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Planning and Preparation of Domicile Search

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Abstract: This article addresses the evidence of the search process both in terms of procedural and practical elements. Considering the quality of criminal investigator of the authors, this article mainly addresses the practical aspects and concrete situations encountered in the judicial practice. Also the specifications in this article can successfully guide the practitioners in the activity.

Keywords: search; probative procedure; warrant issue; criminal investigation police

1. Introduction

Etymologically, “The word “search” comes from the Latin “perquiro”, which means searching, researching with care, everywhere, designating a particularly important activity in the criminal cause” (Dascălu, Ștefan & Țupulan, 2008, p. 10).

The domiciliary search has an important significance in the investigation of criminal cases, being a particularly complex and difficult evidentiary process, often decisive in the resolution of a criminal case. In order to obtain necessary evidence to establish the facts and the specific circumstances in which the crime was committed, the judicial police investigation bodies and prosecutors, in their criminal proceedings shall use, often, the evidentiary process of domicile search.

Domiciliary search is the activity consisting in ransacking the domicile, residence or dwelling in which an individual resides without legal forms or the place of office of

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a legal person or any other space which is delimited by any means which is either used or belongs to a natural or legal person.

Regarding the natural person, the search may be carried out in his/her apartment or, if necessary, in the construction, dependencies or any fenced place in which he/she is located in, and in the case of a legal person, at the headquarters of the company or other buildings they use.

The domiciliary search is usually carried out at the suspect's domicile or residence, but it may also be carried out, if the situation requires so, in the home of other persons such as relatives of the suspect or defendant. In order to solve the case and to find out the truth, the domiciliary searches may be carried out even at the domicile and residence of witnesses or injured people.

According to a doctrine opinion (Olteanu & Ruiu, 2009, pp. 94-96) search is an activity of criminal investigation and forensic tactics that consists of searching the home of an individual or in the places where a legal person operates, searching for evidence and material means or persons, any time when such an activity is considered necessary for the proper conduct of the criminal trial. In this support, the object of the search would be gathering the evidence and the material evidence of probation in a criminal trial or finding the persons who hide in order to get rid of criminal liability.

Another opinion, belonging to the author Emilian Stancu (Stancu, 1997, p. 175), "the domiciliary search is the procedural act intended to search and collect objects containing or bearing traces of a crime, criminal bodies, documents, known or unknown to the judicial body and which may serve to finding the truth. The search is part of the investigative procedures, the work of collecting known evidence and discovering other evidence.

2. Legislative Framework

According to the legislation in force, the manner in which a search warrant is obtained and the conduct of the evidentiary process itself is regulated in Art.157-164 of the Code of Criminal Procedure.

According to the legislation¹, "*the domiciliary search or of the things within a house can take place if there are reasonable suspicions regarding either the committing of*

¹ Art. 158-159 din Codul de procedură penală;

a crime by a person or the possession of documents or things which are related to a crime and it is believed that the search can lead to the finding and collecting of evidence regarding this crime, to the crime tracks preservation or to the catching of the suspect or the defendant. The domiciliary search may be ordered during the criminal investigation, at the request of the prosecutor, by the judge of rights and freedoms of the court which is competent to hear the case at first instance or from the instance where the prosecutor's office is located where from the similar instance where the prosecutor's office is located from the prosecutor who conducts and supervises the criminal investigation is part of. The search shall be carried out by the prosecutor or the criminal investigation body, accompanied, if necessary, by operative workers”.

3. Preparation of the Domicile Search

In the same line of argument, in specialized publication¹, legal practitioners authors claim that the search is an activity with a special weight in the investigation of criminal cases, rarely encountering a case in which the prosecution bodies do not resort to this activity for the discovery of objects, documents or values necessary to prove the criminal activity and, therefore, the guilt of the perpetrator. At the same time, the way in which the search is organized and carried out, depends on the thorough and legal settlement of the case, often the result being conclusive single evidence for establishing the factual situation, non-compliance with legal provisions and rules of forensic tactics having direct repercussions for judicial purposes.

Regarding the final positive results of a judicial success, established authors and former practitioners (Olteanu & Ruiu, 2009, p. 98) appreciate that the success of a search depends, crucially, on how this is prepared, and in order to achieve the desired results, it must be prepared with great meticulousness, paying due attention to all circumstances that could affect the conduct of the search in the best conditions. It is very important that, each time, the nature of the investigated deed, the characteristics of the objects sought, the expected manifestations of the persons at whose home the search is to take place, the characteristics of the place to be searched, the time frame during which the search will take place, the participants, the necessary technical means, the time of commencement of the search and the ways of entering the home of the person under procedure. Also, the preparation of the domiciliary search consists, minimally, in a procedure that involves the following certain steps such as:

¹ <http://revista.universuljuridic.ro/particularitati-privind-efectuarea-perchezitiei-corporale/>

establishing the purpose of the search; knowledge of minimal data about the place and the person searched; planning time landmarks for the search to take place and the ways of entering and blocking the place which is going to be searched; establishment the participants in the search and the necessary technical means, fulfilling the legal formalities for ordering the search.

Establishing the Purpose of the Search

The European Convention on Human Rights states in the framework of Article 13(1) of The Treaty on European Union. 8 par. 1, the fact that everyone has the right to respect for private and family life, his domicile and correspondence. At the same time, in accordance with Article 23 para. (2) and Article 27(1) of the Romanian Constitution, domicile and residence are inviolable and domiciliary search is permitted only in cases strictly provided for by law, which is carried out in compliance with dignity and without constituting a disproportional interference in private life.

In the recitals set out above, the appropriateness of ordering and carrying out a domicile search is of particular importance. Thus, it is necessary to convince the prosecution body that objects and documents of interest will be discovered in the place where the domiciliary search is to be carried out. Judicial bodies, in the exercise of the profession, must show professionalism and exclude the conduct of an irrelevant search.

Knowledge of Minimum Data on the Location of the Search and the Person Searched

Prior to the purpose of obtaining a search warrant, judicial bodies must ensure that there is sufficient information concerning the person of the defendant, his domicile or residence, and of the possession of objects or documents relating to the offence forming the subject-matter of the case.

According to the author Mihail Udroi (Udroi, 2016, p. 365) “*constitutes a violation of the provisions of Art. 8 of the European Convention, the issue of extremely general domiciliary search warrants, stating nothing about the investigated act, the places covered by the search or the goods to be picked up*”.

In order to ensure the success of a domicile search, the judicial bodies have the duty to carry out investigations into the person to be searched and the persons who live together before carrying it out. Regarding the people who are settled in the location which is to be searched, information about the identity, age, material status, occupation, skills, etc. are of great interest. In order to avoid unforeseen situations, it should be known whether people are violent, whether they have firearms or blunt objects in the location, or if there is potential for escalating a conflict. Knowing this data, police officers will be elected to deal with individuals who may have unpredictable reactions at times like this as the search team is gathered. Looking at the situations I encountered as a judicial police officer during the searches, I believe that the team to carry out the search must know whether there are any babies, minors or elderly persons in the house, who may be harmed by the noise or by the strong emotions the activity itself generates. It must also be checked if there are dogs in the building who can become aggressive.

At the same time, for the proper conduct of a domicile search, investigations must be carried out in order to obtain information enabling the characterization and establishment of the particularities of the place where the search is to be carried out. It is necessary to know the address accurately, which will be checked before the search, the access routes leading to the location, as well as the possibilities for entry and exit points of the building. In order to form the search team, the perimeter of the building must be known and whether it has dependencies. Thus, in judicial practice, in the absence of such checks, it is not often that the judicial bodies have mistakenly entered another neighboring dwelling (to a person who is not related to the crime that is the subject of the criminal case), a situation which could have been avoided with a minimum of verifications. Police officers must mind the windows of the buildings so that they are protected by the task force (the possibilities for throwing goods, values or documents of interest to the team to carry out the search at the time of the raid).

The knowledge of data on the buildings in the immediate vicinity of the building where the search is to be carried out and the persons living in them is also necessary. This is of great importance, as evidence may be transferred for concealment or destruction. Very important for the composition of the search team and the necessary logistics is to document the area where the search is to be carried out. It is important to know the possibility of having to deal with a criminal group in the area where the search will be carried out. The appearance of a reaction from them, which can happen in the situation of catching one of the members, is not to be neglected.

It should be considered that the information obtained following the investigations of the area, location or persons where the search is to be carried out is the basis for the analysis of the possibility of the evidence process, the training search and support team, as well as the allocation of logistics elements.

Planning the Time Landmarks for the Search to Take Place and the Ways of Entering and Blocking the Place which is going to be searched

Judicial bodies must also consider choosing the best period for carrying out the search. In view of the aim pursued, the activity must be unannounced. The time frame for the maximum efficiency in the discovery of evidence and evidence related to the offence forming the subject-matter of the case must be chosen. Judicial bodies are, however, bound by the provisions of the Code of Criminal Procedure. According to the Article 159 *“the domiciliary search may not be commenced before 06:00 or after 20:00, except for the flagrant offence or when the search is to be carried out in a premises open to the public at that time”*.

In the practice of judicial bodies, most searches take place from 06:00 in the morning. Searches at this time are aimed at finding searched persons at home and capturing them at a time when people’s responsiveness is greatly diminished due to the time frame.

The choice of time to carry out the search becomes even more important when more searches are to be carried out at the same time. Regardless of the specificity of the offence covered by the file, searches must be triggered at the same time. In judicial practice, such simultaneous searches begin in the morning. The rationale for carrying out searches simultaneously is intended to prevent the possibility of communication between persons subject to this evidentiary process, and to prevent hiding the searched goods.

Judicial bodies must be prepared, both for the situation in which they are willingly admitted to the dwelling and for the situation in which they must enter by force. Penetration by force occurs when no person responds or exhibits resistance. Thus, judicial bodies must be prepared and equipped with the technical means necessary for the opening or forcing of access doors to the dwelling. Team members must be positioned so that any vulnerability in physical integrity and personal security can be avoided.

As regards the blocking and assurance of the building, the search team must ensure the entry into the block and the exit in order to fight people's attempts to escape. At the same time, the windows are supervised to prevent the disposal of the goods or the leaving of these premises by the people being pursued.

Establishment of Search Crew and of Necessary Technical Means

In the days preceding the search, depending on the nature of the offence under investigation, the number of locations to be searched, the extent of the places or areas to be searched, the goods to be searched, data the person being searched, the composition of the teams will be established. Thus, the number of judicial police officers may vary depending on the difficulty of the search. The search team can be completed by forensics or other specialists from other fields. If there is information that there are violent people in the buildings to be searched, the task force that will carry out the search will also include a team of special forces fighters. In the days leading up to the search, the case officer and the manager of the judicial police structure shall determine the composition of the teams as well as the means by which they will move to the address. For each address, sufficient staff shall be provided to deter any possible retaliation for the searched person.

Each team will receive an envelope containing the following: search warrant, warrants for bringing, typing for the search report and means necessary to pick up and seal the goods.

Completion of the search formalities

In the event of more than one searches are to take place simultaneously, a meeting headed by the case officer, the case prosecutor or the head of the police unit shall be carried out on the morning of the day prior to the action who will organise the action in which the entire staff involved in the conduct of the searches will participate. On this occasion, the police workers will be informed of the subject matter of the criminal case and the persons or goods covered by the search. The team leader will receive the envelope made by the case officer and will be informed of the police workers who are part of the team before their movement to the address.

4. Conclusions

Significant in the matter of domiciliary search is the support of some doctrines according to which, “*No other activity involves entering the most intimate details of personal life, does not call into question real rights, has no echo among the social circle, does not involve complex effects in the legal, social and mental terms such as the search*” (Olteanu & Ruiu, 2009, pp. 94-96).

Considering the importance of this evidentiary process, the activities pre- and post-execution must be treated with the utmost seriousness and professionalism by the judicial bodies. As I explained before, the success of a search depends, crucially, on how this is prepared. Superficiality and lack of information of operative interest might compromise the evidentiary process and the results that can be achieved, endanger the integrity or life of members of the task force or people who are within the locations that are to be searched.

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