

METHODOLOGICAL PARTICULARITIES IN INVESTIGATING HOME LARCENY

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Abstract

The study below is meant to focus on the methodological particularities regarding the investigations concerning home larcenies. In the Romanian penal law, the simple or the aggravated theft as well as the other infringements against patrimony are charged by the special part of the penal Code. The theft from dwellings takes the most unexpected and diverse forms: the only main preoccupation of the thieves is not to be seen or caught in the act. Consequently, the main aspects to be analyzed are: establishing the flagrant infringement, investigating the scene of the deed, hearing the injured person, hearing the witnesses, searching, identifying and catching the doers, as well as other activities of penal suing necessary in investigating any home larceny.

Key words: *investigation, infringement, theft, home larceny, Penal Code, Code of Penal Procedure*

Introduction

Infringements against patrimony are charged in Title III of the Special Part of the Romanian Penal Code. The new regulation regards the patrimony in its larger sense, without making any distinction between the public and private property.

In agreement with article 208 of the Penal Code¹, theft - in its simple form - is considered to be any movable goods seized from somebody's property without the consent of the respective person but simply taken into the unjustified possession of the thief. Any energy having an economic value is also considered to be movable goods, as for example documents. The deed is considered to be a theft even if the goods partially or totally belongs to the doer and, the moment the theft was committed, it was in the legal possession of another person.

The aggravated theft is considered to be committed in one of the circumstances provided by article 209 of the Penal Code, letter a)-i): the perpetration committed by a group of two or several persons; by a person holding a weapon or a narcotic; by a masked or disguised person; an attack against a person unable to react or to defend himself/ herself; when the deed happens at night, during a period of calamity, through house breaking, climbing or by an abusing use of a proper or of a false key.

Another aspect of the aggravated theft is also the one provided in paragraph, 2 letter c): a document meant to prove the legal status or the identification of a person.

In conformity with article 211 of the Penal Code robbery is considered to be that form of theft committed with violence or menace or by making the victim become unconscious or unable to defend himself/herself, as well as the theft followed by the above mentioned means as to enable the thief to either keep the stolen object or eliminate/ remove the traces of his/her infringement, or to facilitate the doer's escape.

The same article also provides other forms of burglary at letter a)-h) as: robbery committed by a group of two or more persons, by a person holding a weapon or a narcotic; by a masked or

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¹ Law no 15 of June 21, 1968 - Romanian Penal Code - published in the Official Gazette no 79-79 bis of June 21, 1968, republished in the Official Gazette no 55-56 of April 23, 1973, and then in the Official Gazette no 65 of April 16, 1997, with further amendments.

disguised person; committed at night or during a calamity; committed within a house or in its annexes.

Incrimination practically protects the fact that a movable goods belongs to a certain patrimony.

According to the Explanatory Dictionary of the Romanian Language², a *dwelling* is defined as being the place, the house, the building where somebody lives or might be living; a domicile.

For a theft infraction may be recorded there shall be accomplished the following demands³:

- to purloin a goods from a building/house;
- the goods shall be movable, that is able to be transported or transferred from one place to another;
- the goods shall be in the possession of another person;
- the goods shall be seized without the consent of the person who owned it;
- the seizure shall have an immediate consequence;
- to exist a causality connection between the seizure and the immediate consequence.

THE MAIN ASPECTS THAT SHALL BE CLARIFIED BY INVESTIGATING A HOME LARCENY

The investigation of home larceny - as one of the forms of infringing upon the private property of the citizens - includes a series of peculiarities especially imposed by the fact that the delinquent can be an unknown person to both the injured and to the witnesses; yet, in most of the cases there is not even known the distinguishing characteristics of the one to be pursued⁴.

When it is about an investigation of a home larceny, the task of the inquiry shall compulsorily settle and solve the following problems⁵:

- when and how the theft has been committed;
- what goods have been stolen and whom did they belong to;
- who was the person who committed the theft;
- where have the stolen things been deposited;

The preliminary stages in the inquiry taking place in the cases belonging to this category are the investigation at the scene of the deed and the hearing of the injured person.

Operation moods used in committing home larcenies

To know about the operation moods is of an efficacious interest in order to establish the ways of the delinquent's access, whether they were only one or more, to identify and raise the objects that helped them to commit the breaking in, to establish a group of suspects, to legally settle the deed, etc.⁶

The operating moods are varied, as follows:

- penetrating into the house after a deep and preliminary study, or in the basis of certain "sold hints";
- penetrating into a house under different pretexts or presenting false identification cards;
- penetrating into the house by breaking the windows, forcing the doors or the windows by the use of the physical force or of other breaking instruments; the use of original or false keys, master keys or of other improved instruments, the use of the "breaker" or of the "extractor" - according to the case;

² DEX – Explanatory Dictionary of the Romanian Language, ed. II-nd (Bucharest: Academy of Romania, Univers enciclopedic Printing House, 1998), 580.

³ For more details, see Lazăr Cârjan; Mihai Chiper, *Forensics. Tradition and Modernism*, (Bucharest: Curtea Veche Printing House, 2009), 403-404.

⁴ S.A. Golunski, *Forensics*, (Bucharest: Scientific Printing House, 1961), 466.

⁵ *Idem*.

⁶ For more details, see Lazăr Cârjan; Mihai Chiper – *op. cit.*, 404.

- penetrating into the house by climbing down the top of it or by breaking the ceiling or the wall, etc.

The concrete identification of the movable goods. Depending on how this problem is settled the classification of the deed will be possible, as well as the estimation of the quality and quantity of the stolen goods as for the total estimation of the whole prejudice to be recovered. A concrete identification of the stolen goods can facilitate the pursuing activity of identifying and recovering them, as well as that of catching the delinquents.

Establishing the exact moment of the perpetration is important for the legal classification of the deed: simple or aggravated theft. It also is important for the forensic investigation of the case due to the traces to be discovered at the scene of the crime and which can lead to identifying the thief.

Identifying the means and methods used in committing the infringement is also important as it serves in the legal classification of the deed in one of the categories: simple theft, aggravated theft or robbery.

Identifying the doer and his/her participation in the larceny is also important in order to analyze the deeds and to establish the penal punishment amounted to any of the co-participants or accomplices depending on each one's contribution in perpetrating the breaking in, in concealing the goods and in favoring the doer.

Identifying the injured person. For identifying the possessor of the stolen goods and their being discovered in the possession of the offender, there are plenty of cases when the goods seized from the broken-in apartments are hidden, used by the offender or sold. It is thus necessary to identify the persons whose goods belonged to. In case of robbery, the identification of the injured person is done with difficulty as the victim might be unconscious or even dead and the goods and the identifying documents could have been stolen.

Establishing the conditions that favored the perpetration has a preventive character as to support and guide those legal persons who are to take security measures. In the case of home larceny there are not the least security measures and so, the timetable of the inhabitants can be easily found out, as well as who are the visitors or what kinds of goods are sheltered there.

FIRST MEASURES TO BE TAKEN IN THE CASE OF A HOME LACERNY

If an injured person informs the authorities in a written claim, by denunciation or ex officio they shall start - as soon as possible - the following procedural acts: the findings of the flagrant infringement, the investigation of the crime scene, the hearing of the injured person, the hearing of the witnesses, searches, the identification and catching of the offenders as well as other activities connected with the penal pursuit, necessary for the investigation of the home larceny.

Establishing the flagrant infringement

In agreement with article 465 of the Penal Procedural Code⁷, a flagrant infringement is the one discovered right in the moment of committing it or immediately after. It is also considered a flagrant infringement that infringement whose doer - immediately after committing the crime - is followed by the injured person, by the eye witnesses and by the public roaring or, that doer who is caught in the proximity of the crime scene with weapons or any other object that could have been used in the time of the breaking-in.

In such a situation it is very easy to solve the case. The author of the crime is immediately arrested and identified. The injured person and the eye witnesses can be immediately heard and they can thus help in catching the offender avoiding any possible future mutual influence. The author can be searched and interrogated about the deed. The crime scene will be also examined and the

⁷ Law no 29 of November 12, 1968 - Penal Procedural Code, published in the Official Gazette no 145 of November 12, 1968, the Official Gazette no 146 of November 12, 1968, republished in the Official Gazette no 78 of April 30, 1997, with further amendments.

conclusions shall be mentioned in the report⁸. In the light of article 467 of the Code of Penal Procedure, the report is read to the defendant as well as to the previously heard persons, who are informed that they can complete the declarations or manifest their objections. The report is signed by the penal authority, by the defendant and by the witnesses.

Examination of the crime scene is made immediately after the information regarding the robbery was received, as it is an indispensable procedural act within the examination of such an infringement.

The *crime scene* shall be understood not only as the scene proper from where the goods have been seized, but also the access entrances, the itinerary followed by the doer when coming or leaving the criminal field, the place where the acts of violence or the threats against the injured person took place, as well as the place where the goods have been hidden⁹.

By examining the crime scene there can appear many important data referring to the methods and means used in committing the theft, to the number of persons and to the operating time, to the way followed by the doers and to the stolen goods.

The offender's traces and the tools used in the breaking-in shall be discovered, fixed and raised. Thus, while examining the places where the penetration took place - doors, windows, walls, ceilings, roofs - in the place where the goods used to be or from where they were taken, there can be discovered footwear traces, sole traces, instruments used in burglary, lost or abandoned things belonging to the offender¹⁰.

The traces left by the breaking-in tools appear then when various instruments, apparatus or any other specially made up or adapted objects are used during a perpetration¹¹.

It is impossible to enumerate all the breaking-in tools because in practice they can take the form of nails, tongs, screw drivers, hammers, crowbars, levers, pick axes, drills, spanners, monkey wrenches, and other adapted and especially manufactured.

To force the locks special devices are used; among the most spread ones being the "pontoarcă" key, the breaker, the extractor, the "cypometer" and the bulldozer.

In the case of windows, they force them by disjuncting the glass from the frame by the help of a thin and curved lever or, simply, by cutting and breaking the glass.

For breaking the walls, the floors and the ceilings they use pick axes, chisels, pick-hammers, various corrosive substances and even explosive materials.

According to the type of breaking, the traces left behind can be classified in: depth or surface traces, static or dynamic, and - as a matter of fact - visible traces.

The main methods of fixing the traces created by the breaking instruments are: the report made up at the crime scene, the photography, the judiciary film, the judiciary videograme and the moulding.

Data concerning various professional habits of the author of the crime can be vindicated, as well as data concerning his/her possibility of knowing the topography of the place or of that of hiding the seized objects.

The objects lost or abandoned by the doer can be materialized in fragments of objects or remaining of sawdust, glass splinters, etc. Many of the traces specific to breaking-ins are to be found in a micro-trace form and can be also discovered on the clothes or on the body of the offender. Attention shall also be granted to the biological traces: hairs, blood traces and saliva.

⁸ Emilian Stancu, *Forensics*, (Bucharest: Universul Juridic Printing House, 2002), 548.

⁹ *Idem*.

¹⁰ Vasile Bercheșan, *The Investigation of the Crime Scene - a Main Evidence in the Penal Prosecution* (Bucharest: LITTLE STAR Printing House, 2006), 209.

¹¹ Elena-Ana Nechita, *Forensics. Forensic Technique and Tactics*, ed. II-nd (Bucharest: Pro Universitaria Printing House, 2009), 74.

After the interpretation of the traces discovered in the crime scene, the penal authority will be able to draw the first conclusions about the operating mood - from the very moment of examining the crime scene - and make the first declarations referring to the nature of the deed and to its possible authors¹².

Special attention shall be granted to the negative occurrences which can result from certain theft simulations having the aim to dissimulate another infringement.

Hearing the injured person

Hearing the injured person has the aim to clarify the following aspects¹³:

- the characteristic features of the seized goods;
- the circumstances in which the theft has been committed or in which the victim has been menaced and hit by the aggressor;
- the description of the doer or, if a known person, his/her identification data;
- the sum of money with which he/ she is playing the plaintiff's part in the criminal trial;
- the wounds proved by medico-legal documents and the civil claims he/she has;
- the possibility of recognizing the doer or the goods that have been seized/stolen;
- the way the injured person spent his/her time before, at the moment of the theft and after.

In the case of hearing the victim of a robbery, the hearing shall be made immediately, especially if there might appear the danger of the victim's death. It shall also be taken into account the psychological excitement and confusion of the victim as she/ he might exaggerate or simply might not remember anything.

Hearing the witnesses

The source of the direct witness is the immediate original perception of the deeds and of the circumstances connected with the evolution of the illicit activity of the doer - that is, those information obtained by the witness by his/her own senses¹⁴.

The main problems to be clarified when hearing the witnesses¹⁵:

- the distance from where the deed was seen or heard;
- the activities developed by the doers and by the victim;
- the description of the doers, their attire and, if known, their identification data;
- the wounds caused to the victim;
- the characteristic features of the objects stolen from the victim;
- the means of transport used by the offenders;
- the possibility of recognizing the doers if photos are shown;
- the connections existing between the doers and the victim.

The place of hearing - which is not definitely stipulated by the law - is, as matter of fact - the headquarters of the judicial authority, but it also take place at the office, at the crime scene, at the hospital, at the witness' home or residence.

The search

The search is a probative procedure consisting in the examination performed over the vestments of a person, her/his body, house and vehicle, with the aim to discover and raise objects or documents - known to the judicial authority - but not willingly delivered, and also to possibly discover certain proofs necessary for the solving of the penal cause¹⁶.

¹² Emilian Stancu, *op. cit.*, 549.

¹³ Lazăr Cârjan; Mihai Chiper, *op. cit.*, 411.

¹⁴ Gabriel Ion Olteanu; Marin Ruiu, *Forensic Tactics*, (Bucharest: AIT Laboratories Printing House, www.itcode.ro, 2009), 230.

¹⁵ Lazăr Cârjan; Mihai Chiper, *op. cit.*, 410-411.

¹⁶ Ion Neagu; Mircea Damaschin; Bogdan Micu; Constantin Nedelcu, *Penal Procedural Law. Seminar Portfolio*, ed. II-nd (Bucharest: Universul Juridic Printing House, 2011), 128.

Searches are utterly useful and necessary, as they offer the possibility that the stolen goods might be discovered; they can also bring about other material proofs to be used as evidence in clarifying the case.

Once identified and caught, the doer shall be applied body search, home search, search at the working place or at the place he/ she has been caught; the search can also be applied to the persons who have hidden the goods.

As for discovering other proofs - except the instruments used by the author - there can also be found other bearing traces objects - especially on the vestments that can present material or biological traces belonging to the victim.

Identifying and catching the doers

For identifying and catching the doers, all the data obtained from the examination of the crime scene, from the hearing of the injured person, of the witnesses, from the technical and scientific conclusions, from the forensic reports or from other judicial reports performed in the case are used.

The operation mood will also be taken into account, as it can speak about the doers' real "marks"¹⁷.

OTHER CRIMINAL PROSECUTION ACTIVITIES IN INVESTIGATING THE HOME LARCENY

In the case of a penal prosecution, among the most important procedural actions met with in the investigation of thefts and robberies are: hearing the accused or the defendant, producing the materials and the reconstitution for recognition, setting out the judicial reports.

Hearing the accused or the defendants

The persons engaged in illicit activities charged from the penal point of view are procedurally considered suspects/accused and later defendants, once the penal action has started¹⁸.

The hearing of the accused or of the defendant will take into consideration his/her right to defence together with the application of adequate tactical methods.

The defendants shall be interrogated on regard to the way they had planned and prepared the infringement, to the methods they used in committing the deed, to the way they made use of the stolen values and goods and to the connection they had with the persons who helped them or who had supported them with information about the respective goods as well as to the possibilities of getting to the respective places¹⁹.

A special attention shall be granted to the alibis. It has to be clearly proved the fact that the accused or the defendant was - at the respective date - at the place where the theft or the robbery has been reported.

Presentations for recognition and reconstitutions

The procedural activity of presentation for recognising persons or objects is made that the eye witness or the injured person be able to identify the doer or other participants in the crime, and to offer details about the values and goods that made the object of the theft.

The reconstitution is the probative procedure consisting in fully or partially reproducing the ways and circumstances the deed had been committed, with a view to check and underline certain information collected by the judicial authorities²⁰.

Its aim is to verify and prove the concrete conditions in which the crime had been committed. Reconstitutions can also involve the witnesses so as to enlarge the perception - in the given conditions - of certain episodes or of the whole deed; there are even cases when a dissimulated infringement is planned as to hide another real deed.

¹⁷ For more details, see Emilian Stancu, *op. cit.*, 550.

¹⁸ Gabriel Ion Olteanu; Marin Ruiu, *op. cit.*, 238.

¹⁹ Emilian Stancu, *op. cit.*, 551.

²⁰ Ion Neagu; Mircea Damaschin; Bogdan Micu; Constantin Nedelcu, *op. cit.*, 131.

Judicial report ordinances

A very important role in establishing the truth is played by the technical and scientific conclusions as well by the forensic results; in case of a robbery it also important the medico-legal conclusion.

The technical and scientific conclusions are considered evidence to be used in the penal prosecution and they are based on the knowledge of a specialist or of a technician then when there might be the suspicion that some proofs disappeared and so, certain deeds or circumstances of the cause shall be urgently clarified²¹.

The report is that form of evidence used in a penal prosecution then when the complexity of the cause imposes the presence of specialists representing different domains of activity²².

The forensic report of the trace analysis is necessary for the identification of both the offenders and of the instruments they used in committing the crime, in the base of the traces found at the scene of the crime.

Conclusions

To assure the security of citizens and of their property, to guard over the peace and public order - these are the objectives that shall be of permanent interest for the public society and for the people as well, not only for the specialized institutions of the state. The citizens shall know and observe several elements of self-protection which, once mastered, become habits meant to prevent negligence, indifference, naivety and other aspects that enable the activity of the offenders.

In order to protect the homes from larceny, one shall take into account both the technical means and the preventive attitude of the individual: not to open the door and invite in the house unknown persons, to fix an alarm device, to buy - if possible - a metallic doors having several locks, to have interphones at the entrance of the block of apartments, to fix video cameras, etc. They shall not inform their neighbours, friends, acquaintances, relatives or mates about the working time schedule or about their vacation period, etc.

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²¹ *Idem*, p. 133.

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