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Review of search action as an evidence-gathering activity in criminal procedural law of the Republic of Serbia

***Abstract:** The aim of this article is to provide a brief overview of the search action in the criminal procedure in the Republic of Serbia. The mentioned action is presented through two parts: the legal regulation of the search, and the tactical rules of the conduct of the officials conducting the search. Both parts of the paper give the examples from the case law for a more detailed description of the said evidence-gathering activity.*

***Key words:** search, evidence, legal framework, tactical rules, judicial practice.*

Introduction

Determining the notion of evidence is one of the most important issues in the theory of criminal procedural law. In the provisions of the Criminal Procedure Code, the definition of evidence is not explicitly provided. However, the Code defines three different degrees of suspicion: the basis of suspicion, established suspicion and justified suspicion (Grubač, 2011). In the same time, Code indirectly defines that evidence can be direct or indirect. Previously, in the theory of criminal procedural law, evidence is defined as all procedural actions aimed at determining the truthfulness of the facts of relevance to a court decision (Marković, 1908).

This wide-ranging notion of evidence is the evidentiary treatment of the authorities in charge of the proceedings. This notion represent a concept of evidence in the formal sense. In the material sense, evidence in the criminal proceedings are the relevant data. This kind of data need to have factual nature and need to be derived from actions that are taken by the subjects of the criminal procedure which constitute the basis for drawing relevant criminal-law conclusions in the procedure related to the essential elements of the criminal offense. In the same time relevant criminal-law conclusions needs to point out to the selection of an adequate criminal sanction for the perpetrator (Škulić, 2014).

The legal significance also arises from the notion of evidence determined in this way. In this way evidence need to provide an answer to the question whether the person charged with the commission of the criminal offense did commit the crime indeed, as well as to that would be an adequate criminal sanction for the crime perpetrator. More precisely during the evidence process, and by drawing conclusions correctly from the factual material obtained by the evidence process. The process of determining the factual situation consists of a series of criminal procedural actions undertaken by the subjects of the criminal procedure. These criminal procedures are closely related to the evidence. The participant in the criminal procedure, who has the right to a proof of initiative, proposes the presentation of certain evidence at the appropriate stage of the process. After that, the court or another institution of the criminal proceedings, depending on the stage of the proceedings, carries out the mentioned evidence process.

Pursuant to the principle of free assessment of evidence, the court or the criminal procedure authority is free to assess the evidence, but not fully. The use of certain sources of knowledge as evidence is not permitted in the case where the mentioned sources are not sufficiently reliable or are inhumane (Škulić, 2014).

Regarding the division of evidence, it can be said that it is most often theoretical in nature, since legislators today rarely express their ideas explicitly about the existing types of evidence. The Criminal Procedure Code of the Republic of Serbia in this respect represents a unique exception, since through the division of various degrees of suspicion in criminal proceedings, it indirectly introduces a division into direct and indirect evidence. In addition to the two aforementioned

types of evidence, in the criminal procedure law, the division of evidence into the evidence of the prosecution, the defense's evidence, as well as the evidence that is indefinite in relation to the basic party functions in the proceedings, is significant. Some foreign authors emphasize the division into the evidence, which appears in writing, and the evidence that appears in some other form as the basic division of evidence (Langbein, 1996). The division of evidence into indirect and direct is one of the oldest divisions.

The aforementioned division relies on the criterion of the type of connection between the sources of knowledge and the facts that are the subject of proof (Škulić, 2014). If there is no intermediary between the sources of knowledge and the fact that is the subject of proof, it is direct evidence. In the event that there are one or more intermediaries between the sources of knowledge and the fact that is the subject of proof, the connection between them is indirect, and in that case evidence will be considered as an indirect proof or an indication.

Direct evidence allows the criminal procedure authority to make an adequate conclusion on the existence or truthfulness of the fact, which is the subject of proof, while using the indirect evidence may induce the body in charge of the proceedings to produce different hypotheses on the facts, which are the subject of proof. Furthermore, this reflects the significance of this division of evidence.

When it comes to the second significant division of evidence in criminal proceedings it refers to the process from which the procedural subject is encouraged. In this way evidence can be categorized as the evidence in the function of the prosecution and the evidence in the function of the defense. This division derives from the fact whether an authorized prosecutor - a public prosecutor, the injured as a prosecutor or a private prosecutor, proposed the evidence or if the defendant or the defense counsel presented certain evidence. The prosecutor should focus on obtaining evidence indicating that the defendant deserves a higher sentence for the offense, or evidence to maintain a certain procedural decision at the expense of the defendant, such as a particular detention. On the other side defense, counsel shall propose evidence that indicates the innocence of the defendant or is in favor of a more lenient criminal sanction and the termination or shorter duration of detention (Smibert, 2014).

In addition to determining the concept of evidence and listing the basic divisions of evidence, what is essential to understanding the complete procedure of proving is the determination of the object of proving. In the simplest way, the object of proving in criminal proceedings are crime-relevant facts. These are the facts that refer to the existence of the criminal offense that is the object of the criminal proceedings, as well as the facts based on which the criminal sanctions for the perpetrators of the criminal offenses that are the object of the proceedings are decided. In addition to establishing facts that are the object of proving in criminal proceedings, it is necessary to state the facts that the legislator formally ruled out from proving in the proceedings. Such facts include those judged by the court to be generally known, those that have been sufficiently debated upon, the facts which have been acknowledged by the defendant in a manner that does not require further proof, and the facts about which the consent of the parties is not in conflict with the other evidence.

Means of proving, inadmissible evidence and evidence actions

Means of proving in the theory of criminal procedural law are defined as sources from which facts are provided. That are the basis for making conclusions as to whether the facts that are the object of proving are true or not. By defining the notion of means of proving, this is fully identifiable with the sources of evidence. However, it is terminologically correct to make a certain difference between these terms. Under the means of proving, the theory implies a certain method or procedure in the strictest sense of the word, the application carried out by the criminal procedure authority. The said method is reduced to taking the appropriate evidence action that enables proving. The source of the evidence should be understood even more narrowly as a person or object from which evidence is derived. According to this, the sources of evidence can be divided into personal and material. In the context of the above-mentioned sources of evidence, the witness would be the means of proving, and the evidence action would be the examination of witness.

The provisions of the Criminal Procedure Code impose certain prohibitions. Court decisions cannot be based on evidence that is di-

rectly or indirectly, either in itself or by the manner of obtaining it, contrary to the Constitution of the Republic of Serbia, Criminal Procedure Code, other laws, generally accepted rules of international law and confirmed international agreements. In the legal theory, there is a distinction between two groups of forbidden evidence. The first group constitutes an absolute type of evidential prohibition, since certain methods such as torture can never be used as legal actions to obtain evidence. When it comes to the second group of evidence bans, they constitute prohibitions of the relative type, focusing on the use of the permitted evidence actions; however, the evidence obtained through them cannot be used in the procedure, since certain errors have been made because of someone's ignorance, neglect or abuse. "The prolonged effect of prohibited evidence on the permitted evidence obtained through the use of forbidden evidence actions in the theory of criminal procedural law is the concept of the fruit of the poisonous tree" (Brkić, 2011).

This concept in American law is limited by the concept of inevitable knowledge, according to which there is no elimination of evidence which, according to the previous concept, is a "poisoned fruit", if the organ of criminal procedure had come to the same knowledge and kept the lawful way of obtaining evidence (Martinović, Kos, 2016). Opinions in theory and practice regarding the application of these two concepts are divided, but the legislator appears to have precisely stated the above provision.

When determining the notion of a means of proving, the same is reduced to taking appropriate actions in order to prove, that is, to obtain, present and evaluate the evidence. These actions can be divided into several ways. Some representatives of the legal theory divide them into: actions that collect evidence, actions that secure evidence already collected, actions that are used to present the evidence, and actions aimed at examining the already presented evidence (Škulić, 2014). In addition to this division, the legal theory is characterized by the division of mono-functional and multifunctional evidence actions, depending on the number of functions that a certain item of evidence action has. Unlike the legal theory that divides evidence according to various criteria, the legislator has divided evidentiary actions into general and special evidence actions. General evidence actions can be used in any criminal proceedings, regardless of the type of criminal offense that is

the object of criminal proceedings. When it comes to special evidence actions, special investigative techniques are used to detect criminal offenses that cannot be detected or proved by the use of general evidence actions, or detection and proving would be associated with significant difficulties.

The Criminal Procedure Code envisages the following as a general probative action: interrogation of the defendant, interrogation of witnesses, expertizing, inspecting, reconstructing events, using documents, taking samples, checking accounts and suspicious transactions, temporarily seizing objects, and search action. Special probation actions include secret surveillance of communications, secret surveillance and recording, simulated jobs, computer data search, controlled delivery and engagement of the undercover investigator. The goal of taking evidence is to establish an accurate and complete factual state, and the further actions will depend on the factual situation in each individual case and the opinions of the criminal procedure authorities on what is most appropriate at a given moment (Šikman, 2013).

Material and formal condition for conducting the search

The search action is a systematic search of closed rooms or open surfaces in order to find the perpetrator or objects and traces of a criminal offense, or material investigation on persons and things in order to find the objects or traces of an offense (Sindelić, 2012). Pursuant to the provisions of the Criminal Procedure Code, the criminal procedure organ can take an evidentiary action in the case of cumulative fulfillment of a particular material and formal condition. The law in its provisions prescribes the material condition that there is a probability that the defendant, the traces of the criminal offense, or the objects important for the criminal procedure will be found.

Prescribing material conditions in this way prevents searches motivated by certain personal motives of officials who perform searches in relation to the person against whom the search is conducted (Crofts, Panther, 2010). The formal requirement for undertaking the evidence action of search is reflected in the existence of a court order, which is issued at the reasoned request of the public prosecutor. The search warrant must include the name of the court ordering the search, marking the subject of the search, specifying the reason for the search,

the name of the authority that will perform the search, as well as other information that may be relevant to the search.

Cases from the practice of foreign courts indicate the essential importance of respecting the formal conditions for conducting a search, in the context of the strength of evidence obtained by searching, at later stages of the proceedings (McBride, 2009). It is important to emphasize that the search that conducted based on a court order must be taken within eight days of issuing the order. If the organ of the proceedings does not commence the search within the specified deadline, the search cannot be carried out and the order must be returned to the court. While for the search, without exception, the fulfillment of material conditions is necessary, the said evidence action may be taken in exceptional cases without the existence of a court order, that is, without fulfilling the formal conditions.

The law allows the search of a dwelling, other premises or persons caught there may be undertaken without a court order in case of the existence of any of the conditions such as: the consent of the holder of the apartment and other premises, calls for help, the immediate arrest of the perpetrator of the criminal offense, the execution of a court decision on the detention or bringing in the defendant. In this way, it is possible to eliminate immediate and serious danger to people or property. In an instance of case-law, the second-instance court in the proceedings after the appeal filed by the defense counsel of the accused opted for the separation from the file and separate custody of the record of the search. This is possible because the search of the apartment was undertaken without the existence of a court or without the legal requirements for it. In the concrete case, there was no danger that the accused persons would throw, hide or destroy objects that should be seized as evidence, since the defendants were out of the apartment. More precisely, the authorized police officers intercepted them on the street, so there was no danger that the defendants could enter the apartment and destroy or hide the drug that was in the apartment (Court of Appeal in Belgrade, 2010).

Similarly to the previous case, the court held that the conditions were not met to search the facility - the garage, without the existence of a written and reasoned order by the court. Search without the written order by the court was justified by authorized officials by the fact that before the start of the search, two bags full of marijuana - narcotic

drug dangerous to the human health, were spotted in the mentioned garage, which could result in immediate and serious danger to the people and property. Deciding on the defense counsel's appeal, the second instance court found that the authorized police officers, who found themselves in the said location, secured the garage with their presence, which could not indicate that there was immediate and serious danger to people and property. Based on this established factual situation, the court issued a decision on the exclusion of the search report from the file since the decision cannot be based on it as illegally obtained evidence (Court of Appeal in Belgrade, 2013). The purpose of the aforementioned provisions is that the court is the one who assesses whether a legitimate aim is fulfilled to violate the guarantee of the inviolability of the apartment, and only in exceptional cases prescribed by the provisions of the constitution and law, another body of criminal proceedings (Radović, 2008).

Upon entering the apartment and other premises without the existence of a court order, two situations are provided for by the provisions of the Criminal Procedure Code. The first situation is that the body in charge of the procedure entered the apartment and other premises, but the search action was not taken. In this case, the authority is obliged to immediately issue a certificate to the occupier of the premises or to the present person indicating the reason for the entry and enter the remarks of the owner of the apartment or the present person. In case that a search was conducted after entering the apartment and other premises, pursuant to the provisions of the law, the officers who conducted the search operation without an order and the presence of a witness shall be obliged to make a written record indicating the reason for the entry and the search.

In the case from the case law that follows, the authorized police officers have made a number of irregularities leading to the fact that the items obtained by the search could not be used in the criminal proceedings as sources of evidence. In addition, in accordance with the law envisaged conditions, allowed searches without a court order, authorized officials failed to inform the pre-trial judge of the pre-trial proceedings in an appropriate form, which would appreciate the fulfillment of the search conditions in this way.

As the law explicitly foresees this duty of the criminal justice conducting the search, the second instance court, as well as the first

instance, interpreted the violation of the provisions of the criminal procedure in favor of the defendant, and confirmed the pronounced acquittal (Supreme Court of Cassation of the Republic of Serbia, 2004).

Legal requirements for conducting a search

Observing the law of other states, the legislators regulate the search procedure in various ways by imposing numerous restrictions on the official bodies, which conduct the search action, in order to protect the right to privacy of the individual, as one of the most important rights guaranteed by the order (Farmer, 2001). The official, who conducts the search, is first obliged to give the owner of the apartment and other premises or the person of whom the search is to be conducted, the search warrant and invite him to voluntarily surrender the person or object sought. The law also establishes the duty of an official person conducting the search to inform the owner about the right to engage a lawyer or defense counsel who can attend the search and to delay the start of the search until the arrival of a lawyer or defense counsel, in three hours at the longest. The provisions of the law stipulate that two adult citizens are present at the search as witnesses, who will be warned before the search begins to look at the course of the search, and advised that they have the right to raise their objections in respect of the credibility of the contents before the signing of the search report.

The provisions of the law provide for the possibility of deviation from the aforementioned procedure for undertaking the search operation, in such a way that the body of the procedure can proceed to the search without the prior submission of the court warrant (Supreme Court of Cassation of Republic of Serbia, 2003). As well as without the prior invitation for surrender of a person or object, without notice about the right to a lawyer, if armed resistance or other type of violence is presumed, or if obviously the preparation or destruction of the traces of the criminal offense and the objects important for the procedure, and when the landlord is unavailable. In the following case, from the case-law, the defense counsel in his appeal to the first instance verdict pointed to a significant violation of the provisions of the criminal procedure. This is possible since the decision was based on the record of the search of the apartment and the certificate of the seized objects - narcotic drugs, but that they were not in accordance with the law, since the search operation was undertaken without the

presence of the defense attorney to whom the defendant was entitled. Pursuant to the decision of the second instance court, the appeal grounds are not based on the fact, because the search operation was undertaken on the basis of the knowledge of the police officials that there is a group of persons who are unauthorized in the sale of narcotic drugs, in order to immediately arrest those persons (Court of Appeal in Kragujevac, 2016). Special rules are prescribed by law in the event of a search of military facilities, premises of state bodies, companies or other legal entities. In the event of a search of one of these facilities, their director or the person whom he / she will appoint, or the responsible person to attend the search, will be summoned.

The search conducting body shall be obliged to wait for the summoned person, but no more than three hours from the moment of receiving the summons, after which he is authorized to conduct the search without the presence of that person. In the end, it should also be noted that in the situation where the search of person is conducted, the person conducting the search and the witnesses of the search must be of the same sex as the person to be searched. In the search matter, in some European countries there is a tendency to expand the circle of persons authorized to attend the search, as well as other evidence-based activities such as insights or reconstruction. The aim is to ensure the observance of the rights of the holders of objects, the persons to be searched, by allowing the presence of members of various organizations for the protection of human rights to be present (Bergsmo, Wiley, 2008).

Legal framework of the search process

The provisions of the law stipulate that the authorities conducting the search be obliged to act with caution, respecting the dignity of the person and the right to intimacy, as well as without unnecessary interruption of the right to intimacy. The search is conducted by day, and in exceptional cases at night, between ten p.m. and six a.m., and only if the search started during the day and is not completed, as well as in the case when the search warrant specifies that it should be performed at night. In the case from the case law, according to the factual state established during the proceedings, the authorized police officers started the search at ten minutes past ten p.m.. As the search warrant

did not explicitly provide for the search to be carried out at night, and the same was not started during the day and continued at night, the second instance court considered the allegations from the appeal as legitimate and excluded the record of the search and the receipt for the seized objects from its file (Court of Appeal in Kragujevac, 2017). Specific rules are prescribed for scanning of automatic data processing equipment and equipment on which electronic records are stored or can be stored. When these items are the object of the search action, the expert performs the search operation. The presence of an expert is necessary since the handling of such equipment and devices in an inadequate way can lead to irreversible and, consequently, permanent destruction of the stored data (Ivanović, 2015).

The authority conducting the search procedure shall make a record in which it will accurately describe the seized objects and documents, as well as the place where they were found. In the event that the search is conducted at night, the procedure authority is obliged to enter the explanation in the record, elaborating on the reason due to which it was accessed at night. In addition to the investigating authority, the minutes shall be signed by the persons present. When the present person refuses to sign the minutes, the officer in charge of the procedure is obliged to make a note on this. The duty of the officer in charge of the procedure is, in case of seizure of objects or documents, to produce a receipt of seized objects or documents and immediately issue it to the person from whom they were seized.

The provisions of the law provide for the possibility of sounding and scanning the search action, and the objects found during the search can be photographed in particular. In the event that the search, in the law envisaged cases, takes place without the presence of witnesses, the recording and photographing of the objects are compulsory. The purpose of the provisions of the law that permits, and in certain situations, requires recording and photographing during the search, is to prevent possible abuse by the officials of the authority conducting the search, and hence the strengthening of the legitimacy of the search as an action of obtaining the evidence (Bradford, Loader, 2015).

The acting of officials when searching the apartment

In addition to the aforementioned legal rules of search which the body in charge of the procedure is obliged to observe, it is necessary to mention certain rules of a tactical nature that are typical for the search operation. Since each type of search action has certain characteristics, we can distinguish certain tactical rules relating to the search of premises, search of open spaces, search of means of transport and search of persons. When it comes to searching the apartment and other premises, it is necessary for the searching authority to observe certain tactical rules concerning the preparation, planning and conducting of the search. First, when preparing, it is necessary to analyze in detail the characteristics of the object to be searched, such as the floor, the number and the arrangement of the rooms, the position in relation to the nearby objects, whether it is a facility intended for dwelling or a certain business facility such as a warehouse or a workshop.

When planning how the action will be taken, it is very important to provide answers to questions such as: the precise determination of the object or person sought, source of information, when is the start of the search, with which equipment and how many officials will be carrying out this measure (Simonović, 2004). A characteristic preliminary measure aimed at preventing escape or destruction of the important objects, is the concealed approach to the property and the blocking of all the entrances and exits from the building. If it is expected that the perpetrator of the crime whose apartment is subject to the trial will offer resistance or try to escape, it is best to enter the building at the same time as the perpetrator, when he unlocks the door of the building or someone from the house unlocks it for him. Before the moment of the search begins, it is necessary to monitor the occupant of the place or other persons who are aware that they will enter the apartment that will be the subject of the search operation. Upon entering the apartment, the operative treatment of the body of the procedure depends on the circumstances of the case, but two characteristic forms are distinguished.

The first is characterized by a surprising, quick and efficient overview of the premises without the assistance of the holder of the building, while in the second case, the case where the occupier of the property goes in front of the officials and opens the premises of the

building one at a time. It is necessary to determine, without delay, the identity of the persons found in the property which is being searched. After finding the requested object, or something else that could be used at any of the following stages of the criminal proceedings, it should be photographed, along with the place where it was found, then shown to the witnesses, enabling them to get acquainted with the object's features. It is necessary to ask the owner of the apartment or persons present to explain the whereabouts of the objects found, as well as other facts related to the found objects, which may be of importance. Officials shall, when undertaking the search operations, prevent the uncontrolled movement of objects by other persons, as well as their mutual communication, or communication with third parties by telephone, aimed at hiding or destroying items that could be used in evidence procedure.

When conducting the search, it is necessary to take care that certain objects can be found in special shelters made for them, e.g. in the walls, covered by pictures, cabinets, staircases, etc. One way to hide the object is to stick it to certain less accessible pieces of furniture, or to hide it in clothes, toys, pillows, bedding. Special attention should be paid to the examination of the object in which the requested item or trace can be hidden.

The acting of officials when searching open space

During the search of open spaces such as meadows, parks, forests, streets and squares, difficulties can arise that are not characteristic of the search of other objects. This is primarily due to the size of the space to be searched, the impact of atmospheric conditions, the existing vegetation, and the availability of open terrain for a large number of people. Therefore, in the case of finding the requested items, it is difficult to determine which person has hidden or thrown away the objects, or who the mentioned objects belong to. The previously described difficulties can be overcome by adequate tactical preparation for carrying out the action, in order to collect and process as much as possible data relating to the terrain to be searched, concerning its type, size, existing vegetation, upcoming atmospheric conditions, the existence of facilities on it, as well as the possible presence of citizens.

The above data will be obtained using a topographic map, but also through consultations with members of other services, as well as citizens. In the execution of the search action, it is first necessary to block the space that will be searched, then divide the mentioned space into sectors and eventually start the search. The blocking of the space to be searched shall be carried out in such a way as to prevent arbitrary or violent entry into that area. Certain natural obstacles such as canals or streams can also be used as means of blocking, as well as certain objects such as wire rails that will be placed by authorized police officers in front of the space to be searched (Petrović, 2006). In order to effectively carry out this evidence-gathering activity, official dogs are often used.

The acting of officials in the search of means of transport

An official in a situation carries out the inspection of a vehicle where there is insufficient data on an individually designated means of transport in which the requested item or trace could be found. These are cases in which the official has information on the brand and type of the vehicle or the direction from which the vehicle comes from. Upon commencement of vehicle inspection, an authorized official may make a decision to carry out the search action. They will do so in the event that certain characteristics of the vehicles and persons found in the vehicle indicate that only by undertaking the evidence operation of the search, the requested items or traces could be found.

The behavior of the persons caught in the vehicle must be monitored in order to prevent any attempt to escape, conceal or destroy the traces. In addition, by analyzing the behavior of persons found in the vehicle, it is possible to notice certain signs of confidence, or manifestations of nervousness, fear, informed carelessness, precaution. There are various ways to hide the requested items in vehicles, such as the area behind the headlights, specially made bunkers in the floor of the vehicle, oil tanks, petrol tanks, seats, battery box area (Žarković, 2012). Unlike motor vehicles, the search of other means of transport could be even more complicated, primarily due to the specific shape, size, etc.

A particular difficulty in a bus search can be the so-called nobody's stuff – belongings whose owner needs to be determined. In

such a situation, the most desirable items should not be touched and the officer in charge is to continue observing, so that, at the final destination, the person who comes for the above objects would be caught during the takeover. When searching a vessel, the particular difficulty is the size of the vessel, as well as the difficult access to certain parts of the vessel.

As with the search of objects, before starting the search of the vessel, it is necessary to get drafts of the ship in which all the rooms and channels that exist on the ship are drawn. A similar situation occurs when the aircraft is being searched. It is of utmost importance that experts such as engineers or pilots provide assistance, since only the most specialized persons know certain characteristics of airplanes, and those are the places where items such as explosives or other items essential for criminal proceedings are most often hidden.

The acting of officials during the search of persons

Beside the regular form of search of a person, for which the procedure is regulated by law, the so-called partial searches (Žarković, 2012) also occur in the practice of police officers. This action is reduced to visual checking and touching of certain pieces of clothes and body where the requested items or traces can be hidden.

The above action represents a preliminary step in relation to the evidence obtaining action of searching a person, which may not be possible to perform immediately in certain situations at the place where the persons have been found. When it comes to searching as evidence action, specific rules of a tactical nature are characteristic, which contribute to the safe and efficient performance of the search action. It is necessary to apply the usual precautionary measures. At least two police officers, one who directly performs the search and the other who is positioned at a distance of three to five steps and is ready to intervene quickly if there is a need for that, carry out the search of one person.

The person being searched is required to indicate where the requested items are located. The police practice of dealing with search is familiar with two characteristic types of searching a person, depending on the position of the body of the person to be searched. In the so-called classic search, the person to be searched is positioned with the

back turned to the police officers, standing and holding his hands behind his head or in some other position that allows police officers to search him. When it comes to another form of search, the so-called wall scanning, the scanned person is ordered to move from a wall, about one meter from the wall or a similar obstacle which he is facing, with his fingertips touching the obstacle, and enable the police officers to perform the search.

The basic rule, irrespective of what type of person is searched, is that the police officer approaches the person from the back, in such a way that the person cannot fully see his/her movement (Žarković, 2012). Typically, the search is carried out in a certain order, so that the officials who are conducting the search first visually and perceptively examine the head, hair, wigs and body cavities on the head, and then gradually move to the upper and lower parts of the body. When performing this action, it is necessary to remove and inspect the hat, cap or other garment that the searched person wears on his head, to examine all the pockets in which the searched person can hide the requested object (Žarković, 2012).

In the event that it is necessary to examine the body cavities of the person in order to find the requested items or traces, it is advisable that the doctor be present during the search. It is necessary to approach the examination of the human body with special care during the search, since the persons to be searched are frequently cunning and hide certain objects or traces by gluing or fastening them to the body, under the armpits, women's breasts, in the area of the groin, most often with a patch, gypsum linings, but also other items that can be used for this purpose.

During the search of persons, police officers direct special attention to the objects found on the person being searched or in the vicinity. There are cases where the requested item or trace was hidden in or on the objects mentioned, such as a briefcase, a wallet, a cigarette box, a bag of crisps, or even an animal.

The procedure with the objects found and the search report

The provisions of the Criminal Procedure Code also regulate the manner in which officials of the criminal procedure authority act

with the objects found at the scene of the search. The officials of the criminal investigation authorities conducting the search shall temporarily seize items and documents relating to the purpose of the search. In practice, it is common to find objects that are not related to the crime for which the search was undertaken during the search, but point to the existence of some other criminal offense. In the event that the public prosecutor does not undertake the search, it is necessary that the body conducting the search, inform the public prosecutor immediately about the found objects indicating the existence of a criminal offense. In the event that the prosecutor determines that there is no basis for the conduct of criminal proceedings or if there are reasons for which the objects are temporarily confiscated, and there is no reason for permanent confiscation such as the protection of the interests of general security or morals, the mentioned objects will be returned without delay to the person whom they have been taken away from.

In some cases, in both theory and practice, the issue of the appropriate application of provisions relating to the search for cases indicating the existence of another criminal offense is raised, when the search object is an automatic data processing device or equipment on which electronic records are stored or can be stored. Due to the specific nature of these devices and the data stored therein, some authors think that the appropriate application of the aforementioned provision is not desirable, and that the search warrant should precisely determine the aim of the search for the collection of data related to the specific criminal offense (Pisarić, 2015).

The legal significance of the search record in the evidentiary proceedings is great, because it is precisely by reading it that the criminal court is acquainted with the undertaken search operation, the authorities that carried out the search, its course and its outcome, which is reflected in the objects that were obtained and which will be used as sources of evidence. The authorized person of the criminal procedure authorities who conduct the search operation according to the general rules for documenting criminal proceedings shall compile the minutes. The search record must comprise three parts: introductory, descriptive and final.

The name of the investigating authority, the marking of the person or object to be searched, the place and the legal basis for taking evidence, the statement of the body in charge of the procedure that the

occupier of the premises or the person on whom the search is conducted has been invited to voluntarily surrender the requested object or person, identification data of the persons concerned and the property in which they attend the search, as well as the start of the search, are integral elements of the introductory part of the search report. In the descriptive part, it is necessary to list and describe in detail all found objects relevant for the criminal investigation process within which the search is conducted, considered to be related to the criminal offense. It is mandatory to indicate the place where the object was found, under what circumstances it was found, and whether it was in any way concealed.

The final part of the search duration is foreseen for the conclusion of the search, the signature of the person who was the subject of the search, the witnesses, the attorney, the recorder and the official who conducted the search operation. The persons whose presence is compulsory must be able to read the minutes and, in the place provided for it, make remarks on the same, if any.

There is also a case in court practice, in which the search was conducted without a court order, but in the presence of the witness and the consent of the apartment owner, who, although educated about the right to raise objections, signed the record without any objection. By interrogating the authorized police officers in criminal proceedings, the court found that the defendant was instructed about the right to raise objections, that he himself brought the authorized officials to the place where the confiscated narcotic drugs were taken, and that the record was signed without raising any objections, so that in this case the defense was unfounded. (Supreme Court of Cassation of Republic of Serbia, 2016) If one of the persons present in the record refuses to sign the minutes, it must be stated in the record.

Conclusion

Search is an extremely important action of proving in the criminal procedure of the Republic of Serbia. Because of this, the legislator paid a lot of attention to it and regulated the matter in quite a detailed manner. Due to the great legal importance of the evidence obtained through searches, in addition to the application of tactical principles, officials also must strictly observe the rules prescribed by law, so that

the evidence obtained through the search is not excluded from the further course of the criminal proceedings, as shown in the aforementioned cases from judicial practice.

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Pregled istražnih radnji kao aktivnosti prikupljanja dokaza u krivičnoprocesnom pravu Republike Srbije

Apstrakt: *Cilj ovog članka je upoznavanje čitaoca sa procesom pretresa u krivičnom postupku Republike Srbije. Navedena radnja se prikazuje kroz dva dela, pravno regulisanje pretresa i taktička pravila ponašanja službenih lica koja vrše pretres. U oba dela dati su primeri iz sudske prakse za detaljniji opis pomenute aktivnosti prikupljanja dokaza.*

Ključne reči: *istraga, dokazi, pravni okvir, taktička pravila, sudska praksa.*