IV. CRIMINAL LAW AND PROCEDURE

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GROUNDS TO LIMIT THE RIGHTS OF THE CITIZENS AND THEIR CONSTITUTIONAL PROTECTION WHEN MAKING SEARCHES IN THE US CRIMINAL PROCEDURE

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Introduction: *the article analyzes actual and legal grounds for limitation of civil rights when making searches in the criminal procedure of the USA as well as the constitutionally guaranteed personal rights provided for by the Fourth Amendment to the United States Constitution. The research subject are the differences between continental and Anglo-American models of criminal procedure, the role of the police in apprehension, search and seizure of objects of criminal origins. The article investigates the role of the Supreme Court in the development of doctrines containing legal grounds to stop, search and arrest individuals suspected of criminal activities in various spheres. The paper shows how important it is to study and make use of other countries' experience in combating crime.* ***Purpose:*** *to provide insights into the peculiarities of applying coercive measures when making searches, the observance of constitutionally protected civil rights and liberties, and providing balance between legal enforcement and liberty.* ***Methods:*** *the methodological framework of the research is based on a set of methods of scientific cognition, with dialectical method being the leading one. The study used general scientific methods (dialectics, analysis and synthesis, abstracting and specifica-*

tion) and specific scientific ones (comparative legal and technical legal). ***Results:*** *the research results include analysis of legislative regulation, case law development, practice in the application and interpretation of actual and legal limitations of civil rights when making searches in the criminal procedure of the USA, and also constitutional guarantees of civil rights in this country. It is shown that in the course of social development, increase in crime, appearance of forensic equipment allowing for intrusion into privacy, there has been a change in the understanding and legislative regulation of the grounds for making searches.* ***Conclusions:*** *the major part in the clarification of the limits of intrusion into privacy is played by the US Supreme Court, which in its precedents determines the limits of lawfulness or unlawfulness for making searches, apprehensions and seizures of objects of criminal origin. In its operations, the Supreme Court seeks to find a reasonable balance between personal, social and governmental interests, which determines the development of doctrines with the account of changing social relationships. The paper also states that legislative regulation has evolved from unlimited searches and arrests allowed at early stages of the state development to precise recommendations and establishing limits meeting constitutional requirements set by the Fourth Amendment to the US Constitution.*

Keywords: apprehension; search and seizure; US criminal procedure; constitutionally protected privacy; limitation of constitutional rights and liberties; doctrines and standards of the US Supreme Court

Information in Russian

ОСНОВАНИЯ ДЛЯ ОГРАНИЧЕНИЯ ПРАВ ГРАЖДАН ПРИ ПРОИЗВОДСТВЕ ОБЫСКА В УГОЛОВНОМ СУДОПРОИЗВОДСТВЕ США И ИХ КОНСТИТУЦИОННАЯ ЗАЩИТА

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Введение: *статья посвящена анализу фактических и правовых оснований ограничения прав граждан при производстве обыска в уголовном судопроизводстве Соединенных Штатов Америки, а также конституционных гарантий прав личности, предусмотренных Четвертой поправкой к Конституции США. Предмет исследования составили раз-*

личия континентальной и англо-американской моделей уголовного судопроизводства, роль полицейских органов в задержании, обыске и изъятии предметов, имеющих криминальное происхождение. Исследована роль Верховного суда США в выработке доктрин, содержащих правовые основания для остановки, обыска и ареста подозреваемых в различных сферах криминальной деятельности. Показано значение изучения и использования опыта других стран по эффективной борьбе с преступностью. ***Цель:*** *сформировать представление об особенностях применения мер принуждения при проведении обыска; о соблюдении конституционно охраняемых прав и свобод граждан, обеспечении баланса между законным принуждением и свободой.* ***Методы:*** *совокупность методов научного познания, основной из которых – диалектический; общенаучные (диалектика, анализ и синтез, абстрагирование и конкретизация) и частнонаучные методы (сравнительно-правовой, технико-юридический).* ***Результаты:*** *предпринят анализ законодательного регулирования, развития прецедентного права, практики применения и научного толкования фактических и правовых ограничений прав граждан при производстве обыска в уголовном судопроизводстве США, а также конституционных гарантий прав граждан. Сформулирован тезис о том, что по мере развития общества, роста преступности, появления технико-криминалистических средств для проникновения в конституционно охраняемую сферу человека менялось представление и законодательное регулирование оснований для производства обыска.* ***Выводы:*** *ведущая роль в толковании пределов вторжения в частную жизнь граждан принадлежит Верховному суду США, который в своих прецедентах предусматривает границы правомерности или неправомерности задержания, обыска и изъятия предметов, имеющих криминальное происхождение. В своей деятельности Верховный суд США стремится найти разумный баланс между интересами личности, общества и государства, что обусловливает выработку доктрин в меняющихся общественных отношениях. Правовое регулирование развивалось от разрешения неограниченных обысков и арестов на ранних этапах развития государства до подробных рекомендаций и установления ограничений в рамках конституционных требований Четвертой поправки к Конституции США.*

Ключевые слова: задержание; обыск и изъятие; уголовный процесс США; конституционно охраняемая сфера частной жизни; ограничение конституционных прав и свобод; доктрины и стандарты Верховного суда США

Introduction

In today's world, criminal justice is based on the constitutional guarantees of individual rights. In all countries constitutional provisions prevail if legal norms are in conflict or there is another neighboring legislation which regulates individual rights, freedoms and legitimate interests during preliminary investigation. The case in point is a big number of decisions and rulings of the Constitutional Court of the Russian Federation in our country.

As far as the main function of any Constitution is to consolidate fundamentals of social relations, it cannot undergo frequent alterations. Therefore criminal procedure has been administered for a long time within the framework of constitutional norms adapted tens or even hundreds of years ago when social relations, minimal extent of statutory rights and freedoms, and level of technological development might have been completely different. Modern development of information technologies in the society results in new technological opportunities for law-abiding citizens, criminals, as well as for law enforcement agencies to penetrate into constitutionally protected private life. The emergence of new rights and freedoms, for example in the field of information, can cause disagreement or even contradictions between the former content of constitutional norms administering the protection of individual rights and official enforcement in the course of administration of the law during investigation and detection of crimes. Thus, legislators and law enforcement bodies are facing the urgent problem of reaching a uniform understanding of questions concerning providing a reasonable compromise between constitutional and criminal norms restricting rights and freedoms of criminals; realization of public interests; formation of the best possible criminal procedure model.

Situations like this can occur in any country. However, in the present article we tried to analyze the process of adaptation of criminal procedure law enforcement practice in the USA as their Constitution and the Amendment to it (The Bill of Rights) were adopted more than two thousand years ago. The study of the United States Supreme Court (further referred to as the US Supreme Court) judicial

activity allowed us to make a conclusion that the US Supreme Court has taken a large number of decisions that altered the construction of the content of the Fourth Amendment to the Constitution of the United States of America (further referred to as Amendment IV) under the conditions of public relationship development, advent of new information technologies, new opportunities for committing crimes and intrusion into personal privacy by the officials. The authors studied American legal literature and found out that thousands of pages are devoted to the interpretation of Amendment IV which itself consists of 53 words. This is how eagerly the US Supreme Court tried to neutralize public interest in searches and seizures in the course of investigation of illegal actions as well as the will of individuals to be free from intrusion of the state into their private lives [12, p. 58; 13].

According to Amendment IV, "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized"[1].

To deeper investigate the practice of this constitutional norm application it is necessary to refer to some facts: the period in history when the Constitution of the United States of America (further referred to as the US Constitution) and Amendment IV to it were adopted; peculiarities of Anglo-American criminal procedure system; the organization of police investigation; the role the US Supreme Court plays when interpreting constitutional norms in particular criminal proceedings and in the case law development.

In terms of history Amendment IV to the US Constitution was introduced into The Bill of Rights to protect individuals from searches and seizures British authorities made in American colonies irrespective of place, time or property. New American governments were especially indignant with the use of general warrants and wrists of assistance during searches of houses, factories and warehouses for the good that had been smuggled in order to avoid excessive custom duties imposed by the British [14, p. 64]. Searches were also used to get able-bodied young men and force them to serve under the Royal Navy.

General warrants were issued by a judge or another state official in order to authorize a search in any place at any time. A form of the general warrant was the order of assistance according to which British officials forced policemen and citizens to assist in making a search. These papers once being sanctioned were legally valid not only during the sovereign ruler's life but also six months after his death.

In 1761 there was a case when 63 Boston merchants petitioned the Highest Court of Massachusetts to challenge the legality of a particular type of search warrant. The court of superior jurisdiction stated that the British Parliament had empowered Massachusetts colonial judges to issue court orders. James Otis Jr., advocate general for the colony of Massachusetts, claimed that this writ was "the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law-book". Further he noted: "Now one of the most essential branches of English liberty, is the freedom of one's house. A man's house is his castle; and while he is quiet, he is as well guarded as a prince in his castle. This writ of assistance, if it should be declared legal, would totally annihilate this privilege" [8, p. 58].

In response several colonial states legislative authorities placed a ban on general warrant issue. The United States Declaration of Independence adopted on July 4, 1776 declared that the general demands are flagrant and oppressive and must not be applied in practice. After that, both English and American colonial courts little by little started to declare search warrants allowing searching all individuals and places invalid or illegal; they also insisted on issuing warrants by local judges only provided that there was a high ground to think that contraband goods were in the places "the complainant should suspect"[2].

Amendment IV reflected the current of time and was aimed at canceling general warrants and writs

[1] Annotated Constitution. Fourth Amendment. Available at: https://www.law.cornell.edu/anncon/html/amdt4toc_user.html (accessed 10.02.2018).

[2] Frisbie v. Butler, 1 Kirby 213 [Conn. 1787]. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

of assistance through prohibition of "unproven" searches and seizures and through ensuring that "no Warrants shall issue, but upon *probable cause*, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized". In other words, a judge should be given evidence that criminal activity objects, illegal items are held in by a particular person in a particular place. In accordance to this standard a general warrant was considered unreasonable [11, p. 17].

Constitutional content of Amendment IV can also be extended to protection of people from "unreasonable" governmental searches and seizures in four constitutionally protected spheres. This applies to the protection people from unreasonable arrests or searches; protection of living quarters adjacent to the residence and the areas directly surrounding the house and premises of commercial enterprises closed for the public; protection of personal letters, diaries and business papers; protection of property and belongings including personal things, vehicles, clothes and firearms.

Specifically, the Constitution of the Russian Federation includes three articles (art. 22, 23, 25) concerned with the principle of the inviolability of the person, private life and home while in the US Constitution these values are administered in a single article, that is Amendment IV.

Further the question of investigation and exposure of crimes in the USA will be considered. Searches and seizures of objects and papers result in a legal procedure and such enforcement actions as custody or arrest. Investigation includes collecting evidence by the police; in Russia these actions are considered to be independent investigative actions or operational-investigative measures. According to Amendment IV, the police are entitled to make searches in houses and seize any evidence of illegal actions, papers, property, etc. The study of Amendment IV is supposed to determine the conditions of its application as well as to study legal consequences of inobservance of constitutional norms. To solve these problems it is necessary to analyze the following circumstances: whether any search action held by the police is treated as a search; whether the government [7] was involved into the search or arrest; whether the search was lawfully made; and if a search or seizure appeared to be unreasonable, whether rule on exclusion of evidence is applied. Government in this case means any USA law enforcement officers acting on behalf of the state, or by order of the state or with the knowledge of the state.

What to understand under the term *search*? There are a number of reasons why it is important to answer this question. With the development of technologies, the US Supreme Court has to determine whether various intrusions or seizures are constitutional and whether the police are required to get a warrant issued by the judge in the presence of probable causes or the police do not need judicial approval to invade.

The USA Federal Rules of Criminal Procedure do not give the definition of the term *search*[1]. Article 41 (Search and Seizure) determines just several types of property subjected to seizure; and procedural order of getting a search warrant [9, p. 472].

In Russian legal literature repeated attempts have been made to research the concept itself and the reasons for making a search in the US criminal procedure [3, p. 36]. For example, there are authors who claim that the concept of search is still undefined in American literature is still undefined. For a long time American lawyers treated the search as seeking by the police *hidden* items that can serve as evidence in the case [6, p. 76].

Other authors suppose that in order to understand American laws and other legal acts one has to note not only their records in corresponding papers but also their interpretations by different courts, i. e. one must scrutinize a range of judicial decisions concerning a particular question [2, p. 12]. Supporting this opinion, to a greater extent we will rely on the decisions of the US Supreme Court, which determine the main approaches to the subject under study.

The US Supreme Court favors that searches should be made if there is an appropriate warrant, but it noted that in particular cases it is reasonable to give the police a right to make search or seizure without a warrant. For example, it can happen "in special situations" in which these actions are used

[1] Federal Rules of Criminal Procedure. December. 2017. Available at: http://www.uscourts.gov/sites/default/files/criminal-rules-procedure-dec2017_0.pdf (accessed 10.02.2018).

for protection of the public security but not for collecting evidence of crime. Although these searches do invade private life, it is insignificant; at the same time, they protect public security.

It should also be noted that Amendment IV is aimed at restricting searches and seizures by law enforcement authorities but does not restrict individuals from discovery and seizure of forbidden items [9, p. 432].

The Content of the Concept *Search* and the "Expectation of Privacy" Doctrine

When determining constitutionality of making a search in the case Boyd v. United States, the US Supreme Court derived the rule of property right protection or in other words trespassory approach. This doctrine was designed to protect a house, papers and belongings of people from physical intrusion or infringement of their inviolability. In this case property intrusion is interpreted as physical intrusion into a house or physical searching of people and their papers or belongings. Therefore individuals, houses, papers and belongings get constitutionally protected.

Judge Hugo Black expressed how property right protection should be approached to when he claimed that "the Fourth Amendment was aimed directly at the abhorred practice of breaking in, ransacking and searching homes and other buildings and seizing people's personal belongings without warrants issued by magistrates"[1].

In the famous case of 1928 Olmstead v. United States, the US Supreme Court reviewed the boundaries of the property right. Olmstead was convicted of conspiracy to smuggle, own and sell alcoholic drinks. The major evidence the trial appealed to was obtained by the unauthorized wiretapping Olmstead and his partners' office and home phones. In this case, the US Supreme Court rejected Olmstead's claim, by five votes to four, that about 800 pages of short-hand notes obtained by wiretapping were violation of his rights under Amendment IV. Most judges made their decisions relying on two facts. Firstly, federal agents were just wiretapping conversations transmitted over the wires without any intention to find and seize a physical object. Secondly, taps were inserted along ordinary telephone wires outside the house and excluded physical intrusion into it. The US Supreme Court elaborated that "the language of the amendment cannot be extended and expanded to include telephone wires, reaching to the whole world from the petitioner's house or office. The intervening wires are not part of his house or office, any more than are the highways along which they are stretched."

Judge Louis Brandeis expressed his disagreement with the decision of the Court and claimed that Amendment IV should be treated with the account of changing circumstances. He stated that "the makers of our Constitution ... conferred, as against the Government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men" and therefore "every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment"[2].

In 1942 there was a case Goldman v. United States, in which the US Supreme Court, taking the Olmstead's precedent into account, went on to hold that inserting the detector on the outside wall of the neighboring office to eavesdrop conversations did not violate Amendment IV[3].

In 1967 in the case Katz v. United States the US Supreme Court accepted judge Brandeis's point of view and reversed the precedent-setting decision on Olmstead case. In the Katz case, the US Supreme Court disposed the "intrusion into privacy" approach and developed the standard called *"expectation of privacy"* in order to apply Amendment IV. During the investigation of this case FBI agents, having no search warrant, attached an electronic listening and recording device to the outside of the telephone booth from which the calls were made and wiretapped Katz's telephone conversations where he transmitted illegal gambling wagers. The US Supreme Court declared that "the trespass doctrine was no longer controlling" and claimed that Amendment IV *"protects people rather than places"*. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally

[1] Katz v. United States, 389 U.S. 347, 367. 1967. Available at: https://supreme.justia.com/cases/federal/us/389/347/case.html (accessed 10.02.2018).

[2] Olmstead v. United States, 277 U. S. 438, 465, 478. 1928. Available at: https://supreme.justia.com/cases/federal/us/277/438/case.html (accessed 10.02.2018).

[3] Goldman v. United States, (1942). Available at: http://case-law.findlaw.com/us-supreme-court/316/129.html (accessed 10.02.2018).

protected. In this case, as it was found, the government violated the privacy of the telephone booth which Katz had relied upon. The fact that the government did not seize the material object or penetrate the wall of the boot could not exclude the search provided by Amendment IV[1].

Judge John Marshall Harlan had his own special opinion about the case, which the US Supreme Court relied upon, and set forth a two-part test for determining whether government conduct constituted a search. According to Judge Harlan:

subjective aspect: the individual has a subjective expectation of privacy;

objective aspect: the individual's expectation of privacy is "one that society is prepared to recognize as reasonable".

To illustrate this test Judge Harlan noted that people hope that their private lives at home would be kept inviolable while they do not expect privacy when their public words or actions are concerned.

The analysis of the reasons for the change of precedent-setting decision and application of Amendment IV requires considering Katz case in detail. In February 1965, the petitioner made calls from three located near the bank public telephone booths at certain time almost every day. But each time he used a different booth. In the period from 19 to 25 February 1965 FBI agents attached microphones on tops of the two booths the petitioner normally used. The other telephone was switched off by the telephone company. The microphones were attached to the external side of the booths by the scotch tape. So there was no physical intrusion into the booths. The microphones got activated only when Katz was in the booth. The wires coming from the microphones were attached to a recording device mounted on one of the booths. Thus, FBI obtained the evidence of the fact that the petitioner had made several telephone calls[2].

When trying the case, the US Supreme Court had to decide whether FBI agents had violated Amendment IV despite the fact that physical intrusion into the booth had not taken place. Defending their position, the parties paid special attention to the design of the booth which the petitioner made his calls from. The petitioner claimed that the booth was "constitutionally protected territory" while the government stated the opposite.

In the final decision, the US Supreme Court sided with the petitioner Katz, declared wiretapping of the telephone conversations by FBI illegal, and explained that the requirement of an exemption required compliance with the procedure of getting a preliminary permit from the judge or magistrate. The same requirements must be observed in case the search is made not in the house but in the office, hotel suite, or telephone booth. Wherever a person is he must be sure that he will not be subject to unreasonable search or seizure.

Apart from the major question about getting a legal permit to wiretap telephone conversations (these actions can be treated as a search) in Katz case the aspects of the use of information obtained from so called false friends, agents or informants were concerned [7, p. 41].

Thus, in Katz case it was established that that the government had used electronic equipment to control a conversation without agreement of its participants. The US Supreme Court held that Katz had had subjective and reasonable expectation of privacy in relation to his telephone conversations content and supposed that legal search, according to Amendment IV, could be made only having the warrant issued on probable cause.

Concerning the conversations with the so called false friends when the suspect does not know that he is talking to an undercover police agent or informant, or the situation when informant can record or transmit the conversation to a remote recording device, the US Supreme Court developed another approach: in both cases the suspect does not have *reasonable expectation of privacy*. The suspect wrongly supposes that the conversation is confidential and will get into police [9, pp. 84–88].

In the case Hoffa v. United States, Edward Partin, a Labor Union official and a government inspector, visited the hotel room of the National

[1] Katz v. United States, 389 U. S. 347, 351. 1967. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

[2] Katz v. United States, 389 U. S. 347 (1967), Stewart, J. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

President Jimmy Hoffa, who was prosecuted for corruption related to trade unions and was in the status of the defendant. Partin had eavesdropped the conversations, in which Hoffa spoke about jury tampering. Partin later testified that he was the prime witness of the government in the prosecution of Hoffa for the jury tampering. The US Supreme Court held that although the hotel suit was a "constitutionally protected area", Hoffa was not relying on the security of his hotel suite. Instead, Hoffa relied on his misplaced confidence that Partin would not reveal the content of the conversation about jury tampering. The US Supreme Court noted that "nothing in the Fourth Amendment protects a wrongdoer's misplaced belief that a person to whom he voluntarily confides his wrongdoing will not reveal it"[1].

The same conclusion was drawn by the US Supreme Court in the case Lewis v. United States. Lewis twice invited agent Cass to his home to sell him marijuana. The US Supreme Court held that "when the home is converted into a commercial center to which outsiders are invited for purposes of transacting unlawful business, that business is entitled to no greater sanctity than if it were carried on in a store, a garage, a car, or on the street". During his visits Cass did not "see, hear, or take anything that was not contemplated, and in fact intended, by petitioner as a necessary part of his illegal business"[2].

So, is there any difference between informants equipped and those non-equipped with recording electronic devices? Does this fact matter concerning the legitimacy of applying Amendment IV? In the case United States v. White the informant had an electronic equipment to transmit the conversations to government agents. The US Supreme Court held that "if the conduct and revelations of an agent operating without electronic equipment do not invade the defendant's constitutionally justifiable expectations of privacy, neither does a simultaneous recording of the same conversations made by the agent or by others from transmissions received from the agent to whom the defendant is talking and whose trustworthiness the defendant necessarily risks"[3].

Finally, the US Supreme Court held that when talking to other people there is always risk that a person one is talking to might prove to be a government agent of informant. That is why there is no constitutionally protected expectation that a person, who you are conversing with, will not then or later reveal the conversation to the police or record it using electronic eavesdropper.

However, not all the US Supreme Court judges agreed with final decisions and the approach developed. Thus, Judge Harlan, for instance, in his special opinion concerning the case USA v. White claimed that the decision taken by the US Supreme Court compromises trust and security and encroach on people's rights to talk freely[4].

Summarizing the discussion on the meaning of "expectation of privacy", which has had a number of the US Supreme Court precedents, one can represent this term as the following legal structure (see chart 1).

Chart 1

Legal Content of the Doctrine "Expectation of Privacy"

Expectation of privacy is justified	=	Expectation of privacy is shown.
	+	Society tends to accept this expectation as reasonable.
Expectation of privacy is not justified	=	If people consciously reveal to the public (even in their own house or office) the facts that they wish to keep private even in a publically available place, it may be protected by the Constitution.
	+	The information is passed to the third party (suggestion about risk).

[1] Hoffa v. United States, 385 U. S. 293, 302–303.1996. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

[2] Lewis v. United States, 385 U.S. 206, 210–211. 1966. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

[3] United States v. White, 401 U. S. 745, 751. 1971. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

[4] Article 401 U.S.C. at 787. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

Keeping studying the concepts of search and seizure in criminal procedure in the USA, let us consider the *plain view* doctrine along with the requirements specifying the belongings that are in plain view; we will also provide an analysis of the link with the criterion of "expectation of privacy" in houses and surrounding areas.

The "plain view" doctrine is an exception to Amendment IV requirements as it allows the police to seize an object without a search warrant in the following two cases:

1. *Legal presence* of a policeman in duty status in a particular place.

2. A policeman has probable causes to think that the object being seized is somehow the result of criminal activity. Probable cause must be obvious when *just looking at the object*.

From the above it follows that if a policeman sees an object connected with a crime or an object connected with illegal activity, those could be seized without a warrant. The "plain view" doctrine proceeds on the basis that if an individual leave an object in view, by doing so this individual loses the right to expectation of privacy. For example, the police can legally stop a driver for violation of traffic rules and seize drugs or opened bottle of some alcohol drink found at the rear seat, i. e. in plain view. Making a search with the regard to a drug-dealing case in a house might discover prohibited by law pornography objects and seize these.

The latter example can be represented by the case Arizona v. Hicks. In response to a shot the police entered the apartment having no warrant. The policemen saw a brand new stereo system. One of the policemen moved it, read serial numbers and called the police to be told that this stereo system had been stolen. The US Supreme Court agreed with Hicks that this situation was not a search under the "plain view" doctrine. Even though the policemen had probable causes to enter the apartment, they could not see it clearly that the system had been stolen until one of them had to move the equipment to obtain the numbers and had to call headquarters to ensure that the stereo had been taken in an armed robbery[1].

The US Supreme Court also admitted the *"plain feel"* doctrine, when a policeman patting down the suspect's clothes made a conclusion that in the pocket under the lining he had discovered drugs. Other courts developed the *"plain smell"* doctrine, when a policeman smells drugs or alcohol in a vehicle. In 2008 the Court of Appeals of Virginia noted that an individual did not tend to keep his own smell secret. A person cannot help emitting a particular smell (especially associated with illegal drugs) and expect reasonably that those in contact with him, including police officers, not to pick up the smell. So the judges accepted the common opinion that an individual cannot claim "reasonable expectation of privacy" from legally being present there policemen or agents having "sensitive nostrils"[2].

The courts also accepted the *"plain hearing"* doctrine for the cases when people do not have "reasonable expectation of privacy" but their conversations could be heard by law enforcement officials[3].

Another aspect of the given research is making searches and seizures in *open fields* and the land immediately surrounding the house or dwelling (curtilage), in the places where the police relies on "the in plain view" doctrine. Let us find out whether the police use additional technologies in order to enhance the ability to observe, run ordinary checks or make seizures.

The US Supreme Court divided the house and the land around it into three separate categories, each having different rate of constitutionally protected expectation of privacy, and introduced the following concepts.

Open fields. These are places relatively far from the house where the police can enter without a probable cause or warrant.

Dwelling. A house which is constitutionally protected by Amendment IV and to enter it the police has to have a search warrant issued on probable cause.

[1] Arizona v. Hicks, 480 U. S. 321. 1987. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

[2] Bunch v. Commonwealth, 658 S. E. 2d 724 [Va. Ct. App. 2008. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

[3] United States v. Ceballos, 385 F. 3d 1120. 7th Cir. 2004. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

Curtilage. The land immediately surrounding the house is considered the part of it. When observed from the air this land does not have reasonable expectation of privacy. In Russian reality, so can be called a cottage yard or fence in the territory of a country house. In other words, this is the area around the house (unlike the land for vegetables or the fruit garden).

There are other categories of objects that do not have expectation of privacy according to Amendment IV.

Public property. These are places and indoor spaces generally open to the public and the police do not need a warrant to seizure.

Commercial property. Police can enter stores or enterprises and seize publically available items without a warrant. To enter rooms available only for personnel the warrant is required.

Abandoned property. The property that was deliberately left is not entitled to the right of expectation of privacy and can be seized by the police without any warrant.

There is a separate but common case that does not fall within the scope of expectation of privacy according to Amendment IV. It is the *"open fields" doctrine*. In the case Oliver v. United States, the Kentucky State Police were checking the report that marijuana was being raised by Thornton and Oliver on the Oliver's farm. The police drove past his house to a locked gate with a "No Trespassing" sign and then along the fence and found amarijuana field over a mile from the petitioner's house.

During the investigation, it was found that there were "No Trespassing" signs on the footpath, the field was surrounded by woods, fences and some bank and was not visible from any side. The US Supreme Court held that Amendment IV does not protect "persons, houses, places and property" extended to the open fields from unreasonable searches or seizures. Generally, privacy right doctrine cannot be applied to the open fields and actions of the Kentucky State Police, when they entered the territory and seized marijuana, were found legal.

The US Supreme Court explained that there were strong reasons for open fields not to be protected by Amendment IV and cannot claim the right of expectation of privacy[1].

The first reason is the purpose. Amendment IV aims at the protection of "private" activities, so there is no necessity to protect the activities that take place on open fields such as cultivation of crops.

The second reason is accessibility. Primarily, unlike dwellings or offices, open fields are publically accessible and are easily controlled by aircrafts.

The US Supreme Court held that Oliver was not entitled to privacy on the open field despite all the efforts he had undertaken to keep marijuana including "No Trespassing" signs.

Unlike open fields, curtilage is a place for "intimate activity" associated with the "sanctity of a man's home and the privacies of life" and so is considered a part of the dwelling itself. The US Supreme Court noted that persons used their wells, drives and backyards for barbecuing, socializing, outdoor and other recreation activities which are covered by the "use of home" concept.

Thus, the question arises: how can a police officer draw a distinction between curtilage and open fields? When dealing with the case United States v. Dunn, the US Supreme Court enlisted the factors to be taken into account when differentiating between these concepts[2].

1. *Distance* – whether the territory is remote or close to the house.

2. *Enclosure* – whether the territory immediately surrounds the house.

3. *Function* – whether the territory is used for household activities.

4. *Protection* – whether any efforts are made to prevent the territory from surveillance.

On the account of the above listings the major question arises: how close is this territory to the house? Should it be protected by Amendment IV? One federal judge was really precise when describing the difference between curtilage and open fields; he defined it as "an imaginary boundary line between privacy and accessibility to the public"[3].

[1] Oliver v. United States, 466 U. S. 170. 1984.

[2] Dunn v. United States, 480 U. S. 294. 1987. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

[3] United States v. Redmon, 138 F. 3d 1109, 1112. 7th Cir. 1998. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

In the case United States v. Dunn, the US Supreme Court considered a barn a part of open fields bat not that of curtilage. The police officer who discovered a laboratory making drugs did not need a warrant to make a search in the barn. The barn was located behind the surrounding the house fence in 50 yards from the fence and 60 yards from the house itself. Dunn, however, did not take any precautions to protect its inside from observing. Air photos and chemical smells from the barn indicated that it was not used for any intimate activity done in the house.

Several supreme courts of different states, among which are Mississippi, Montana, New York, Tennessee, Vermont and Washington adjusted their Constitutions in order to protect open fields in case fencing and signs testify the person's right to "expectation of privacy". These courts explained that the main question was whether a person possessed the reasonable right to expectation of privacy, in other words, if the land was remote or rarely used for "private activity".

Curtilage and aerial observation. According to the general rule curtilage is considered the part of the house and has reasonable "expectation of privacy". The rule states that to search the house and curtilage the warrant is required. However, one has to make sure that curtilage does not get the same level of protection as the house itself. In the two cases considered further the US Supreme Court held that unreasonable aerial observation over the territory did not violate "individuals' expectation of privacy" [15, pp. 217–219].

In the case California v. Ciraolo, the police received a tip that Dante Carlo Ciraolo was growing marijuana plants in his backyard, shielded from view by two fences which prevented the police from checking this information. So they chose another way to check whether any criminal activity took place. Two police officers dealing with illegal drug trafficking flew over by a private plane found marijuana plants and took aerial photographs of them at an altitude of 1,000 feet which is designated airspace. The photos confirmed that there were marijuana plants growing in the backyard. This gave a probable cause for a warrant to be issued, the search was made and marijuana plants were seized. Ciraolo claimed that the police had violated his reasonable expectation of privacy.

The US Supreme Court held that in "an age where private and commercial flight in the public airways is routine" it was unreasonable for Ciraolo to expect that his marijuana plants were constitutionally protected from being observed with the naked eye from an altitude of 1,000 feet. Ciraolo did not have reasonable expectation of privacy and the police did not have to obtain a warrant to aerial observation[1].

The US Supreme Court decision on Ciraolo case was based on the precedent of the case Florida v. Riley. The police could not check the information received from an informant that Michael Riley was growing marijuana in the greenhouses located 20 feet behind his mobile home. The greenhouse was covered by corrugated roofing panels, some translucent and some opaque. The police officer circled twice over Riley's property in a helicopter at the height of 400 feet and through the openings in the roof and open sides of the greenhouse and managed to see and identify marijuana plants growing inside. Obviously, the officer obtained the search warrant which was made in the greenhouse and marijuana was seized. The US Supreme Court highlighted that the helicopter was flying at navigable airspace and rejected the petitioner's claim who had expected his greenhouse to be immune from aerial observation[2].

The case Dow Chemical Company v. United States is the third case connected with aerial observation. Although it refers to a chemical company, the case is of great importance for the discussion of the application of visual surveillance method strengthening technologies. In the Dow case, the Environmental Protection Agency (EPA) employed a commercial aerial photographer for an on-site inspection of the plant. The US Supreme Court held that "human vision is enhanced somewhat, at least to the degree here, does not give rise to constitutional problems". In other words the camera just clarified the things that were visible with the naked eye. The US Supreme Court also noted that Dow plant was located between open fields and curtilage

[1] California v. Ciraolo, 476 U. S. 207, 215 [1986]. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

[2] Florida v. Riley, 488 U. S. 445, 452 [1989]. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

and so unlike the house it could not claim the expectation of privacy[1].

Thus, the US Supreme Court drew a distinction between curtilage and open field territory establishing different legal regimes for these territories. Curtilage is considered the part of the house and so protected by the Constitution. Nevertheless, when observing curtilage from the air the warrant is not required.

Modern Technologies and Constitutional Dwelling Protection

According to the general rule, search and seizure warrants are necessary to enter a house possessing the highest expectation of privacy. In the case Kyllo v. United States, the US Supreme Court encountered the problem whether the police could use a thermal-imaging device to determine the amount of heat escaping the house. This method indicates that high-intensity lamps are typically used for indoor marijuana growth[2].

As it was mentioned above, the US Supreme Court upheld the decisions about legitimacy of the use of recording devices, aerial observations and photography technologies in order to strengthen surveillance. In the decades to come, more powerful technological methods are likely to be used in the course of criminal investigation. The US Supreme Court adopted two general rules concerning the use of technologies by the police [4, pp. 298–304].

In plain view. The technology strengthening the method of visual surveillance over the territory or object situated in plain view (open fields, curtilage) does not require a search warrant.

Dwellings. A dwelling being a physical structure has high expectation of privacy. The technology cannot be used without a warrant issued on probable cause in order to observe the inside of the house and reveal criminal activity which cannot be revealed without physical entrance into the house.

The example of how technology was used to strengthen the surveillance over the object can be the case Texas v. Brown. In this case the US Supreme Court decided that the use of the flashlight to shine a dark section of the car could not be considered a search according to Amendment IV[3].

In another example, the US Supreme Court supported the use of an electronic device set up in the container with ether used for drugs production to watch the suspect's car. The Court decided that the defendant's movement along public roads was also being monitored by aerial observation and that the device in the container had revealed no information inaccessible for either public or police. The US Supreme Court noted that "nothing in the Fourth Amendment prohibited the police from augmenting their sensory faculties with such enhancement as science and technology afforded them in this case"[4].

On the other hand, the US Supreme Court drew a clear distinction between tracking in a public place using an electronic device and setting up a container in the house. The task was to decide whether leaving the container inside the house could be considered the place of illegal production of drugs and under these circumstances whether the police could obtain the search warrant. The Court held that the government could not enter the house without a warrant just to make sure that the container with ether was inside; it is similar to the situation when the government secretly "employs an electronic device to obtain information that could not obtained just observing the house from outside"[5].

In 2001 in the case Kyllo v. United States, the US Supreme Court had to decide whether the use of a military device to measure infrared radiation escaping the house is a search. Scanning from the device along with other information provided

[1] Dow Chemical Company v. United States, 476 U. S. 227, 238-239 [1986]. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).
[2] Kyllo v. United States, 533 U. S. 27 (2001). Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).
[3] Texas v. Brown, 460 U. S. 730 [1983]. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).
[4] United States v. Knotts, 460 U. S. 276 [1983] (rule 1). Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).
[5] 468 U. S. 70S [1984] (rule 2). Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

probable cause for the search warrant to be issued. During the search over 100 marijuana plants were seized[1].

In this case the main question the US Supreme Court was facing was whether the use of thermal-imaging device to scan a private home from outside in order to determine the amount of heat inside is in accordance with Amendment IV.

The investigation of the circumstances showed that in 1991 agent William Elliott of the United States Department of the Interior suspected that marijuana was being grown in the home belonging to Danny Kyllo. Growing marijuana indoors usually requires high intensity lamps. In order to determine the amount of escaping from Kyllo's house heat, agent Elliot and agent Dan Haas used an Agema Thermovision 210 thermal imager to scan the house. It happened at 3:20 January, 16, 1992. Thermal imagers detect infrared radiation, which is emitted by practically all objects, but is not visible to the naked eye. The monitor converts radiation into images based on relative warmth-black (the hotter the object, the brighter it is on the screen). So a thermal imaging device works as a video camera showing hot images.

Scanning of the house took just a few minutes and was performed from the passenger seat of agent Elliott's car parked across the street from the front of the house .The scanning showed that the roof over the garage and a side wall of Kyllo's home were relatively hot compared to the rest of the home and substantially warmer than neighboring homes. Thus, agent Elliot came to a conclusion that Kyllo used high intensity lamps to grow marijuana in his house. Based on the information from the informants, utility bills, and the thermal imaging, a federal judge issued a warrant authorizing a search of Kyllo's home, and the agents found more than 100 marijuana plants. Kyllo tried to prove but with no success that the evidence obtained by the thermal imaging was received illegally.

Eventually, the US Supreme Court held that Amendment IV drew "a firm line at the entrance to the house". That line must be not only firm but also bright, which requires clear specification of the methods of penetration into the house. The video from thermal imaging did not compromise the homeowner's privacy, but it is essential to understand the original meaning of Amendment IV for privacy protection. Where the Government uses a device that is not in general public use to explore details of the home that would previously have been unknowable without physical intrusion, technical scanning is a "search" and is presumptively unreasonable without a warrant [10, pp. 69–119].

GPS-monitoring of Vehicles

In 2012 in the case United States v. Jones, the US Supreme Court examined the question whether it was constitutional to install and use a Global-Positioning-System (GPS) tracking device on Jones's vehicle without a warrant in order to track the vehicle movements along city streets. The Government tracked the vehicle's movements for 28 days which caused Jones to claim that his reasonable expectation of privacy was violated[2].

Judge Scalia in the decision argued that the installation of GPS devices on the Jones's car to obtain information was a "search". He also concluded that the government had "improperly physically invaded a constitutionally protected area by attaching GPS to Jones's vehicle". Getting back to the issue of confidentiality in the Katz case decision, it was noted that "mere visual surveillance does not constitute a search" regardless of surveillance duration or gravity of the offence.

Judge Alito, with whom other three judges agreed, expressed their special opinion that "*longer term* GPS monitoring in investigations of most offenses impinges on expectations of privacy". In drug-related crimes, "society's expectation has been that law enforcement agents could not secretly monitor and catalogue every single movement of an individual's car for a very long period". He also mentioned that there could be serious crimes requiring long-term surveillance. Judge Alito specified that if the police "followed the same car for a much longer period using unmarked

[1] Kyllo v. United States, 533 U.S. 27 (2001), Scalia, J. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

[2] United States v. Jones. 2012. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

cars and aerial observation", this tracking would not constitute a search, according to Amendment IV.

Searches in Public Places and Private Industries

The police have the right to seize the objects found in plain view in public places, parks or streets. Public places also include private industries accessible to the public. A search warrant is required so that police could search the places which are closed for the public (e.g. workplaces or offices accessible only to staff). In the case Maryland v. Macon a country detective, who was not in uniform, entered a bookstore and purchased a pornography magazine. Later he came back and arrested the clerk for distributing obscene materials. The US Supreme Court held that the officer's action in entering the bookstore and examining the wares that were intentionally exposed to all who frequented the place of business did not infringe a legitimate expectation of privacy, and hence did not constitute a search within the meaning of the Fourth Amendment.

Chart 2

Legal Content and Meaning of the Concept "Expectation of Privacy", Police Searches in accordance with Amendment IV

Expectation of privacy under Amendment IV	Expectation of privacy not protected by Amendment IV
1. Electronic wiretapping of telephone conversations.	1. Eavesdropping of conversations.
2. Opening of the luggage.	2. Invasion into land used for growing fruit and vegetables.
3. Home invasion.	3. Aerial observation of the yard and curtilage.
4. Opening and reading diaries	4. Exploring garbage containers.

Abandoned Property

Abandoned property is the property whose true owner is likely intended to leave it. That is why the owner does not have expectations of privacy and this property is not protected by Amendment IV. In these cases, the police do not have to obtain a seizure warrant. As abandoned property generally does not have any signs of being abandoned, judges rely on the totality of the circumstances and take into account its location, type and estimated cost. For example, an old rundown suitcase found in the trash container is sure to have been thrown away. However, if it is a new expensive leather briefcase, that has been reported stolen, another conclusion has to be drawn.

In most cases the question whether the property is abandoned or not is simple. In the case Hester v. United States escaping from the Government agents Hester dropped a jug and two bottles. Later, the agent also found a bottle. All the three vessels contained illicitly distilled whisky in them. The US Supreme Court held that the vessels had been thrown out and Hester lost the right to personal privacy provided by Amendment IV[1].

In the case Abel v. United States some articles were found in the hotel room's wastepaper basket, where petitioner had put them while packing his belongings and preparing to leave. The US Supreme Court held that "there could be nothing unlawful in the Government's appropriation of such abandoned property"[2].

In another case California v. Greenwood, the US Supreme Court had to decide whether the petitioners had expectation of privacy in the sealed plastic garbage bags which according to the municipal regulations had to be left on the curb in front of the house. The police received the information that Greenwood might be engaged in drug trafficking and asked a regular trash collector to take Greenwood's garbage bags and hand these to the police. Items in the bags indicated the use of drugs and the police used that information to obtain a warrant to search Greenwood's home during which drugs were discovered and seized. Greenwood filed a petition for exclusion of evidence as he kept

[1] Hester v. United States, 265 U. S. 57, 58 [1924]. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

[2] Abel v. United States, 362 U. S. 217, 241 [I960]. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

expectation of privacy in his garbage bags. He claimed that his privacy expectation was in the fact that the garbage was taken by the collector and mixed with other garbage and brought to a garbage dump. Greenwood could not expect his garbage to be given to the police for examination.

Garbage can often reveal the most intimate aspects of people's lives and most individuals do not expect the content of their garbage bags to be checked by the police. On the other hand, left on the curb garbage is likely to have been thrown out and so can be examined by anyone.

The Ground for Stop and Apprehension of a Person

Legislators developing the US Constitution took care of protecting people, houses, papers and property from unreasonable searches and seizures. Amendment IV comes into effect when a law enforcement officer seizes a person and restricts his freedom of movement. The US Constitution aims at encouraging freedom of person and restricts this freedom only to the extent that is necessary for the protection of security and society. Legal content of Amendment IV is as follows: the more is interference with private freedom, the more grounds the police should provide to stop a person. There has to be a probable cause for seizure of a person, who afterwards could be taken into custody, as well as for making a search related with the arrest if arms or other prohibited articles were discovered. On the contrary, a short stop of a person in order to clarify the circumstances of an incident may be based on a less demanding standard of reasonable suspicions and for the purpose of security only provides the outwear inspection to find if the person is carrying arms.

The US Supreme Court recognized the third category of relations between the police and a citizen, which is legally called "encounters". These involve nonforcible or willful contacts between citizens and police which are not administered by Amendment IV. The Court noted that not all outdoor contacts between citizens and the police can be considered a probable cause for seizure. There are a lot of occasional interactions occurring in streets, parks or restaurants that do not restrict person's freedom of movement. The US Supreme Court emphasized that the police should be free about conducting the investigation by briefly surveying individuals about presumptive criminal activity. In the case United States v. Mendenhall the US Supreme Court claimed that "characterizing every street encounter between a citizen and the police as a "seizure" would impose wholly unrealistic restrictions upon a wide variety of legitimate law enforcement practices"[1].

In order to distinguish between "seizure" and "meeting" courts must consider the whole totality of the circumstances as sometimes the difference is not quite clear. The following example shows the difficulty of drawing a distinction between the above categories. In Mendenhall case two DEA agents approached Sylvia Mendenhall in the Detroit Metropolitan Airport. They introduced themselves as federal agents, and asked to see her identification and airline ticket. The ticket was issued in the name "Annette Ford". The agents noticed that Mendenhall "became quite shaken, extremely nervous" and could hardly speak. They returned her the driving license and the ticket and asked her to accompany them to the office fifty feet from where they were standing, which she did. In the office she consented to a search during which two packages of heroin were discovered and seized.

The US Supreme Court held that according to Amendment IV this was not an arrest and the police officers did not have to provide any probable causes (which would be necessary if they had to arrest her) or reasonable suspicions (which would be necessary to stop and search her) to justify their approach to Mendenhall. The suspect was not seized since the agents approached her and just asked to see her ticket and identification and asked her some questions. In this case the routine contact between a person and police cannot be lawfully considered to be an arrest.

The examples of circumstances identifying seizure could be: a bigger number of officers, showing a gun by an officer, some physical restraints and using the language or voice tone indicating coercion. The fact that Mendenhall was given her documents back before being asked to proceed to

[1] Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018)

the office is the key argument in the US Supreme Court's analysis of the situation.

From the analysis of this situation it follows that the police must differentiate between seizure and contacts for clarification of circumstances. It should be noted that the agents did not have weighty arguments to explain why they stopped Mendenhall. If the US Supreme Court had held that actions of the police were classified as seizure, it would have meant that she was seized illegally. The drugs in her case would have been illegally obtained evidence as in such cases *the Fruit of the poisonous tree* doctrine is applied[1].

The acceptance of the fact that not every contact between a policeman and a citizen is an arrest goes in agreement with the recommendation of The American Law Institute concerning Model Code of Pre-Arraignment Procedure whose section 110.1 implies that a law enforcement officer can clarify a person the right to willfully answer questions, appear in a police station, to fulfill other reasonable requirements. Such interview must not be considered as a coercive action or coercion solely only because the questions are asked by a law enforcement officer.

In accordance with Amendment IV two types of arrests should be identified: a physical seizure and a show of authority seizure. In the case of the latter police officers apprehend individuals by demonstrating formal power without applying any physical force. Apparently, arrest and seizure require either probable cause or reasonable suspicion. Let us consider the concepts of physical seizure and show of authority seizures.

Physical seizure. It is when a law enforcement officer intentionally seizes a suspect using physical power in order to prevent the person from leaving.

Show of authority seizures. Law enforcement officers show their powers demonstrating their weapons, require a person to stop, prevent a suspect from moving or behave in the way that would make a person aware of inability to leave or somehow interrupt this contact. The suspect has to obey these manifestations of power.

As it was mentioned above, the difference between "seizure" and "meeting" is not always clear. To understand this difference, one has to consider the cases in which the US Supreme Court held that Amendment IV was inapplicable. Some of these are described below.

Factory sweeps. Immigration and Naturalization Service officers equipped with radio sets entered a factory, blocked the entrance and questioned the workers about their legal status. The sweep lasted from one to two hours. The US Supreme Court claimed that the workers were free to walk around the factory and that their freedom was only restricted by labor routine, not federal agent[2].

Bus sweeps. Two officers from Sheriff's Department, one of whom was armed got on an overcrowded interstate bus. During one of the scheduled stops they approached Bostick sitting at the back of the bus. Having asked him several questions, they requested to search his luggage. They did not threaten or demonstrated him their weapons. Bostick agreed to have his luggage checked which led to the drugs discovery in it. The US Supreme Court held that in the light of evidence presented any reasonable (innocent) person could refuse the permission to search his luggage or try to terminate this contact as it was not a search[3].

Vehicle surveillance. Four officers were in their patrol car and saw a man who got out of a car and approached Michael Chesternut. Having noticed the police car Chesternut began to run. The officers followed him in their patrol car and approached him close enough to see that he threw some four packets onto the pavement which, as it was found out later, contained cocaine. While it was happening, the policemen did not activate a siren or flashes or demonstrated weapons or stopped

[1] United States v. Mendenhall, 446 U. S. 544, 553 [1980]. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

[2] Immigration and Naturalization Service v. Delgado, 466 U. S. 210 [1984]. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

[3] Florida v. Bostick, 501 U.S. 429 [1991]). See also United States v. Drayton, 536 U.S. 194 (2002). Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

Chesternut in his movements. The US Supreme Court held that "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave"[1].

In the next case to be considered, that is California v. Hodari, there was introduced a legal test of applicability of Amendment IV indicating the application use of physical force[2].

The study of the above case materials stated that in April, 1988 late at night police officers Brian McColgin and Jerry Pertoso were on patrol in a highly-criminal area of Oakland, California. The policemen were wearing casual clothes but having jackets with "Police" embossed on both front and back. Turning round the corner, they saw a bunch of youngsters huddled around a small red car parked at the curb. When the boys saw the approaching police car the panicked and stared to run. Officer Pertoso chased the suspect Hodari who discarded a tiny packet of cocaine. After that he was captured, handcuffed and arrested. The convict Hodari claimed that officer Pertoso had seized him illegally (having no reasonable suspicions or probable causes) and that drugs had to be classified as illegal evidence seized as a result of illegal arrest. The government in its turn stated that the fact that Hodary had discarded the drugs was the lawful basis for his arrest.

California Court admitted that officer Petroso did not have any probable cause for reasonable suspicion which was necessary for Hodari's seizure. But it also claimed that it would have been groundless to stop a brief investigation of the situation in which the young people having seen the police panicked and tried to escape. The Court had to solve the problem whether the policemen showed their formal power or applied physical force for making an arrest even though the subject did not obey their orders and was not captured.

In the course of thorough study of all the circumstances the US Supreme Court drew a conclusion that officer Petroso's pursuit should have been considered as a demonstration of power requiring Hodari to stop. Since Hodari did not meet the requirement he was not considered arrested until he was captured. Discarded cocaine was not the result of the seizure so the suggestion to eliminate this evidence was rejected. The differences in the content of some legal standards allowing the restriction of private rights can be presented as follows.

Chart 3

Comparative Content of Legal Standards for the Restriction of Inviolability of Person Provided by Amendment IV

Foundation standard	Requirements	Type of search
Probable cause	Any reasonable person could suppose that a crime was committed.	A strip search to find weapons and evidence.
Reasonable suspicion.	A reasonable person could believe that a crime was committed or is being prepared.	A search to find weapons.
A contact of an individual with a police officer.	Foundation is not required.	A search cannot be made but consent for search can be asked.

Establishment of the "Terry-Stop" Standard. Stop-and-Frisk

In 1968 in the case Terry v. Ohio the US Supreme Court had to answer the question whether persons could be stopped and searched in accordance with Amendment IV based on reasonable suspicions. Law enforcement officials had used to practice stopping, questioning and searching people for decades. The situation got worse in the late 1960s in response to public demonstration against the war in Vietnam, protests against campuses conditions, the increase in crime rate, confrontations between police and various self-proclaimed fringe group.

[1] Michigan v. Chesternut, 486 U. S. 567 [1988]. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).
[2] California v. Hodari, 499 U. S. 821 (1999), Scalia, J. Available at: http://caselaw.findlaw.com/us-supreme-court/ (accessed 10.02.2018).

Some states, including New York, adopted statutes, allowing the police to stop any person reasonably suspected of being involved in some criminal activity and make a search for life and health protection[1].

In 1967 owing to the crime rate's growth, the President's Commission on Law Enforcement and Administration of Justice recommended legislatures of 50 states to vest the police with authority to stop, search and question particular persons, even if the reasons for it are less than "probable causes". Civil human rights defenders objected to a lesser standard of constitutional protection since it would be used to track the homeless, minorities and political activists. Law enforcement agencies, in their turn, claimed that it would be groundless to prevent authorities from stopping those suspected of preparing for or committing a crime. Judge William Douglas warned that refusal of "probable cause" standard was a step towards "totalitarianism" and that "suppression" of the events would lead to the destruction of civil liberties.

The US Supreme Court stood against any efforts aimed at weakening Amendment IV and considered that according to this standard "reasonable search" requires a warrant issued in the presence of "probable causes" or a search can be made without it in case the police do not have enough time to get one[2].

In the well-known case Terry v. Ohio, the US Supreme Court *opened a new page* in the application of Amendment IV and established a new basis for balancing between the necessity to fight crimes and civil rights and freedoms. The main idea of this legal basis is that when having *reasonable suspicions* law enforcement officers are allowed to briefly stop particular persons in order to clarify the circumstances. The Court explained that questioning was of great importance when speaking about street crimes investigations. These stoppings differ from arrests as their aim is to contribute into investigation and not to invade into private freedom of a person. That is why they can be based on a lower standard of reasonable suspicion rather than on probable cause. Taking into account the implementation of a new standard of private rights restriction, one has to set out its basic principles that were developed during the consideration of the Terry case[3].

Reasonable suspicions and guarantee clause. Generally searches and seizures must be made if there is a probable cause and warrant issued by the court. However, it does not mean that searches and seizures cannot be made without a warrant. The provision of the probable cause sufficiency clause allows the police to stop individuals for questioning or pat down if there are reasonable suspicions.

Balance. The reasonable suspicion standard for stoppings and pat downs is determined by the balance of interests in immediate actions by a police officer in order to reveal, investigate and prevent the crime with the minimal intrusion into a citizen's privacy.

Chief Judge Earl Warren claimed that "in appropriate circumstances" a policeman can approach a suspect to investigate possibly criminal behavior and make an arrest even though the officer has no probable cause. Reasonable suspicion is the standard for such actions.

The reasonable suspicion standard was developed to provide a balance between the necessity of operational search actions the police perform to investigate and detect crimes with the minimal intrusion into individuals' privacy. The US Supreme Court supposed that if policemen were required to determine probable cause, the society would be threatened by crime growth. A suspect's interest to be free from unreasonable searches and seizures must be properly protected by an objective standard, i. e. clear, comprehensible requirements the police officer could rely upon when making a seizure. The above confirms the conclusion that "a person of reasonable caution is certain that actions undertaken are appropriate".

The circumstances of the case mentioned above indicate that a law enforcement officer noticed two men walking in front of the furniture shop, looking into the shop-windows and constantly

[1] N. Y. Code Crim. Proc. 180-a [1964]. Available at: http://caselaw.findlaw.com/us (accessed 10.02.2018).

[2] Henry v. United States, 361 U. S. 98 [1959]. Available at: https://supreme.justia.com/cases/federal/us/ (accessed 10.02.2018).

[3] Terry v. Ohio, 392 U. S. 1 (1968), Warren, J. Available at: https://supreme.justia.com/cases/federal/us/ (accessed 10.02.2018).

discussing something. The officer was experienced enough to know that behavior like this often indicates that thieves are studying the situation and discussing the best possible ways to rob the shop. So the policeman approached the men, asked them to introduce themselves only to hear mumbling in response, patted down the coat of one of the men and found a gun in his pocket. The policeman's actions were approved by the US Supreme Court as quite consistent with the requirements of Amendment IV. Although the conduct of those two people could not provide a "probable cause" for making the normal "arrest" or "search", it gave a ground for reasonable suspicion, for making a pat-down search – "stop-and-frisk".

Definition of Reasonable Suspicion

When considering Terry case, the US Supreme Court established the basic approaches to the use of methodology for determining reasonable suspicions in other cases to come. One has to take into account that each situation the police find themselves in has its own characteristics, circumstances that can cause reasonable suspicions that the suspect should be seized, and very often those do not match the content of a particular legal norm. Thus, the concept "reasonable suspicion" is determined in each individual case and is evaluative. In order to take a justified decision in such situations, the US Supreme Court developed the following criteria.

Articulable suspicion [5]. A police officer should justify his invasion and provide concrete, certain facts that along with rational conclusions resulting from those facts would give a reason to assume that a particular individual have committed a crime or is about to commit it. This criterion can be interpreted as a seen, understood, perceived action of a suspect who is committing or preparing to commit a crime.

Objective standard. The facts must be evaluated in accordance with a reasonable person's standards and cannot be based on the officer's opinion alone. Policemen cannot rely only on their guesses or intuition, which would result in the violation of the rights of individuals to be free from unreasonable searches and seizures, guaranteed by Amendment IV.

Experience and expertise. The facts must be interpreted considering the policeman's experience and his educational background.

Informants. Reasonable suspicions can be based on the information obtained either from a reliable informant or an anonymous informer and this information must be confirmed and approved of by law enforcement officials[1].

Totality of the circumstances. The current situation must be evaluated considering reasonable suspicions presented. Courts take into account such factors as: whether a suspect keeps calm or he/she is nervous; whether he / she is in the high crime zone; how long he / she has been in custody for the crimes committed; his / her willingness to cooperate with the police; his / her lifestyle, behavior, disposition to commit crimes. The evidence "must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement"[2].

Probabilities. Reasonable suspicion is based on probability but not reliability.

Particularized suspicion. To prevent criminal actions, the officer making a seizure must have objective and particular reason for a suspicion[3].

One should draw a clear distinction between *probable cause and reasonable suspicion.* The US Supreme Court explained that "probable cause" means that "the evidence of crime commitment would definitely be found". However, reasonable standard of a suspicion is "less demanding" compared to probable cause and requires "at least a minimal level of objective justification for the cessation of the suspect's activity". A law enforcement officer must be able to define his / her "guess" about supposed criminal activity[4].

[1] Alabama v. White, 496 U. S. 325 [1990]. Available at: https://supreme.justia.com/cases/federal/us/ (accessed 10.02.2018).
[2] United States v. Cortez, 449 U. S. 411, 418 [1981]. Available at: https://supreme.justia.com/cases/federal/us/ (accessed 10.02.2018).
[3] United States v. Cortez, 44 U. S. 411 [1981]. Available at: https://supreme.justia.com/cases/federal/us/ (accessed 10.02.2018).
[4] Illinois v. Wardlow, 528 U.S. 119 [2000]. Available at: https://supreme.justia.com/cases/federal/us/ (accessed 10.02.2018).

The Facts Reasonable Suspicion is Based on

Reasonable suspicion demands to evaluate all the circumstances. The US Supreme Court admitted that "it is impossible to give a clear definition of reasonable suspicion". It is a "fluid concept" to be evaluated in a "particular context"[1]. Several factors developed by the US Supreme Court are presented below. When combined with other factors they are considered to be reasonable suspicion.

Criminal activity. This includes actions that could indicate some signs of criminal activity, e. g. preparing a crime in a shop in Terry case or illegal currency exchange taking place in the street.

Time. Criminal acts are committed at the time when the crime activity normally takes place. These may involve unloading an unmarked van in a warehouse late at night.

Location. Crime actions are most likely to be committed in the areas with high crime rate or special type of criminal conduct.

Criminal record. Police officers know about the crimes recorded and people committing them.

Evasion. A person who has committed a crime tries to escape from the police or dodges meeting with a police officer.

Noncooperation. A suspect refuses to contact the police or provide them with some evidence about criminal activity.

Nervousness. A suspect gets nervous during the meetings with the police.

Experience. An experience of making arrests for similar offences the policeman possesses is of great importance.

Informants and hearsay are especially important in determining grounds for making a search.

Thus, reasonable suspicion can be based on a policeman's direct surveillance; information obtained from an informant, victim, witnesses of the crime or police reports. Information obtained from other sources but not from a policeman's direct surveillance is called "hearsay". The textbook example of the latter situation is when a bleeding victim calls the police and provides the description of the attacker. In some other cases the police can be provided with even less information so cannot be sure about reliability of hearsay. One can imagine a policeman receiving an anonymous telephone call informing that some person wearing a baseball cap is selling drugs on the street corner opposite a primary school. And does the information imply that a suspected drug dealer is armed?

Chart 4

Legal Content and Meaning of Amendment IV for Making a Search and Arresting a Person Based on Reasonable Suspicion

Reasonable suspicion as grounds for searches and arrests.	=	In order to justify the use of coercive measures, a police officer should provide concrete facts that together give reason to think that a crime has been or is going to be committed (objective test).	+	The facts must be evaluated considering the totality of circumstances.
	+	The facts must be evaluated considering the policeman's experience.		

In the case Adams v. Williams sergeant John Connolly was patrolling Bridgeport, Connecticut, the area with a high crime rate. He was approached by a citizen, he already knew, who said that "an individual seated in a nearby vehicle was carrying drugs and had a gun at his waist." Sergeant Connolly approached the car and tapped on the window and asked the driver Robert Williams to open the car door. When the driver rolled down the window the officer "reached into the car and removed a fully loaded revolver from Williams' waistband".

In this case, the US Supreme Court encountered the question whether reasonable suspicions could be based on an informant's tips. The Court decided that the information obtained this way had

[1] Ornelas v. United States, 517 U. S. 690, 694 [1996]. Available at: https://supreme.justia.com/cases/federal/us/ (accessed 10.02.2018)

"enough indicia of reliability" to justify Sergeant Connolly's actions to check obtained from the informant tip. The officer knew the informant and he had provided the police with information before. In this very situation the informant gave the officer the information which he immediately checked. Upon this one has to take into account that the Connecticut State Law provides criminal liability for knowingly false denunciation of crime.

The US Supreme Court emphasized that the police can reasonably rely on the information obtained from a victim of a street crime. As far as informants are concerned, if the information they provide does not look completely reliable, the police does not have the right to get a warrant. In such cases further investigation is required so that to get the probable cause for involuntary stop of a suspect.

In the case Adams v. Williams, the US Supreme Court noted that the information provided by an informant is "stronger" than "an anonymous telephone tip. So the question arises if the police can rely on an anonymous telephone call. The solution to this problem can be seen in the case Alabama v. White. Officer Davis received an anonymous telephone tip that Vanessa White was going to transfer drugs from one address to another; she will be carrying them in a brown briefcase and she will be in a Plymouth station wagon with the right taillight lens broken. Officers Davis and Reynolds immediately put the mentioned address under surveillance and saw a suspect leave the building and get into the car but she did not have the mentioned briefcase with her. The policemen followed her, stopped her car on the road and found a locked brown attaché case in it. They got her permission to unlock it and having done so discovered marijuana there[1]. Did the police have reasonable suspicion to stop White?

Concerning this case, the US Supreme Court claimed that reasonable suspicion is "obviously less demanding than probable cause" so it can be based on the information that is less reliable than it is necessary for "probable cause". The US Supreme Court evaluated the totality of the circumstances and put forward two crucial ideas. Firstly, it is important to find out how trustworthy an informant is and secondly, what the "basis of his knowledge" is. In this very case the police had no information about the informant and so could not evaluate how reliable the information he provides is. Nevertheless, the US Supreme Court held that the police did have reasonable suspicions to stop White because the facts provided by the informant were confirmed. On the one hand, the police could not check the woman's name or if she was carrying a brown case. On the other hand, the number of details the informant provided was precise: the building the woman was leaving, the time, the description and the location of the vehicle. The Court emphasized that "because only a small number of people are generally privy to an individual's itinerary, it is reasonable for police to believe that a person with access to such information is likely to also have access to reliable information about that individual's illegal activities". Despite the fact that the information was not public the US Supreme Court, considering all the circumstances, held that the tip confirmed by the police proved to be reliable. In fairness it must be said that during the proceedings there were objections on the part of some judges. In his special opinion Judges Stevens, Brennan and Marshall supposed that there could have been an abuse on the part of a disgruntled neighbor or an unscrupulous policeman in order to falsify the case.

Thus, in the cases Adams v. Williams and Alabama v. White the US Supreme Court established that law enforcement officers can rely on the information obtained from an informant which would provide them with "reasonable suspicion" as the legal ground. The conditions under which this can happen are considered below.

Reliability. The judge has to find out if the informant is known to the police, if he has provided reliable information before, and take into account whether criminal liability for knowingly false denunciation of crime is established.

Informant's basis of knowledge. The judge determines how the informant obtained these facts. The informant possessing the knowledge about criminal activity must provide detailed information.

Police corroboration. With the lack of the two above factors, one can rely on the actions taken by the police, those confirming the major details. The most important thing here is the ability of the informant to predict the suspect's behavior.

[1] Alabama v. White, 496 U. S. 325, 327 [1990]. Available at: https://supreme.justia.com/cases/federal/us/ (accessed 10.02.2018).

Totality of the circumstances. The judge studies the totality of the circumstances and establishes the indicia balance. The less reliable is the informant, the more insistent the court can be about providing more detailed information. If anonymous information looks unreliable, police officers must check it along with the informant's personality.

Chart 5

Legal Content and Meaning of Intelligence Information for Making a Search and Arresting a Person Based on Reasonable Suspicion in Accordance with Amendment IV

The police use the agent's information.	=	The informant's reliability.	+	The informant's actual awareness.
	+	The police check that the intelligent information is reliable.	+	Totality of circumstances.

Drug Courier Psychological Profile

In order to discover and investigate criminal behavior, law enforcement officers developed the concept of drug courier profile. When relying on the profile the officer compares the person's behavior with the pattern described in the profile. Any matches between the nature of the person's activity and details from the profile cause reasonable suspicions.

Generally, profiles are based on the behavioral analyses of persons who were arrested for such crimes as hijacking and illegal immigration. Later the profiles to uncover illegal drug trading were developed. In the first well-known case Markonni v. Atlanta seven primary and four secondary characteristics of a drug courier were identified[1].

Seven primary characteristics of the Markonni profile include: (1) arrival at or departure from the specific place in the city; (2) little or no luggage; (3) unusual itinerary; (4) use of an alias; (5) carrying large amounts of cash; (6) buying ticket with cash in small denominations; (7) unusual nervousness.

Secondary characteristics are: (1) exclusive use of public transport, especially taxis at the exit of the airport; (2) making phone calls after deplaning; (3) leaving a false call-back number with airline; (4) excessive traveling to and from drug-source cities.

This profile is sometimes not easy to use as innocent people can suit some of the above characteristics. Some experts note that focus on the drug supplier's sources or drug-source cities tends to identify ethnic and racial minorities. Other specialists claim that using profiles ones just relies on the previous experience when taking current decisions. However, the statistics shows that developing and using profiles is really effective. The data from Detroit airport quoted by Judge Lewis Powell in the US Supreme Court's decision of 1980 indicate that agents for control of illegal drug trafficking using drug courier profile had searched 141 people in 96 encounters for eighteen months. Drugs were discovered in 77 of these cases which resulted in the arrest of 122 persons[2]. It has to be noted that the courts not only relied upon the accuracy of profiles but studied the totality of factors together with the additional surveillances made by the police officers.

The US Supreme Court in the case Reid v. Georgia decided that law enforcement officers reasonably relied upon drug courier profile when arresting and questioning Reid[3].

The US Supreme Court considered the question whether the federal agents for control over illegal drug trafficking possessed a reasonable cause to suspect Reid of committing offences. The court decided that Reid had

[1] United States v. Elmore, 595 F. 2d 1036, 1039 [5th Cir. 1979]. Available at: https://supreme.justia.com/cases/federal/us/ (accessed 10.02.2018).

[2] United States v. Mendenhall, 446 U. S. 544, 562 [1980]. Available at: https://supreme.justia.com/cases/federal/us/ (accessed 10.02.2018).

[3] Reid v. Georgia, 448 U. S. 438, 440–441 [1980]. Available at: https://supreme.justia.com/cases/federal/us/ (accessed 10.02.2018).

arrived at Atlanta from a well-known drug-source city Fort Lauderdale early in the morning when law enforcement officials in the airport were understaffed. The agent claimed that Reid and his companion tried to conceal the fact that they were traveling together and that they were carrying all their things in the bags on their shoulders. The US Supreme Court did not account the fact that Reid and his companion actually were walking separately watching each other. Thus, the conclusion the agent drew about the suspects traveling together was no more than a "guess" and could not serve a sufficient probable cause to stop Reid. Eventually, the US Supreme Court having studied the totality of circumstances made a conclusion that the police had no reasonable suspicion to stop and search Reid.

In the case Florida v. Royer, the US Supreme Court admitted the presence of reasonable suspicions when the police checking a drug courier profile found out that Royer was traveling using an alias. While conducting surveillance the policemen decided that Royer suits the drug courier profile since he had started his journey from a big drug-source city, bought a single ticket and paid for it in small denomination bills. Further check showed that the plane ticket had been bought on the name different from that in his driver's license. While talking to detectives he was nervous[1]. The US Supreme Court accounted the discovery made by the police that Royer had been traveling under an alias and other circumstances known to the police and considered these probable causes to suspect Royer of drug trafficking, to seize him and to further check the suspicions.

Apparently, to determine whether a policeman has a reasonable suspicion is a skill rather than a science. In Royer case, the Court held that the use of an alias along with other factors allowed the law enforcement officials to apply reasonable suspicion standard and seize the criminal. On the contrary, in the Reid case the policeman could not identify particular actions indicating that the suspect might have been involved into some illegal activity. The US Supreme Court held that the majority of factors the agent referred to would have been common for a large number of innocent people and that the totality of circumstances enlisted in the "profile" did not provide law enforcement officials reasonable suspicion to stop and search Reid.

Thus, the above examples can be used to determine three distinctive features of drug courier.

Reasonable suspicion. Courts must study the profile content in order to determine if the information law enforcement officials possess can serve as reasonable suspicion.

Suspicious behavior. Reasonable suspicion must be based on evidence confirming particular actions of a suspect or other persons which combined with other circumstances would indicate criminal behavior.

Chart 6

Legal Content and Meaning of the Profile for Making a Search and Arresting a Person Based on Reasonable Suspicion in accordance with Amendment IV

Apprehension of the suspect on grounds of the profile.	=	Courts do not accept reasonable suspicion on grounds of the profile alone.	+	The suspect's behavior or actions are typical of a person involved into criminal activity.
	+	Totality of circumstances.		

Stops and Checks of Motor Vehicles, Search of the Driver and Passengers

Can law enforcement officers demand the driver and passengers to leave the vehicle? This question arises due to the fact that, on the one hand, this demand is intrusion into freedom without reasonable suspicion but, on the other hand, the people in the car pose a threat. Obviously, a policeman must not be put at risk in case a driver or passenger is having a firearm.

In the case Pennsylvania v. Mimms the US Supreme Court held that "legal and weighty" interest in providing safety showed by the policeman overweighed "minor" intrusion into personal

[1] Florida v. Royer, 460 U. S. 491, 493–494 [1983]. Available at: https://supreme.justia.com/cases/federal/us/ (accessed 10.02.2018).

freedom and so justified the demand to the driver to get out of the car .

In 2009 in the case Arizona v. Johnson the US Supreme Court established that a vehicle was stopped by three police officers and a license plate check revealed that the vehicle's registration had been suspended for an insurance-related violation. The vehicle was stopped in the district associated with a particular local gang. Officer Maria Trevizo noticed that back-seat passenger Johnson was wearing a blue bandana indicating membership in this gang. Trevizo asked Johnson to leave the car, patted down his clothes and discovered a gun. The US Supreme Court held that the driver and passengers were searched lawfully because the vehicle had been stopped for violating traffic rules. Temporary stop of the driver and the passenger was of reasonable duration of time usually taken to check offences. Policemen do have the right to question persons and investigate criminal activity of passengers during the stop. An officer can also perform a pat down of a driver and any passengers upon reasonable suspicion that they may be armed and dangerous.

Chart 7

Legal Content of the Terry Standard to Stop a Vehicle

Terry standard to stop a vehicle.	=	A policeman can demand the driver or passengers to leave the vehicle during the stop.
	+	No reasonable suspicion is needed to have the driver and the passengers leave the vehicle.

Peculiarities of the Terry Standard Application during Frisks and Seizure of Weapons

In the case Terry v. Ohio, the US Supreme Court admitted that America had a long history of gun violence, law enforcement officers were killed and hurt in duty status every year. So the Court held that in the initial stages of the check the policeman can "dispel his reasonable fear for his own or others' safety. He is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him"[1].

The analysis of the above decision of the Supreme Court allows several circumstances that justify frisks to be determined.

Weapons. The US Supreme Court explained that a frisk is aimed at protection of a policeman and other persons nearby and that it must "be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer".

Reasonableness. A policeman might not be completely sure that a suspect is armed and puts a threat. A reasonable officer in the given circumstances can suppose that his safety and that of other people is at risk. Reasonableness must be determined by the facts interpreted in terms of the policeman's experience. This criterion is objective. When drawing a conclusion an officer cannot rely on his own subjective fear or intuition. If he is not sure that a suspect is armed and puts a threat at this very moment, he, considering objective circumstances, is entitled to frisk the suspect.

Extent. A frisk must be aimed at discovery of firearms, knives and other prohibited items. A policeman can make a search of a suspect's clothes from inside only when there is a suspicion that there is a weaponlike object. Having discovered a container or a packet the officer is entitled to open it if he has a reasonable suspicion that there is a weapon in it.

Apprehension. The stop is not automatically followed by a frisk. A suspect should be provided with an opportunity to refute the policeman's arguments about him being armed and putting

[1] Terry v. Ohio, 392 U. S. 1 (1968). Available at: http://case-law.findlaw.com/us-supreme-court (accessed 10.02.2018).

a threat. The evidence indicating the threat coming from the suspect is as follows: a bulgy pocket; the suspect's sudden and quick movements; the fact that the suspect digs his hand into a pocket; knowledge the policeman possesses that the suspect was involved into criminal activity; the type of criminal activity; presence of the suspect in the area with a high crime rate especially at night; he is found with another person who is to be arrested for a grave crime.

The US Supreme Court elaborated that if a suspect immediately provides a trustworthy proof of not putting a threat and is able to refute the policeman's reasonable apprehension of being armed at this very moment, then the search can be cancelled. Despite the fact that generally a frisk does not follow after the stop immediately it has to be noted that a number of courts supported "immediate" frisks in case there is a suspicion of illegal drug trafficking since naturally the information about gangs, drugs and weapons is interconnected and confirmed in the course of the investigation of crime[1].

The case Arizona v. Johnson should be reminded of here in which three policemen stopped the car for violation of traffic rules and officer Trevizo demanded Johnson who was at the backseat to leave he car, made a personal search and discovered a gun stuck in his belt. In this case, the US Supreme Court held that to provide officers with personal safety was more important than a minor intrusion into personal privacy. The Court noted that the passenger's motivation is similar to that of the driver: they both tend to be violent and prevent the police to reveal criminal activity not connected with the traffic stop. Officer Trevizo acted within Amendment IV when she did not allow Johnson to leave the site of occurrence[2].

In 1983 in the case Michigan v. Long, the US Supreme Court recommended to use the Terry standard to search passenger car unit in case the policemen have a reasonable apprehension that there is some threat. Policemen Lewis and Howell in the rural area saw a car swerve into a ditch. When they approached the vehicle for conducting the investigation they saw David Long next to it. The car door from the driver's side was open. One of the officers found that suspect Long "appeared to be under the influence of something" as he could not respond to requests concerning his registration; he just turned and headed towards the open car door. The officers followed him, saw and seized a hunting knife from the mat in the cabin from the driver's side. Officer Howell shined his flashlight into the car, saw something protruding from under the armrest on the front seat. He took the pouch that appeared to contain marijuana[3]. When considering the legality of the search in the car, the US Supreme Court elaborated that such actions in the passenger's car unit are justified if an officer has a reasonable apprehension to think that a suspect is potentially putting a threat and tends to gain immediate control over weapon. The Court emphasized that the search must be "limited to those areas in which a weapon may be placed or hidden". However, in the situation described there was a probability that Long could get immediate control over weapon; if he was not arrested he could have taken his weapon as soon as he reached the car.

Peculiarities of the Terry Standard Application during a PatDown and Seizure of Drugs

In 1993 in the case Minnesota v. Dickerson, the US Supreme Court confirmed the right of the policeman making a pat down to seize the drugs discovered. Surely, the officer must have probable causes to think that the items he is going to find are drugs. The US Supreme Court explained that making a pat down a law enforcement officer could discover some objects and if there are probable causes to think these are drugs, the pat down can be made and justified by "the plain-view" or "the plain-feel" doctrines. "The plain-view" doctrine allows a law enforcement officer to seize objects that would have been seized during a legal search. The functioning of this doctrine can be illustrated by the situation when during the legal search in a house the

[1] United States v. Garcia, 459 F. 3d 1059 [10th Cir. 2006]. Available at: https://supreme.justia.com/cases/federal/us/ (accessed 10.02.2018).

[2] Arizona v. Johnson, 555 U. S. 323 [2009]. Available at: https://supreme.justia.com/cases/federal/us/ (accessed 10.02.2018).

[3] Michigan v. Long, 463 U. S. 1032, 1035 [1983]. Available at: https://supreme.justia.com/cases/federal/us/ (accessed 10.02.2018).

police found not only drugs but an assault rifle and seized it. "The plain-feel" doctrine is based on the officer's physical touch not just visual perception.

Chart 8

Complete Legal Content of the Terry Standard

Terry standard.	=	Frisk is made at the most initial contact of the police and
	+	the suspect if a policeman fears for his own safety and that of the people around.
	+	An officer has the right to protect himself and other people in the given area by thoroughly patting down the upper clothing of suspicious persons.
The Terry standard application for the passenger car unit search.	=	Is applied in order to discover a weapon that might be used for attacking the police.
	+	The passenger car unit search is justified in the cases when a police officer has a reasonable cause to believe that the suspect is putting a potential threat and tends to gain immediate control over weapon.
The Terry standard application for seizure of drugs.	=	The search should be limited by the areas where weapons can be placed or hidden when the police have a clear and objectively justified belief that the suspect is potentially dangerous.
	+	A policeman lawfully patting down the upper clothing of suspicious persons.

With the spread of computer technologies, law enforcement authorities encounter a question whether an individual possesses a "reasonable expectation of privacy" with regard to electronic information stored on computers (or other electronic storage devices) that is under his control [5, pp. 231–236]. If the answer is positive, the police must have a warrant to make a search or take other coercive measures. According to Amendment IV, if there is no warrant, an electronic device must be treated as *"closed container"* such as closed briefcase or an office cabinet containing folders with documents; the Amendment prohibits law enforcement officials to examine electronic information stored on the device seized [10]. In the same way the courts established the doctrine "expectation of privacy" concerning computers and "expectation of privacy concerning closed containers" such as suitcases, covers, briefcases[1]. As far as people normally have reasonable expectation of privacy when it comes to the content of their close containers, they do absolutely the same in regard to the data stored on storage devices.

The police can seize and examine electronic information without a warrant in the following situations: the suspect's agreement; extraordinary circumstances; lawful arrest; being in plain view; property inventory; border search; checking a person who has been sentenced to probation or released on parole.

Research Results

The Fourth Amendment to the US Constitution aimed at protection of individuals from mass, ubiquitous, unlimited searches made by the British colonial authorities with the use of general warrants and writs of assistance. Amendment IV actually cancelled general warrants and writs of assistance and prohibited unreasonable searches and seizures; it required a warrant to be issued by a magistrate or an independent court official upon probable cause such as: the description of the place to be searched and the things to be seized [1]. However, the US Supreme Court admitted that in some particular cases the police do have the right to make a search without a warrant.

Originally the US Supreme Court accepted the "trespass on a building" standard, which served as a protector for individuals, their personal and commercial papers and property. But in 1967 in the case Katz v. United States it clarified that Amendment IV

[1] United States v. Ross, 456 U. S. 798, 822-23 (1982). Available at: https://supreme.justia.com/cases/federal/us/456/798/case.rhtml (accessed 10.02.2018).

was aimed at protection of people, not buildings. In other words, everything persons want to keep secret as a part of their private lives must be constitutionally protected either it is a "public place" or physical intrusion into another person's property. And vice versa, Amendment IV does not protect "what a person knowingly exposes to the public, even in his own home or office". Since Katz reasonably supposed that his telephone conversations were confidential, the police first had to obtain a search warrant. The rule established in the Katz case states that when law enforcement officials "violate reasonable expectation of privacy", the search under the guarantees of Amendment IV takes place.

Thus, it can be stated that by the application of Amendment IV concerning searches and seizures the US Supreme Court was eager to provide a balance between the duty of the police to detect and investigate crimes and an individual's right to privacy. A person has the right to be under a total protection by Amendment IV in such spheres as home when he is entitled to an expectation of privacy and the society finds it reasonable. On the other hand, areas and objects classified as "in plain view" do not have expectation of privacy so the police do not have to obtain a warrant. If a person passes the information to the third party or some aspects of private life becomes available to the public, he cannot rely on reasonable expectation of privacy.

The US Supreme Court demands the police to justify execution of searches and seizures either by a probable cause or reasonable suspicion. Policemen can approach citizens and question them to clarify the circumstances of the incident but these actions are not considered as a seizure or arrest and people are free to leave or refuse to cooperate with the police.

In the above mentioned case Terry v. Ohio, the US Supreme Court *opened a new page* in the application of Amendment IV, establishing a new ground for achieving a balance between the necessity of crime fighting and the protection of civil rights and liberties. The essence of this legal basis is that *having reasonable suspicions* law enforcement authorities have the right to briefly stop individuals to clarify the circumstances. The Court elaborated that questioning citizens is really important for detecting and investigating the street crimes. These stops differ from arrests as they are not considered as intrusion into a private liberty and aim at the investigation of a case. That is why policemen can rely on a lower standard of reasonable suspicion rather than on probable cause.

In the Terry case, another ground was established which provides a policeman with the right to a frisk in order to protect himself if there are probable causes to think that a suspect is armed and putting a threat.

Conclusions

The Fourth Amendment to the US Constitution provides personal immunity from "unreasonable" governmental searches and seizures in the four constitutionally protected spheres: persons, houses, commercial and private papers, property.

The law enforcement body that has to apply constitutional requirements of Amendment IV is the police.

The content of Amendment IV was changing together with the development of social relationships and technologies used for committing as well as detecting and investigating crimes.

The US Supreme Court, federal courts, and courts of appeal provided the interpretation of this Amendment at different stages of social development.

Probable cause is the main factual ground for conducting a search in the US criminal procedure.

The legal ground in this case will be the search warrant issued by the court to a policeman who reports, giving an Oath, that he possesses evidence, i. e. "probable cause", that in a particular place, a particular person is keeping the items of criminal origin.

A warrant issued by the court is not required for making searches if there are probable causes presented. These are connected with cases involving exigent circumstances. These are the situations when extraordinary circumstances make receiving the warrant by the police impossible. Any emergency situation can justify making a search without a warrant. But in each such situation, the first-instance

court judge, while considering the accused's petition, must check whether there has been an extraordinary circumstance and the police have a probable cause for making a search. Exceptionally, a search without a warrant can be made in any vehicle that potentially contains evidence of a crime; it might be any container found in the car big enough to contain items sought after.

The search resulting from a lawful arrest can also be made without a warrant. The searches made with the suspect's agreement require neither probable cause nor warrant.

The searches of computer devices, retrieving and investigating electronic information, according to the judges' opinion, are covered by the "expectation of privacy" doctrine, considering computer devices "closed containers" and requiring a warrant.

Inspection and examination of computer information can be carried out without a warrant in the following situations: if a suspect agrees to be searched; extraordinary circumstances; lawful arrest; being in plain view ("plain-view doctrine"); property inventory; border search; checking a person who has been sentenced to probation or released on parole.

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