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# The Procedure for Performing the IT Search - Some Theoretical and Practical Aspects

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**Abstract**: The term "search" originates from the French language, from the word "perquisition", which generally means a "forage". The legislator clearly provided the forms of the search, i.e. home search, computer search, the search made on a person or vehicle, but it should also be mentioned that, from the point of view of the terminology of this term, the specialized literature noted a difference between the search that has a judicial character, thus being subject to the provisions of the Code of Criminal Procedure, as an evidentiary procedure, and the extra judicial activities that are incidental to special rules (for example, during a trip by plane, when people arrive and board and they are searched to avoid the transport of prohibited products or weapons and explosives that may endanger the lives of citizens) (Lorincz, 2015, p. 211).

**Keywords:** *IT search; IT search procedure; criminal procedural law.*

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## 1. Introduction

The legislator, in order to avoid errors in the violation of the rights of citizens, required that the search and discovery activity be carried out without unlawfully and undesirably disturbing a person's personal life, an essential and absolutely necessary element to take into account being dignity (Udroiu, 2022, p. 413).

It should also be remembered that the legal provisions in force have regulated procedural immunities regarding the search procedure (Udroiu, 2022, p. 413). The first immunity to a search refers to the fact that the President of Romania, during his mandate, cannot be searched. According to art. 72 of the Romanian Constitution, deputies and senators, without the approval of the Chamber they belong to, cannot be searched. In this situation there is an exception regarding crimes that are flagrant.

Prosecutors, judges and assistant magistrates can no longer be searched without the consent of the corresponding section of the Superior Council of Magistracy, except for flagrant crimes (Romanian Parliament, 2005). Also, without the consent of the presidents of the two Chambers of the Parliament, the People's Advocate cannot be searched (Udroiu, 2022, p. 413).

In the Explanatory Dictionary of the Romanian Language (1996), the search is seen as an investigation carried out by the prosecutor or by the criminal investigation bodies, on a person or in their home, in order to find, collect material evidence pertaining to the crime, as well as for the identification of the offender (Romanian Academy. Iorgu Iordan Institute of Linguistics, 1996, p. 776). By search, as a procedural activity, we mean the action carried out by the court or by the criminal investigation bodies, considering the uncovering (Apostu, 2018) of documents or objects that are hidden and which, after being discovered, can help uncover the truth in a criminal case (Abraham & Dersidan, 2000; Huidu, 2019).

By "search" we mean rummaging, searching everywhere, in detail, which takes place on a person or in their home, a thorough search of every item of clothing with which the person in question is dressed, as well as in any place in their home. This activity is necessary in cases where, from the research carried out, the reasonable suspicion has been reached regarding the existence of unique and necessary evidence that is indispensable in order to solve the case (Boroi & Neguţ, 2020, p. 271; Damian et al. 2020; Nastyuk , et al. 2020).

The search represents the evidentiary procedure through which documents, objects or any other material evidence are searched, in order to

pick them up, all of which can be used in the criminal process as evidence (Udroiu, 2022, p. 413).

## 2. The procedure for performing the IT search

This evidentiary procedure can be carried out both during the criminal prosecution and during the trial. Thus, ordering a computer search, during the criminal investigation, will be done at the prosecutor's request. The measure is ordered by the judge of rights and liberties acting within the court that has the competence to judge the case in merits or by the judge of rights and liberties within the corresponding court (Florea et al., 2019) located in the territorial region where the Court of Appeals where the prosecutor's office who carries out or supervises the criminal prosecution is situated.

The prosecutor can order the completion of the computer search warrant when, during the criminal investigation, he finds that the data being sought is in another medium or computer system. In the trial phase, at the request of the prosecutor, the injured person or the parties in the file, the search can be approved by the court, with the possibility of it being also done ex officio ((Boroi & Neguţ, 2020, p. 283).

In order to carry out a computer search, the prosecutor submits the case file to the judge of rights and liberties, as well as the request by which he asks for approval to carry out the search. His request is resolved in the council chamber, with the mandatory participation of the prosecutor, but without the need to summon the parties. The solution is ordered by conclusion by the judge of rights and liberties, the search warrant being issued in the shortest possible time in case the request is accepted (Udroiu, 2022, p. 435).

Thus, considering the previously presented aspects, both the conclusion of the judge of rights and liberties and the mandate issued must include:

- the time and date, as well as the place where it was issued;
- the name of the court;
- the quality of the person who issued the mandate, as well as his name and surname;
- the period in which the activity must be carried out, as well as the period for which the mandate was issued;
- the name of the suspect or defendant;
- the computer support or system to be searched;
- the purpose of the mandate;
- the signature of the judge and the stamp of the court.

The solution given by the judge of rights and liberties by conclusion cannot be appealed (Neagu & Damaschin, 2022, p. 586). The computer search can be carried out by a specialist who carries out his activity within the criminal investigation bodies or with an independent expert body. It is mandatory that the prosecutor participate in the search, as well as that the suspect or the defendant be present. This activity can also be performed by a specialized police officer, only in the presence of the criminal investigation expert or the prosecutor (Boroi & Neguţ, 2020, p. 284).

In order to keep the searched data content intact, the person carrying out the search must show special attention to the activity carried out, to avoid the data being altered or modified. Thus, in order to ensure the integrity of computer data, they will be copied as a result of the prosecutor's ordinance (Udroiu, 2022, p. 438). It is also recommended that copies by judicial bodies be made in duplicate. The purpose is for one copy to be used for data extraction and the other to be sealed as a control sample.

The people who participate in the activity have the obligation to sign the sealed envelopes in which the discovered data are kept. As in the case of the home search, when the computer search is carried out, the suspect has the right to request that his legal representative participate in the activity (Udroiu, 2022, p. 439-440).

It should also be mentioned that the legal norms in force do not provide for a specific period of time to carry out a computer search, however, in the practice of the courts it was decided that the computer search cannot extend beyond the moment when it was carried out when copying the computer data (Neagu & Damaschin, 2022, p. 586).

As a result of the IT search, it is necessary to conclude a report that includes mentions of:

- the name, signature or stamp of the person who carried out the search;
- descriptive presentation and enumeration of the activities carried out;
- the names and signatures of the persons who were present during the search;
- listing and descriptive presentation of the found computer data;
- the name of the person from whom the storage medium or the computer system was removed or the name of the person who owns the researched computer medium (Boroi & Neguţ, 2020, p. 284).

## 3. Relevant aspects of judicial practice

On December 15, 2015, the judge of rights and liberties approved the performance of an IT search on IT systems, telephones, data storage media, which were discovered and taken from the homes of the defendant A.D.C., this measure being indispensable in order to collect and discover the evidence in question.

The search warrant issued was valid for 60 days, it provided the possibility of it being used only once, in compliance with art. 168 of the Criminal Procedure Code. Considering the legal provisions, the activity, first of all, requires making copies of all the computer data obtained, as well as carrying out the actual search on these data (Moisă, 2019, p. 323).

From the content of the minutes it follows that, in accordance with the provisions of art. 168 of the Criminal Procedure Code and the prosecutor's order, the computer devices were copied. At the same time, during 2016, the criminal investigation bodies discovered data that were of interest to the case, represented by:

- electronic correspondence and documents
- other documents
- photos.

At the same time, during 2017, the prosecutor supervising the criminal investigation of the case requested the approval of access to the results of the computer searches carried, which were attached to the criminal file YYY/P/2015, for the use of relevant evidence, for the purpose of establishing the truth. Following the approval of the request, several files were identified and searched, sorted and centralized. The information obtained concerned the activities carried out by the defendants for the purchase and management of the company E.C. LLC. Later, from the respective file, by ordinance, it was ordered to detach the documents containing electronic messages (e-mails), as well as other documents to be used in the other case-file.

On October 1st, 2018, by the conclusion that was pronounced by the judge of the preliminary chamber of the Bucharest Court of Appeal, Second Criminal Section, they were rejected, being assessed as unfounded, according to art. 345 para. (1), due to the requests and exceptions that were formulated by the defendants A,D.C. and U.E.G.

It was taken into account that the two defendants also requested the exclusion of the evidence resulting from the e-mail communication that was sent or received by the said A.D.C., and the documents related to the activities carried out for the administration and acquisition of the E.C. Ltd.,

because they were not administered in the present case, but in another criminal case.

In order to support the formulated requests, it was presented that in file no. YYY/2015, computer searches were carried out on the storage media discovered and seized from the defendant A.D.C.. Thus, e-mail communications, made with the defendant U.E.G., were also detected, which were not used as evidence in the criminal case by which the Braşov Court of Appeal was notified, no longer handed over to the author, remaining in the management of the National Anti-Corruption Department of Brasov county.

As a result of a report issued in file no. XXX/P/ 2017, on August 28th, 2018, consent was obtained to access the results of the computer searches carried out in the YYY/P/2015 file, in order to use the relevant evidence in order to find out the truth, subsequently concluding a minutes in which the data obtained as a result of the access to the searches in the YYY/P/2015 file were centralized. After that, it was ordered to detach the documents containing the messages received/sent by mail by A.D.C., but also the documents related to the way in which the acquisition and administration of the company E.C. was carried out, in order to be used in another file. Later, as a result of the detachment, they were used as evidence in the second case, for which the defense considered that taking evidence from another case was illegal and thus requested that this evidence be excluded.

The judge of the preliminary chamber assessed that the request cannot be admitted because the evidence is administered in compliance with the legal provisions, and the fact that they were attached to the second file does not attract the nullity of the evidence, as no legal provisions have been identified that would result in the prohibition of the administration of these evidences (Moisă, 2019, p. 320-321).

Against the decision of the court, the two defendants filed appeals. Thus, the solution of the judge of the preliminary chamber was criticized by the attorney of the defendants, who pointed out that the documents from the criminal file do not constitute evidence in the second file, because they are not found in the search report completed by the criminal investigation bodies, and pointed out that the search procedure is not limited to copying some storage media, as this activity is made by means of searching for documents that have evidentiary value, as it was mentioned in the minutes.

The High Court of Cassation and Justice found that documents stored in storage media, as well as correspondence received/transmitted by A.D.C. (Moisă, 2019, p. 320-321), were obtained in the absence of a search

warrant, and they do not represent evidence, the appeals of the two defendants thus being admitted. Thus, the correspondence and documents related to the purchase and management of the E.C. company were excluded from the evidentiary material (Moisă, 2019, p. 328).

## Conclusions

As we have observed, the computer search presents a series of particular aspects, which deserve to be taken into account both by the practice of law and by legal theory. Some of these aspects were taken into account when writing this article, but we appreciate that a deepening of the analysis and a correlation of the practice are required.

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