervisory body immediately sends representatives to the defendant's residence to identify the

location, verify the defendant's identity, identify persons living with or dependent on the defendant, and draft a report on these findings. This report is then communicated to the judge for rights and liberties, the preliminary chamber judge, or the trial court to confirm the commencement of supervision activities.

The primary responsibilities of the institution, body, or authority designated to oversee the application of house arrest are as follows:

- Periodic verification, no later than every two calendar days¹⁰, of the defendant's compliance with the measure and obligations;
- Immediate referral to the prosecutor during the criminal investigation, the preliminary chamber judge during the preliminary chamber procedure, or the trial court during the trial, with a proposal in cases of willful breaches of obligations, such as the offense of escape;
- Granting police authorities the ability to enter the residence where the measure is being executed without the consent of the defendant or those living with them.

For each individual under house arrest, the designated supervisory body will compile a supervision file containing:

- a. Judicial rulings regarding the imposition, review, extension, cessation, revocation, or replacement of house arrest, as well as permissions to leave the residence and other communications;
- b. The defendant's identification documents¹¹, personal record sheet, or identification report;
- c. Documents prepared during each verification of compliance with the measure and obligations by the defendant;
- d. Documents containing identification data of individuals the defendant is prohibited from contacting;
- e. Documents containing identification data of individuals residing with or dependent on the defendant;
- f. Acknowledgment signed by the defendant of the conditions for leaving, traveling, and returning to the residence;
- g. Any other documents deemed necessary for properly executing supervisory activities related to or involving the defendant under house arrest.

If it is found that the defendant has willfully violated house arrest or their obligations or there is reasonable suspicion that they have intentionally committed a new offense resulting in criminal proceedings, the judge for rights and liberties, the preliminary chamber judge, or the trial court, either upon referral by the prosecutor or ex officio, may replace house arrest with a more severe measure, namely preventive detention.

For proper supervision of the defendant, the supervisory body collaborates with local authorities, other law enforcement and public safety agencies, and any individuals or entities that may provide information regarding compliance or non-compliance with the obligations imposed by the judicial body. Replacing house arrest with a more severe preventive measure is a possibility, not an obligation, allowing the judge or court to assess whether preventive detention is necessary to achieve the purpose stipulated in Article 202 of the NCPP. This

¹⁰ Article 129, paragraph 3¹ of Law No. 254/2013 on the Execution of Sentences and Deprivation of Liberty Measures Ordered by Judicial Bodies During the Criminal Process

¹¹ Ivan Anane, *Elements of Computerized Personal Records*, Pro Universitaria Publishing House, Bucharest, 2015

decision is based on the severity of the violation, its duration, the number of violations, and all relevant personal or factual circumstances.

The Romanian legislator has chosen to distinctly regulate the cases of termination of preventive measures, differentiating between general cases applicable to all preventive measures and specific cases applicable only to house arrest. Preventive measures are automatically terminated upon the expiration of the time limits provided by law or established by judicial bodies. For example, during the preliminary chamber phase, the legality and validity of house arrest must be reviewed within a maximum of 30 days, and during the trial phase within a maximum of 60 days. If these maximum review periods expire without the judge for rights and liberties conducting the review, the measure automatically terminates upon the expiration of these time limits.

Another example is that during the criminal investigation phase, house arrest can be ordered for up to 30 days; however, this does not prevent the judge from imposing the measure for a shorter duration. In such cases, if the measure is not extended, it automatically terminates at the expiration of this period. Moreover, preventive measures also terminate in cases where the prosecutor orders a non-prosecution solution, or the court pronounces a ruling of acquittal, termination of the criminal trial, waiver of the penalty, postponement of penalty application, or suspension of penalty execution under supervision, even if the decision is not final.

Furthermore, according to Article 241, paragraph (1)(c) of the NCPP, preventive measures automatically terminate on the date when the ruling ordering the defendant's conviction becomes final. Paragraph 3 of Article 241 NCPP states that preventive measures also terminate automatically in other cases provided by law.

This phrase allows reference to Article 399, paragraph (3) of the NCPP, which provides that preventive detention automatically terminates when the court pronounces: a prison sentence equal to or less than the duration of detention and preventive arrest; a prison sentence with execution suspended under supervision; a fine that does not accompany a prison sentence; or an educational measure. According to the NCPP, preventive detention and house arrest automatically terminate: during the criminal investigation phase, upon reaching the maximum duration of 180 days; during the trial in the first instance, upon reaching the maximum duration provided by law; and on appeal, if the measure's duration equals the sentence pronounced in the conviction ruling. Additionally, termination occurs when the motivated proposal to extend the measure is not sent to the competent court at least five calendar days before the measure's expiration.

Revocation of preventive measures is a procedural act at the discretion of judicial bodies. Thus, a preventive measure is revoked, *ex officio* or upon request, if the reasons that justified it cease to exist or if new circumstances arise indicating the measure's illegality. It can be observed that the revocation of preventive measures aligns with the pattern established by pre-2014 regulations: according to Article 139, paragraph (2) of the previous Code of Criminal Procedure, a preventive measure was revoked when it was found to have been imposed in violation of legal provisions or when no grounds remained to justify its continuation.

During the criminal process, circumstances may arise requiring the replacement of the initially imposed preventive measure with another. Under the provisions of the NCPP, a preventive measure is replaced, *ex officio* or upon request, with a less severe preventive measure if the conditions provided by law for imposing the less severe measure are met and, following an evaluation of the specific circumstances of the case and the procedural conduct of the defendant, it is deemed that the proposed less severe measure is sufficient to achieve the purpose stipulated in Article 202, paragraph (1) of the NCPP. Conversely, a preventive measure

is replaced, ex officio or upon request, with a more severe preventive measure if the conditions provided by law for imposing the more severe measure are met and, following an evaluation of the specific circumstances of the case and the procedural conduct of the defendant, it is deemed that the proposed more severe measure is necessary to achieve the purpose stipulated in Article 202, paragraph (1) of the NCPP. For example, this could involve replacing judicial control with house arrest or preventive detention, or replacing house arrest with preventive detention. Regarding the replacement of preventive measures, the legislator has made a clear distinction between replacing a preventive measure with a less severe one and replacing it with a more severe one.

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