

Investigation in Criminal Prosecution of Burglary

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Abstract: As investigating instrument of the criminal prosecution activity, investigation is an extremely important step in criminal prosecution, aiming to discover, obtain valuable information and clues. Investigation is a common instrument, in order to obtain information about the author, his residence, his habits, the stolen goods or the capitalization method. Investigation is the main method used by police officers in the immediate activity of identifying authors of criminal deeds.

Keywords: investigation; burglary; criminal deeds; criminal investigation

Although it is not defined by the Criminal Procedure Code as an institution in itself, investigation is a very used instrument in criminal research.

Etymologically, investigation is the action of detailed research and study, performed for the purpose of discovery.

From the perspective of criminal and police research, it is an instrument of the police criminal research activity that facilitates, openly or secretly, the obtaining of clues or data, regarding certain places or environments of operative interest, certain circumstances or real persons. (Stancu & Manea, 2017)

In researching an offense, we may say that investigation is a common instrument, whose importance is given by the fact that it is necessary and frequently used in most cases, to obtain information about the author of the offense, his address, his habits, the stolen goods or the capitalization method.

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Main Situations in which Investigation Can be Used in the Case of Burglary

In investigating and researching the burglary offense, investigation may be used in the following main situations:

- in order to identify suspects and to ascertain that they have committed the offense;
- in order to complete existing information regarding certain complaints;
- in order to identify, find and catch the offenders;
- in order to ascertain the places where the stolen goods have been capitalized and to recover the damages;
- in order to ascertain the situation of the buildings where the authors of the offense live or the persons in whose buildings the goods have been hidden/capitalized, in order to prepare the house search;
- in the case of house search if the burglary has no identified authors;
- to catch the offenders that are hiding from criminal investigation.

These situations are presented only from a theoretical point of view, since, from a practical perspective, there are multiple situations in which investigation may be used as instrument in criminal investigation if the burglary offense has been committed.

Most frequently, investigation is used on the occasion of the house search or as a consequence of an ordinance issued by a prosecutor, in criminal investigation, based on the art 148 in the Criminal Procedure Code¹, if the limiting conditions imposed by the law are fulfilled. In this sense, in the case of a burglary offense it is necessary to analyse each case to see if the following conditions mentioned at art 148² in the Criminal Procedure Code:

- The punishment limit must be of 7 years or more, condition that must be fulfilled both in the case of the offense mentioned at art. 233 as well as in the case of that mentioned at art. 234 in the Criminal Code².
- “the measure is necessary and proportional with the limitation of fundamental rights and freedoms, given the particular aspects of the case, the

¹ Law no 135/2010 on the Code of Criminal Procedure.

² Law no 286 of July 17, 2009 updated.

importance of information or the evidence to be obtained or the seriousness of the offense”, according to art. 148² letter b;

- “the evidences or the location of the offender, the suspect or the defendant could not be obtained in another way or obtaining them would involve difficulties that would damage the investigation or there is potential danger for the safety of persons or goods of value”, according to art. 148² letter c.

Interpreting the provisions of art. 148², par. 2 of the Law 135/2010 regarding the Criminal Procedure Code, the authorisation of undercover investigators may be issued through ordinance of the case prosecutor, both ex officio, as well as upon the motivated request of the criminal investigation institution.

We mention that the motivated request of the criminal investigation institution, requesting authorization of undercover investigators must be made in accordance with the provisions of art 286 par.4 of the Criminal Procedure Code, through memo.

Following the undercover investigation, the investigator has the quality of judicial police criminal investigation institution¹, providing the information obtained to the prosecutor that ordered it, elaborating, in this sense, a report. We emphasize that, following the investigation and the achievement or lack of achievement of its objectives, the report is the only evidence in which the obtained result materializes.

During the view, the investigation may take several forms, according to the necessity resulting in the concrete situation. From this point of view, in the framework of the performed investigation we provide the following examples:

- Investigation to identify evidence or means of proof to ascertain the existence or the inexistence of the offense;
- Investigation regarding the identity of the author, in the case of an offense committed by an unknown author;
- Investigation regarding the discovery of the route of the author before and after committing the offense;
- Investigation regarding the verification of the truthfulness of the claims of the damaged person because, many times, due to the emotional impact or to other factors, the declaration of the damaged person are altered;
- Investigation regarding the capitalization method of the goods involved in the offense;

¹ According to art 148² par 4, of the Law 135/2010 concerning the Criminal Procedure Code.

- Investigation performed during the view, in the case of a sting operation, to verify the claims of the author and to obtain evidence;

Particular Aspects of the Investigation Performed During the View in Burglary Offenses

Not in all cases of committing a burglary offense the view is necessary or useful at the actual site of committing the offense. In this sense, we provide an example: a passenger boat where the author, during the journey, snatched the object from the hand of the damaged person and, afterwards, jumped in the water, or a similar situation in which the offense is committed in a train in movement from which the author jumped after stealing the object.

In both cases, there is a possibility that the author has not left any traces, the investigation practically meaning going to that particular place, identifying the witnesses and the damaged person and hearing them in a view report.

In order to understand the dynamics of the offense, the ascertainment of the existence or of the inexistence of the deed and the proving of the author's guilt, the criminal research institution must take into consideration that, the concept of place where the offense was committed, the following categories of places are included (Aionitoaie, 1992, pp. 27-28):

- the actual place where the criminal activity was performed, this may vary, such as a public place like the street or an institution, the person's house, a public restaurant or means of transport;
- the route used by the author to arrive at the place where the offense was committed and the route used to leave after committing it;
- the route used by the author to ensure the escape;
- the route used by the victim after the offense was committed or in order to escape being followed by the author;
- the place where the goods have been hidden, if this is the case, or even the house of the offender; in this case, we may speak about an extended view, this being possible and achievable only after obtaining the house search warrant;
- the mobile place of the offense;

In this category, we may include common transport means, such as trains or passenger boats, buses, etc. If the place of the offense is a ship or a passenger train

travelling in the country, for example the I.R. train, travelling from Galati to Bucharest, and the burglary took place in the railway station Faurei.

Thus, in this case, the investigation will be performed by the criminal investigation institutions from several transport police units on the route of the train, the elaborated documents will be sent afterwards.

Thus, based on the ordinance for the performance of the view by the designated institution, the actual view as well as the extended view may be performed by the criminal investigation institutions mentioned in the ordinance, from B.J.P.T. Buzău, S.J.P.T. Prahova, both on the route of the train or S.R.P.T. Bucharest, at the destination.

From the perspective of the criminal investigation institution in charge with proving the offense, we appreciate that the investigation, irrespective of its moment, which can be at the beginning of the criminal investigation, and the view during its performance, is constituted as a usual investigative procedural instrument, very significant, used to achieve some specific objectives in the criminal investigation.

Taking into consideration the fact that the investigation is not mentioned per se in the Criminal Procedure Code, but only as an activity performed by the undercover investigator, we claim that its results can be used in criminal investigations only if it becomes means of proof (Pascu & Ivan, 1992).

The means of evidence that must be generated by the performance of the investigation is the investigation report¹, this being the only method through which the direct and personal findings of the person with the quality of criminal investigation institution become means of evidence.

In order to be admitted as means of evidence, the report must fulfil certain conditions of content and form, precisely to be elaborated by the person with the quality of criminal investigation institution, to be elaborated chronologically after the initiation of the criminal investigation and to strictly comply with the provisions of art. 199 in the Criminal Procedure Code.

¹ According to art 199, para. 2, of the law 135/2010, regarding the Code of criminal procedure.

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