

PROCEDURAL AND TACTICAL GROUNDS FOR A DECISION TO PERFORM A SEARCH

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DOI:10.24412/2500-1000-2023-1-1-129-132

Abstract. *This article discusses the procedural and tactical grounds for making a decision to conduct a search. When the investigator decides to carry out such an investigative action as a search, it is necessary to strictly observe the norms of procedural legislation, as well as tactical principles. In this regard, the issue of determining and delimiting the procedural and tactical grounds for making a decision to conduct a search seems to be relevant. For the most part, this issue concerns the conduct of an urgent search without obtaining court permission. Within the framework of this study, the author analyses the issues of procedural regulation of the grounds for making a decision to conduct a search, as well as tactical grounds. To analyse of the norms of procedural legislation and doctrinal studies on the procedural and tactical grounds for making a decision to conduct a search. In order to develop a uniform practice of applying the rules on the validity of the decision to conduct a search, the author proposed to develop guidelines for determining the sufficiency of the grounds for making such a decision.*

Keywords: *search, grounds for conducting a search, making a decision to conduct a search, procedural grounds, tactical grounds.*

A search is a complex investigative action both from the point of view of procedural law and from the standpoint of the tactical features of its production. This is due to the large number of procedural requirements for its production, the need to comply with the legally established procedure for its implementation, the provision of technical and organizational means for its implementation, as well as the use of tactically sound methods in order to most effectively produce it.

Scientists who study the procedural issues of the appointment and conduct of a search note that Art. 182 of the Code of Criminal Procedure of the Russian Federation (hereinafter referred to as the Code of Criminal Procedure of the Russian Federation) [1] establishes the material (actual) and procedural grounds for conducting a search [6].

Under the material basis, the authors understand the basis established by part 1 of this article - the presence of sufficient evidence to believe that in any place or in any person there may be tools, equipment or other means of committing a crime, objects, documents and valuables that can be relevant to a criminal case. The decision of the investigator or

the court decision is recognized as the procedural basis.

At the same time, the investigator at the stage of resolving the issue of appointing and conducting a search should not have reliable information about the location of the items being searched for in a certain place or with any person. An assumption based on the available evidence is sufficient [5].

Uncertainty arises in this area: the criminal procedural legislation does not fix the concept of sufficiency of data on which the decision of the investigator or court to conduct a search should be based, and therefore this issue is resolved by the inner conviction of the investigator or court.

Despite this, in practice, the decisions of the investigator or the court's decision to conduct a search are rarely recognized as unreasonable due to the lack of data on which it is based.

It seems appropriate to analyze an example of law enforcement practice. Thus, from the appeal ruling of the Supreme Court of the Republic of Dagestan dated April 17, 2019, it follows that the decision of the Kirovsky District Court of the city of Makhachkala of the

Republic of Dagestan declared the search conducted in the dwelling unlawful. The head of the investigation team applied to the Kirovsky District Court of the city of Makhachkala of the Republic of Dagestan with a notice of recognition of the search in the dwelling in an urgent case as lawful, indicating that due to the urgency, the investigator conducted a search in the dwelling without a court decision.

The detective of the police drew up a report, from which it follows that documents and objects relevant to the criminal case can be stored in the dwelling at the place of the search. The information indicated in the report served as the basis for the decision to conduct the said search.

The court of first instance, recognizing the search as unlawful, motivated its decision by the fact that the material presented is not complete and sufficient for the production of an urgent investigative action - a search.

However, the Supreme Court of the Republic of Dagestan, canceling the decision of the court of first instance, pointed out the fact that the search in the dwelling was based on the report of the detective and did not suffer delay, since the delay in the search could lead to the destruction and concealment of items relevant to the criminal case [2].

Thus, we believe that the Supreme Court of the Russian Federation needs to give clarifications or recommendations on assessing the sufficiency of data on which the decision of the investigator or court to recognize the search as lawful should be based, as well as establish an approximate list of documents, if available and on the basis of which such a decision should be made .

As for the issue of tactical grounds for making a decision to conduct a search, we believe that they generally coincide with the actual grounds specified in the law, since, when resolving the issue of conducting a search, the investigator must take into account not only the possible benefit from its production, but also the degree violation of the rights of the searched person [4].

So, when making a decision to conduct a search, the investigator should take into account the following factors:

- the presence of evidence to believe that during the search objects of importance to the criminal case will be found;

- the presence of evidence to believe that the negative results of the search will not become a kind of alibi for the searched person, with the help of which he will be able to refute his involvement in the crime;

- conducting a search of a person who is not directly related to the crime committed will not lead to the concealment by the guilty of other traces of the committed crime and the concealment of the guilty from criminal prosecution.

Considering these circumstances, when making a decision to conduct a search, the investigator must evaluate and select such tactics and combinations that will allow him to conduct it most effectively and expose the perpetrators.

For example, the investigative team may use such a tactic as a parallel search. This technique consists in conducting a search simultaneously in several places. Its use allows you to search unexpectedly at once several participants in a criminal case, which does not allow them to inform each other about a possible approaching procedural action and hide the traces of the crime committed.

If the investigator decides to conduct an urgent search without a court order, then his decision must be more than justified both from a procedural and tactical point of view.

Thus, the investigator's decision to conduct a search must contain information about the time and place of its performance; details of the official who made the decision; the actual grounds for the search; a decision to conduct a search indicating exactly where and what items, documents, valuables that may be relevant to the criminal case are subject to seizure; details of the person who is being searched; a decision to send a copy of such a decision to the prosecutor [3].

So, when making a decision on the urgent conduct of a search, the investigator must take into account its tactical features in terms of choosing the date and time of its production; specifying the properties of the items being searched, if he is not sure that they may be located at the place of the search.

In addition, the following tactical features should be taken into account: delay may lead to the loss of traces of the crime and other evidence, allow the perpetrators to escape, and negatively affect the compensation for the damage caused by the crime.

Thus, we believe that practitioners need to develop a unified methodology for making a decision to conduct a search in terms of observing the tactical grounds and features of its production.

We believe that the above is most relevant in the case of a decision to conduct an urgent search of a dwelling without obtaining a court decision, since in this case the court most strictly checks both the procedural grounds for making a decision to conduct an urgent investigative action - a search, and its tactical grounds, due to in particular by the fact that, as noted above, delay may entail the concealment of the traces of the committed crime.

Thus, the procedural and tactical grounds for making a decision to conduct a search par-

tially coincide, which indicates to a greater extent the completeness of the legislative regulation of the procedural action in question. Despite this, there are still some problematic aspects, the resolution of which is required at the level of higher judicial instances.

Thus, there is a need to develop and put into practice recommendations for assessing the sufficiency of data for a reasonable decision to conduct a search, as well as compiling an approximate list of such data. To a greater extent, this concerns the issue of conducting an urgent search without a court decision. In addition, we consider it necessary to develop methodological recommendations for practitioners of preliminary investigation bodies on the tactical grounds for making a decision to conduct a search, which will allow them to take a more balanced approach to resolving this issue, as well as reduce the number of cases of declaring a search illegal and a decision to conduct a search.

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ПРОЦЕССУАЛЬНЫЕ И ТАКТИЧЕСКИЕ ОСНОВАНИЯ ПРИНЯТИЯ РЕШЕНИЯ О ПРОИЗВОДСТВЕ ОБЫСКА

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Аннотация. В данной статье рассматриваются процессуальные и тактические основания для принятия решения о проведении обыска. Когда следователь принимает решение о проведении такого следственного действия, как обыск, необходимо строго соблюдать нормы процессуального законодательства, а также тактические принципы. В этой связи представляется актуальным вопрос определения и разграничения процессуальных и тактических оснований для принятия решения о проведении обыска. По большей части этот вопрос касается проведения срочного обыска без получения разрешения суда. В рамках данного исследования автор анализирует вопросы процессуального регулирования оснований для принятия решения о проведении обыска, а также тактических оснований. Проанализировать нормы процессуального законодательства и доктринальные исследования по процессуальным и тактическим основаниям для принятия решения о проведении обыска. В целях выработки единообразной практики применения правил об обоснованности решения о проведении обыска автор предложил разработать методические рекомендации по определению достаточности оснований для принятия такого решения.

Ключевые слова: обыск, основания для проведения обыска, принятие решения о проведении обыска, процессуальные основания, тактические основания.