ASPECTS ON INQUISITION PROCEDURE IN CRIMES RELATED TO THE REGIME OF DRUGS AND PRECURSORS

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Abstract

The inquisition is the procedural activity consisting in searching a person or its premises in order to find and pick up objects or inscriptions known and solicited by the judicial organ, but not voluntarily delivered, as well as the eventual discovery of evidence necessary to find the truth in cause. Inquisition represents an important derogation from the principle of inviolability of home and residence of a person, an important restraint of the right to privacy and inviolability of private life.

In case o the crimes regarding drug traffic, the se of this mean in order to discover and collect evidence is extremely important for proving the criminal activity of the defendants, because through this method, the defendant is caught carrying the drugs or having the drugs at the domicile, in the car, evidence that is very hard to contest. The rules governing the inquisition are provisioned by the Constitution in article 27, paragraph 3 and 4 and in the Code of Criminal Procedure, in articles 100-111.

Inquisitions in the cases of drug crimes aim at the following: discovery of drugs, toxic substances of products; discovery of installations or equipment used for production, conditioning or experimenting with drugs; discovery of raw material or intermediate products, including substances used in production and refining drugs; catching dealers hiding in a certain place; identifying and collecting inscriptions regarding the way drugs are procured, their provenience, people involved; discovery of goods or values obtained by selling illicit drug traffic; discovery of other goods or values held against the legal dispositions in force (arms, ammunition, explosives, fake means of payment etc.).

Keywords:

The inquisition, drug traffic, evidence, drugs, private life.

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The inquisition is the procedural activity consisting in searching a person or its premises in order to find and pick up objects or inscriptions known and solicited by the judicial organ, but not voluntarily delivered, as well as the eventual discovery of evidence necessary to find the truth in cause. (Dongoroz, V., Kahane, S., Antoniu, G., Bulai, C., Iliescu, N., Stanoiu, R., (2003) : 238-239).

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According to the Constitution, the domicile and residence of a person are inviolable except for the situation provisioned in article 27, paragraph 2. Within the exceptions provisioned by the Constitution, for the defense of national security and public order, we can mention inquisition, regulated distinctly in paragraphs 3 and 4 of the same article. The Constitution establishes three rules governing the matter of inquisition: it can be disposed only by a judge, it can be made under the conditions and forms provisioned by law; are forbidden during the night, with the exception of flagrant crimes.

Inquisition is reported in article 8 of the European Convention[1] as interference in private life, the protection of the domicile being a right related to the personal safety and prosperity. This interference is analyzed by ECHR from the perspective of three essential elements: legality of interference, legitimacy and proportionality of the measure. (Volonciu, N., Barbu, A., (2007) : 198).

The legality of the interference imposes that the measure is provisioned by law and executed according to the legal provisions that have to be accessible to the litigants, predictable, detailed and have to contain guarantees against abuse. In what regards the quality of the legal provisions, ECHR mentioned in a cause that the expression "according to law" in article 8 of the Convention entails in the first place, that the measure has to be grounded in an internal regulation, refers then at the quality of the regulation- having to be accessible to the person targeted who has to be capable to foresee the consequences of this

[1] According to article 8 in the European Convention, any person has the right to have his private life, family, domicile and correspondence respected. The interference of a public authority in exerting this right is not allowed, except for the measure in which such involvement is provisioned by law and if it represents a measure which, in a democratic society, is necessary for national security, public safety, economic wealth, protecting order and preventing criminal actions, protecting health or moral or protecting the rights and liberties of others.

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norm for oneself. Also, the legal provision has to be compatible with the lawful state. In the context of the inquisitions, the regulations have to be sufficiently clear in what concerns the content, so that the litigants are provided with adequate clues on the circumstances and conditions in which the public authorities righteously use these measures.

Article 8 in the European Convention restrictively lists the legitimate purposes the state can follow when taking a measure that can consist in interference in the private life of a person, such as: national security, public health, defending the public order and preventing criminal actions, protecting the rights and liberties of others.

Regarding the proportionality, ECHR stated that that this relates to the collocation "necessary in a democratic society" in the content of article 8, in which the term "necessary" implies the fact that the interference in question has to correspond to an imperative social necessity, the exceptions being strictly interpretative.

Inquisition can be made in two situations: if the person who was asked an object or an inscription withholds their existence or tenure or if there are solid clues regarding the possibility of discovery and collection of evidence by performing an inquisition.

Inquisition can be performed at the domicile or residence of a person or on his/ her body. When there are clues regarding the existence of drugs hidden in some places, drug dealers or drug consumers escaping from prosecution or are searched by judicial organs, the domicile inquisition is performed. At the same time, inquisition is performed when there are clues that in a certain residence a crime related to drugs has been committed or is about to be committed.

The conditions for an inquisition are: it can be disposed only by a judge; it can be disposed only during a prosecution and in the course of justice. Having a very significant impact on the private life of people, the legislator considered necessary to introduce a guarantee that this modality of collecting evidence will not be used in abusive manner, allowing the inquisition only after the prosecution had begun; more than that, article 100, paragraph 6 in the Code of Criminal Procedure forbids the inquisition before the beginning of the prosecution; it is performed only between 6.00 a.m. - 8 p.m., except for the flagrant crimes or when is to be performed in a public place. Another exception from this rule establishes that inquisition begun before 8 p.m. can be continued during the night.

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people involved; discovery of goods or values obtained by selling illicit drug traffic; discovery of other goods or values held against the legal dispositions in force (arms, ammunition, explosives, fake means of payment etc.). (Draghici, C., Eduard, S., C., (2006), : 205).

Inquisition can be disposed at the domicile or residence of the defendant or at the home of other people close to the latter.

Regarding the "home search" it was extensively interpreted both in the national jurisprudence as well as in the European one being included or example spaces such as: hotel rooms occupied by a person, yard or garden, if used by the searched person, but also unconventional spaces, such as the penitentiary cell or other locations, such as the private home of a person that is at the same time social headquarter of a company owned by that person or commercial locations of legal persons. The interpretation given by the European instance to the notion of "domicile" is justified by the fact that what is protected is the space used effectively by a person and for which the latter has a legitimate expectation to not be disturbed by the authorities or by other people. (Volonciu, N., Barbu, A., (2007): 202).

Home inquisition is disposed by a judge at the request of the prosecutor, in the course of prosecution. This disposal by the judge represents a guarantee that ensures the impartiality of the decision regarding the necessity, opportunity and legality of this measure that seriously affects fundamental rights and liberties. The necessity is asserted by the judge depending on the particularities of that cause, while the opportunity focuses on the impossibility of finding the truth using other methods other than inquisition.

When performing an inquisition, procedural rules have to be followed, rules that represent guarantees of finding the truth but also guarantees of respecting the fundamental rights of the persons affected by this activity.

In practice, in a cause in which the organs of authority belonging to a special battalion of intervention have picked from the place the defendant was discovered, a silver folium with 6 doses, containing a brownish powder that seemed to be heroin, without presenting them to the defendant, without being labeled and sealed, the doses remaining in the custody of the organs of criminal research for several hours; the procedures comprised in article 107 of the Code of Criminal Procedure were conducted in a different manner from the discovery of the objects, the judicial instances have sanctioned the lifting of goods with the breach of the express provisions in article 107, paragraphs 1 and 2 Code of Criminal Procedure, attracting a serious doubt on the validity of those comprised in the protocol drafted subsequently by the police station. On this occasion, it has been shown that article 107 Code of Criminal Procedure represents the guarantee of respecting the procedural rights of the defendant and the breach of the procedure represents a cause of invalidity of the

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procedural act, in the meaning of article 179, paragraph 1 in the Code of Criminal Procedure.[1]

The body search is performed by the judicial organ that disposed it, that has to legitimate itself prior to the search and in the cases provisioned by law, has to present the authorization given by the judge. Body search entails object search, inscriptions or other evidence on that person, for example, clothing, shoes, briefcases.

The doctrine assimilated the body search and the activity of inspecting the body of the searched person in order to discover the eventual traces of the crime. The measure entails the exploitation of some cavities or hidings human of the body, for example hair, fake nails, dental crowns or even inside the body, for example the stomach, with the purpose of discovering means of evidence, has to be approached with high diligence, given the necessity of the conformation with the requests comprised in article 8 in the European Convention on private lie and article 3 in the Convention on forbidding degrading and inhuman treatment, respectively article 6 on the right to fair trial.

The European instance observed a serious intrusion committed by the authorities regarding the physical and mentally integrity of the plaintiff, by forcing the latter to regurgitate 0.2182 grams of cocaine, with the purpose of obtaining evidence (that could have been obtained using other methods as well, less intrusive than the ones used), following the determination of pathological reaction of the plaintiff's body by administrating substances inducing vomit through a tube in the nose, respectively by injecting apormophine and its derivates. ECHR reminded that articles 3 and 8 of the European Convention do not forbid per se the use pf these procedures that, aside from the will of the suspect, are used to obtain evidence of his implication in committing crimes, such as saliva or blood sampling but the interference with the physical integrity of a person, accomplished with the purpose of obtaining evidence, has to be rigorously analyzed, at least under one of the following aspects: until what point can the mandatory medical intervention, the health risks for the suspect, the way in which the measure was performed and the physical and mental sufferings caused, the degree of available medical supervision and the effects of the measure of the health of the suspect.

At the same time, ECHR observed that, although the intention pf the authorities wasn't to induce pain and suffering to the defendant, the evidence was obtained through inhuman and degrading treatment, thus breaching article 3 in the Convention and this, correlated to the fact that drugs obtained by forcefully administrating substances causing vomit have constituted decisive evidence in convicting the defendant, determined the breach of the latter's

[1] I.C.C.J., Criminal Section, decision no. 1928 on March 21st 2005, www.scj.ro/

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privilege to not self incriminate and conferred the entire judicial procedure an inequitable character, beaching therefore article 6 of the Convention.[1]

Body search is made only by a person of the same gender with the one being searched. In practice, in a cause in which the protocol of observing the flagrant crime noted that before being sent to the residence of the defendant, the telltale was thoroughly searched which means that in the condition in which the five police officers delegated to declare the flagrant crime were male and the body search can be performed by a person with the same gender as the defendant's, according to article 106, paragraph 2 of the Code of Criminal Procedure, the supreme court observed that the search in cause breached the legal dispositions mentioned, and was not made in detail, not being able to offer certain data, namely that the telltale wasn't holding drugs the same nature as the ones subsequently found at the home of the defendant.[2]

The inquisition in other conditions other than those provisioned by the procedural criminal regulations attracts both procedural penalties in the cause in question, as well as disciplinary and especially criminal penalties for those people, the act being constitute abuse in service against the interests of the persons or abuse in service by limiting some right or violation of property. The practice decided that confiscating goods containing drugs, discovered by the police officers in a home following a seize for public nuisance, before prosecution began, is legal because it has been performed according to article 213 in the Code of Criminal Procedure and does not represent home inquisition in the meaning of article 100 in the Code of Criminal Procedure.[3]

Regarding the procedural penalty, this will intervene depending on the aspect under analysis, invalidity not being automatically absolute, for any breach of the provisions regarding inquisition. For example, when the fulfillment of the condition provisioned by law regarding the present of assisted witness wasn't acquired, the invalidity is relative but in case provisions such as the presence of the person being searched of persons who have the right, according to the law, to assist at the action instead of the person searched, the invalidity is absolute.

Regarding the verification of the regularity of the search, it is observed that it can be contested during prosecution in front of the organ of prosecution, according to article 275 and following, in the Code of Criminal Procedure and in the trial stage, according to the regulations of com*mon law on judicial prosecution.*

[1] ECHR, Cause v. Germany, decision on July 11th 2006.
[2] I.C.C.J., Criminal Section, Decision no. 826 on February 8th 2006, www.scj.ro/
[3] I.C.C.J., Criminal Section, Decision no. 5748 on November 4th 2004.

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