Logos Universality Mentality Education Novelty: Law
ISSN: 2284-5968 | e-ISSN: 2458-1046
Covered in: ERIH PLUS, HeinOnline, CEEOL, Index Copernicus, CrossRef, CrossCheck, J-GATE, Google Scholar, Ideas RePeC, Econpapers, Socionet, KVK, WorldCat.

2022, Volume 10, Issue 1, pages: 30-35 | doi: https://doi.org/10.18662/lumenlaw/10.1/68

The Procedure for Carrying Out a Body Search and a Vehicle Search

Silviu Nicolae PANĂ[1]

[1]Bachelor in law from the University of Bucharest, Faculty of Law, master in business law from the Nicolae Titulescu University, lawyer with the Dambovita Bar of Lawyers, silviunpana@gmail.com

Abstract: In the specialized literature, the importance of the search is proven, determined by the fact that, in many circumstances, it becomes decisive in solving the criminal case, by obtaining evidence which is absolutely necessary to establish the facts or circumstances in which a crime was committed, as well as to identify the author. Body search and vehicle search is a procedure by which important evidence can be obtained in the criminal process and not only, giving the criminal investigation bodies the opportunity to violate the rights and freedoms of people for legitimate purposes, but in compliance with strict rules provided by the law.

Keywords: *body search; vehicle search; probatory means; evidence.*

How to cite: Pană, S.N. (2022). The Procedure for Carrying Out a Body Search and a Vehicle Search. *Logos Universality Mentality Education Novelty: Law, 10*(1), 30-35. https://doi.org/10.18662/lumenlaw/10.1/68

©2022 Published by LUMEN Publishing. This is an open access article under the CC BY-NC-ND license http://creativecommons.org/licenses/by-nc-nd/4.0/

1. Introduction

The legislator expressly stated that the carrying out of the body search requires the arrangement and strict respect of the human dignity of the searched person. Thus, in order to fulfill the above mentioned requirement, the persons competent to carry out this evidentiary procedure must be of the same gender as the person on whom the body search is carried out (Neagu & Damaschin, 2020, p. 589).

The person conducting the search has a legal obligation to identify themselves and subsequently request the voluntary surrender of the items being searched. If the searched person consents to handing over the goods, the search is no longer carried out.

Also, in this case there is an exception, namely when it is appreciated that it is useful to search the person, because there is the possibility that suspicions might arise that new objects or traces will be found (Crişu, 2018, p. 410). Compared to the home search, the body search does not have a time limitation in terms of the period in which it can be carried out. A body search can be carried out at any time, including at night, regardless of whether the crime suspected of having been committed is flagrant or not.

2. The procedure of conducting a body search

On the occasion of the body search, the activities that have been carried out will be recorded in a report that has the character of a means of evidence and that includes the following elements:

- identification data (name and surname) and the quality of the person who did the search;
- identification data for the searched person (name and surname);
- the place where the minutes are concluded;
- the time and date when the search was initiated and completed, as well as any interruptions;
- the list of discovered objects;
- the detailed presentation of the place where the documents/objects or traces of a criminal act were found and seized, as well as the detailed presentation of such objects for recognition (Barbu, 2019; Udroiu, 2022, p. 416).

Also, in this case, there is an obligation to sign the minutes by the judicial body who conducts the search and by the searched person, and it is necessary to sign each page, but also at the end. A copy of this document is

given to the person concerned, and if he refuses to sign or is unable to, the minutes must include mentions of these aspects (Udroiu, 2022, p. 410).

The search of a vehicle is another evidentiary procedure through which the interior or exterior of a vehicle or another means of transport is examined, as well as their components. This activity is carried out when a person who has been asked to hand over certain goods hides their possession or existence.

Also, this evidentiary procedure can be carried out in all situations where there are reasonable indications regarding the discovery or collection of evidence. This activity is also stipulated in certain special laws that provide for the competence of state bodies when, by conducting a search of a vehicle, there is the possibility of discovering criminal bodies, traces of a criminal act, as well as objects that can lead to finding out the truth in a criminal case (Barbu, 2018; Huidu, 2018; 2019).

At the same time, the national security officers and order bodies that have the competence to detect flagrant crimes (Apostu, 2018; Florea, et al., 2019), during the exercise of their duties, according to their job description, have the possibility to search some vehicles. Given the particular nature of this evidentiary procedure, it is not mandatory that a warrant or ordinance be issued in advance to search a vehicle (Udroiu, 2022, p. 418).

3. The procedure for conducting a search of the vehicle

In the case of the search of a vehicle, the person whose vehicle is to be searched will be required to voluntarily surrender the items sought before the search begins. If the objects are handed over, the search will only take place if it is deemed necessary to do so, in order to search for traces or objects.

A vehicle may be searched at any time, regardless of the nature of the crime suspected of having been committed. The minutes will record the activities carried out following the search of the vehicle. It will constitute evidence and will include:

- the name, surname and quality of the person who did the search;
- the place where it is concluded;
- the name, surname of the person who owns the searched vehicle;
- the listing of found objects;
- the detailed description of the conditions and the place where the objects, documents or traces were discovered and picked up;
- the date and time the search began and ended.

This report will be signed on each page and at the end by the person whose vehicle was searched and by the person who completed this process.

It will state the reason why the person who owns the vehicle refuses to sign, in case of refusal, and will receive a copy after the trial (Boroi & Neguţ, 2020, p. 281).

If they constitute evidence, the documents or objects seized as a result of the search will be filed, and the traces of the commission of the crime will be collected and preserved. If the documents cannot be picked up, the objects and traces will be photographed, and the goods that are not related to the case will be handed over to the person whose vehicle was searched (Udroiu, 2022, p. 419).

Moreover, those objects that are not subject to the confiscation procedure can be returned before the end of the criminal trial, even if they are used as evidence (Barbu, 2016). An exception to this situation occurs when the restitution of the goods could lead to the disturbance of the truth-finding process (Udroiu, 2022, p. 419).

4. Jurisprudential aspects

During the evening of August 18, 2020, the police officers from the Răcari Police, while they were in the radius of the Bălteni locality, on national road no. 7, for the exercise of their duties, according to the job description, stopped a vehicle for control, which was driven by L.I., a 19 years old person from the town of Picior de Munte, because one of the vehicle's headlights was defective.

The police officer went to the driver, disseminated their name and rank, on which occasion they requested the driver to present his documents. At the request of the police, the young man had a suspicious reaction, in the sense that he spoke incoherently.

The police managed to identify the driver, asking him to submit to the breathalyzer and drug test. Following the test, the police found that the result regarding alcohol consumption was negative, but it was positive regarding the consumption of psychoactive substances (Damian et al., 2019; Damian et al., 2021). The police asked the young man for explanations regarding the substances he consumed, on which occasion he stated that he was going to a party and consumed a marijuana cigarette (Galeş et al., 2019).

Taking into account his verbal statement, as well as the probability that drugs were present in the car, the policemen proceeded to search it, through a careful and detailed check of the passenger compartment and storage places, on which occasion a colored envelope was identified in the glove box, on the inside of which a tinfoil sheet containing a plant substance likely to be cannabis was found.

Given that the conditions for committing the crime of driving a vehicle under the influence of alcohol or psychoactive substances were met, the police requested the presence of a criminalist to fix and identify other traces of evidence that could be of interest in establishing the situation. The young man was taken to the police headquarters for questioning and to establish the factual situation.

At the same time, in this case, the police reported the crime of driving a vehicle under the influence of alcohol or psychoactive substances, a report was drawn up to confirm the flagrant crime. The police officers specialized in fighting organized crime were informed to carry out investigations for committing the crime of drug trafficking or consumption.

5. Conclusions

This article took into account the basic procedural elements regarding the home search and the search of a vehicle, as well as the importance of the rules for conducting these procedural acts. As it results from the decision of the case presented in the case study which is the subject of the second part of the article, the two procedural institutions are far from being free of controversies, in concrete cases the legal provisions may raise problems of concrete application of the law.

References

Apostu, I. (2018). Conceptual Referendum-Socio-Legal Aspects and Social Consequences. *Jurnalul de Studii Juridice, 13*(1-2), 103-110. https://doi.org/10.18662/jls/24

Barbu, D. (2016). *Drept procesual penal. Partea generală* [Criminal Procedural Law. The general part]. Lumen Publishing House

Barbu, D. (2018). Practical Aspects Of Criminal Investigation Object And Bodies. *Valahia University Law Study, 32*(2), 52-62. http://www.analefsj.ro/ro/reviste/numarul32/nr32.pdf#page=52

Barbu, D. (2019). The Procedure For The Referral Of The Criminal Investigation Bodies. *LESIJ - Lex ET Scientia International Journal, XXVII*(1), 172-180. http://lexetscientia.univnt.ro/download/2020_XXVII_1_13_LESIJ.pdf

Boroi, A., & Neguţ, G. (2020). *Drept procesual penal* [Criminal Procedural Law]. Hamangiu Publishing House.

Crişu, A. (2018). *Drept procesual penal. Partea generală* [Criminal Procedural Law. The general part]. Hamangiu Publishing House.

Damian, S. I., Schiopu C., & Stefănescu, C. (2021). Neuro-bio-chemical balance within deviant delinquent behaviors in adolescents. *International Journal of*

Legal Medicine (2021) 135 (Suppl 1), S11–S119. https://doi.org/10.1007/s00414-021-02613-z

Damian, S-I., Diac, M., Iov, T., Hunea, I., & Bulgaru Iliescu, D. (2019). Particularities of Medical Education in the Field of Forensic Toxicology. Studying Dangerous Chemical Agents in Forensic Research. *Revista Romaneasca pentru Educatie Multidimensionala, 11*(4Sup1), 337-344. http://dx.doi.org/10.18662/rrem/194

Florea, D., Galeş, N., & Terec-Vlad, L. (2019). The premise of the Establishment of the International Criminal Court. *European Journal of Law and Public Administration, 6*(2), 213-222. https://doi.org/10.18662/eljpa/98

Galeş, N., Florea, D., & Terec-Vlad, L. (2019). Jurisdictional Means of Resolving International Conflicts. *European Journal of Law and Public Administration, 6*(2), 223-235. https://doi.org/10.18662/eljpa/99

Huidu, A. (2018). Redefining Autonomy, Dignity and Intimacy in a Postmodern Society. *Revista Romaneasca pentru Educatie Multidimensionala, 10*(3), 112-118. https://doi.org/10.18662/rrem/67

Huidu, A. (2019). The Psychopathology of Serial Killers. *Eastern-European Journal of Medical Humanities and Bioethics, 3*(1), 3(1), 38-54. https://doi.org/10.18662/eejmhb.19

Neagu, I, & Damaschin, M. (2020). *Tratat de procedură penală, Partea generală* (Ediţia a III-a) [Treatise on Criminal Procedure, General Part (3rd Edition)]. Universul Juridic Publishing House.

Udroiu, M. (2022). *Procedură penală. Partea generală* (Ediţia a III-a) [Criminal procedure. General Part (3rd Edition)], Vol 1. C.H. Beck Publishing House.