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Legal regulation of operational-search activities: comparative analysis

Əməliyyat-axtarış fəaliyyətinin hüquqi tənzimlənməsi: müqayisəli təhlil

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Abstract

The purpose of the article is to study the legal regulation of detective and investigative activities through the prism of the comparative aspect. To achieve this goal, the author used a number of scientific methods, in particular, the content analysis of professional literature made it possible to determine the positions of scholars on the problems existing in the legal regulation of operational and investigative activities. The results of the study show that in the former Soviet countries, until 1991, the problems of organisation of operational and investigative activities were not demonstrated to the public. Only with the beginning of democratisation of society did the regulation of detective and investigative activities become more public, and the relevant clearer legislative norms were established. It is important that the legal acts regulated the process of operational and investigative activities in accordance with the observance of citizens' rights. It is established that in world practice, the results of operational and investigative activities are introduced in accordance with a court decision. The author concludes that similar systems of interaction are used in many European countries which pay great attention to establishing cooperation between law enforcement agencies.

Keywords: operational-search activity, constitution, regulation, law enforcement agencies.


Annotasiya

Məqalənin məqsədi əməliyyat-axtarış fəaliyyətinin hüquqi tənzimlənməsini müqayisəli təhlil prizmasından öyrənməkdir. Bu məqsədə çatmaq üçün müəllif bir sıra elmi metodlardan istifadə etmişdir. Xüsusilə peşəkar ədəbiyyatın məzmununun təhlili əməliyyat-axtarış fəaliyyətinin hüquqi tənzimlənməsində mövcud olan problemlərə dair alimlərin mövqelərini müəyyən etməyə imkan vermişdir. Araşdırmanın nəticələri göstərir ki, keçmiş sovet ölkələrində 1991-ci ilə qədər əməliyyat-axtarış fəaliyyətinin təşkili problemləri ictimaiyyətə nümayiş etdirilmirdi.

Yalnız cəmiyyətin demokratikləşməsinin başlanması ilə əməliyyat-axtarış fəaliyyətinin tənzimlənməsi daha ictimai xarakter aldı, müvafiq qanunvericilik normaları təsbit olundu.

Qanunvericilik aktlarının əməliyyat-axtarış fəaliyyətini vətəndaşların hüquqlarına riayət olunmasına uyğun olaraq tənzimləməsi çox vacibdir. Müəyyən edilmişdir ki, əksər dünya ölkələrinin təcrübəsində əməliyyat-axtarış fəaliyyətinin nəticələri məhkəmənin qərarına əsasən cinayət prosesinə daxil edilir. Müəllif belə qənaətə gəlir ki, hüquq-mühafizə orqanları arasında əməkdaşlığın qurulmasına böyük diqqət yetirən bir çox Avropa ölkələrində oxşar qarşılıqlı fəaliyyət sistemlərindən istifadə olunur.

Açar sözlər: əməliyyat-axtarış fəaliyyəti, konstitusiya, tənzimləmə, hüquq-mühafizə orqanları.

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Introduction

Operational-search activity plays an important role in modern society, as it provides individuals and organizations with services in the field of security, investigation and information gathering. Given the current globalization conditions and the growing impact of cybercrime, this area is becoming increasingly important. This is especially noticeable in countries with high levels of economic and social interaction. At the same time, operational-search activity is also associated with risks of abuse, violation of human rights and non-compliance with ethical standards. This makes legal regulation of this area a necessary condition for ensuring its legitimacy and effectiveness.

A specific problem

Due to the increase in the number and types of potential offenses, the modern conduct of operational and investigative activities requires transformations, which should also include clear legislative restrictions. The point is that the sensitive area of investigators' work should not contradict the freedoms and rights of citizens, since their guilt is not proven, and interference with their privacy is an undesirable act that undermines confidence in the law enforcement system in general and in the state mechanisms for performing government functions (Shevchuk et al., 2022).

Despite the importance of operational-search work, approaches to its legal regulation differ significantly in different countries. In some states, it has well-defined frameworks, including licensing, government oversight, and codes of ethics. In other cases, the legal framework is fragmentary or non-existent. This fact creates space for legal gaps and violations. This situation raises questions about the effectiveness of existing regulatory models and the possibilities of their adaptation. Moreover, a clear delineation between criminal proceedings is problematic, which in practice prohibits procedural or operational internal affairs agencies from interfering with each other's professional activities. Legislation also regulates the forms of interaction between operational and procedural bodies. The issue of the forms of introduction of the results of operational and investigative activities into criminal proceedings is also debated at the legislative level. Given this, the issue is quite promising for research (Asgarova, 2022).

The purpose of the article is to analyse the legal regulation of operational and investigative activities through the prism of the comparative aspect. This goal is achieved by reviewing the current professional literature on this issue and studying the leading practices of operational and investigative activities. The main objectives of the study are as follows:

1. To conduct a comparative analysis of the legal regulation of operational-search activity in different countries, in particular, individual states of the post-Soviet space, the EU and the USA.
2. To identify the strengths and weaknesses of various approaches to the regulation of operational-search activities.
3. To propose recommendations for the purpose of improving the legal basis of operational-search activity.

Literature review

Conceptual foundations of investigative activities

Modern scientists have described in detail various aspects of law enforcement, security, operational measures against the background of legal analysis. In particular, S. Albul (2019) described the main intelligence functions of operational and search activities. This author characterized various aspects of the conceptualization and proceduralization of investigative activities. He also described the process of intelligence gathering and law enforcement activities. The conceptual principles of national security are described in the study by M. Chekhovska and others (2021). Moreover, the study by M. Chekhovska et al. (2021) addressed the broader conceptual principles of national security and linked them to investigative activities as part of a cohesive framework for safeguarding state interests.

Comparative perspectives on legal regulation

The comparative research of legal frameworks for investigative and operational measures is a growing area of interest. Daugirdas (2020) provided detailed information on operational measures in modern

international organizations. The author described various legal frameworks, implementation challenges and the impact of these measures on the sphere of management. E. Goodell Ugalde (2024) examined the issue of political invisibility in the modern world with a focus on the analysis of certain political and social aspects. Hajiyeve and Aismailov (2018) characterized the state of consulting services in Azerbaijan. Hurd (2024) described the main laws related to the operational activities of international organizations. The author also described the impact of these generally accepted norms on national legislation. Hurd (2024) builded on this by examining the influence of international norms on national legislation, with particular attention to how these norms regulate operational activities across jurisdictions. N. Khairova, D. Uzlov, S. Petrasova (2014) determined the features of the implementation of the method of identification and determination of the comparator for dynamic operative and investigative activity. On the other hand, V. Lysenko (2023) defined the problem of using the data obtained during operative-investigative activities for the purpose of gathering evidence.

Technological integration in modern law

Separately, the authors also described the technical aspects of using digital and computer technologies in modern systems in law enforcement agencies. At the same time, Y. Khyzhniak et al., (2021) described a model of operative search for criminals by the criminal police. It is especially valuable that the author described some important methods of data analysis for the purpose of preventing various crimes. T. Kravtsova and O. Yarmysh (2019) characterized the main principles of regulating the work of the bodies providing operational and investigative activities with the aim of ensuring national security.

Thus, modern literature examines various aspects that may be useful for understanding the specifics of the regulation of investigative activities through the prism of modern challenges in the fields of law enforcement and security. However, debates regarding certain practical and ethical issues are noticeable in the scientific literature. The debatable question of the existence of a balance between security and rights becomes noticeable. Although operational measures are important for security purposes, they often raise ethical and legal issues. Some authors point to the existence of problems regarding privacy and human rights. Others do not emphasize this. Also notable is the following debate in the scientific community: standardization versus flexibility. Modern authors offer separate mechanisms of standardization. However, others believe that their adaptation to specific national conditions remains difficult. Summarizing findings from comparative studies, national frameworks and technological advances, the review identifies gaps and potential areas for future research, particularly in harmonizing international norms with local practices and addressing ethical considerations in operational interventions. This task will solve this research and problematize effective operational-search strategies.

Methodology

First of all, it was collected certain regulatory documents that regulated the conduct of operational and investigative activities. In particular, we are talking about the relevant legal framework of European countries, the United States, and post-Soviet countries (Azerbaijan, Kazakhstan, and Ukraine). The search for relevant scientific literature was then launched. The key words for the search were the following definitions: operational and investigative activity, constitution, law, regulation, law enforcement agencies. The criteria for including scientific papers in the review were based on the following positions:

1. The scientific work reveals the essence of operational and investigative activities and its reception through the prism of international comparison.
2. The study describes various aspects of the use of operational and investigative activities.
3. The article describes the legislative aspects of the regulation of operational and investigative activities.
4. The evolution of the legislation of this concept is described.
5. The study has a significant scientific novelty, is modern and relevant in terms of taking into account changes to legislative acts.

Based on these criteria, 27 materials were selected. The material included laws.

Qualitative data analysis included content analysis of scientific literature and legislative framework. Content analysis is carried out systematically and step by step. the text is now pre-processed. This involved the segmentation of selected texts into blocks: articles, laws, book chapters. This was done for additional targeted analysis. After that, thematic coding was carried out. This involved developing a coding framework

based on previously identified categories. These categories related to the following aspects: country, sphere of regulation, methods of detective activity). After actually using open coding to discover new topics that weren't initially considered. These topics covered areas such as technology use, innovation and ethical issues, which ensured adaptation to new ideas. A comparative cross-jurisdictional analysis was also used. To determine the differences in the regulation of operational-search activities, a comparison method was used, which also allowed comparing the results with the works of other authoritative scientists.

Results

To permanently protect the rights of citizens from encroachments and violations, to identify and stop criminal acts and abuses, and to apply established sanctions to offenders and criminals, the state mechanism has created separate special bodies whose main mission is to ensure the law enforcement function. In order to solve problems with protection and development of interests of citizens and state bodies, a viable system of law enforcement agencies is needed, which should ensure both personal security of citizens and national security, function and evolve together with other state structures, carrying out law enforcement functions. The comprehensive nature of the general methods of guaranteeing the national security of the state, the difference in the means, forms and organisational instruments for implementing such measures stimulate the specific role of each instance of public administration to guarantee the interests of national security. In practice, this means that law enforcement agencies and public administration bodies with special competences carry out many tasks in the field of security (Eichensehr & Hwang, 2023). However, their activities are based on certain principles: the functioning of such administrative bodies is aimed primarily at ensuring the protection of key objects (we are talking about guaranteeing and protecting the freedom and rights of citizens, protecting material and spiritual values important for society, ensuring compliance with laws and the constitutional order, defending sovereignty and protecting the territorial unity of the country. The complex of measures implemented by public administration bodies in the field of national security includes special attention to the work of internal affairs bodies, whose activities, according to the law, are quite complex and extensive (Sanetra-Półgrabi, 2022). In fact, it is the internal affairs bodies that protect legislative norms and implement them in practice, which primarily involve: ensuring personal security, protecting civil rights and freedoms, ensuring and supporting the realisation of legitimate interests of citizens; establishing and maintaining order in public places; preventing offences, preventing criminal acts; ensuring public safety; countering all types of criminal encroachments on all forms of property of citizens; recording, detecting and solving crimes, searching for persons who have committed crimes.

In order to perform these functions directly, internal affairs agencies have a system of legal rights and administrative duties. The work of internal affairs agencies is carried out on the basis of practical application of legal acts – usually starting with the norms enshrined in constitutions and international agreements and ending with departmental acts of ministries, service instructions, etc. Taking into account the complex system of professional activities of law enforcement agencies during operational and investigative actions, the researchers conclude that the basis of the operational and investigative function is the ability to protect society from illegal encroachments, to detect, prevent and disclose facts of illegal activities using established methods, to conduct investigations and effectively present evidence of the guilt or innocence of suspects (Nabavi-Noori, 2021; Lavrov et al., 2022). All such functions are inextricably linked and create a complex set of activities of internal affairs agencies, which is regulated by relevant regulations and requires clear implementation in practice.

In Soviet times, the legal norms of operational and investigative activities were regulated primarily by closed departmental regulations and documents for official use. It was only after 1991 that a number of countries of the former USSR defined the term operational and investigative activity at the legislative level, defined the grounds for its conduct, defined tasks, guarantees of ensuring the rights of individuals, and established a clear list of rights of law enforcement officers in the course of operational and investigative activities. As a result of the marked democratisation of social processes, the nature and specifics of these actions have changed. Secrecy and secrecy have been replaced by more open procedures and their detailed description approved in laws.

In February 1992, the Law of Ukraine “On Operational and Investigative Activities” was adopted, which officially defined the concept of operational and investigative actions, described the basis for operational and investigative activities and related measures, set out the tasks, guarantees of protection of individual rights and freedoms, and provided a list of the use of the capabilities of the relevant law enforcement agencies authorised to carry out operational and investigative activities (Law of Ukraine No. 2135-XII,

1992). The Criminal Code of the Republic of Kazakhstan was adopted in July 2014. This law was the first legal act of Kazakhstan to regulate many aspects of specific operational and investigative activities, which had previously been conducted primarily in secret, in the open press (Criminal Code No. 226-V, 2014).

This fact is in line with the constitutional principles of building legal and democratic relations within the state. The law defines operational and investigative activities, exhaustively lists the administrative bodies authorised to carry them out, sets out the fundamental rights of citizens and investigators, and defines the implementation of legal and social protection measures, etc. The proposed law states that operational and investigative activities constitute a scientifically defined system of both public and non-public operational and investigative and organisational and managerial work.

Defining the importance of the relevant vector of work, the Law emphasises that the work of the relevant services is regulated by the legislation of the Republic of Kazakhstan, including the Constitution of the Republic of Kazakhstan. The definitions emphasise that the established reasonable limits of public and non-public actions of an operational and investigative nature are limited to the range of relevant regulatory documents and do not contradict the rights and freedoms of citizens. Similarly, the relevant law of the Republic of Azerbaijan of 1999 stipulates that operational and investigative activities are the performance by the relevant state authorities of public and non-public actions provided for in this law. Considering the legislative framework of operational and investigative activities in different countries, the researchers conclude that the main legal act regulating the guarantees of legality of actions related to operational and investigative activities is the Constitution, which further provides the basis for the adoption of subsequent regulatory legislative acts (Muzychuk et al., 2023).

In particular, in the United States, certain Amendments to the Bill of Rights set out a clear established procedure for organising searches and seizures of persons or their property. It is about ensuring that the right of people to protect their lives, homes, securities and other movable and immovable property from unreasonable searches and seizures is mandatory and should not be subject to harassment. Accordingly, search and seizure warrants will be issued on the basis of a decision by judges, who will control the sufficiency of the grounds. Such warrants, drawn up in accordance with the existing formulas, include sections requiring detailed descriptions of the place of search and the grounds for arresting persons or their property. Separate provisions regulate the rules of prosecution, trial and sentencing.

In particular, private property may not be seized without justification, nor may it be confiscated for public use without appropriate compensation. Thus, the fundamental law in America stipulates that no citizen shall be oppressed for being prosecuted for a felony or any other crime except by a jury verdict (Madiev et al., 2020). The Constitution also guarantees that no US citizen shall be compelled to testify against himself or herself in a criminal investigation. Similarly, it is impossible to deprive a person of property without a legitimate court decision (the same applies to the restriction of human rights).

Therefore, according to researchers, the US Constitution establishes only the main human rights, while the details are regulated by separate laws, regulations of departmental and interdepartmental institutions. Given the fact that there is a large number of law enforcement agencies in the United States, specific regulations have been introduced to establish cooperation between them, which guarantee compliance with the law in the course of operational and investigative activities (National archives, 1789). In particular, the FBI's powers are set out in several regulations that delineate the competence of federal investigators from that of local law enforcement. Similarly, the Instruction delineates the powers of the Central Bureau of Investigation, which is primarily engaged in investigative activities related to national security, countering foreign intelligence, etc. An important feature of the US system of operational and investigative activities is that the US law provides for confidential cooperation with citizens.

In some cases, the performance of criminal police officers may be assessed according to the quality of their informants. At the same time, such activities have strict legal restrictions and are defined at the legislative level. In particular, the FBI's job description regulates the specifics of contacts with informants, requiring that the following conditions be taken into account: the extent to which the informant's work may contravene constitutional guarantees of citizens' rights and whether it compromises the course of the investigation or subsequent evidentiary actions in court. It also regulates how reliable the informant's specific testimony is in terms of his or her knowledge and whether the FBI has the ability to directly influence him or her (Mikayilov, 2023). The selection of informants in the United States takes into account

not only the importance of the testimony obtained, but also various features of the informant's character and ability to penetrate the relevant criminal environment.

In addition, investigative activities may be carried out in accordance with the legislatively established informant privilege in a number of states: the informant may not appear in court on his own, and the testimony emanating from him is presented in court by an operative. He is interrogated as a witness and has the right not to disclose the source of his testimony. This rule is a significant exception to the legislative practice that the use of derivative evidence is inadmissible. An important source of law supporting operational and investigative activities is the decision of the US Federal Court. In particular, its rulings determine the admissibility of obtaining hearsay evidence. This means that it is possible to obtain hearsay evidence from persons who cooperate with the investigation, even from other people's words. A similar practice is also used in the Federal Republic of Germany.

The same situation exists in Azerbaijan (when it comes to establishing cooperation with informants. The Azerbaijani law requires working with persons who are willing to assist in operational-search activities and preserving their confidentiality. It is also possible to create entire fictitious units, enterprises or organisations in the form of legal entities and use them to provide anonymity to persons willing to cooperate with the investigation (Niyazov, 2022). Other post-Soviet republics also have such provisions. For example, in Ukraine, it is also allowed to use information from public and private, full-time and part-time employees, to cooperate with them confidentially, and to receive information from legal entities or individuals, free of charge or for a fee, about illegal actions that have been committed or are being prepared. Therefore, the practice of using informants in operational and investigative activities is becoming widespread.

In most European countries, the following actions are enshrined in the course of operational-search activities: organisation of internal surveillance, control over correspondence and other communications, wiretapping, monitoring of financial data, and the possibility of imitating a bribe or even giving a bribe (Makili-Aliyev, 2021). All of these actions are carried out in accordance with a court decision and are implemented before the next investigation as a result of such a court ruling.

However, researchers have repeatedly identified incidents in the use of this practice. In particular, the results of operational and investigative activities may become admissible evidence immediately from the beginning of investigative or other investigative actions during the investigation of a criminal case, and only later they may be submitted to the court, which will determine their place and importance in the case. In practice, it is difficult to perform the necessary procedural actions, and investigative bodies do not fully comply with them. Therefore, when the evidence obtained is brought to court, the court may be able to disregard it in the course of the criminal case, thus exonerating the accused from liability.

Discussion

The results of the study indicate that the implementation of operational and investigative activities requires more reliable legislative support, which is implemented in a number of regulations. A comparative analysis of existing experiences in Europe and the USA has shown that researchers of the peculiarities of the organisation of operational and investigative work often point to its exclusively or mainly covert nature, and, accordingly, remove from this process certain parts of public actions, which are primarily performed by employees of operational units to solve crimes. Other scholars hold the opposite view, considering the open activities of law enforcement officers to be an integral part of operational and investigative actions (Daugirdas, 2020). At the same time, they point to the importance of formalising the relevant actions at the regulatory level, which may even allow for direct coercion and even the inclusion of operational and combat activities (Daugirdas, 2020).

Undoubtedly, in any science that studies a particular branch of law, there is still a debate about the subject matter of legal regulation, but the differences in approaches to its definition are not so radical; there is a certain core for regulating social relations, which is the subject matter of regulation, on which most researchers in the field of science have reached a consensus.

In the case of the implementation of operational and investigative actions, one can see in the above examples diametrically opposite approaches, in which the scope of social relations subject to regulation differs significantly. Moreover, these contradictions exist not only in the views of scholars, but also in the current operational and investigative legislation. For example, it is often stated that it is impossible to

actually detain and personally search individuals, which makes it impossible to implement the available operational and investigative data. At the same time, legal scholarship has developed diametrically opposed approaches to the legal regulation of the procedure for conducting operational and investigative activities (Harfield & Harfield, 2018).

According to one of them, there is a need to abandon the establishment of an exhaustive list of measures, to allow other measures that are not reflected in the laws to be carried out by regulation, limiting only the limits of their implementation by prohibitive norms (Niyazov & Niyazova, 2021). Another approach is to regulate in detail the scope and procedure for conducting operational and investigative activities and exercising other rights of operational and investigative agencies (Mirzazada, 2014).

At the same time, the results of the study confirm the fact that the regulation of operational and investigative activities is rather noticeable evidence of the democratisation of legislation which began in Eastern Europe at the end of the twentieth century. The results also confirm the views of scholars that the foundations of operational and investigative activities are laid down in the constitutions of states (fundamental laws) and are further regulated by legislative norms (Nazarenko et al., 2023).

The studies identified both common features and differences in the organization of search operations. First of all, it was noted that all measures. Which the police or other law enforcement agencies have the right to carry out, regulated by the relevant laws, take into account the principles of observance of human rights, do not contradict them. Conducting operational measures requires a court sanction. Obtaining such permission minimizes the risk of abuse by operational-search bodies, protects the rights of individuals to privacy, inviolability of housing and protection of personal information. Changes to the relevant legislative framework are made taking into account the opinion of special committees that control the work of law enforcement agencies. At the same time, it is also worth agreeing with the researchers' opinion that there are significant differences in the European systems of law enforcement and the organization of investigative activities. We are talking, in particular, about the detailing of laws (Asgarova, 2022). For example, in Germany and Great Britain, the legislative framework that regulates the conduct of investigative activities is much better detailed than in the countries of Central and Eastern Europe, the former post-Soviet states. The issue of transparency in decision-making, accountability, and the organization of the investigative process is also being updated (Madiiev et al., 2020). Therefore, the legal regulation of operational-search activities under such circumstances is aimed at finding a certain balance between the effective actions of law enforcement officers and the observance of human rights. Undoubtedly, Western European legal mechanisms have a longer tradition, which determines their deep detailing. Such conclusions should be taken into account during subsequent works on this topic.

The proposed study has certain limitations, which are primarily related to the sample of English-language literature. An appropriate search for relevant research in national languages will allow to improve the data obtained, to highlight the conduct of operational and investigative activities from other perspectives, and to add additional data to the interpretation and analysis of the problems associated with this process.

Conclusions

A comparative analysis of the legal regulation of operational and investigative activities has shown that the approach to this issue is quite heterogeneous. In particular, in the post-Soviet countries, this issue entered the public sphere after 1991, when many of the old instruments of the totalitarian system were abolished. The regulation of operational and investigative activities became more public, received justification in the form of legislative norms, clear definitions and rules of conduct. In particular, guarantees for the observance of citizens' rights were provided by national constitutions, within which there are separate legislative acts that define the scope of regulation of operational and investigative activities. Undoubtedly, in the world practice, such activities have a more solid legislative tradition. For example, the United States allows for the participation of informants in operational activities, while in post-Soviet countries such norms have been enshrined relatively recently.

This research contributes to original insights into the fields of law and criminology and provides a comparative analysis of the legal regulation of operational-search activities in different jurisdictions. Originality lies in several key aspects. First of all, the work provided a detailed analysis of how operational-search activities have moved from opaque practices under totalitarian regimes, especially in post-Soviet states, to regulated and transparent systems. This historical perspective contextualizes current

regulatory frameworks and highlights their evolution, which has been underexplored in the existing literature.

A promising area for further research could be an analysis of the debate on the legitimacy of the use of covert methods by law enforcement agencies, as well as the relationship between public and covert actions. This will require additional justification in the legislation.

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