



# Kolegji AAB

FACULTY OF LAW

DEPARTEMENT: CIVIL LAW

MASTER STUDY

THEME:

**ORDER CONTROL AS PROOF ACTION**

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## **RATIONALE**

The work of order control as proof action presents a study of some issues with importance and special topicality in contemporary society.

The theme consists of several chapters and subchapters divided mainly for practical reasons, where we first addressed the legal basis and legal conditions for conducting the control, which is undertaken in most cases by the police as a specialized force that is considered to have enough criminal knowledge to implement this action, and it is one of frequent acts of police operations with criminal-procedural character, to capture the perpetrators of the crime, and the collection of traces and evidence, and here lies the rationale for them a study this action.

The rationale of the legality study of the action control, adds the fact that the raid is one of the top controversial topic in public and media, which reflects a rivalry in between the organizations for the protection of freedoms and human rights on one side and investigative bodies in other side. This contradicts the efficiency of freedoms and human rights. Investigative authorities are always accused of disrespecting the "Criminal Procedure Code" in pursuing the procedure.

So, the ungrounded and illegal search affects the rights of citizens guaranteed by the Constitution, such as the inviolability of residence, secrecy of correspondence.

Therefore, search-control takes place only when there is reasonable suspicion that the person is concealing material evidence or items in his body, in places or apartments and only with court approval. Court acts themselves that the action be carried out by police officers assigned to the control order.

Normally, there are no official data or report of any non-governmental organization for possible abuse of police forces during the search, but is a public stand that the legal procedures for regular control-search are rarely respected.

Starting from what was said above, I want to remind you of the importance of control as operative-investigation and criminal measure, which is a complex task and very important, through which we get to the evidence and material indications, respectively to the objects and traces of the crime and the discovery and arrest of perpetrators.

The drive to address this topic is the analysis and examination from different viewpoints, watching from all aspects: tactics during the commission of control actions, compliance of the legal form to avoid hasty and unlawful behavior to be bring into question the argumentative value of things found.

In this regard, this paper, among other things, made a modest effort to not be repetition of what has been written until now from them, but in addition in the foreground (legal provisions which deal with this subject, their reasoning, norms, and tactics during the conduct of control actions) to give the psychological dimension the specified place. So, what are the motivations, the factors that influence criminals hide the object in a certain place, with what are they led, what surprises, frauds they perform to the officer controlling, with hopes that it will demoralize the further control performance. At the same time we need to answer the question on what are the mistakes that police officials make during the control, and also with what tricks can they be served in order to fully and creatively carry out the control, which means that the aim is not only to count those, but primarily in this way to try to give the set instructions, and the indicator exactly on which direction should any official who performs control develop personal skills (on what to be careful, where to look, and what to look etc.). Of course, all this with the purpose of carrying out the successful operation of control.

Finally, I want to thank Prof. Dr. Nedjad Korajlic for the support and hard work that has shown, without whose help I would not come to the realization of this work. And I also want to thank my family.





## **AIM OF THE STUDY**

The first issue, that deals within this paper, is to present a table, with legal basis of a search operation in general, as a quite complex phenomenon, then treat the search during the historical development of society human until today, also it will be discussed about legal conditions for undertaking this measure under the provisions set out in the Code of Criminal Procedure of Kosovo, actions that make raiding illegal action will be analyzed, and also order control as action proof.

During the discussion of this theme, we will aim to do a presentation of some of the international documents and principles that address the protection of human rights and freedoms and also we will analyze Code of Criminal Procedure of Kosovo, which simultaneously forms the basis of legal – criminal regulation of control action. Preventing and combating crime, preservation of public peace and order as targets in the security area are the primary goal of any contemporary police in democratic countries.

Police undertakes measures and concrete actions conform of the specified situation in order to achieve its objectives defined by strategic plans of its formal mandate, as mentioned above, by the law and the constitution. Some of the frequent police operations exercised with criminal-procedural criminal character is the raid, police action determined by specific legal provisions.

Even the provisions of the penal ad procedural code decisively regulate the matter under control. My motivation and orientation of the theme is based on the search-control importance as a complex, criminal-processor and criminologicistic action, which is undertaken with the aim of finding the person and his arrest, in order to find all important tools for the criminal procedure that will be seen, will tsubject the expertise or will be exposed to get known.

In the context of investigative actions, PCKK recognizes the following actions:

- The interrogation of the defendant,
- The interrogation of the witness,
- Expertise,
- Control and temporary confiscation,
- Inspection of the crime scene, reconstruction and identification of persons and objects, that in many countries these acts are rightly called argumentative actions.

Another aim of the work of this theme is to determine the factors that affect the search to be proving action, also the act by which the illegality control over the application is prevented.

## **METHODS OF THE PAPER**

The word "methodos" derives from the ancient Greek meaning method, from which a man sets out to achieve the set aim. A set of methods used constitutes specified methodology.

The method is often determined by its object, in our case, methods are dependent directly from the facility that we reviewed.

During my research work "Order control as proof action" I used a variety of necessary methods to define the role and importance of our theme. We say that the problem of legitimacy during the implementation of control action is a phenomenon that occurs in every society, whether developed or developing societies.

We have used the historical method to redirect the flow of the phenomenon that elaborated on paper, through different historical-periods circumstances, trying to redirect the phenomenon to different periods of decades up to the present day. In the paper, we are also served with the method of analysis, synthesis, and comparison method. With the method of analysis, we have distinguished the object of study from the totality of the problem to study in the most objective way possible. With the synthesis method, we have shown potential oscillations of the object of study. With the method of comparison, we have tried to reflect the theme in a crystalline way by comparing between the communist system where the search was done in a very rough way and human rights were not respected and there is no permission from the court, and democratic systems where the search conducted based on the situation created but always according to the law of criminal procedure and consent (order control) of the court.

There is no specific statistics on the structure, volume, or dynamics of the phenomenon for the illegal control, but there is a general opinion in public that legal and regular procedures for search is rarely respected.

Contemporary literature in Kosovo, Albania, Republic of BIH and elsewhere is used during the drafting of this paper, and other sources of knowledge for treatment.

## **INTRODUCTION**

The aim of control is capturing the perpetrators of crime, collection of traces and evidence. With these actions, we gather evidence which mostly could not be collected in another way, and see their value to the criminal proceedings. But it is important to note that at the same time it affects some fundamental human rights, so the question is to what extent do the state authorities may limit the fundamental rights of citizens, to achieve success in criminal proceedings.

So, as we shall see later, the Criminal Procedure Code (CPC) is the component which accurately determines WHO, WHEN and HOW they violate this integrity. The problem can arise only from the reason that GCC does not specify the content of these standards, but leaves it to the procedural bodies. Those are linked with the accepted general logic and legal standpoint, but still, there are possibilities of mistake and the possibility of abuse to authorization. Thus, to protect the fundamental rights of citizens, the definition of incrimination is not enough and to think that everything was completed. In real life, in practical terms, this value is only relative and depends on several factors acting on society. Much more important is the definition of instruments with the help of which will come to the fair application of the limits of their authority.

As the title, the content and analysis of this thesis paper tells, this theme is conditional and based on something that is important for a successful search.

This paper presents, we can say a monographic treatment of the problems of understanding the house, premises, vehicles and space search, which in the case of performing the assumption that the offense undertakes (would have) in order of finding items and clues about the relevant facts to criminal proceedings. Control as one of the oldest investigative actions according to the purpose that it has, resembles in some other action to the discovery of facts and data that state authorities implement, especially the police in preventive cases (e.g. security control and criminology, racial, blockade, etc.) but differs from the degree of penetration of constitutional rights. This is also the reason for which the legal order with an intensity regulates with specific legal norms the control, and are subject to a special regime of enforcement.

In this context, the emphasis will be put in the planning and tactics of the search, specifically in the rules, which are presented in the "Criminal Procedure Code of Kosovo".

In the end of the paper, we would rely on literature from university courses held during studies, as are: "Introduction to Criminology", "Criminology Tactics" "Criminology", "Law of Criminal Procedure" taught by eminent professors of these areas, such as: dr. Borislav Petrović, dr. Nedžad Korajlic, Mr. sc. Bruno Muharram, prof. dr. Hajrija Sijerčić-Colic, Mr. sc. Haris Halilović, Dusko Modz, Vladimir Bayer, prof. dr. Vesel Latifi, prof. dr. Azem Hajdari, dr. Ejup Sahit, prof. Dr. Ismet Salihu, prof. Skender Begeja, etc. lecturer of the abovementioned materials.

## CONCLUSION

Control of apartments and other premises as investigative activity aiming at finding people, objects and traces is basically one of the actions of the legal obligation, from which we provide evidence for criminal proceedings or the presence of the person (the perpetrator). Such research is undertaken when there is reasonable suspicion that an offense has been committed, and the suspicion that to one person, traces of objects were found within the place that is supposed to be controlled.

Throughout this topic, I have tried not only to specify the legal provisions dealing with this issue, to justify and in accordance with this, to give specific rules and specific tactics to research the case, but also try to show the psychological characteristics, ways of thoughts and action, of the person who commits the concealing, as well as the person who performs the control and research. I tried to show who are all these factors that affect criminals and with what they are guided, and the current way of the authorized officials in disclosing their case control weaknesses, things in which to be careful, and also indicate the direction or, to give instructions in which direction to develop individual skills for better control performance.

Through all the titles, I tried to emphasize the importance of control as investigative action, especially considering that in the postwar period, in our region, is a clear violation of fundamental human rights, and thus the right to inviolability of the apartment, as well as areas of criminality in relation to the pre-war period. Among other things, I have tried to show how the control action should be under the provisions of CPC's, pointing to certain fluctuations that may arise during the conduct of a control, but also how the control action should look like from the criminology point of view. Although, in the institutions of state power there is no information about violations of the CPC provisions, which have to do with the control of the premises, vehicles and space, by an authorized officer, I think that in our area there is a dark number of offenses derived from "illegal control".

The importance of the investigative action of control is obviously great, especially if one considers that from ancient times, offenders tend to remain undisclosed, predict possible actions of the police and, therefore take further steps and actions. In such actions, perpetrators use different spaces in which they hid themselves or hide items and traces of crimes. The not

possible control of the premises, vehicles and space by the official persons has increased greatly the efficiency of the prosecution bodies. Of course, with the aim of protecting the rights and freedoms, the control procedure is regulated with the provisions of CPC, who at the same time protect these rights, and enable efficient fight against crime. The successful implementation of this control requires the authorized officials to have forensic knowledge, also to recognize the procedural rules contained in CPC renewal. Code of the current PP, which entered into force in 2013, pays special attention to the protection of human rights. Editing of legal norms with which the manner of performing the duties of the bodies of internal affairs is done during the commission of control represents a segment of the overall report to lawmakers on the way of collecting evidence for the conduct of criminal proceedings. State, as a regulator of all rules, should consider all violations of their rights that have been approved for its citizens, and in violation of the rules by its organs, because in case of controlling illegal the offenders are state bodies which act on its behalf, i.e. in the case of our legislators we are talking about a violation by the bodies of internal affairs. The court, before issuing for control should carefully on the basis of all evidence to confirm whether or not there is a suspicion. In our legal provisions, there is no right to legal remedy, objection, or appeal in the control order and in the decision rejecting the request of state bodies for conducting the control.

The right in filing a legal remedy exists only indirectly through the objection against the formal accusation. As a summary of all this, we can say that the CCP are aligned to a large extent of the rights of citizens and the second role of RFP should not be forgotten, and this is the detection and punishment of the perpetrators of the crime. The aim should be rational criminal proceedings, if each of the mentioned trends prevail, criminal proceedings will miss the meaning.

In our CPC, there are certain norms with the respect of which there will be no consideration of the legality control. In Article 105 -111 are specified the conditions under which it can be performed the control action, and ways of carrying out performance control, rights and obligations of the authorized officials and other persons who are required when performing the search as well as ways of meeting the official documentation.

Undoubtedly, the disregard of legal proceedings (Article 105-112 CPC), will take us to certain legal consequences as illegal control, and the final result may be not only the opposition of

certain documentary evidence crucial for criminal proceedings but also the loss of the case as a whole.

So, a violation of the norms which the control is determined, represents in fact illegal control.

## **CONCLUSION**

Control is argumentative act undertaken primarily in order to detect objects, traces and persons, respectively offenders. With control, there can be found other persons and items too, as well as the bodies, respectively, parts of bodies. Criminal practice has shown that through control, the most required items are: the preparations items for the performance or use during the commission of a criminal offense, provided with the offense, created by a criminal offense, in which traces of a criminal offense are found which show the connection of the person with the committing of the offense, respectively in his habits, activities, etc.

Control of the apartment and other suspected areas, namely the accused and other persons and their movable property outside the dwelling may be conducted only when there are sufficient grounds to suspect that there is the perpetrator, accomplice, traces of criminal offense or important items for the procedure.

Control of movable things includes control of computer systems, equipment for the supply of computer and electronic data, such as devices of mobile phones, etc. People who use these devices are obliged to allow access, to submit the medium in which are stored data and provides the necessary information regarding the use of these devices.

The court can issue the control order for control under the conditions defined by law. Control order for control can only be issued by a court with the prosecutor's motion or upon motion of authorized officials who have received the consent of the prosecutor. The request for issuing a control order may be submitted in writing and written form. If submitted in writing, it must be drafted, signed and certified in the way defined by law. The authorized official may enter the dwelling and other premises without search warrant and without a witness, as appropriate, to perform control if the occupant of that apartment house wants, if someone calls for help, if necessary the capture of the perpetrator which is caught in the act or because of the safety of persons and property, whether at home or other premises, the person found who according to the

court order should be arrested or forcibly brought or who is hiding there from prosecution. The authorized officer may search a person without control order and without witnesses: with the implementation of the association's command, during the arrest, if there is a suspicion that this person possess firearms or cold weapons, or if there is a risk that it will be deleted, will cut, or shoot items that should be taken from him and used as evidence in criminal proceedings.

Consistent application of the general tactical rules of the case control is necessary in all cases taking this act, i.e. when it is carried out based on the order of a judge of the preliminary procedure, and in the case of volunteering, and implies substantial and qualitative planning preparation, in the right time, suddenly, carefully and within the tactical operation, the processed treatment of a greater number of police officers, equipped with adequate resources.

Before you start the control, it is advisable to previously traverse the object, observe the sequence of spaces and all the specifics that may affect the control flow. The action is carried out in a way that it does not move to another room until the previous one not to be checked thoroughly. Control must be conducted to greatly respect the house rules, avoiding unnecessary noise and screams, causing damage and unnecessary use of force. All private secrets and circumstances which are understood during the checks on third persons, have no connection with criminal activity, they should be treated as secret and the right to privacy of these individuals.

First, you need to have in mind that the control is a very tedious and grueling action that requires great perseverance and thoroughness during execution. The required facilities should be searched that are close to where it is common to be kept, and in places where you can hide a suspect at the last moment before the entry of officials. Order control is considered as one of the most important actions to secure material evidence. Therefore, it is important that during the inspection the legal form be strictly respected in order to avoid hasty and unlawful behavior. The argumentative value of control depends on one hand the reliability of the connection between the found item and the investigated offense, and on the other side in the argumentation of the connection between the found item and the suspect as a potential (probable) perpetrator.