

SOME ASPECTS OF THE LEGAL REGULATION OF THE CONDUCT OF OPERATIONAL-SEARCH MEASURES BY THE INTERNAL AFFAIRS BODIES

Rakhimkhujaev Rustam Nishonkhujaevich,

Senior Lecturer of the Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan
e-mail: raximxo'jayevr@mail.ru

To Cite this Article

Rakhimkhujaev Rustam Nishonkhujaevich," SOME ASPECTS OF THE LEGAL REGULATION OF THE CONDUCT OF OPERATIONAL-SEARCH MEASURES BY THE INTERNAL AFFAIRS BODIES" *Musik In Bayern, Vol. 88, Issue 10, OCT 2023, pp01-07*

Article Info

Received: 11-09-2023

Revised: 20-09-2023

Accepted: 01-10-2023

Published: 10-10-2023

ANNOTATION:

The article deals with the actual problems of legal regulation of the conduct of operational-search measures by the internal affairs bodies. The author proposes to make amendments and additions to article 15 of the Law «On the operational-search activity» related to the basics of conducting operational-search activities. The article examines the current problems of legal regulation of the conduct of operational-search activities by the internal affairs bodies, in particular, the grounds in the Law «On operational-search activities» state that in the practice of operational-search activities, the possibility of performing the task of detecting crimes is somewhat limited. The author calls Article 15 of the Law «On Operational-Search Activity» «the reasons and grounds for conducting operational-search measures», in the text it is necessary to separately indicate the «reasons» and «grounds». Also in the first part, he proposed to introduce a clause «on the need to identify hidden (latent) crimes that are planned, prepared and committed».

Keywords: operational-search measures, grounds for conducting, reasons, foundations, legal reasons, and intelligence search.

In today's era of globalization, new threats and dangers are emerging, methods and means of committing crimes, goals are changing. With this in mind, in recent years, large-scale work has been carried out in our country to prevent crimes prematurely, to expose them, as well as to improve the system of more effective combating crime [1].

In particular, a number of measures are being taken on the issue of legal regulation of the conduct of operational-search measures by the operational units of the internal affairs bodies. "As a result of the measures taken, confidence in justice and the rule of law is emerging in our citizens. But no one has the right to indulge in peace, there is still a lot of work to be done before US" [2]. In this sense, it can be said that along with the achievements, there are still important issues that are waiting for their solution to increase the efficiency of conducting operational-search activities by the operational units of the internal affairs bodies.

President Of The Republic Of Uzbekistan Shavkat Mirziyoev Said "...when talking about the completeness of the laws, their viability and the fact that they have direct mechanisms of

implementation, it is necessary to emphasize that we still have a lot to do in this regard" [3, p.106], which, in fact, are certain gaps in the laws governing the operational-search activities, which can adversely affect legal regulation. That is why a number of laws are being passed with the aim of filling in the gaps in legislation and Legal Regulation.

In particular, we can cite as an example the law "on operational-search activities", adopted in order to legally regulate the observance of the rights and freedoms of citizens when conducting operational-search activities. This law not only serves as a legal guarantee of the implementation of relevant activities in solving the issues of operational-search activities, but also shows that this activity is of great importance in preventing crimes, identifying and exposing them.

Until the adoption of this law, the "operational-search activities" carried out by the internal affairs bodies are subject to departmental regulatory legal acts (orders, instructions, manuals) [4, p.25] regulated on the basis of [5, p.552], and only certain general provisions for the implementation of operational-search measures were prescribed by the Criminal-Procedural Code [6, S.35-38]. The law allowed citizens for the first time to get acquainted with the types of operational-search activities, the basics and conditions of their conduct, including those that limit their rights.

While the law "on operational-search activity" states that operational-search activity is a type of activity carried out by conducting operational-search activities, scientists have argued that the Institute of operational-search activities is the mechanism for the implementation of operational-search legislation and forms the core, that is, the main part of the law [7, p.25]. The regulatory norms of the law (Articles 3, 15-16, etc.) and the analysis of the opinions of scientists allow us to draw conclusions about the fact that conducting operational-search activities is important and forms the core of operational-search activities.

The legal regulation of the conduct of operational-search activities by the internal affairs bodies refers to the regulation by legislation, the word "legislation" is the sum of legal norms governing Social Relations [8] or the sum of regulatory legal acts regulating a certain sphere in force in a particular State [9], and "regulation" is derived from the term "regulation" to bring something into an orderly state [10, p.66].

From this, we can understand that the legislative regulation of the conduct of operational-search activities by the internal affairs bodies means the sum of regulatory legal acts that embody the norms governing Social Relations associated with this activity.

Through the analysis of the above, the legislative regulation of the conduct of operational-search activities by the internal affairs bodies can be described as follows: legislative regulation of operational-search activities – consists in the sum of international treaties, laws, legislation and departmental regulatory legal acts covering the norms governing legal relations arising in this area.

Although the conduct of operational-search activities by the operational units of the internal affairs bodies has a special place in operational-search activities, the current procedure for conducting events does not allow the full implementation of the tasks specified in the law.

The main tasks of operational-search activities are as follows:

ensuring the protection of human rights, freedoms and legitimate interests, property of legal entities and individuals, the security of the individual, society and the state;

prevention of crimes, their detection, elimination and exposure, as well as identification and finding of persons involved in the preparation and commission of crimes;

to carry out the search for persons who are hiding from investigating authorities and the court, evading criminal punishment, missing persons and other persons in cases provided for by law, as well as the identification of unrecognized corpses;

collect information about individuals, phenomena, actions (inaction) that threaten the security of the individual, society and the state.

In the law "on operational-search activities" there are the following problems associated with the conduct of operational-search activities.

First, section 15 of the act, entitled "grounds for conducting operational-reconnaissance activities", also provides "reasons" for conducting operational-reconnaissance activities.

Secondly, the basics of conducting operational-search activities established in this article limit the possibility of operational units of internal affairs bodies to perform such tasks as the detection of crimes in Operational-Search practice for some time.

In Section 15 of the act, we see in the following that the "reasons" for conducting operational-search activities are given as "grounds". The basics of conducting operational-search activities, which are presented in the first part of this article, covered seven cases. In particular:

- the presence of a criminal case;
- inquiry, written assignment of investigative bodies, instruction and assignment of the prosecutor;
- if there are not enough grounds for initiating a criminal case, information that has become clear to the authorities carrying out operational-search activities about the symptoms of the preparation of crimes, as well as about persons involved in the preparation or commission of crimes;
- the presence of information about individuals, phenomena, actions (inaction) that threaten the security of the individual, society and the state;
- inquiry into the authorities carrying out operational-search activities, information that has become clear about persons hiding from the investigating authorities and the court, evading criminal punishment, missing persons and other persons in cases provided for by law, as well as about unrecognized corpses found;
- Surveys of the Republic of Uzbekistan on the basis of international agreements on cooperation in the field of combating crime and providing legal assistance;
- surveys of other bodies that carry out operational-search activities.

These "bases" are classified into two types in the theory of operational-search activity, such as valid (valid) bases and legal (official) reasons [11, p.101]. The current (real) grounds mean that there is information about any criminal phenomenon in the operational units of the internal affairs bodies that requires conducting operational-search activities. And legal (official) grounds refer to official documents that came to the internal affairs bodies about criminal incidents.

To the criminal process (322-m of jpk.) note that the distinction between "reasons" and "grounds" is clearly defined. In particular, to initiate a criminal case:

- applications of persons;
- messages from enterprises, institutions, organizations, public associations and officials;
- media reports;
- direct identification of information and traces indicating the commission of the crime by the Inquirer, investigator, prosecutor, as well as the body that carries out the pre-investigation examination;
- it is established that *arz* is the reason for taking the blame, and information indicating the presence of signs of a crime is the basis for initiating a criminal case.

These analyses mean that we need to include the word "reasons" in the naming of this article, dividing the grounds for conducting the operational-search measures given in the first part of Article 15 of the law into two groups, "reasons" and "grounds". The first group – officially identified reasons, i.e. the grounds specified in Article 15, paragraph 1-2, 4-7 of the law, and the second group-the actual basis in Article 15, Part 1, Paragraph 3, i.e. the most common basis for conducting operational-search activities-"if there are not enough grounds for initiating a criminal case, the bodies carrying out operational-search activities should be included. The analysis of this "basis" allows us to draw conclusions as follows.

In order for operational employees of the internal affairs bodies to have the right to conduct operational-search activities, they must first obtain information (information) about illegal behavior. Obtaining information can be direct (for example, an instant employee receives information in the process of face-to-face communication with a person) and indirect (for example, written applications, mail received messages, etc.). The information that makes up the content of the basis under consideration can be in a procedural form (e.g., a criminal application, an explanatory note, an interrogation statement, etc.) or in a non-procedural form (e.g., messages received in Express Ways).

But at this point, a natural question arises, what should the operational units of the internal affairs bodies do if there are no applications, messages and other information of victims about the crimes being planned, prepared and committed, that is, the grounds specified in the law? In such cases, from the point of view of legality, the operational staff of the internal affairs bodies does not take on the obligations to identify and (or) prevent crimes. They also do not have the right to conduct operational-search events. If there are criminal acts, you can object, saying that there will be information about them. Unfortunately, this opinion is not always true. There is a category of latent crimes, described in detail in the criminological literature, not officially taken into account for certain reasons, hidden from competent state bodies [13, p.64-65].

This characteristic in particular is characteristic of crimes of corrupt and economic orientation, such as bribery and giving. These crimes have a concealment nature. The parties are interested in the final results of illegal behavior and their secrecy. The absence of a petition or a notice (information) of illegal behavior that a bribe is required means the emergence of a fast-search legal relationship and the absence of the possibility of carrying out fast-search actions. Because, in the operational staff of the internal affairs bodies, there is no basis for conducting operational-search activities.

In particular, we can see that the basics of conducting operational-search activities established in Article 15 of the law somewhat limit the possibility of such tasks as the detection of crimes by internal affairs bodies in Operational-Search practice, when the norms in existing legislation are causing a decrease in the intelligence-search nature of operational-search activities.

In particular, this article is intended for operational units of the internal affairs bodies:

- a) cannot be the basis for conducting intelligence-seeking work for the purpose of identifying the symptoms of a crime;
- b) does not make it possible to obtain information about the crimes being prepared;
- C) does not create conditions for conducting operational-search activities for preventive purposes.

We need to have an idea of this activity in order to connect the foundations under consideration with the essence of the intelligence search of operational-search activities. The tasks of operational-search activities by operational units of the internal affairs bodies are carried out by conducting operational-search activities. Depending on their development time, type, and goal orientation, quick-search events form the stages of the quick-search process. In the theory of fast-search activity, sequential stages such as fast tracking, fast verification, and fast processing are separated [14, p.408-435].

The basics of conducting operational-search activities in question directly affect the initial stage of the operational-search process. This is due to the fact that a characteristic feature of quick search – fast with known facts and individuals-consists in the fact that a limited number of objects of search activity are in contact. Its main task is to identify unknown crimes and the persons who committed them. Quick tracking can be defined as "intelligence" conducted in a criminal environment or on objects that affect crime.

Rapid tracking is often associated with the knowledge of operational-search characteristics and criminological signs of certain types of latent crimes. All this leads to a

logical assumption about the possibility of the formation and implementation of criminal plans in certain categories of individuals. The identification of information of immediate importance in the process of rapid search allows you to establish optimal measures for the implementation of the tasks of operational-search activities related to the Prevention of crimes, their elimination or exposure.

Thus, the operational search ensures that the internal affairs bodies are carried out not all, but one of the tasks of operational-search activities by operational units. Since the lack of official operational information on the basis of conducting operational-search activities does not allow the operational units of the internal affairs bodies to go to the first stage of the operational-search process aimed at identifying information about illegal behavior, it will not be possible to perform other tasks later.

In this regard, we consider it necessary to make amendments and additions to Article 15 of the law "on operational-search activity" in the following content in order to ensure an increase in the effectiveness of the rapid search phase for the timely detection and disclosure of hidden crimes by the operational units of the internal affairs bodies:

- naming this article "reasons and grounds for conducting operational-search activities";
- show the "reasons" and "grounds" separately in the text of the article;
- the inclusion of the clause "the need to identify hidden (latent) crimes that are being planned, prepared and committed" as the basis of the first part of the article.

One of the problematic issues in the legal regulation of the conduct of operational-search activities by the internal affairs bodies is related to the conditions for conducting events. The conditions for conducting operational-search activities are contained in Section 16 of the operational-search Activities Act, but the requirements are therefore not limited to itself. The relevant provisions are other norms of the law (6-9, 19, 21-m, et al.) and are also listed in some norms of other legislation within the scope of operational-search activities [15].

The law (16-m) provides for three groups of conditions for conducting operational-reconnaissance events, the first group – consisting of conditions limiting the conduct of certain operational-reconnaissance events. In law (16-m., 1-q) A special condition for conducting operational-search activities aimed at obtaining information about residential immunity, correspondence, telephone conversations and other conversations, restrictions on the rights to the secrecy of mail, courier dispatches and telegraph messages transmitted over communication networks, as well as connections between subscribers or subscriber devices.

In particular, this mandatory condition is associated with obtaining a sanction, which guarantees legitimacy when conducting operational-search measures limiting the constitutional rights of citizens. The sanction is reflected in the document issued by the operational employee in the form of a decision. The law (21st m., 3.) under which the court shall review the materials provided, sanction the conduct of operational-search activities, or reject it on the grounds of its conduct, indicating it in the decision.

The signature of the authorized person and the seal with the coat of arms for conducting operational-search activities, in which the sanction is obtained and agreed, will be at the top front of the first sheet of the document, in addition to the signature and place where the seal with the coat of arms was approved by the head of the body carrying out

This is what should be mentioned here. The problem with the conditions for conducting operational-search activities by the internal affairs bodies is due to the fact that the law on operational-search activities does not clearly indicate the limit of the validity period of the sanction [16]. For practice, the period of validity of the sanction is of particular importance, therefore, it is advisable to indicate in the law the period of validity of the sanction.

It is advisable to calculate the hearing period of telephone conversations based on the requirements of the JPK. This period can be calculated in the days from the date of this sanction and, if no different rule is established in the decision itself, it cannot take more than six months

to eavesdrop on conversations carried by phones and other telecommunications devices, receive information transmitted through them (JPG 170-m), 4.) [17].

In our opinion, the validity period of the sanction should be calculated in the days from the date of its issuance, in this case, the hour and day of sanction issued by the citizen, allowing to limit the constitutional right, and the validity period of the decision should expire at 24:00 on the night of the last day.

The expression of these proposals in the current legislation serves to ensure the principle of priority of human rights, freedoms and legitimate interests by operational units of the internal affairs bodies. Creating an effective mechanism for solving the problems of operational-search activity in the legal field with the detection of crimes, it provides a solution to the further tasks of this activity. At the same time, the legal gap in the legislation will be filled.

References:

1. <https://lex.uz/docs/3159827>.
2. Мирзиёев Ш.М. Қонун устувор, адолат барқарор бўлса, жиноятчиликка ўрин қолмайди: Ўзбекистон Республикаси Президенти Шавкат Мирзиёев раислигида 10 январь куни мамлакатимиз тинчлиги ва жамоат хавфсизлигини таъминлаш, жиноятчиликнинг олдини олиш борасидаги келгуси вазифаларга бағишланган видеоселектор йиғилишидаги маърузаси // Халқ сўзи. – 2019. –10 янв. (Mirziyoev Sh.M. If the rule of law prevails, justice will prevail, there will be no room for crime: the speech of the President of the Republic of Uzbekistan Shavkat Mirziyoyev on January 10 at a video conference dedicated to the future tasks of ensuring peace and public security, crime prevention // People's speech. - 2019. –10 Jan).
3. Ш.М.Мирзиёев. Қонун устуворлиги ва инсон манфаатларини таъминлаш – юрт тараққиёти ва халқ фаровонлигининг гарови // Миллий тараққиёт йўлимизни қатъият билан давом эттириб, янги босқичга кўтарамиз. Ж. 1. – Т.: Ўзбекистон, 2017. – 592 б. (Sh.M.Mirziyoev. Ensuring the rule of law and the interests of the people is the key to the development of the country and the well-being of the people // We will resolutely continue our path of national development and raise it to a new level. J. 1. – Т.: Uzbekistan, 2017. – 592 p).
4. В.Г.Каримов. Тезкор-қидирув қонунчилигини ривожлантиришнинг айрим масалалари // Ўзбекистон Республикаси Бош прокуратурасининг Олий ўқув курслари ахборотномаси. – 2018. – № 1 (33) – Б. 24-29. (V.G.Karimov. Some issues of development of operative-search legislation // Bulletin of Higher Education Courses of the Prosecutor General's Office of the Republic of Uzbekistan. – 2018. – № 1 (33) – P. 24-29).
5. А.Р.Оганесян. К вопросу о законодательном определении понятия оперативно-розыскной деятельности в законе республики армения «об оперативно-розыскной деятельности» / Актуальные проблемы российского права. – 2009. – № 3. – С. 551-554. (A.R.Oganesyana. On the question of the legislative definition of the concept of operational-search activity in the law of the republic of armenia "on operational-search activity" / Actual problems of Russian law. – 2009. – No. 3. – P. 551-554).
6. Е.В.Кулькова. Правовое регулирование оперативно-розыскного обеспечения расследования преступлений // Бизнес в законе. – 2012. – № 6. – С. 35-38. (E.V.Kulkova. Legal regulation of operational and investigative support for the investigation of crimes // Business in law. – 2012. – No. 6. – P. 35-38).
7. Б.Э.Закиров, В.Г.Каримов. «Тезкор-қидирув фаолияти тўғрисида»ги қонунда инсон ҳуқуқ ва эркинликларини таъминлаш // Ўзбекистон Республикаси ИИВ Академиясининг ахборотномаси. – 2013. – № 1. – Б. 22-27. (B.E.Zakirov, V.G.Karimov. Ensuring human rights and freedoms in the law "On operational search activities" // Bulletin of the Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan. - 2013. - № 1. - P. 22-27.)

8. <https://huquqiportal.uz/dictionary>
9. <https://qomus.info/encyclopedia/cat-q/qonunchilik-uz/>
10. Ўзбек тилининг изоҳли луғати: 5 жилдли: 80.000 дан ортиқ сўз ва сўз бирикмаси. Ж. IV Т-Тартибли / Таҳрир ҳайъати: А.Мадвалиев (раҳбар) ва бошқ. Ўз. Рес. ФА Тил ва адабиёт ин-ти. – Т.: «Ўзбекистон миллий энциклопедияси» Давлат илмий нашриёти, 2006. – Б. 687. (Annotated Dictionary of the Uzbek Language: 5 volumes: more than 80,000 words and phrases. J. IV T-Order / Editorial Board: A.Madvaliev (leader) and others. Own. Res. FA Language and Literature in- ti. – T.: "National Encyclopedia of Uzbekistan" State Scientific Publishing House, 2006. – 687 p).
11. А.А.Хамдамов, Т.Р.Саитбаев ва бошқ. Ўзбекистон Республикасининг «Тезкор-кидирув фаолияти тўғрисида»ги қонунига шарҳ. – Т., 2015. – 236 бет. (А.А.Khamdamov, T.R.Saitbaev and others. Commentary to the Law of the Republic of Uzbekistan "On operational search activities". - T., 2015. - 236 p).
12. <https://lex.uz/docs/2107763>
13. И.Исмоилов, Қ.Р.Абдурасулова, И.Й.Фазилов. Криминология. Умумий қисм: ИИВ Олий таълим муассасалари учун дарслик. – Т., 2015. – 272 бет. (I.Ismoilov, Q.R.Abdurasulova, I.Y.Fazilov. Criminology. General part: Textbook for higher education institutions of the Ministry of Internal Affairs. - T., 2015. - 272 p).
14. К.К.Горяинова, В.С.Овчинского, Г.К.Синилова, А.Ю.Шумилова. Оперативно-розыскная деятельность. 2-е изд., доп. и перераб. / Под ред.– М.: ИНФРА-М, 2004. – 848 с. (K.K.Goryainov, V.S.Ovchinsky, G.K.Sinilov, A.Yu.Shumilov. Operational search activity. 2nd ed., Add. and revised / Ed. - M.: INFRA-M, 2004. - 848 p).
15. <https://www.lex.uz/docs/86044#91519>
16. <https://www.lex.uz/docs/2107763>
17. <https://lex.uz/docs/111460#5138076>