

Tactics of the Search. Collection of Objects and Documents

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ABSTRACT: When a crime is committed that is likely to damage state or private property, a criminal investigation is used, one of the important objectives of which is a search. By search, we mean a criminal procedural act carried out by investigators for the purpose of discovering the truth by uncovering elements of a criminal nature that are favorable to the prosecution of the person who has acquired the status of defendant. Following the ex officio referral to the criminal prosecution authorities or following a referral via the 112 emergency service of a crime against property, the State acquires the status of investigator in solving the reported crime. According to the Civil Code, the right to property is guaranteed, so the violation of this right by malicious persons, by committing offences against property, brings the investigating authorities from both sides into the same sphere of action. They have an obligation to investigate whether there are grounds for bringing the defendant to trial by taking evidence from the scene of the crime and from other places where the defendant is believed to have hidden important evidence in the case. I mention this point in relation to important evidence in the case file because the search itself is aimed at finding evidence that ultimately leads to the conviction of the defendant, such as objects, money, etc. It should be noted that we should not confuse the search with the investigation on the spot, which are two distinct aspects. The on-the-spot investigation involves finding evidence leading to the real suspect. In terms of a search, it is understood that the criminal investigation authorities already have a suspect, and the investigation is carried out at the places where the suspect has spent his day-to-day activities from the beginning of his crime until the time he is apprehended by the authorities. This investigation is therefore called a search. Procedurally, the search starts with the suspect's home, where he is believed to have spent most of his time, and then to other places where the suspect is believed to have carried out various activities. The most common places where investigators carry out searches are the homes and/or residences of persons close to the suspect or the home/residence of a stranger with whom the suspect has had new contact immediately after the crime was committed. Thus, from an etymological point of view, the notion of evidence comes from Latin and means "to prove," and the word "probation" means proof. Therefore, this article will cover topics such as the importance of the search and the collection of objects and documents, criminal procedural regulations, the classification of searches from a forensic tactical point of view, the preparation of the search, the specifics of probation work and its role in the trial phase and the procedure of probation.

KEYWORDS: investigation, tactics, procedures, rules, forensics, search, evidence

Introduction

In this article, I will highlight how the competent bodies carry out searches and how they follow the prosecution procedure. In the first part of the article I will discuss the importance of the search from a procedural point of view. At the same time, I will present the tactical forensic position of the search and develop the criminal procedural regulations in relation to the new legislative changes. Thus, I will expose the places where the search is carried out, its scope of application, the novelties that have appeared in the Romanian legislation compared to the European one and the determination of the role of evidence in the case of search. I will continue the article by classifying searches according to their nature and scope. Next, I have chosen to present the stages of preparation of a search from a procedural point of view.

Towards the end I will talk about the procedure of evidence in terms of how evidence is delimited and administered and also on what criteria a defendant is convicted. The article will conclude with an opinion on the chosen scientific topic.

Importance of search and seizure of objects and documents

The definition of evidence consists in recognizing it as an element (facts, events, circumstances) which, by its very nature, is the truth in a criminal investigation, thus leading to its resolution. This evidence is evidence of a probative nature for the prosecution, which will establish the guilt or innocence of the accused.

In the Romanian Criminal Procedure Code, evidence is of a legal nature designed to respect the fundamental rights of citizens in accordance with European regulations. These refer to the principle of procedural fairness in the taking of evidence and its administration. Thus, in doctrine, the importance of the search is in the attention of justice, because it can solve the criminal investigation after establishing the circumstances and the facts that have been committed, as well as identifying the perpetrator. In particular, the search has an authoritative role before the law, more specifically, it can be carried out even in circumstances where it might appear to be a violation of the private space in which the suspect resides. However, regardless of its role, the legal provisions in force are respected without prejudice to the suspect's rights (Volonciu 2014, 230).

In forensic tactics, the collection of objects and writings is not complex in nature, so in the way the procedural acts are carried out, rules are laid down that turn the aforementioned procedure into a more variable and much more complicated activity.

Criminal procedural rules

In the New Code of Criminal Procedure, the seizure of objects is defined by Articles 169-171 and the search by Articles 156-168. Thus, in Article 157(1), the activity of the prosecuting authority or the court is defined by the possibility of ordering a search if there is a reasonable suspicion that a criminal act has been committed by one or more persons or that objects or documents related to a criminal offence are in their possession, and the search leads to the discovery and taking of evidence relating to that offence (Neagu 2013, 332).

Classifying according to the place of application of the search, it is carried out either at home, corporal, and computer or at a vehicle.

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 implementation, but also the necessary material means, the time within which it will be fulfilled, the participating persons, without losing sight of the framing of the entire activity, from beginning to end, in the limits provided by law (Buzatu 2013, 99).

With the introduction of digitalization in almost all areas, the new Criminal Code adapts to the "current market" and thus implements two new forms of search, the computer search and the search of a vehicle, of course alongside the other forms of search application. House searches are a more delicate activity than other searches because they involve finding things that belong to a person's private space, whether or not they are of a probative nature, but this activity must be carried out with the opinion of the court of rights and freedoms, in the course of criminal proceedings or at the request of the prosecutor. Procedurally, the time for carrying out a house search is between 06:00 and 20:00.

The timetable can only be exceeded by the authorities in the case of an arrest in flagrante delicto or when the search is to take place in a public place. Of course, the above-mentioned hourly interval should not be understood as a letter of the law, as it can be exceeded and continued during the night, but provided that the search is started between 06:00 and 20:00 (Stancu 2015, 496).

An important aspect is the behavior of the competent authorities who are going to carry out the search at home, when there are persons who may be related or just friends of the suspect. In this case, the competent authorities will cooperate with the persons found in the suspect's premises, urging them not to change the position in which they were found and

especially not to undertake other activities that would hinder the proper conduct of the search (Theodoru 2013, 220).

In the New Code of Criminal Procedure, a novel element is the right of the suspect or other person found at the suspect's home, in the case of a detained suspect, for the suspect's lawyer to participate in the search conducted by the authorities. However, it should be understood that the new Code of Criminal Procedure does not give the lawyer greater authority over the prosecuting authorities, who are obliged to wait up to two hours for the lawyer's arrival if he has been contacted or to start earlier than two hours if the lawyer cannot be contacted (Stancu 2015, 496).

Concerning the objects or documents taken during the search, it differs depending on the type of crime. Specifically, if the offence is theft of personal property, these will be searched; but in the case of homicide, weapons or objects used by the offender to carry out the criminal act or any items of clothing bearing biological traces will be searched (Karanovici 1961, 302).

The latter are, more recently, regulated in the New Code of Criminal Procedure as follows:

The object of evidence shall be considered - the existence of the crime and its commission by the accused, facts regarding civil liability, facts and factual circumstances on which the application of the law depends, and any circumstance necessary for the fair resolution of the case.

The way in which the evidence reaches the judicial authorities can be called a route, and is expressed by means of evidence as follows:

- The statements of the suspect or defendant;
- Statements by the injured party;
- Statements by the civil party or the party liable in tort;
- Statements of witnesses;
- Documents, expert or expert reports, minutes, photographs, material evidence;
- Any other evidence not prohibited by law.

In conclusion, the means of proof are means regulated by law as being the means of establishing the elements that serve as evidence and the evidentiary procedure is the legal way of obtaining them.

Classification of searches under tactical forensic report

From a forensic tactical point of view, house and body searches fall within the scope of forensic analysis and can be divided into several categories as follows:

- *According to the nature of the place*, the search is divided as follows: search of open and closed places;

- *By the number of persons*, the search may be: individual or group, as in the case of crimes committed with participation.

- *Primary or repeated searches*, depending on the circumstances that led to the first search, if the search was negative or if conditions were poor, more specifically searches in open public places (parks, promenades, alleys, etc.).

In particular, according to the Code of Criminal Procedure, probation work focuses on three important aspects: the object of the criminal investigation, the role and purpose of the evidence and, finally, the operation of establishing the existence or non-existence of the offence.

- *As regards the object of the prosecution*, this refers to the gathering of evidence to help establish whether or not a criminal offence has been committed, to identify the perpetrator or perpetrators and to establish the conditions and grounds for charging and convicting the accused;

- *The role and purpose of the evidence* is the likelihood that there may or may not have been a basis to prosecute the suspect;

- *The work of the criminal investigation* body in establishing the niches in the commission of a crime which may lead to the identification of the perpetrator or perpetrators and the establishment of the legal framework for prosecution.

Thus, the classification of searches is important only in forensic tactics, the legal provisions remaining in general, applying strictly to the field of classification (Aionitoaie 1992, 198).

Preparing the search

As we have already pointed out, it is important that the criminal investigation is carried out with real success, so one of the branches of the investigation is the search. The evidence found during a search cannot be left unattended or unpreserved, so rigorous management is needed, especially in complex cases.

To begin with, it is necessary to define the type of search according to the type of crime (murder, theft, embezzlement, fraud, etc.), which gives the criminal investigation body a broad overview of the nature of the objects or documents sought, anything that may provide evidence against the accused. The criminal investigation body has an important role to play in the search process, i.e. it must focus on general characteristics such as shape, size, structure, etc. There is the possibility of some concordances with regard to the objects found at the place of the search that may confuse the judicial body, such as objects of a narcotic nature, where the investigator will certainly not only find drugs, but also blank weapons, stacks of banknotes, false passports, etc. (Ciopragă 1997, 325).

Another important aspect in the preparation of the search is to know the place where the search will take place. Knowing the place where a search is going to be carried out, especially when it comes to a house search, is in fact a rule for the criminal investigation body that must be applied in all cases of crime, especially complex ones.

Cases where the place of search is taken into account:

- enclosed places, refers to the exact address such as street, number, floor, apartment, block, building features such as building survey, number of tenants, frequent visitors, parking places, etc.

- open spaces, which refers to their surface area, their topographical layout, their features such as soil, vegetation, any residential or commercial buildings, building sites, parks, alleys, paths, gardens, children's playgrounds, recreational areas for the elderly, etc.

The importance of knowing the persons who live or reside in the places where the searches are to be carried out is of particular importance in the above-mentioned rigorous management. The criminal investigation body must know the personality, education, profession and position, family life of the persons who will be found in the building where the search is to be carried out. It should be understood that this knowledge does not only refer to the person to be searched but also to the entire family or group of persons who will be found on the premises, since it is based on a reasonable assumption that the objects are actually in the possession of persons in direct contact with the perpetrator (Griga 2016, 142-143).

As the proverb says "the right man at the right time", the criminal investigation body must also resort to this aspect by determining the time of the search. By its very nature, the search is a backward type of search that must be carried out with maximum efficiency. More specifically, it is not necessary to rush the search, except in the case of a flagrante delicto arrest, in which case the suspect is pursued by the investigators to the suspect's home and especially until the moment when the offence is committed or the attempt to hide the criminal objects begins. There is a psychological tactic applied by investigators to delay the scheduled search so that the suspect has a sense of control over the time in which he can hide the criminal objects or commit the crime. Postponing the search is not because the investigators

do not have enough information about the building, suspect, etc., but only from a tactical point of view, because in the simplified procedure it would be difficult to enter the building or place to be searched (Olaru 2020, 140).

Therefore, in order to carry out the search, technical-scientific means are used which are used for the on-site search carried out by most forensic teams. These means are found in the forensic experts' kits, including lighting sources such as infrared and ultraviolet lamps, measuring wheels, key kits for unlocking doors or furniture and various tools such as screwdrivers, hammers, levers, shovels, etc.

Finally, the preparation of the search by forming the team that will carry out the prosecution must be understood. Therefore, the criminal investigation body in charge of the search of the closed or open place is assigned to form a team with which to carry out the activity of taking objects and writings from the places established following the search. The team of investigators must be made up of a mix of fields, from construction to chemistry, etc., which will make the search more efficient in terms of time and sampling. It has been shown that there is a need for qualified personnel in certain areas of which the search site is part, e.g. a construction site, a chemistry laboratory, an operating theatre, an apartment, a school, a basement, a sewer pipe under the city, etc. (Bodea 2021, 125).

In conclusion, all photographed objects and video and audio recordings, if we are talking about video tapes found, are an integral part of the criminal prosecution process and have the character of legal evidence before the court according to Article 159 paragraphs 19-20 of the New Code of Criminal Procedure.

Probation procedure

The criminal procedural obligation incumbent on a participant to prove the circumstances which form the subject of the evidence is called the burden of proof. As a rule, this "obligation" is primarily incumbent on the criminal investigation body and then on the parties to the criminal proceedings.

Thus, if sufficient evidence has been gathered to bring the suspect to trial and prove his guilt, the suspect or defendant has the right to challenge the taking and handling of evidence found in the places searched. An important aspect to be mentioned in this article is that if the evidence is not strong and sound enough to prove the guilt of the defendant, he/she is given the degree of presumption of innocence and thus is no longer obliged to prove his/her innocence in court, thus giving him/her the right not to participate in the prosecution process (Griga 2016, 151).

In conclusion, both the injured party and the suspect and the parties have the right to request the criminal investigation bodies to administer evidence, more specifically to prove the circumstances in which the crime was committed.

Conclusions

It must be understood that the search, depending on the circumstances, becomes a decisive factor in the successful completion of the prosecution file. It is therefore necessary that the objects found at the place where the search is carried out are taken and rigorously administered, as they will lead to the identification of the perpetrator and, above all, to the demonstration that the objects found were used to successfully carry out the crime.

In particular, judges have a major interest in the role of the search, since the criminal investigation authorities can carry out this action in any circumstances, even where there is a violation of private space, i.e. the privacy of the person's or persons' home, which is common in cases of arrest in flagrante delicto.

With regard to the administration of evidence found and taken from the place of the search, the new Code of Criminal Procedure regulates a series of principles aimed at guaranteeing respect for the fundamental rights of the citizen. The Romanian legislation on

human rights is in line with European standards, so the criminal investigation bodies apply the principle of fairness of the procedures for the administration of evidence by eliminating evidence that is not of a legal nature or that has not been administered according to the standards in force. These issues revolve around two theories called the theory of legitimacy and the theory of exclusion of evidence derived from other evidence that was taken unlawfully.

Thus the taking of evidence and documents from the places searched are identical in terms of the degree of importance as the resolution of criminal prosecution cases. From a forensic tactical point of view, such character is not of such great importance as it relates to the manner of carrying out the procedural acts mentioned above.

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