

On the Application of Public Search Measures to Detect and Obtain Information

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Summary

The article considers the state of legislation that regulates the use of public methods of obtaining information by authorized state bodies. The correlation of public investigative (search) actions with operative-search measures as concepts denoting the application of public methods of obtaining information has been studied. In addition, it argues the need for more detailed delineation and legislative regulation of public investigative (search) actions and operational and investigative measures at the legislative and departmental levels. The purpose of the article is to analyze certain provisions of the Law of Ukraine "On operational and investigative activities" to identify inconsistencies in the content of the text of the law in order to correct and prevent ambiguity in the theory and practice of law enforcement.

Key words: *operative-search activity, operative-search measures, public procedural activity, information.*

1. Introduction

Without further ado in scientific research to determine the basic theoretical concepts of operational and investigative activities [1], we will begin an applied analysis of some provisions of the Law of Ukraine "On operational and investigative activities" [3]. This Law regulates specific state socially useful activities aimed at combating crime. Given that Article 3 of the Law declares regulations that constitute the legal basis of operational and investigative activities, Article 4 of the Law should indicate only the special principles of operational and investigative activities, including conspiracy, confidentiality, purposefulness, offensiveness, combination of vowels. and

covert measures to combat crime, as constitutional and general principles are enshrined in the content listed in Art. 3 of the Law of legislative and by-laws, which are the legal basis of operational and investigative activities. Special principles of operative-search activity are declared in the departmental Instruction [3], where, in addition to the constitutional and general principles mentioned in the Law, the principles of conspiracy, aggression, completeness and objectivity of the investigation of the circumstances of the event, interaction with the authorities and the population are indicated. But the mentioned document is classified, and, accordingly, citizens do not have the opportunity to get acquainted with it without proper admission and access to information that contains a state secret. We are convinced that the principles of operational and investigative activities should be in the public domain, prescribed in the text of Art. 4 of the Law, and their competent interpretation can solve a lot of conflict situations in which employees of operational units find themselves while performing tasks of operational and investigative activities [2].

The issue of operational and investigative measures was studied by domestic and foreign scientists, in particular K.K. Goryainov, Yu.F. Kvasha, K.V. Surkov, O.Y., Osipkin, V.S., Ovchinsky, M.A. Pogoretsky and many others. We performed a critical analysis of existing approaches with regard to operational and investigative measures, testified to the lack of unity of views on this issue and necessitated further study of this problem.

2. Theoretical Consideration

Any public search activity in combination with covert methods of work of operative divisions on revealing of the information of illegal character can be carried to operatively-search activity according to definition of concept of operatively-search activity.

Based on the analysis of the rights of units that carry out operational and investigative activities under Art. 8 of the Law "On operational and investigative activities", we have identified public measures of search activities, namely:

- interviewing people with their consent, using their voluntary assistance (direct search for media);
- violation in the manner prescribed by law of the inspection of financial and economic activities of enterprises, institutions, organizations, regardless of ownership and persons engaged in entrepreneurial activities or other economic activities individually, and participation in their conduct (direct search for signs of illegal activity);
- acquaintance with the documents and the data characterizing activity of the enterprises, establishments and the organizations, with the right to study them, to make copies from such documents (direct search both sources of the information, and signs of illegal activity);
- visiting residential and other premises with the consent of their owners or residents to clarify the circumstances of the impending crime, as well as collecting information about the illegal activities of persons inspected (direct search for both sources of information and signs of illegal activities);
- receiving from legal or natural persons free of charge or for remuneration information about crimes that are being prepared or committed, and about the threat to the security of society and the state (direct search for both sources of information and signs of illegal activity);
- use with the consent of the administration of office space, vehicles and other property of enterprises, institutions, organizations, as well as with the consent of persons - housing, other premises, vehicles and property belonging to them (can be used as a means of identifying persons prone to illegal activities, creating various, for example, traps or other conditions for the implementation of criminal intent);
- creation and application of automated information systems (for the accumulation and analysis of information in order to identify the subjects of illegal activities);
- appeals within the limits of their powers with inquiries to law enforcement agencies of other states and international law enforcement organizations (obtaining non-obvious information).

Depending on the publicity of operational and investigative measures can be classified into public investigative measures (interviews with their consent) (Article 8, paragraph 1), violation in the manner prescribed by law of inspections of financial and economic activities of enterprises, institutions, organizations (Article 8, item 3), demand, collection and studying of the documents and the data characterizing activity of the enterprises, establishments, the organizations, and also a way of life of the individuals suspected of preparation or commission of a crime, a source and the sizes of their incomes (item 8,

item 4), visiting residential and other premises with the consent of their owners or residents to clarify the circumstances of the crime committed or being prepared, as well as collecting information about the illegal activities of suspects or persons under inspection (Article 8, item 6) and covert operative-search measures (covert intrusion into the dwelling or other property of a person, removal of information from communication channels, control over correspondence, telephone their conversations, telegraph and other correspondence, the use of other means of obtaining information, etc.). Some of them can be both public and private (for example, surveys, visits to residential and other premises with the consent of their owners or occupants to find out the circumstances of the crime committed or being prepared, as well as gathering information about the illegal activities of suspects or persons subject to inspection, etc.).

Given the requirements for documenting and using the results of operational and investigative measures in criminal proceedings, operational and investigative measures can be classified into those that can be used only for information and tactical purposes in criminal proceedings, and those that under certain conditions, in accordance with the requirements of Criminal -procedural codec, can be used to obtain factual data that can be evidence in a criminal case.

Public measures are more common both in the operational and investigative activities, and in the practice of combating crime to identify and record factual data on offenses, sources of evidence, search for persons who evade legal liability, including criminal. The criminal procedure legislation and the Law of Ukraine "On operational search activities" define the grounds for such measures. Thus, part 5 of Art. 97 of the Code of Criminal Procedure of Ukraine states that "a statement or notification of a crime before the initiation of a criminal case may be verified by conducting operational search activities." At the same time in Art. 103 of the Code of Criminal Procedure of Ukraine states that the bodies of inquiry are responsible for the application of the necessary operational and investigative measures in order to identify signs of a crime and the perpetrators [4].

Public measures may include: acceptance by the operative unit of statements on the commission of offenses and complaints and their verification, participation in the inspection of the scene, obtaining explanations on specific facts, illegal acts and persons who committed them, taking the necessary measures to stop and prevent crimes and administrative offenses. The specifics of the work of operational units of law enforcement agencies are associated with public visits to enterprises, organizations and institutions, conducting interviews, during which explanations are obtained, documents describing financial, economic and other activities are studied, residential and other premises may be visited with the consent of their

owners. technical means that do not require a special permit.

However, conducting public investigative measures may have an implicit purpose. For example, when accepting a report of a crime, the operative, using various tactics, can obtain the necessary information without the consent of the applicant. Operational staff are involved in various public inspections, such as audits, inventories, and the study of documents and objects, and these activities can be encrypted. An employee may act as another official using cover documents [5].

We emphasize once again that the listed public measures of search activity are conditioned by the rights of the operative subdivision as a subject of operative-search activity. And if so the unit does not currently carry out operational and investigative activities in a particular case, which are the legal grounds for the application of these measures, because the law is not the basis, but the presence of the basis determines the emergence of the right. In addition, Article 7 of the Law clearly defines the duty of units engaged in operational and investigative activities, the obligation to take measures to prevent, timely detect and stop crimes and expose the causes and conditions that contribute to the commission of crimes, as well as to prevent crime. It is clear and logical that in order to find, it is necessary to search, and latent crime, unfortunately, does not indicate to us the place where to search [6]. Therefore, the so-called measures for testing or general prevention include the array of possible sources and media that can cover the operational unit. Of course, the application of these measures should not be total in nature, accompanied by violation or unjustified restriction of the rights of citizens, unjustified interference in the economic processes of enterprises, administrative activities of institutions and organizations, and so on. On the other hand, observing the attitude of society to law enforcement agencies, one should expect resistance, but if a person or business entity is "clean before the law", accordingly they have nothing to fear, in addition, citizens have a duty to assist law enforcement agencies in fulfilling their responsibilities. their functions, which is directly spelled out in Article 11 of the Law. Unfortunately, today the society remembers well the responsibilities of law enforcement agencies, at the same time not all citizens remember and know about their responsibilities to the same society and law enforcement agencies in particular. The analysis of normative-legal support of operative-search activity of the National Police allows us to state that realization of tasks of operative-search activity, in fact, occurs by application of operative search measures (secret work) and operative-investigative measures with use of operative and operative-technical means. In contrast to operative-search measures, the application of which is carried out only on the established operative-search cases, in order to perform the tasks of operative-search activity

the operative subdivisions of the National Police can carry out operative search. In the theory of operational and investigative activities and departmental regulations, operational search is understood as a set of measures that do not violate the rights and freedoms of citizens, carried out by the operational unit to detect, prevent and stop crimes, prevent illegal activities [7]. The search activity of operative subdivisions is partially regulated by departmental normative legal acts with the seal of secrecy. They also defined the list and content of search activities. The text of the Law does not mention operative search at all, which, by the way, is one of the forms of operative-search activity, and even more so the text of the Law does not prescribe specific measures for its implementation in order to perform operative-search activity tasks. If operational development, as a form of operational and investigative activities carried out after the opening of operational and investigative cases through the use of operational and investigative measures and is covert (secret) in nature, the Law defines the place, the concept, content and measures of operational search have a public (open) nature, such a place was not found [8]. And this, in our opinion, leads to conflict situations between citizens and operational units, such as: "What are you doing here, why are you interested in us, this is political persecution ?!". In addition, if the operational development is to establish, accumulate, record factual data on the actions of persons in respect of whom there is data on participation in illegal activities, the main task of operational search is the process of direct or indirect detection, finding data on such person's participation in illegal activities, and therefore the measures and content of such activities must be clearly determined by the provisions of the Law "On operational and investigative activities" [9].

Conclusions

The Law "On operational and investigative activities" must: a) clearly state the special principles of operational and investigative activities, namely: conspiracy, confidentiality, purposefulness, aggression, a combination of overt and covert measures to combat crime - due to the need to perform its tasks to society in the field of crime control; b) clearly define the concept and content of operational and investigative measures; c) prescribe separately public measures of search activity which can be applied by employees of operative divisions of subjects of operatively-search activity for the purpose of performance of the same tasks of operatively-search activity as in the absolute majority of results of operative search become the bases for the beginning operational development for operational and investigative cases.

Summarizing the above, it should be noted that criminological support of operational and investigative

activities is a comprehensive use of criminological tools to improve the implementation of operational and investigative activities. Criminological tools can be used in the field of information and analytical support, given the possibility of obtaining, summarizing and using new additional information about crimes and those who committed them, which will be used in the future to detect, detect and prevent crimes.

The list of criminological tools that can be used to improve operational and investigative activities, first of all, should include: criminological characteristics; criminological portrait of the criminal; victimological characteristics, when the collection of information about the offender is carried out in the direction of "from the victim"; criminological forecasting, based on the results of which it is expedient to decide on the possibility of placing a person on the operational and preventive register, etc.

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