

## CONSIDERATIONS REGARDING THE SEARCH AND INSPECTION OF VEHICLES, LUGGAGE AND CARAVANS

**Adriana MIRON**

*Transilvania University of Brașov, România*

[adriana.miron@unitbv.ro](mailto:adriana.miron@unitbv.ro)

**Abstract:** *The inspection activity can be carried out only on the basis of the necessary approvals, in certain periods of time and only if there is a reasonable suspicion of committing an offense by a person or if the suspect is in 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 the crime, the preservation of the traces of the crime or the arrest of the suspect or defendant. However, the investigation of the vehicle consists of a deeper, broader examination, including the case of compartments specifically designed for the resting of drivers, if they are equipped with all necessary items for living – compartments which can usually be found on vehicles which travel on international routes with long distances, such as trailer trucks. Therefore, it must be established that the respective compartment is where the driver rests, eats, and has all the necessary items for living in order for the same rules to apply.*

**Key words:** *inspection, vehicle, luggage, domicile, human dignity*

**Rezumat:** *Activitatea de inspecție se poate desfășura numai pe baza avizelor necesare, în anumite perioade de timp și numai dacă există o suspiciune rezonabilă a săvârșirii unei infracțiuni de către o persoană sau dacă suspectul se află în posesia unor obiecte sau documente. legat de o infracțiune și se presupune că percheziția poate duce la descoperirea și strângerea de probe privind infracțiunea, păstrarea urmelor infracțiunii sau arestarea suspectului sau inculpatului. Cu toate acestea, investigarea vehiculului constă într-o examinare mai profundă, mai amplă, inclusiv în cazul compartimentelor special concepute pentru odihna șoferilor, dacă acestea sunt echipate cu toate elementele necesare locuinței – compartimente care se găsesc de obicei pe vehiculele care circulă pe rute internaționale cu distanțe lungi, cum ar fi camioanele cu remorcă. Prin urmare, trebuie stabilit că compartimentul respectiv este locul unde șoferul se odihnește, mănâncă și dispune de toate obiectele necesare locuirii pentru a se aplica aceleași reguli.*

**Cuvinte cheie:** *inspecție, vehicul, bagaje, domiciliu, demnitate umană*

The respect for the human personality also implies respect for one's domicile, which includes two aspects, namely: the inviolability of one's domicile and the free choice, change and use of one's home. As for the second aspect, it found its legal expression in art. 25 of the Constitution on free movement.

The inviolability of the domicile legally expresses the prohibition of entering a person's domicile. Although, in its title, art. 27 marks this right by the expression of the inviolability of the domicile, in the content of paragraph (1) references are made to the domicile of residence. It should be noted that both expressions are of course correct. It must be borne in mind that in constitutional law, as in public law in general, the notion of domicile has a different meaning from that given by civil law<sup>4</sup>. In this

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<sup>4</sup> Mihai Constantinescu, Antonie Iorgovan, Ioan Muraru, Elena Simina Tănăsescu - The Romanian Constitution, revised. Comments and explanations. All Beck Publishing house, 2004.

sense, it should be emphasized that in civil law, the domicile of an individual is where he/she has the permanent and main residence.

On the other hand, in constitutional law, the notion of domicile has a wider meaning, practically comprising the domicile in a broad sense, being used in other branches of law, such as criminal law. However, speaking of entering a person's home, it should be noted that according to art. 27 para. (1) of the Romanian Constitution, revised, “domicile and residence are inviolable. No one may enter or remain in a person's home or residence without his or her consent. ”

However, there are also situations when the entry into the person's home can be done even without his/her consent, but only in the cases provided for in Article 27 paragraph (2) of the Constitution. Thus, according to the mentioned text, from the provisions of par. (1) may be derogated by law for the following situations:

- a. execution of an arrest warrant or of a court decision;
- b. the removal of a danger to the life, physical integrity or property of a person;
- c. protection of national security or public order;
- d. preventing the spread of an epidemic.

According to paragraph (3), the search is ordered by the judge and is carried out under the conditions and in the forms provided by law. Finally, according to paragraph (4), overnight searches are prohibited, with the exception of flagrant offenses. Therefore, by paragraph (2), the constitutional norm seeks to limit the cases in which the basic constitutional principle may be derogated, according to which no one may enter or remain in the domicile or residence of a person without his/her consent.

Therefore, it can be observed that these cases are necessary, legal and exceptional, they are also limitedly listed, and no law can add new situations to those already established by the Constitution. On the other hand, the reality is that the inviolability of the home is not and cannot be absolute. The inviolability of the home cannot stop the course of justice, it cannot serve as a means of protecting criminals, it cannot lead to the impossibility of taking measures to save a person's life or property, to defend national security and public order. The situations provided for in this paragraph are complex and are to be detailed by law.

Article 27, paragraph (3) of the Constitution sets out the authority competent to order searches, as well as the procedure for carrying them out. Finally, in paragraph (4) of the constitutional text, night searches are prohibited, except in the case of a flagrant crime, knowing that a search carried out at night produces in itself undesirable effects, not only for the person concerned, but also for their family, possibly the neighbours as well.

Regarding the issue under discussion, namely the search of vehicles, we note that the constitutional text (Article 27) which refers to home searches, does not refer to the institution of search of a vehicle, being a clear delimitation of one from the other.

In fact, a constitution cannot even propose such a thing. Therefore, from a legal point of view, the problem was solved by the regulations provided in the Code of Criminal Procedure and in Law no. 218/2002 on the organization and functioning of the Romanian Police, republished in the Official Gazette no. 170 of March 2, 2020, rules that expressly refer to the institution of the search or control of a vehicle.

Thus, according to article 35 paragraph (1) of law no. 218/2002, the police officer is entitled to carry out the physical control of the legitimate person and, as the case may be, of the luggage or vehicle used only for the purpose of:

- a) the seizure of property subject to confiscation prohibited from possession, sought under the law or which may be used as evidence in a judicial proceeding, when there are plausible reasons to suspect that the person has such property under his or her control;

b) the identification and seizure of weapons, objects or substances which may be used against the police officer, against other people or self-harm, when the person is subject to the measure of driving to the police headquarters or in case of a warrant, detention orders, arrest warrant or execution of the sentence;

c) the identification of documents or inscriptions which may serve to the establishment of the identity of a person in an unconscious state;

d) The identification and seizure of weapons, objects or dangerous substances, when the person is trying to enter or currently is located in places where access with these is prohibited.

The inspection of a vehicle may also be carried out in order to identify a person pursued or wanted in accordance to the law, when there are good reasons to suspect that this person is present in the vehicle. For the purposes of that law, the control of the vehicle means the control of any means of transport by road, rail, air or water (Article 35 (paragraph 2)).

Body control is performed with respect for human dignity, by a person of the same sex as the controlled person, and it involves external examination of a person's body and clothing, visually, as well as by palpation and pressure. Thick clothing can be examined separately. When objects are identified by examination, the person is obliged to present them at the request of the police officer.

Baggage control involves external examination of it, visually, as well as by palpation and pressing. At the request of the police officer, the person has the obligation to open and present the contents of the luggage (paragraph 4). Therefore, it is concluded, without denial, that at the request of the police officer, the person in question must open the luggage, being a luggage carrier.

In fact, the luggage compartment is nothing more than an accessory device in a luggage<sup>5</sup> vehicle, therefore being its component – a part of its body in which luggage is carried. Regarding the control of the vehicle, it implies that the police officer examines by viewing the components which, by construction, are intended for the transport of passengers and goods. At the request of the police officer, the person has the obligation to open and present the contents of the compartments (art. 31 paragraph (5) of the Law on the organization and functioning of the Romanian Police).

If the person does not comply with requests referred to in paragraph. (3) - (5), the police officer may personally carry out the requested activity, including by the use of force. Therefore, if some damage occurs to the person who does not comply with the requests of the police officer, he cannot be held criminally liable, as he benefits from the provisions of art. 21, paragraph (1) of the Penal Code (exercise of a right or fulfillment of an obligation) which provides that " the deed provided by the criminal law is justified, consisting in the exercise of a right recognized by law or in the fulfillment of some obligations imposed by law with the observance of the conditions and limits provided by it".

Thus, if the legal norm obliges the police officer to exercise certain activities, even in violation of certain rights of the person, he/she is automatically given the possibility to perform those operations. The result of the control shall be recorded in a report signed by the police officer and by the person in question or by their legal representative.

The completion of the report takes place as per the legal texts, only in the situations expressly provided by the provisions in force and not when, for example, a routine activity is performed, such as checking the driver's documents (driving license, the vehicle registration certificate, the documents related to the nature and weight of the goods carried, etc.), or the technical condition of the vehicle, what can be found in the luggage compartment, or on the occasion of the finding and application of a contravention sanction.

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<sup>5</sup> Aurora Chioreanu, Mircea Maciu, Nicolae C. Nicolescu, G. Rădulescu, Valeriu Șuteu – Small encyclopedic dictionary, 2<sup>nd</sup> Edition, revised and added, Scientific and Encyclopedic Publishing House, București, 1978, page 760

In addition to the provisions contained in the Law on the organization and functioning of the Romanian Police regarding the control performed in the field of traffic on public roads, in the Code of Criminal Procedure in force it is also provided the institution regarding the search of a vehicle.

The vehicle consists of a technical system, with or without self-propulsion, intended to travel on a terrestrial, underground, aquatic, cosmic or aerial<sup>6</sup> communication route, and the vehicle is a self-propelled terrestrial vehicle<sup>7</sup>.

The search consists in examining the exterior or interior of a vehicle or other means of transport or their components (art. 167 para. (1) of the Code of Criminal Procedure.

The inspection involves researching, studying something or someone<sup>8</sup> in detail, in the case in question being a detailed activity of checking the interior or exterior of the vehicle.

According to article 167 paragraph (2), the inspection of a vehicle is carried out under the conditions provided in article 165 paragraph (2). The provisions of articles 162, 165 and 166 shall be applied accordingly. According to article 165, paragraph (2) of the Code of Criminal Procedure, if there is a plausible suspicion that by conducting a body search will be discovered traces of the crime, crime objects or other goods which are important for finding out the truth in question, judicial bodies or any authority with attributions in ensuring public order and security will proceed performing it (in the case under analysis, the vehicle shall be inspected).

Objects, documents and traces found, that are not attached to the file, can be photographed. The photographs are approved by the criminal investigation body and are attached to the file.

According to article 166 paragraph (1) of the Code of Criminal Procedure (conducting a body search), the judicial body must take measures to ensure that the search is carried out with respect for human dignity. The search is carried out by a person of the same gender as the person who is being searched (paragraph 2).

Prior to the start of the investigation, the person who is searched shall be required to surrender the searched items voluntarily. If the searched objects are handed over (for example, some objects in the trunk, the search is no longer carried out, unless it is considered useful to search for other objects or traces). After carrying out the investigation activities, a report needs to be drawn up, and it must include all the data required by the legal provisions<sup>9</sup>.

From the reading of the legal provisions, respectively article 167 of the Code of Criminal Procedure, it results that the search of a vehicle is carried out under the conditions provided in article 165, paragraph (2) of the Code of Criminal Procedure. It is also further specified that the regulations of articles 162, 165 and 166 of the Code of Criminal Procedure shall be applied accordingly, without any reference to the provisions of article 158 of the Code of Criminal Procedure, which stipulates that the home search may be ordered during the criminal investigation, at the request of the prosecutor, by the judge.

Therefore, we consider that no approval or authorization is required for the investigation of a vehicle, as required in the case of a home search. Thus, the problem arises in the case of an investigation or search of the caravan that is being towed by the vehicle. By "caravan" it is implied a two-wheeled vehicle, towed to a car and equipped with comfort 10 elements, respectively, in our opinion, equipped with necessary items for a space designed for living. As such, the caravan is assimilated as a home,

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<sup>6</sup> Aurora Chioreanu and collaborators, op. cit., page 1021]

<sup>7</sup> Ibid page 84

<sup>8</sup> Ibid page 357

<sup>9</sup> Article 166 para. (4-7) of the Code of Criminal Procedure

<sup>10</sup> Aurora Chioreanu and collaborators, op. cit., page 848

and it can only be entered under the conditions established by law, in compliance with the conditions established for conducting a home search, demanding that it is inhabited.

We consider that the same rules apply in the case of compartments specifically designed for the resting of drivers, if they are equipped with all necessary items for living – compartments which can usually be found on vehicles which travel on international routes with long distances, such as trailer trucks. Therefore, it must be established that the respective compartment is where the driver rests, eats, and has all the necessary items for living.

In contrast to the investigation of a vehicle, in the case of the home search also referred to in the constitutional text - in the case of the first institution (search of a vehicle), the activity consists in examining the exterior or interior of a vehicle or other means of transport or their components, whereas in the case of the second situation (house search), the activity can be carried out only on the basis of the necessary approvals, in certain periods of time and only if there is a reasonable suspicion of committing an offense by a person or in 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 the crime, the preservation of the traces of the crime or the arrest of the suspect or defendant (article 157 paragraph (1) Code of Criminal Procedure ).

As a conclusion of those analyzed, we can highlight the fact that the investigation activity involves a permanent, periodic or unexpected verification in a certain field, in order to know the realities and how the activity is carried out in that field<sup>11</sup>. However, the investigation of the vehicle consists of a deeper, broader examination.

The investigation activity to which I referred has its roots in the provisions regulated by the Law on the organization and functioning of the Romanian Police, while the institution of the vehicle investigation is regulated by the Code of Criminal Procedure. Both the investigation and the search of vehicles by the police must be carried out with respect for human dignity, without abuse, without harassment and only when the situation requires it.

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3. Code of Criminal Procedure; Article 166 paragraphs 4-7

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<sup>11</sup> Aurora Chioreanu, op. cit., page 236