

УДК 343.1

## CURRENT LEGISLATIVE REGULATION OF OPERATIONAL-SEARCH SUPPORT OF CRIMINAL PROCEEDINGS IN UKRAINE

Sergiy OBSHALOV,

PhD, Associate Professor, Dean of the Faculty of training specialists for pre-trial investigation  
Dnipropetrovsk State University of Internal Affairs,  
Colonel of police

### SUMMARY

The author has considered legal support for the organization of the operational units' work of prevention, detection and investigation of crimes, the ratio of operational-search activities and covert investigative (search) actions in criminal proceedings.

**Key words:** operational-search measures, covert investigative (search) actions, prevention, detection, investigation, operational-search case, criminal proceedings.

### АНОТАЦІЯ

Автор розглядає юридичний супровід організації роботи оперативних підрозділів з профілактики, виявлення та розслідування злочинів, ставлення оперативно-розшукових заходів і слідчих негласних (пошукових) дій в кримінальному процесі.

**Ключові слова:** оперативно-розшукові заходи, таємні слідчі (пошукові) дії, попередження, виявлення, розслідування, оперативно-розшукова справа, кримінальна справа.

**Formulation of the problem.** Scholars have widely considered the issue of improving the quality of organizational, operational-search and other measures and investigative actions on prevention, detection and investigation of crimes, to enable their effective use in criminal proceedings. To achieve positive results in this, in our opinion, will promote the use of the full capacity of operational units, including the stage of identifying, recording and documenting criminal activities of individuals. The ability to effectively use of these provisions in law enforcement can be ensured only if their legal and institutional regulations.

The **purpose** of this article is to examine the problems and prospects of introducing an integrated approach to activities of operational units of law enforcement agencies in the prevention, detection and investigation of crimes in the course of criminal proceedings.

**Analysis of publications in which there is a solution of this problem.** In an important issue for the prevention, detection and investigation of crimes were involved such scholars as: K.V. Antonov, R.S. Belkin, A.F. Dolzhenkov, G.A. Dusheyko, V.V. Ivanov, I.P. Kozachenko, O.I. Kozachenko, A.G. Lekar, E.V. Lyzohubenko, Ye.D. Lukyanchikov, D.Yo. Nykyforchuk, M.A. Pohoretsky, V.F. Usenko, K.O. Chaplynsky, M.Ye. Shumylo and others.

**Basic content.** The success of the combating crime depends on the effectiveness of applied operational-search measures and conducted investigational actions, and for this they need a clear and reasonable legal support. Normatively all measures and actions of inquiry agencies officers, investigators, prosecutors, courts and prison service are regulated with the fundamental law of Ukraine - the Constitution, laws, codes and interdepartmental Ukraine decrees, orders and instructions that are directly related to the implementation of their activities when performing specific assigned tasks. However, setting the basis for their actions to ensure human rights and freedoms (Constitution) and exercise of objective criminal proceedings, which are common, each of these sectors have to perform some of their tasks stipulated by law only for them. For example, you can specify the tasks of operational-search activities - art. 1 of the Law of Ukraine "On operational-search activities", which says that the objective of operational-search activities is

search and fixing of factual data of wrongful acts of individuals and groups, responsibility for which is in the Criminal Code of Ukraine, reconnaissance and subversive activities of special services of foreign states and organizations to stop crime and in the interests of criminal justice, as well as the obtaining information in the security interests of citizens, society and the state [1]. That is, except for tasks to ensure the criminal proceedings entities of operational activities should carry out their activities in order to obtain relevant information, implementation of which will enable to ensure the safety of citizens, society and state. In addition, operational-search measures conducted by operational units officers within the framework of the criminal proceedings, in some cases go beyond the existing criminal proceedings, which starts with excitation of criminal case.

To proper ensure combating crime with forces and means of operational-search activities, in our view, we should clearly delineate its scope and usefulness to modern society. Consistently revealing objectives that the legislation sets for operational units of law enforcement bodies we should distinguish the following main areas of the use of operational component in combating crime: search and fixing of factual data of wrongful acts of individuals and groups, reconnaissance and subversive activities of special services of foreign states and organizations; obtaining the information in the security interests of citizens, society and state. And if the first direction is almost completely should provide stopping and detection, and according to the new Criminal Procedural Code - the investigation of criminal offenses, the second one may include social benefits and outside the criminal proceedings, that it should solve problems on preventing negative phenomena, events, even those not regulated or not sufficiently covered by the current legislation, but can cause significant damage. Moreover, the Criminal Procedural Code defined the main objectives of the criminal proceedings to protect the person, society and state from criminal offenses, the protection of rights, freedoms and legitimate interests of the criminal proceedings parties, and also to ensure prompt, full and impartial investigation and trial, so that everyone, who has committed a criminal offense, would be prosecuted as guilty, not innocent none was charged or convicted, no one had been subjected to unwarranted procedural coercion and to each member of the criminal proceedings a due process would

be applied [2]. If providing a rapid, complete and impartial investigation and trial ... is sufficiently reasoned and supported by the content of specific articles, the issue of protection of persons, society and the state from criminal offenses, the protection of rights, freedoms and legal interests of participants of criminal proceedings, in our opinion requires further consideration. According to the interpretation of the word "protection" - (to prevent the offense) [3] the Code reveals more procedural order of restoration of the rights and freedoms, indemnification and so on in that direction. The issue is prevention (avoidance, cessation) of criminal offenses is relied on the investigator, who is the official and public figure, and on operational units (art. 41) that can carry out investigator's written instructions, to use his rights, but "have no right to execute procedural actions in criminal proceedings on its own initiative or handle petitions to the investigating judge or prosecutor". Regarding the fact that most crimes can be disclosed using mostly covert investigation actions and operational-search actions as criminals when they commit them, use every possible attempt to cover up or destroy evidence of a crime, if possible to reduce the number of witnesses, the conducting of covert investigative (detective) actions requires a more expanded form.

The most controversial is, was and remains the issue to determine the nature and content of operational-search activity, and its main purpose - the secret identification of information that can be evidence for criminal proceedings. We are of interest of mostly covert operational-search measures, although the Law of Ukraine "On operative-investigative activities" states that the operational-search activity is a system of open and covert operational-search activities, simply because the elaboration of open measures involve scientists in the field of criminology, criminal procedure, administrative activities, etc., and the determination and improvement of covert measures is the subject of research of the science of operational-search law, which legally, unfortunately, has not found its legal and theoretical recognition and consolidation.

So the debate on this issue is not groundless. For someone the words "may be used as evidence in criminal proceedings" provides an opportunity to develop and improve, but for others - an opportunity not to take into account operational-search data in criminal proceedings, mainly when there are no basic knowledge of operational-search law. However, in practice of operational units operational-search measures which serve the purposes of criminal proceedings may go beyond the criminal proceedings as before of their excitation (operational-search legal relations) and after their closure (criminal-executive legal relations).

Fairness, objectivity, precise compliance with the regulations are the main requirements of the investigation. The Constitution of Ukraine emphasizes that the person's legal responsibility has an individual character. This fully applies to individual of law enforcement officer: the Law of Ukraine "On Militia" emphasizes the principle of respect for the individual - is the tap root along with other law enforcement activities. The Constitution of Ukraine emphasizes that a person's life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value, because the provisions of the Basic Law coincides with the universal understanding of the essence of humanity and the principles of the Universal Declaration of Human Rights [4]. Detection and investigation of crime is the process of establishing a true knowledge of the specific case of criminal proceedings, i.e. finding out the truth by a full, thorough and objective investigation of the case, is to collect, search, detection, procedural fixing of information and evidence, verifying of guilt of persons who have committed a crime, prosecution of perpetrators of crime and protection from unwarranted prosecution of persons who are not implicated for its commitment.

The legal framework of the implementation of these activities is also uneven. Operational-search one is based on the provisions of the law on operational-search activities and undercover departmental regulatory acts, and procedural one - on base of the Criminal Procedural Code of Ukraine. The limits of operational-search and procedural actions are also various. To carry out investigational actions we must have filed criminal proceedings, while operational-search measures can be carried out before its excitation.

Unlike procedural activity, in operational-search one we mainly use covert methods, forces and means. In this case it is emphasized that the law divides duties of the investigator and operational officer who although they are equally responsible for detecting crimes, are a common goal in different ways, using different methods [5].

Current perspectives on operational-search activities affected the matters of this type of place in the system of judicial proof and, therefore, the ratio of operational-search information and evidence. The introduction of covert investigative (detective) actions do not exhaust all the problems of specified direction. Upon receipt of operational information, the operational unit officer unfortunately does not fully use all the arsenal of available forces and means regulated to use according to the Law "On operational-search activities" and internal departmental instructions and orders. Thus, under the operational search information is always understood as a kind of social information that was the information about the circumstances to be proved, obtained by inquiry agencies via operational-search, mostly covert forces, means and methods. Based on the fact that non-procedural measures to identify media provide substantial assistance in gathering evidence, but lie outside of proof as of procedural, operational-search information for the investigator may have only mentioned a guide (no more) in the investigation and is used only in determining the tactics of investigation to identify sources - carrier of evidence-based information when nominating versions [6].

The list of these conditions is important and requires, in our view, additional disclosures, review and statutory regulation. The information about the event of the crime is received by law-enforcement bodies from different sources. In most cases, its applications are as citizens, communications of officers and members of the public. Citizens report such crimes in which they were victims, less - witnesses or when it became aware of the crime by a third party. But today many citizens, unfortunately, does not understand the need to report to the police about a crime, the circumstances of its commission or the persons suspected of committing a crime. In addition, the legal relations that exists in criminal proceedings, usually "overload" witnesses, attesting witnesses and victims of procedural obligations. Legal regulation of operational units and investigators activities in the detection and investigation of crime is not yet sufficiently provides complete and full use of all their available forces and means in their practice, so bringing to modern social demands of society of legislative and regulatory support of existing legal relations is essential and necessary [7].

Thus, in our opinion, it is appropriate to consider the development of existing legal relations from a position of respect for their fundamental principles, which have emerged in the theory of operational-search activities, namely: legality and respect the rights and freedoms of the man and the citizen and the principle of cooperation with the authorities and the public.

The search and fixing information on criminal activities of individuals or groups as a form of operational-search activities should be carried out continuously, regardless of the fact of the crime. It is through timely received and realized of such information, which in the theory of operational-search activities is operational, law enforcement bodies, in addition to effective aid in the detection and investigation of crimes, carry out their prevention.

**References:**

1. Law of Ukraine "On operational-search activities: scientific-practical comment / Ya. Yu. Kondratyev, I.P. Kozachenko, I.F. Obushevskyy. - K. : EPD of the MIA of Ukraine, 1993. - 120 p.
2. Criminal Procedural Code of Ukraine. The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine in connection with the adoption of the Criminal Procedural Code of Ukraine". - Kh. : Odysseus, 2012. -360 p.
3. Great Dictionary of Modern Ukrainian / [head. ed. V.T. Busel]. - K. ; Irpen : Perun, 2003. - 1440 p.
4. Constitution of Ukraine, adopted at the fifth session of the Verkhovna Rada of Ukraine June 28, 1996 - K. : Ukraine Press, 1997. - 80 p.; The Universal Declaration of Human Rights adopted December 10, 1948.
5. Knyazev V.A. To a question about the concept of tactical problems of investigation / V.A. Knyazev, A.D. Marushev // Reform of the political and legal system of Soviet society and the strengthening of the socialist rule of law: abstracts of the scientific-practical Conf. - Kharkov: Kharkov. law inst, 1990. - P. 127-129.
6. Maxim Tsutskiridze. The use of material of operational-search activities for investigation. Dis. ... c. l. s. 12.00.09. - Kyiv. 2010.
7. Obshalov S.V. Operational-search legal relations: beginning, development and end // Sciences Bulletin of the National Academy of Internal Affairs; № 1 (28) '2012. - Part 2. - P. 178-184.

