

# Tactical Particularities of Performing the Body Search

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**ABSTRACT:** The article presents and analyzes aspects related to the body search, starting from the regulation of this procedural act in the Romanian Criminal Procedure Code. Body search is a probatory procedure that involves the external body examination of a person, the oral cavity, the nose, ears, hair, clothing, objects that a person has on him or under his control, at the time of the body search.

**KEY WORDS:** body search, forensic, tactical, criminal investigation, Romanian Criminal Procedure Code

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## Introduction

Body search is the probatory procedure that involves the external examination of a person's body, mouth, 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. (1) of the Romanian Criminal Procedure Code.

If there is a reasonable suspicion that by performing a body search, traces of the crime, criminal bodies or other objects that are important for finding out the truth in question will be discovered, the judicial bodies or any authority with responsibilities in ensuring public order and security shall proceed to perform it, according to Article 165 para. (2) of the Romanian Criminal Procedure Code. The bodies of public order and national security, for the crimes ascertained during the exercise of the attributions provided by

the law, have the right to carry out corporal searches of the offender in the case the crimes they have the competence to ascertain are flagrant.

According to the provisions of Article 92 para. (1) (b) of the Romanian Criminal Procedure Code, during the criminal investigation the lawyer of the suspect or defendant does not have the right to assist in the body search in the case of flagrant crimes. In order to carry out the body search, taking into account the particularities of this evidentiary procedure, it is not necessary to issue an order or a search warrant, the Romanian Criminal Procedure Code referring only to the cases in which it is carried out.

The body search, in its capacity as a criminal prosecution act, should not be confused with the customs control carried out at the state border crossing points or in places subject to a special regime, nor with the probatory procedure of physical examination consisting in external and internal examination of the body of a person, as well as the taking of biological samples, nor with the evidentiary procedure of the forensic examination of the person in order to ascertain the traces and consequences of a crime, which results in the elaboration of a forensic certificate or, as the case may be, of a forensic expertise report (Stancu 2010, 511).

Before starting the body search, the searched person is asked to voluntarily hand over the searched objects. If the searched objects are handed over, the body search is no longer carried out, unless it is considered useful to search for other objects or traces.

Due to its particularities, as well as the methods of execution, from a forensic tactical point of view, the search of the person is divided, conventionally, in the clothing search and the actual body search (Moise and Stancu 2020, 279).

Through the procedure and the procedures applied, it can be argued that the body search goes through several phases, but it should be noted that, regardless of the type of search (clothing or body), it must be carried out very carefully and thoroughly.

### **Preliminary tactical rules for performing a body search**

The preliminary search is intended to prevent a violent action of the searched person, which involves, first of all, his disarmament, respectively the verification

of the fact whether or not he has a knife or firearm, as well as any other objects or substances that could put endangering the judicial body, allowing the searched person to flee. From a tactical point of view, it is necessary to proceed in such a way that the person is unable to react. For this, the searched person will be placed facing the wall, at a distance of at least one meter, depending on his height. He is then asked to raise his hands above his head, lean against the wall and spread his legs. The right and left side of the body are examined in turn, the criminal investigation body sitting in a lateral position and placing one foot in front of the foot on the part of the body being examined.

This procedure allows the quick unbalance of the searched person, in the event of an attack attempt. In the case of dangerous criminals, known or suspected of being able to react violently, the search will be carried out with one hand, the weapon being held in the other hand. The body search is performed from top to bottom, starting with the objects on the head. Next, examine the back, the portions under the arms, the hands from the shoulder to the fingers, the chest. The feet will be checked inside and out, up to the ankle, as well as the cuffs of the pants, the socks, in which small objects, money, knives are often inserted, and finally the shoes.

The research is also done by firm palpation, by tightening the thicker parts of clothing (shoulders, lapels, cuffs) because, with a simple touch, thin objects, including metal, can often go unnoticed. Also, all pockets will be emptied, checking if the clothing does not have secret pockets, the criminal investigation body picking up not only any weapons discovered, but also the objects or documents found, thus avoiding a possible attempt to throw these objects.

After the preliminary search, the clothing and the body will be thoroughly checked, an operation that will be carried out at the headquarters of the criminal investigation body.

## **The clothing search**

The clothing search involves checking in part for each piece of clothing, underwear, and footwear, which can be removed from the person's body if necessary. Undressing is necessary, both for the fact that it allows a thorough check of the clothing and for the possibility of a separate search of the body.

During undressing, it is also possible to discover any objects hanging or wrapped around the body.

The clothing is checked for seams, pockets, collars, shoulder pads, the inner fabrics on the chest, to which the documents, currency can be glued, are difficult to notice with a simple touch. If it is considered to be necessary, the garment can be unstitched enough to allow for internal inspection (Stancu, 2010, 512). For footwear, the investigators must check the lining, insoles, sole, heels that can be transformed into hiding places for small objects, especially jewelry or currency.

The same attention will be paid to objects currently on a person: purses, trouser belts, watches, lighters, cigar cases, diaries, spectacle cases, various stationery, and ornaments. A special meticulousness will be taken for the discovery of some secret writings, as the ways of making them are very various. For example, in practice, there have been cases of writing in nice ink on underwear, for example, T-shirts, shirts, or lining of clothes and sometimes on the body.

Briefcases, handbags, suitcases will be thoroughly researched, both of them as such, involving the lining, handles, possible double bottoms, ornaments, and their content, which is very diverse. And in this case, the possibilities of hiding are innumerable. For example, tubes of toothpaste or razors, cosmetics from makeup kits, shaving sprays, medicine boxes, musical instruments, umbrellas, canes are often used as hiding places.

We emphasize that in the research of these objects will be used strong light sources, including invisible radiation as well as magnifying tools, such as magnifying glasses, stereomicroscopes, portable microscopes that allow the discovery of encrypted messages.

## **The actual body search**

The search of the body as such is carried out by a person of the same sex as the searched person, using the help of a doctor if necessary. The main way to hide is to insert objects into the natural holes, and sometimes even swallow objects, especially if they can be easily removed. For these methods, the doctor will be asked to check, first of all, the natural orifices, and then the radiological examination will be used (Moise and Stancu, 2020, 281).

The search of the scalp and soles of the feet on which various encrypted messages can be pasted should not be omitted during the body search. Hair should also be checked carefully, especially the bun and curls, without neglecting the hair of men, which, in some individuals, does not differ in length at all from that of women. Hand and foot prostheses, including dental prostheses, other medical devices, or instruments, on the person, for example, corsets, hernia belts, hearing aids, will also be examined (Stancu 2010, 513).

We specify that the pets, such as dogs and cats that accompany the searched persons must be checked, if there are indications that they could be used for criminal purposes, as they can be used for hiding objects, including for operations of inserting small, flat documents or objects under the skin.

Particularly thorough must be the body search carried out at the time of preventive detention or apprehension. In such cases, in addition to objects of direct importance to the case, all metal objects and other sharp objects, as well as documents, diaries, pencils, pens, money and other valuables, must be seized from the body search. In all cases, firearms and ammunition are seized.

If the body search is not carried out in connection with the case involving preventive detention or apprehension, only the weapon will be seized, as well as the acts and objects related to the case.

The body search must be carried out in the presence of assistant witnesses, who are presented with all the objects seized during the search. We emphasize that a partial body search can be carried out only in exceptional cases, in the absence of assistant witnesses, in order to pick up a firearm, in the case of preventive detention of a dangerous offender in a place or at a time when no assistant witnesses can be called.

In these cases, it is necessary that the thorough body search of the detainee be carried out after the usual procedure, in the presence of assistant witnesses, immediately after he/she was taken to the police station, to the place of preventive detention or to the office of the criminal investigation body (Buzatu 2013, 122).

Before conducting the body search of the detainee as a result of a serious crime, for example, murder, robbery, as a rule, the searched person must be asked to raise his/her hands and turn his/her back, so as not to

give him/her the opportunity to surprise attack on the person conducting the body search.

After that, by palpating the pockets and other places (in the middle region, the sleeve, the ankle boots, etc.), it is checked if the weapon is not hidden somewhere. It is necessary to take care that the searched person does not lower his hands while palpating the clothing.

Once it has been established with certainty that the searched person does not have a weapon on him/her or after it has been seized, a detailed examination of the clothing is carried out, in order to discover the objects that are in it. It is recommended that the search begins with the pockets, then palpate the entire garment, to determine if the object sought was not hidden between the fabric and the lining (Palmiotto 1994, 170).

The seams of the garment must not be untied unless absolutely necessary. However, this may sometimes be necessary, especially when searching for padded or furry clothing. In such circumstances, all seams must be thoroughly examined and it must be determined whether there are any places where they have recently been torn off and then sewn back together. Sometimes small valuables can be hidden, for example, in the heel of the shoe, between the sole and the lining.

If it is suspected that the stolen objects have been hidden by such procedures, the items in which there may be places of concealment should be picked up and examined, using X-rays or gamma rays, at the nearest laboratory or medical institution. It should not be lost sight of the fact that some small objects can be hidden in the nose, mouth, and sometimes can be swallowed. When there are indications to that effect, the coroner should be called in to carry out the search, and if necessary, the person searched should be examined with X-rays (Buquet 2011, 376).

The accessory objects found on the person must also be examined in detail: wallets, matchboxes, cigarette packs, cigarette cases, spectacle cases, pens, watches, pipes, sticks, cameras, etc. If traces are looked for in addition to things, in order not to risk destroying or erasing all or part of the traces, the initial touch will be omitted at the beginning. Because traces, which may be stains of blood, paint, ink, grease, oils and other substances soaked or

glued to the outside or inside of clothing and may be dry and brittle or left in the stripes of pockets, folds or seams in the form of or dust from other substances, in both cases which may be more or less erased or diminished, intentionally by the wearer of the garment or, without his knowledge by the simple wear and tear of the wearer (Stancu 2011, 314). Consequently, in this case, or when there are suspicions that there may be obvious traces, one will first look carefully and thoroughly after these traces, examining the fabric of the clothing systematically and if they are found, proceed to ensuring them and only after that will continue the search for the existence of objects. If there is no doubt that there is no trace on the clothing, then the indicated palpation can be used.

### **Recording the results of the body search**

The recording of the results of the person's search is done both by the report and by fixing them with the help of the photo or the video recording. They will also be accompanied by a statement taken immediately from the searched person.

The body search report must include, according to Article 166 para. (4) of the Romanian Criminal Procedure Code:

- a) First name and name of the searched person;
- b) Name, surname and qualification of the person who carried out the body search;
- c) Enumeration of the objects found during the body search;
- d) The place where the body search is concluded;
- e) The date and time at which the body search began and the time at which the body search was completed, mentioning any interruption;
- f) Detailed description of the place and conditions in which the documents, objects or traces of the crime were discovered and collected, their enumeration and detailed description, in order to be recognized; indications as to the place and conditions in which the suspect or defendant was found.

The report must be signed on each page and at the end by the person who concludes it and by the searched person. If the searched person can not or refuses to sign, this is mentioned, as well as the reasons for the impossibility or refusal to sign.

A copy of the report is left to the searched person. The provisions regarding the measures regarding the objects or documents raised shall be applied accordingly with the provisions of Article 162 of the Romanian Criminal Procedure Code. The objects or documents seized which constitute means of proof are attached to the file or otherwise preserved, and the traces of the commission of the crime are collected and preserved. Objects, documents and high marks, which are not attached to the file, can be photographed. The photos are targeted by the criminal investigation body and are attached to the file. The material means of proof shall be kept by the criminal investigation body or by the court where the case is located, until the final settlement of the case. Objects that are not related to the case are returned to the person to whom they belong, except for those that are subject to confiscation, in accordance with the law. Objects that serve as evidence, if not subject to confiscation, under the law, may be returned, even before the final settlement of the case, to the person to whom they belong, unless this return could hinder the finding of the truth. The criminal investigation body or the court informs the person to whom the objects were returned that he/she is obliged to keep them until the final settlement of the case.

## **Conclusions**

The judiciary must take steps to ensure that the body search is carried out with respect for human dignity. The body search is carried out in all cases of taking preventive measures (preventive detention or apprehension) of the person who committed a crime. It is also necessary on the occasion of the home search carried out in the rooms if the persons suspected of hiding the wanted objects are also present. Unlike the home search, the authorization given by the judge of rights and freedoms or by the court is not necessary to carry out the body search, as there is the possibility of resorting to this procedure whenever is necessary for the interest of the criminal investigation.



Regardless of the conditions in which the body search is carried out, by the mode of placement, by the way the examination is carried out and by the mode of supervision, we consider that those who perform the body search must prevent any incident, namely the attack or flight of the searched person, destruction or throwing away the goods and values sought.

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