

TACTICAL FEATURES REGARDING SEARCHES IN THE CASE OF THE CRIMES AGAINST PATRIMONY

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Abstract

The article presents and analyzes some elements of forensic tactics in connection with conducting the searches in the case of committing crimes that harm the patrimony: theft and robbery, the offence of deceit and embezzlement.

The regulation of the measures for the protection of the patrimony provided by the criminal law proves the importance of the protected social value, of the legal object of the crime represented by the social relations regarding the patrimony, the importance that personal wealth represents for man, which, in the end, ensures it.

The offences against patrimony concern the illicit action of the offender and not the legal position of the victim that is, if he is a precarious owner, possessor, or owner.

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1. Introduction

In our criminal law, the offences of theft, robbery, deceit and other crimes against property, are incriminated in Title II Offences against patrimony in the special part of the Romanian Criminal Code.

Theft, in its simple form, according to the provisions of the Article 228 paragraph (1) of the Romanian Criminal Procedure Code consists in “taking a movable property, from the possession or detention of another, without his consent, in order to misappropriate it, is punishable by imprisonment from 6 months to 3 years or with a fine”.

According to the provisions of the Article 233 of the Romanian Criminal Procedure Code, the robbery represents “theft committed by using violence or threats or by putting the victim in a state of unconsciousness or inability to defend himself, as well as the theft followed by the use of such means for the preservation of the stolen property or for the removal of the traces of the crime or for the perpetrator to ensure his escape”.

According to the Article 295 paragraph (1) of the Romanian Criminal Procedure Code, the standard variant of the offence of embezzlement consists

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in “the appropriation, use or trafficking by a civil servant, in his interest or for another, of money, values or other goods that he manages or administers”.

According to the Article 244 paragraph (1) of the Romanian Criminal Procedure Code, the standard variant of the offence of deceit consists in “misleading a person by presenting a false deed as true or as false a true deed, in order to obtain for himself or for another a patrimonial benefit unfair and if damage has been done”. The aggravated variant is provided by the Article 244 para. (2) of the Romanian Criminal Procedure Code and is retained when “the deception is committed through the use of false names or qualities or other fraudulent means”.

Unlike other crimes against patrimony, in the case of the crime of deception, the damage is caused by misleading the person by the perpetrator who wishes through various fraudulent acts, obtaining an unfair property benefit for himself or for another.

The crimes against patrimony have been a problem for society since ancient times. The regulation of the measures for the protection of the patrimony provided by the criminal law proves the importance of the protected social value, of the legal object of the crime represented by the social relations regarding the patrimony, the importance that personal wealth represents for man, which, in the end, ensures it. The concept of patrimony, with developments regarding the own patrimony of the society and the patrimony of affectation of the authorized natural person is developed in the doctrine. (Apan, 2022: 114)

2. Carrying out searches in the case of the crimes against patrimony

The searches ordered in the case of the investigation of the crimes against patrimony are the following: the home search, the body search and the vehicle search.

Conducting searches is a particularly useful and necessary procedural activity, offering the possibility of discovering stolen goods, as well as other material means of evidence capable of serving to elucidate the case (Moise, Stancu, 2017: 33).

According to the Article 157 paragraph (1) of the Romanian Criminal Procedure Code, “the home search may be ordered if there is a reasonable suspicion that a person has committed an offence, or the possession of objects or documents related to a crime and it is assumed that the search may lead to the discovery and gathering of evidence regarding this crime, the preservation of the traces of the crime or the arrest of the suspect or defendant”.

The purpose of the home search in the case of crimes of theft and robbery may also be to determine those assets belonging to the criminal, which will serve to cover the damage caused by theft or robbery, goods or valuables that will be made unavailable by instituting an insurance seizure.

In the case of the crimes of theft and robbery, during the criminal investigation of theft and robbery, the search is an activity of the utmost importance, an effective means of proving the guilt of the perpetrators.

The main issues that need to be clarified by conducting a home search in the event of crimes of theft and robbery are the following: knowledge of the perpetrator in all behaviors, his psycho-behavioral aspects, obtaining data on the location of the building, establishing the places where the searcher could possibly disappear, the neighbors and especially determining the purpose of the home search (Stancu, 2011: 320).

Therefore the main purpose of the home search is the discovery of stolen goods and valuables, objects and tools or weapons, substances used in theft or robbery (Scheb, Scheb II, 2011, 451).

We emphasize that it should not be forgotten that at the home or workplace of the perpetrators may be discovered other goods or values that have been the subject of previous thefts or that are held contrary to legal provisions - weapons, ammunition, toxic substances or narcotics. It is also necessary to look for the clothing or footwear worn by the perpetrator at the time of the crime and which left traces on the spot.

The rules of forensic tactics must be observed (Stancu, 2011: 320): entering the place of home search; legitimizing the team leader and showing the purpose of the search; the presentation of the search warrant; the identification of the person being searched and of other persons and their careful supervision after first body searches were carried out; the systematic search in all the outbuildings and annexes, showing the objects, documents and values discovered to the assisting witnesses and the participants; the correct recording of the home search results in the reports.

It is necessary that, from the preparation phase, to identify all persons to whom the stolen goods may be hidden carrying out simultaneous home searches.

With regard to the discovery of material evidence by means of a house search, we recall, for example, that, in addition to the tools used by the author, other objects bearing traces can be discovered, especially clothing that contains traces of material debris, including biological traces from the victim, such as blood stains, hair (Buquet, 2011: 68-74).

In the case of the investigation of embezzlement offences, we consider that home searches and seizure of objects or documents must be carried out with the utmost urgency to discover the stolen goods, values or money, as well as material evidence, especially forged documents (Moise, Stancu, 2017: 40).

The main purpose of the home search in the case of the crime of embezzlement is to identify the assets that were the subject of the crime of embezzlement, as well as some documents related to the case.

To this end, the criminal investigation body must establish, from the initial phase of the investigation, the relations of the suspect, especially in the

circumstance in which it is found that several persons participated in the commission of the crime (Moise, Stancu, 2017: 40). We underline, that home searches will also be carried out at the workplace of managers or employees.

Thus, at the home or workplace of the offender, documents or copies of them can be found that were used to commit or conceal embezzlement, such as inventory lists, invoices, shipping notices, purchase slips, reports of receipt, consumption vouchers, time sheets and payment statements.

Of particular importance for the case is the discovery of notes made by the offender regarding the quantity of goods stolen from the inventory, their division between participants, addresses, telephone numbers, which may prove the criminal links and the places where the embezzled goods were capitalized. It is also necessary to look for and seize goods purchased with embezzled sums of money or, as the case may be, the amounts from the sale of goods stolen from the inventory, as well as those that represent the profit obtained from trafficking (Stancu, 2011: 321).

On this occasion, the criminal prosecution bodies must identify in the patrimony of the criminal, the movable and immovable goods that are to be made unavailable in order to recover the damage caused.

The home search will also be carried out at the home of the persons where the criminals hid the embezzled property.

The seizure of objects and documents is required in the vast majority of embezzlement offences, not only for the study of the manner in which the records were kept, the movement of money was recorded, revisions were made, but also to prevent the destruction of documents used to commit crimes.

We consider that it is preferable for the criminal prosecution body to limit itself only to the removal of those objects and documents which are really useful in establishing and clarifying the circumstances in which the crime of embezzlement was committed, it is forbidden to pick up a large volume of documents that take a long time to examine, delaying the settlement of the case.

Thus, fictitious or falsified documents, used to cover deficiencies or to create surplus in the inventory, such as reports and inventory lists, consumption statements, transfer vouchers, shipping notices, time sheets, reports of commercial risks must be removed from the place of home search.

By studying these documents it is possible to establish the procedures, the methods used by the offender, including the amount of damage, as well as the possibility of discovering some possible registration or calculation errors.

In the case of the crimes of deceit, the home search carried out by the judicial bodies aims at discovering the goods, such as money, valuables, objects, documents that constituted the unjust patrimonial benefit received by the offender as a result of the illegal activity carried out (Moise, Stancu, 2017: 45).

Also, during the search of the home, the judicial bodies will also look for the tools and materials used to falsify the documents intended to induce or to

mislead deceived people. This category includes molds, stamps, either handmade or stolen from different places, such as inks, colours, scriptural instruments and standardized forms.

Regardless of the place where it is carried out, at home or at work, we point out that the home search, in the case of the crimes of deceit, aims to discover the goods, such as money, objects, documents, that constituted the material benefit received by the offender as a result of the illicit activities carried out.

In preparing the home search in the case of the crime of deceit, the criminal investigation bodies must not lose sight of the possibility of discovering the documents used by the perpetrator to commit the crime: false identity documents, study documents, certificates of seniority and savings books (Stancu, 2011: 321).

The discovery at the home of the searched person or at his place of work of some documents that he received from the injured persons is likely to lead to the identification of all the deceived persons, constituting, in addition to important means of proof, and the starting point for expanding criminal investigations into other crimes.

If the search has been completed with the identification and collection of documents attesting to the criminal links of the searched person, their use during the investigations offers the possibility to extend the investigations to other participants, helping to clarify their role and the contribution to the preparation and conduct of illicit activity, as well as establishing the unfair benefits they have benefited from (Palmiotto, 1994: 177).

Therefore, we consider that the seizure of objects and documents, in the case of the crime of deceit, is necessary especially to prevent the destruction of those objects and documents that constituted the unjust patrimonial benefit received by the offender as a result of the illicit activity carried out by him.

Once the main purpose of the home search has been specified, in order to prepare and carry out this activity, the criminal investigation body must not omit the search and discovery of objects, documents or values obtained contrary to legal provisions, for example, weapons, ammunition, toxic or narcotic substances, and the identification in the patrimony of the perpetrator of movable and immovable property, to make those things unavailable, in order to repair the damage caused by the crime (Stancu, 2011: 322).

In the case of patrimony offences, other forms of searches may be ordered and carried out by the judicial bodies, such as body searches and vehicle searches.

Article 165 paragraph (2) of the Romanian Criminal Procedure Code states that if there is a reasonable suspicion that a search of the body will reveal traces of the crime, bodies of crime or other objects of importance to the truth in question, the judiciary or any authority responsible for ensuring public order and security shall proceed to performing it.

According to the Article 165 paragraph (1) of the Romanian Criminal Procedure Code, the body search involves the external examination of a person's body, mouth, nose, ears, hair, clothing, objects that a person has on or under his or her control at the time of the search (Buquet, 2011: 68-74).

The judicial body must ensure that the body search is carried out with respect for human dignity. The body search is carried out by a person of the same sex as the person searched.

According to the Article 166 paragraph (3) of the Romanian Criminal Procedure Code, prior to the start of the body search, the searched person shall be required to surrender the searched items voluntarily. If the searched objects are handed over, the body search will no longer be carried out, unless it is considered useful to search for other objects or traces.

The search of a vehicle consists of examining the exterior or the interior of a vehicle or other means of transport or its components, as provided by the Article 167 of the Romanian Criminal Procedure Code.

All activities carried out during home, body and vehicle searches shall be recorded in a report in accordance with the provisions of the Articles 161 (2) and 166 (4) from the Romanian Criminal Procedure Code, which shall include the following: the name and surname of the searched person; the name, surname and the quality of the person who carried out the body search or the vehicle search; the name, surname and quality of the person who concluded the home search report; the number and date of the home search warrant; the name, surname, occupation and address of the persons who were present during the home, body and vehicle searches, stating their quality; informing the person to whom the home search it will be performed regarding the right to contact a lawyer to participate in the home search; the objections and explanations of the persons who took part to the searches, as well as the information concerning the audio-video recording or the photographs taken; mentions of the objects that have not been picked up but have been left in storage; the enumeration of the objects found during the searches; the place where the home, body and vehicle searches reports are concluded; the date and time when the searches began and the time when the searches were completed, stating any interruptions during the searches; the detailed description of the place and conditions in which the documents, objects or traces of the crimes against patrimony were discovered and collected, their enumeration and detailed description, so that they can be recognized; information on the place and conditions in which the suspect or defendant was found.

The home, body and vehicle search reports shall be signed on each page and at the end by those persons who conclude them, by the persons who were searched, by their lawyers, if they were present and by the persons who were present at the time of the searches. If any of these persons cannot or

refuse to sign, this shall be stated, as well as the reasons for the impossibility or refusal to sign.

Conclusions

We consider that it is preferable for the criminal investigation body in the case of crimes against patrimony to limit itself to the collection of those objects and documents that are useful for establishing and clarifying the circumstances in which the crimes were committed, being contraindicated the collection of a large volume of documents, delaying the settlement of the case.

In order to find the stolen goods, in addition to conducting home, body and vehicle searches, it is necessary for the criminal investigation body to investigate the consignment shops, markets, fairs or certain places where there are people who are engaged in buying and selling clothes or other objects.

We are of the opinion that it is necessary to write down the uncovered documents found on the person who is being searched, or on whom the body is being searched, as well as to photograph all the objects found in the places where they were found.

These forensic tactical rules, together with the home, body and vehicle search reports drawn up in strict compliance with the Romanian criminal procedure law and the forensic tactics rules are important means of proving the guilt of the offender and the existence of crimes against patrimony.

The main role of the home, body and vehicle search reports is to provide the court the evidence that, during the search, the judicial body that conducted them respected all the rights of the person or persons to whom the property or documents were located. The results of the home, body and vehicle searches are fixed in the reports, as well as in photographs, sketches, or recordings, as annexes to the reports.

As the main means of fixing the home, body, and vehicle searches results, we highlight the role of the report that must be concluded at the place of searches, immediately after the end of these activities, in compliance with the legal requirements of the rules of forensic tactics.

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