

SOME ASPECTS REGARDING THE CONDUCT OF SEARCHES IN THE CASE OF CRIMES COMMITTED UNDER THE REGIME OF WEAPONS, AMMUNITION AND EXPLOSIVE MATERIALS

Associate Professor Adrian Cristian MOISE, PhD.
Spiru Haret University of Bucharest, Romania
adriancristian.moise.@gmail.com

Abstract:

The search at home or at the workplace aims to discover weapons or ammunition and explosive materials possessed without right, manufactured weapons and ammunition or certain parts that were to be assembled into a weapon, manufactured or processed explosive materials of various machines, devices, instruments, which served or were intended to serve in the manufacture of weapons, the manufacture or processing of explosive materials. The purpose of the article is to present several types of searches aimed at the discovery of the proceeds of the crime used through the use of firearms, especially game or fish obtained through acts of poaching, trees or stumps removed with the help of explosives. Also, during the preparation of these procedural activities, the search and discovery of documents that prove the origin of weapons, ammunition and explosive materials must not be omitted.

Keywords: *searches, crimes, weapons, ammunition, explosive materials.*

Introduction

The search, regardless of whether it is home, vehicle, physical or computer search, this procedural activity aims to discover weapons, ammunition and explosive materials possessed without right, manufactured weapons and ammunition or certain parts that were to be assembled into a weapon, manufactured or processed explosive materials of various machines, devices, instruments, etc., which served or were intended to serve in the manufacture of weapons, the production or processing of explosive materials.

The searches in the case of crimes committed under the regime of weapons, ammunition and explosive materials also aim to discover the product of the crime used through the use of firearms, especially game or fish obtained through acts of poaching, trees or stumps removed with the help of explosives [1].

We highlight that the judicial bodies, when preparing the searches, must not omit the search and discovery of documents that prove the origin of weapons, ammunition and explosive materials.

The legislative framework in Romania that regulates the arms and ammunition

regime is contained in Law no. 295/2004 regarding the arms, essential components and ammunition regime and the Romanian Criminal Code.

Law no. 295/2004 establishes the categories of weapons, essential components and ammunition, as well as the conditions under which possession, port, use and operations with these weapons, essential components and ammunition are allowed on the territory of Romania.

The crimes related to non-compliance with the arms, ammunition, nuclear materials and explosives regime are contained in the Articles 342-347 of the Romanian Criminal Code: failure to comply with the weapons and ammunition regime (Article 342); unlawful use of a weapon (Article 343); forgery or alteration. erasing or altering markings on lethal weapons (Article 344); non-compliance with the regime of nuclear materials or other radioactive materials (Article 345); non-compliance with the regime of explosive substances (Article 346); failure to comply with the restricted explosives precursors regime (Article 346¹). Article 347 of the Romanian Criminal Code sanctions the attempt in the case of committing the crimes stipulated by the Articles 342, 345, 346 and 346 from the Romanian Criminal Code.

Aspects regarding the authorization and conducting of searches in the case of crimes committed under the regime of weapons, ammunition and explosive materials

In the case of these crimes, in addition to the fact that the searches must be carried out only on the basis of authorization, it is necessary for the criminal investigation bodies to know in advance the places or possible places of hiding of weapons, ammunition or explosive materials, taking into account all the particularities the cause and the characteristics of the buildings to be searched.

The search can be home, body, IT or of a vehicle. Regardless of its nature, the search must be carried out with respect for dignity, so that it does not constitute a disproportionate interference in the private life [2].

Article 157 para. (1) from the Romanian Criminal Procedure Code provides that “the search of the home or of the goods in the home can be ordered if there is a reasonable suspicion regarding the commission of a crime by a person or the possession of objects

or documents related to a crime and assumes that the search can lead to the discovery and collection of evidence regarding this crime, to the preservation of the traces of the commission of the crime or to the arrest of the suspect or the defendant”.

According to the provisions of the Article 158 (1) of the Romanian Criminal Procedure Code, “the home search can be ordered during the criminal investigation phase, at the request of the prosecutor, by the judge of rights and liberties from the court that would have jurisdiction to judge the case in the first instance or from the corresponding court in its level in whose constituency is located the headquarters of the prosecutor's office of which the prosecutor who conducts or supervises the criminal investigation is a member”. During the trial phase, the home search is ordered ex officio or at the prosecutor's request, by the court charged with judging the case.

According to the Article 157 (2) of the Romanian Criminal Procedure Code, “domicile means a dwelling or any space delimited in any way that belongs to or is used by a natural or legal person. The home search can be carried out in the home or residence of the suspect or the defendant, but also in other homes or spaces belonging to other people, such as, for example, relatives of the suspect, the defendant, witnesses”.

During the search, attention must be paid to things such as: the walls, the door frames, the floor, the furniture, the stairs and their railings, the bathrooms, the electrical installation, as well as the annexes of the building - bridge, stable, shed, barn and the surrounding land [3].

Judicial bodies must observe the way in which the discovered weapons, ammunition and explosives were packed and preserved [4].

If they were packed in newspapers, the publication, the date of publication, will be mentioned, they being at least an indication of the date when the perpetrator came into their possession, packed them, walked with them.

Likewise, newspapers, paper and other packaging must be preserved with care, and papilar evidence belonging to the person on whom they were discovered can be taken from them, in this way removing the possible claims of the perpetrator regarding the fact that he had no knowledge about the existence of those discovered during the home search.

The rules regarding the description, handling and transport of weapons, ammunition and explosive materials must be strictly followed, both to eliminate the possibility of destroying traces and micro-traces, and to prevent accidents [5].

Another search that is carried out in the case of crimes committed under the regime of weapons, ammunition and explosive materials is the body search.

According to Article 165 para. (1) of the Romanian Criminal Procedure Code, “the body search is that evidentiary procedure that involves the external physical examination of a person, the oral cavity, nose, ears, hair, clothing, objects that a person has on him or under his control, at the time of the search”.

According to article 165 para. (2) of the Romanian Criminal Procedure Code, “if there is a reasonable suspicion that by carrying out a body search, traces of the crime, bodies of crimes or other objects that are important for finding out the truth in the case will be discovered, the judicial bodies or any authority with powers in ensuring public order and security proceeds to carry it out”. Unlike the home search, the authorization given by the judge is not necessary to carry out the body search, there is the possibility of resorting to this procedure every time it is necessary in the interest of the criminal prosecution phase. The body search must be carried out only by a person of the same sex as the searched person [6].

The search of vehicles is the activity carried out by the judicial body whose purpose is to thoroughly check them, including the trunk, the documents of the driver and, as the case may be, of the travelers and passengers, the luggage they have on them, as well as the legality transport of goods or people.

According to the provisions of the Article 167 para. (1) of the Romanian Criminal Procedure Code, “the search of a vehicle consists in examining the exterior or interior of a vehicle or other means of transport or their components”. The search can be carried out by the judicial body on vehicles running in traffic, those stopped or parked in public places.

Stopping and controlling a vehicle in road traffic can be carried out when there is data and information that the targeted vehicles are carrying weapons, ammunition and explosive materials or other values derived from crimes or wanted persons [7]. The judicial body will proceed to search the vehicle, it being indicated that this activity should

be performed by at least two or three people, of which one person will supervise the occupants of the vehicle, and the others will perform its control.

The places that must be searched when searching vehicles in the case of crimes committed under the regime of weapons, ammunition and explosive materials are the following: bumper; the engine; counterwings; tires and wheel covers; ventilation system; the interior of the doors; deck; side pillars for supporting the ceiling; the ceiling; the passenger compartment of the vehicle; the petrol tank; the trunk; the body sills.

In the case of crimes committed under the regime of weapons, ammunition and explosive materials, computer searches may also be carried out.

During the criminal prosecution phase, the judge of rights and liberties from the court that would have jurisdiction to judge the case in the first instance or from the corresponding court at its level in whose district is located the office of the prosecutor's office of which the prosecutor who carries out or supervises is a part the criminal investigation can order, through a reasoned conclusion, the performance of an computer search, at the request of the prosecutor, when it is necessary to search a computer system or computer data storage medium for the discovery and collection of evidence.

During the trial phase, the computer search is ordered by the court through a reasoned conclusion, ex officio or at the request of the prosecutor, the parties or the injured person.

Computer systems and computer data storage media may contain data related to the expiration of the weapon permit or data related to the purchase of lethal or non-lethal weapons, such as tax receipts or tax invoices.

Conclusions

Home search, body search, vehicle search and computer search represent very important evidentiary procedures that have a great contribution in the criminal investigation process of crimes committed under the regime of weapons, ammunition and explosive materials.

The report is the main means of recording the results of the four types of searches in the case of crimes committed under the regime of weapons, ammunition and explosive materials. Along with the report, as auxiliary technical means of recording the results of

the search, photography, video recording and, when necessary, sketches or drawings of the search site are also used in the criminal investigation process. The video recording reproduces more precisely, completely, in a dynamic form, the most significant aspects of the searches and, above all, the image of the objects or documents with all the characteristics from the moment of their discovery.

Regarding the computer search report, we point out that the statements, the photos taken, the documents seized, screenshots, as well as the Forensic Investigation Report of the computer system and the storage medium of the searched computer data will be attached to it.

References:

- [1] Stancu, Emilian (2011). Tactical procedures used in criminal investigations. Evolutions. Bucharest: AIT Laboratories S.R.L., p. 324.
- [2] Scheb, John M.; Scheb II, John M. (2011). *Criminal Law and Procedure*, Seventh Edition, Wadsworth, Ohio: Cengage Learning, pp. 450-453.
- [3] Stancu, Emilian (2011). Tactical procedures used in criminal investigations. Evolutions. Bucharest: AIT Laboratories S.R.L., pp. 324-325.
- [4] Buquet, Alain (2011). *Manuel de criminalistique moderne et de police scientifique, cinquième édition argumentée et mise à jour*, Paris: Presses Universitaires de France, pp. 27-30.
- [5] Buquet, Alain (2011). *Manuel de criminalistique moderne et de police scientifique, cinquième édition argumentée et mise à jour*, Paris: Presses Universitaires de France, pp. 30-32.
- [6] Moise, Adrian Cristian; Stancu, Emilian (2020). *Forensics. Elements of technique and tactics of criminal investigation*, Bucharest: Universul Juridic Publishing House, p. 279.
- [7] Moise, Adrian Cristian; Stancu, Emilian (2020). *Forensics. Elements of technique and tactics of criminal investigation*, Bucharest: Universul Juridic Publishing House, pp. 282-283.