

Operational-search component of public relations in combating crime

Оперативно-пошукова складова громадських відносин у боротьбі зі злочинністю

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Key words:

legal relations, inquiry agencies, investigator, causes, consequences, execution, use, criminal proceedings.

Ключові слова:

правові відносини, органи дізнання, слідчий, причини, наслідки, виконання, використання, кримінальне провадження.

Formulation of the problem. The scientists have widely considered the issue of the existence and development of relations in the operational-search and criminal procedural spheres of criminal proceedings. The need for their effective use in the inquiry, investigation requires further legislative and organizational regulation.

The purpose of the article is to examine problems and prospects of development and the existence of extent of legal relations arising in activities of operational units in the holding of criminal proceedings.

Analysis of publications where there is a solution of this problem. The problems on the emergence and existence of legal relations in criminal proceedings have been considered by foreign and domestic authors: A.I. Alekseyev K.V. Antonov, A.F. Voznyy, E.O. Didorenko, V.V. Ivanov, I.P. Kozachenko, Ye.D. Lukyanchikov, D.Yo. Nykyforchuk, M.A. Pohoretsky, I.I. Prypolov, V.G. Samoylov, I.V. Servetsky, M.Ye. Shumylo, and other scholars.

Basic content. The problem of legal relations for decades has attracted the scholars' and practitioners' attention, and is a rod for any branch of legal science, including operational-search activities and criminal procedure. Regarding the fact that this issue is the subject of separate scientific studies we must focus only on those aspects that need to be disclosed to research problems using operational-search materials in criminal proceedings.

In the general theory of law legal relations are defined as specific social volitional relations arising from the relevant law rules, whose participants are interconnected with subjective rights and legal responsibilities, provided by the state. Based on that relationship is a combination of actual social relations and legal rules they distinguish their legal content as recorded in the rules of law subjective rights and legal duties of their participants and the actual content – really executed actions by participants of legal relations aimed to implement their subjective rights and legal obligations¹.

In the modern theory of operational-search activities the issue of legal relations is the least studied, which affects the determination of the legal status of operational-search activities actors, their interaction with each other as well as in relations with criminal procedure actors in the course of execution by operational units investigator's orders, prosecutor's of instructions on holding operational-search measures, making other procedural decisions for receiving factual data that could be evidence in a criminal case, while ensuring the legality of their use in criminal proceedings by means of prosecutorial supervision and judicial control. The main reason of that is this specific, mostly secret field of activities before the adoption of legislation on operational-search activity in the early 90s in the CIS and Baltic states was regulated exclusively by covered departmental regulations, which significantly complicated and sometimes made impossible scientific elaboration of its multifaceted aspects².

It should also be noted of the existing latency of criminal activity and certain types of crimes, in which the legal rations between the parties of the criminal proceedings take changes, and pass into another plane or even cease.

¹ General theory of law / [ed. V. Kopeychukov]. – K., 1997. – P. 190–191.

² Pohoretsky M.A. Functional operational activities in criminal proceedings : [monograph.]. – Kh. : Aris, Ltd., 2007. – P. 240.

The success of combating crime depends on the effectiveness of applied operational-search measures and conducted investigational actions. Their combination with each other is the need of daily interaction of the investigator with operational officer. This operational-search measures and investigative actions must be carried out at a predetermined tactical focus, because it is under these conditions they can achieve better results in the detection and investigation of crimes.

For a better understanding and convenience of the study of existing social legal relations, regulating or somehow related criminal proceedings, we consider it appropriate to differentiate them in the following fields: political, international, civil, labor, business, administrative, disciplinary, tax, operational-search, criminal-legal, criminal procedural, criminal-executive and others. All of them, depending on the type, and severity of crime can occur and in some way be developed in the implementation of criminal proceeding by relevant actors. But the last five, in our opinion, are the most characteristic for criminal proceedings in our country. Therefore, namely to them, to the matter of their origin, limits of existence and interdependence and development the attention will be paid in this article.

Normatively all measures and actions of officers of the inquiry agencies, investigators, prosecutors, courts and penitentiary have been regulated with the fundamental law of Ukraine – the Constitution, laws, codes of Ukraine and interdepartmental 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 justice, which are common, each of these sectors have to perform some of their tasks stipulated by law only for them. For example, we can specify 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 finding and fixing factual data of individuals' and groups' wrongful acts, responsibility for which is stipulated in the Criminal Code of Ukraine, reconnaissance and subversive activities of special services of foreign states and organizations to stop offences and in the interests of criminal justice, as well as the obtaining information in the interests of security of citizens, society and state³.

That is, except for tasks to ensure the criminal proceedings the entities of operational-search activities should carry out their activities in order to obtain relevant information, the 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 justice system, in some cases go beyond the existing criminal proceedings which today begins with a criminal case. Finding and fixing information on individual's or group's criminal activities as a form of operational-search activities should be carried out continuously regardless 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 agencies, in addition to effective aid in the detection and investigation of crimes carry and their prevention.

Performing these tasks by operational-search units officers makes limits of the existence of operational-search relations broader than criminal-legal, criminal procedural and criminal-executive because the former can exist both independently and accompany or provide the last three. We offer to consider our declared statement in more detail and significantly. For this we consider the situation of obtaining by operational unit officer of information about a person who has expressed intention to commit a grave crime resonance in the presence of another person who secretly brought this information to operational officer. To better understand in this situation of existence of legal relations that we have considered, we offer to divide them into stages, namely:

1. Statement by a person of intent to commit the crime;
2. Preparation of a person to commit the crime (looking for accomplices, instrument of the crime, drawing up plans, schemes, etc.);
3. The detention in the act of the person trying to commit a crime or committed it. The beginning of criminal proceedings;
4. Holding pre-trial investigation;
5. Execution of all stages of the trial of the criminal case;
6. Serving sentence;
7. The end of the sentence, removal of convictions of persons for the crime.

³ The 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.

In the first stage there is no criminal-legal (criminal intents are not punished with the Criminal Code), criminal-procedural, and criminal-executive relations. At the same time, according to the Law of Ukraine "On operational-search activities" departmental regulations, agreed with the Ministry of Justice of Ukraine, operational units of law-enforcement bodies begin work to verify the received information. They conducted search operations, and accordingly there are operational-search legal relations.

The second phase includes a limited possibility of use of criminal law and criminal procedure rules, and the lack of actual existence of legal relations of other specified areas of law. At the same time, there is an active work of operational units of documenting entity's criminal activity.

The third phase is fully opened criminal-legal and criminal procedural legal relations. There is operational-search support of criminal case and conducting of immediate investigational actions.

The fourth stage involves the operational-search support to the investigational actions in the pre-trial proceedings, where there are all legal relations that we consider, except criminal executive ones (i. e. the person serving the sentence and other relations arising after the verdict).

At the fifth stage there is the operational-search support of all investigative stages of criminal proceedings in which criminal procedural relations dominant, but there are fully criminal-legal and operational-search ones.

At the sixth stage criminal-procedural relations ceased to exist, and the criminal-executive actually regulate all vital functions of the sentenced person. But operational-search work with a person in penitentiary institutions continues and respective legal relations continue to exist, gaining only a specific form.

In the seventh step, according to the existing legislation, all above mentioned legal relations stop. But today, in the practice of law enforcement agencies, in carrying out tasks for the implementation of appropriate and efficient criminal proceedings, there is a different situation. With the commitment of a new crime on the served territory – committed by the same or a similar way to what has been committed by a person who has passed all seven stages we offer he/she comes again under suspicion and respect his/her continue to operate certain operational-search relationship. Operational units officers are actively using operational-search, operational-preventive and operational background counts regarding persons reasonably suspected of committing a crime or fall under the category of persons who are operational interest. In this respect the legal consequences they can not develop further – the criminal-legal, criminal-procedural or criminal-executive, and remain, if not confirm the likelihood of committing a crime by him/her, initially.

As a result of our research (interviewed a significant number of participants of criminal proceedings, including former prisoners who have already served their sentences and again were checked by operational departments on the subject, is not committed new similar offenses by them) 87% of respondents fully accept that the former criminals are checked by police during disclosure and investigation of these crimes. Obviously this is due to some compliance of morals rules of society and existing subsequent operational-search relations, based on "common sense" and perform socially useful function of prevention, detection and investigation of crimes.

Practice of law enforcement agencies shows that successful prevention and detection of crimes can be achieved by any operational unit of the Interior, but subject to certain regulated in the legal requirements. These requirements should be as follows: timely receipt of information about the facts and circumstances of crimes they commit; its professional, in a clearly defined period of inspection; use in detection of crimes of professionally trained staff directly involved in the combating crime; full use of legislative and regulatory fixed capacities of operational-search activities and investigations.

Conclusion. The list of these conditions is important and requires, in our view, additional disclosures, review and regulatory regulation. The information about the event the crime is received by law-enforcement bodies from different sources. In most cases, it is received as citizens' applications, 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, do 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, victims of procedural obligations. The 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 legislative and regulatory support of existing legal relations is essential and necessary.

Summary

The author has considered the existence and development of legal relations arising in activities of operational officers on prevention, detection and investigation of crimes. There is the author's vision of legal reasons and effects of the criminal proceedings and prosecution of persons reasonably suspected in criminal activity.

Анотація

Автор розглянув існування та розвиток правових відносин, що з'являються під час діяльності оперативних працівників щодо попередження, виявлення та розслідування злочинів. Надано авторське бачення правових причин і наслідків кримінальних проваджень та судового переслідування осіб, обґрунтовано підозрюваних у кримінальній діяльності.

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