

Some Considerations Regarding Search

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ABSTRACT: In this paper, aspects were analyzed regarding the tactical research activity of the home or on the body of a person, known as search. The purpose is to present, from a procedural point of view, how to carry out this activity, the importance of carrying it out, the types of search regulated by the Romanian Criminal Procedure Code, as well as aspects regarding the psychology of the search.

KEYWORDS: prosecution, home search, body search, document, legal psychology

Introduction

The search has an important role in solving criminal cases, being a complex activity, carried out by criminal prosecution bodies. The search is important because in a criminal case, without obtaining evidence, the investigation would remain without purpose.

Denying a person regarding the delivery of objects or documents makes the legislator offer the possibility to the criminal investigation body to resort to conducting a search.

The provisions of article 157 of the Criminal Procedure Code indicate that in case of suspicion of committing a crime by a person related to the possession of objects or documents, in this case, a search is necessary which may lead to the arrest of the suspect or defendant.

Although it seems that the criminal investigation bodies violate the inviolability of the domicile, of the person, or the secrecy of the correspondence, in order to find out the truth, they can perform this act.

The success of a search depends on how it is prepared. Thus, the organization of such activity requires a lot of patience, careful organization, and a thorough examination, with rapid adaptation to concrete situations.

Of particular importance is the psychology of the criminal investigation body that conducts the search. He must have a sufficiently developed sense of observation, so as to lead to the finding of the truth and the discovery of objects and writings.

In fact, the behavior of the searched person will be monitored at all times, finding an accentuation of his emotional tension, at the time of the search.

Search is a tactical investigation of a person's home or body, which may be ordered by the prosecuting authority or the court, when the person asked to surrender in the interest of establishing the truth, any object or document denies their existence or possession (Buzatu 2013, 98).

The search may have as its purpose the detention of persons who evade criminal prosecution, trial or the execution of the sentence. The search can locate the kidnapped or missing people, alive or dead (Ionescu 2007, 191).

Detailing the definition, it can be seen that what is related to the essence of the search is the action or complex of actions that can be subsumed under the notion of "search" (Olteanu and Ruiu 2009, 98).

From a procedural point of view, the search is an activity characterized by procedural relations that arise between the parties to the criminal proceedings, which derive from the right to compensation, to repair the damage caused to the injured party by crime and the need to administer criminal probation forced by objects, values, documents that may be on some persons or in their homes, persons who may have the quality of perpetrators, accomplices, concealers or witnesses, even if or not they are acquirers in good faith.

The search must be an activity whose purpose must be established in advance (Ordukaya 2017, 225).

The search functions are:

- complete and without delay the collection of evidence;
- discovering both the means of proof that are the object of the search, as well as new factual elements that can serve to find out the truth or even to extend the research in question;
- the preservation of the means of proof, both those discovered during the activity and those that the persons in question refused to hand over voluntarily to the judicial bodies and it was necessary to proceed to obtain them by force (Grofu 2019, 93).

The importance and purpose of the search

The literature shows the importance of the search, determined by the fact that it is decisive in solving a criminal case, by obtaining evidence absolutely necessary to establish the facts or circumstances in which a crime was committed, as well as the identification of the perpetrator.

The particular role of the search also results from the fact that the criminal investigation bodies have the possibility to carry out this act even in the conditions in which, apparently, it would mean a breach of the inviolability of the domicile, person or secrecy of correspondence, as in the case of flagrant crimes the provisions of the law (Ciobanu and Stancu 2017, 218-219).

Depending on the particularities of each criminal case, the search may aim at:

- The discovery and seizure of objects, goods, values, documents, which contain or bear the traces of the crime, of those who used or were intended to serve in the commission of the crime, as well as of those who are the product of the illicit activity;
- The discovery of the persons who evade the criminal investigation, trial or execution of the sentence and of the missing persons, corpses or fragments of corpses;
- The discovery of goods/values to be made unavailable in order to recover the damage caused by the crime (Buzatu 2013, 98-99).

The seizure of objects and documents is of equal importance for the settlement of a criminal case. From a forensic tactical point of view, it has a less complex character (Stancu 2015, 495).

Specifying the purpose of the search in relation to the investigated case presupposes the existence of a correct representation of what is sought and can be discovered in each case (Văduva 2004, 95).

The purpose of the search must also be specified in the search warrant issued by the judge of rights and freedoms, at the request of the prosecutor (Ordukaya 2017, 224).

Classification of searches

The search can be *home*, *body*, *computer* or a *vehicle* (Art.156 of Criminal Procedure Code, 85). *Home search* is the evidentiary procedure ordered by the criminal investigation body, the judge of rights and freedoms or the court, in order to find and pick up objects or documents not voluntarily handed over or whose existence or possession is hidden by the person who was asked to hand over the object or the respective document (Paraschiv 2019, 221).

The home search targets both the home and the goods in the home. The domicile represents a dwelling or any space delimited in any way that belongs to or is used by a natural or legal person. Part of this concept is the place of practice of the profession. The bodies of the European Convention on Human Rights have included in the notion of domicile certain spaces, such as: a hotel room occupied by a person; the yard or the garden, if they are used by the searched person, the cell of a penitentiary etc. (Volonciu and Barbu 2007, 202).

The body search consists of searching for evidence and material means of evidence on a person's body and must be divided conventionally, in the search of clothing and the search of the person's body.

Search activities should be extended to the luggage carried or accompanying the searched person as well as to the perimeter around it, in order to discover some objects thrown before or during the search (Olteanu and Ruiu 2019, 116).

Usually, the body search is carried out on the perpetrator on the occasion of ascertaining the flagrant crime, the person caught after his pursuit for detention or arrest, the person under house search, the person to be arrested (Mircea 1999, 292).

Computer search involves researching a computer system or a part of it or a computer data storage medium in order to discover, identify and gather evidence necessary to solve the case.

According to the provisions of article 168 paragraph (1) of the Criminal Procedure Code, computer search is "the process of researching, discovering, identifying and gathering evidence stored in a computer system or computer information storage medium, carried out by various appropriate technical means and procedures, such as to ensure the integrity of the information contained therein" (Hegheş and Moise 2019, 79).

According to article 168 paragraph (2) of the Criminal Procedure Code, during the criminal investigation the computer search is ordered at the request of the prosecutor by the judge of rights and freedoms who decides by conclusion and immediately issues the search warrant if he admits the request (Stancu 2015, 517-518).

The search of a vehicle is assimilated to closed places, although it has natural features by their constructive nature. The search of a vehicle or other means of transport will be carried out by people who have knowledge in this field, sometimes requiring the support of specialists in car mechanics (Stancu 2015, 513).

In the literature, other classification criteria have been proposed:

- *By nature of the place where the search is carried out:* search in open places and search in closed places.

- *After the time of the search:* the search carried out during the day and the search carried out during the night.

- *By composition of the search team:* searches carried out only by the judiciary and searches involving specialists from different fields of activity.

- *By the number of persons carried out:* searches carried out on a single person and searches carried out simultaneously on several persons (Grofu 2019, 95-96).

Regardless of the types of search, it is done by applying the same tactical rules. It is necessary to establish from the beginning the actual tactical methods of performance, but also the necessary material means, the time within which to be met, the participants, from beginning to end, within the limits provided by law (Buzatu 2013, 99).

Aspects regarding the psychology of the search

The search is a real fight, in the psychological realm, between those who perform this activity and the searched persons, which is why it is necessary to know some issues of forensic psychology, especially the psychology of the searched and those who perform it. Thus, during the search, both the searched person and the person conducting the search study each other, seeking to intuit what the other person is thinking and preparing.

The person conducting the search will have to permanently penetrate the way of thinking of the searched person (Ordukaya 2017, 218).

Carrying out a search requires a series of psychophysiological qualities determined by the strength, mobility and dynamism of the nervous system, by the balance between the process of arousal and inhibition.

Those conducting the search should turn their attention to the capture of psycho-behavioral manifestations of those searched, such as body and hand tremors, changes in voice and speech, restless breathing, facial expression.

Members of the search team must avoid any conflict with the person searched.

They must not express their feelings of joy or dissatisfaction with the search results. It must also refrain from assessments related to her personal and family life (Buzatu 2013, 99-100).

Given the importance of the search to find out the truth, it is obvious the need for the judicial body to follow a conduct governed by general rules, common to all these procedural acts. So:

1. Careful examination and constant observation, in its psychological sense, of directing attention to a better, complete perception of both the behavior of the person searched and the particularities of the entire place where the search is made;
2. Maintaining the stability of attention which requires avoiding monotony;
3. Rapid adaptation to concrete situations encountered on the spot;
4. The search requires a lot of perseverance, calm and patience, such an activity being incompatible with superficiality, nervousness, haste or repulsion towards certain places or objects (Stancu 2015, 501-502);

The knowledge of the psychology of the searched allows the criminal investigation body to differentiate the reactions that appear in connection with the search activity from the reactions due to other causes, the very event of the search - affectogenic factor likely to explain feelings of anxiety, disorder, dissatisfaction or outrage.

The permanent study of the psychology of the searched, in many cases, led to the discovery of the wanted objects. Thus, in the case of a crime of robbery, on which occasion the victim was deprived of some jewelry, proceeding to search the home of the person suspected of committing the crime, it was found that he was quiet some of the time, but when the search team entered the kitchen, he became agitated (Ordukaya 2017, 218-220).

Some peculiarities regarding the performance of certain categories of body searches and home search

Forensic theory and practice have developed a series of general rules to be adapted to the specific situation and the type of search carried out.

Searching for the person. The typical case is the arrest in flagrante delicto or the execution of an arrest warrant.

a) *Body search (anatomical)* is performed only by a person of the same sex, possibly assisted by a doctor (Ionescu 2007, 192).

It is intended for searching for objects and documents on a person, which involves the external examination of a person's body, mouth, nose, ears, hair, object that a person has on him or under his control, at the time of the search (Stancu 2015, 514).

b) *Search of clothing.* Usually, the search is performed from top to bottom, ie from head to toe. Each item of clothing will be thoroughly examined (Ionescu 2007, 192).

This part of the search involves the partial verification of each piece of which it is formed, of the linen and the shoes, and if necessary they can be removed from the person's body. Undressing is necessary, both for the fact that it allows a thorough check of the clothing, and for the possibility of a separate search of the body (Stancu 2015, 515).

Knowing the place of the search. Exact knowledge of the place where the search is to be carried out, especially at home, is a rule that must be followed in all circumstances, especially in complex cases where the search can be carried out immediately.

It concerns the layout of the place, the construction or topographic characteristics, its destination, the people who live or have access to the search space (Ciobanu and Stancu 2017, 224-225).

Search of closed rooms and places. In the case of closed places, it is important to know the exact address (street, number, floor, apartment), construction features, layout and destination of rooms, outbuildings, any changes or arrangements made by tenants, location of doors, windows, entrances or exits, other than the usual ones, persons domiciled or temporarily living at the respective address, frequent visitors, neighbors, telephone number (Ciobanu and Stancu 2017, 225).

a) *The search of the building and the construction elements* involves the verification of the building as a whole, as well as of each room or outbuilding. The interior and exterior surfaces, established by measuring the interior and exterior length of the walls, their thickness and the angles they make between them, will be examined.

b) *The research of the bulwark or walls* begins with the measurement of their dimensions (length, width and height), in order to ascertain whether or not they are uniform or corresponding to the plan of the building.

c) *Research of other construction elements.* When checking the walls, the door or window sills, as well as the vents, the closets, frequently used as hiding places, are also examined.

d) *The search for furniture and objects inside the rooms* is a meticulous operation, which requires a lot of attention and patience on the part of the person who performs it, as a series of objects must be checked during the search.

The furniture, especially the wooden one, will be checked piece by piece, given the possibility of improvising as hiding places.

Paintings, icons, various interior decorations fixed to the wall, allow hiding behind them documents, currency other objects and must be checked very carefully.

Books, albums will be searched piece by piece, hiding in them not only money or documents, but also weapons, jewelry.

Preserved food vessels and jars are often used to hide gold coins and precious stones (Stancu 2015, 511-512).

Searching in public institutions is much more difficult than a home search itself. The difficulties are determined not so much by the exact delimitation of what is generically called a public unit (including private), but by the precise determination of the places where a person has access, assuming that the person carries out his activity in a place that does not belong.

Searching for a vehicle. Frequently used places as hiding places for objects such as jewelry, weapons, narcotics, art or worship, include the upholstery of seats, benches and doors, gas tanks, body elements, wheelchairs, radiators, headlights etc. (Stancu 2017, 512-513).

Searching for open sites involves searching for objects on clearly demarcated, fenced areas or land that belong to the person being searched, or that the person using them exclusively or together with a limited number of people.

In order to search the open places, the characteristics of the searched objects will be taken into account, as well as the particularities of the researched place (Stancu 2015, 513).

The open places are extremely diverse, either around the house (yard, garden, cultivated land), or out of town (field, forest, leisure spaces) (Ionescu 20017, 193).

In order to obtain the data necessary to know the places to be searched, we will proceed with maximum discretion, avoiding alerting the persons concerned, meaning that we will call on the support of local state administration bodies, the management of legal entities, in compliance with legal provisions (Ciobanu and Stancu 2017, 225-226).

The first measures that will be taken on the spot aim at organizing and establishing the manner of conducting the search. Given that the main way to hide objects or corpses, in open places, is burial, the criminal investigation body will have to take into account the specific traces of this mode of operation (Stancu 2015, 513-514).

After the search, a report shall be drawn up stating:

- Date and place of the search;
- The name and quality of the one who concludes it;

- Identification data of assistant witnesses and other persons present;
- The findings made;
- The objects and documents found, with the exact description of the individualizing characteristics and the conditions in which they were discovered;
- Measures taken: lifting, leaving in custody;

The minutes will be signed by all participants and the photos, videos and sketches prepared on this occasion will be attached (Ionescu 2017, 193).

Conclusions

The search is an activity that must be organized in great detail, being necessary in criminal cases to find out the truth. It must be carried out with quick intuition by the judiciary, characterized by strength, mobility and dynamism.

It can be seen that the search is an activity consisting in the complete gathering of evidence, the discovery of new elements likely to expand the scope of the research in question, as well as the preservation of evidence.

For each type of search (home, body, computer, from a vehicle), the same tactical rules apply, by establishing the actual methods of execution, material means, time and participants.

Among the important factors in the preparation of the search activity, we also mention those of a psychic nature, the judicial bodies following, throughout the process, the behaviors of the searched persons.

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