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GENESIS AND DEVELOPMENT PROSPECTS OF OPERATIONAL-SEARCH ACTIVITIES

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Operational-search activities, granted to the law enforcement officer as powers by the Law of the Republic of Uzbekistan "On operational-search activities", are a fairly effective functional-legal instrument of operational-search activities. It should be recognized that its (instrument) adoption in synthesis and "armament" did not occur simultaneously with the adoption of the Law of the Republic of Uzbekistan "On operational-search activities" in 2012, but much earlier - during the period of emergence, formation and gradual development of the state, society and search, as a prototype of modern operational-search activities and at the same time as a necessary requirement of the state structure[1].

It is known that criminal procedural and operational investigative instruments have a common origin, initial commonality and a step-by-step functional-legal division or, in other words, fixed boundaries[2] which is consistent with the results of research and the doctrinal positions of legal scholars[3].

[1] *Рахимходжаев Р.Н.* Совершенствование правового обеспечения проведения оперативно-розыскных мероприятий органами внутренних дел: Диссертация доктора философии (PhD) по юридическим наукам. - С. 40.

[2] *Тамбовцев А.И.* Негласный потенциал уголовно-процессуального законодательства России // Вестник Санкт-Петербургского университета МВД России. 2018. № 2 (78). С. 173; *Тамбовцев А.И., Павличенко Н.В.* Оперативно-разыскная деятельность и уголовный процесс: вопросы сближения и взаимопроникновения // Вестник Волгоградской академии МВД России. 2019. № 2 (49). С. 9–14.

[3] *Мухаметшин Ф.Б.* Организационно-правовые основы становления и развития институтов обвинения и защиты в судопроизводстве России (IX–начало XX века): дис. … д-ра. юрид. наук. Санкт-Петербург, 2004. 360 с.; *Амплеева Т.Ю.* История уголовного судопроизводства России (IX–XIX вв): дис. … д-ра. юрид. наук. Москва: Московский Государственный институт международных отношений, 2009. 457 с.; *Захарцев С.И.* Теория и правовая регламентация оперативно-розыскных мероприятий: дис. … д-ра.

Most scientists in the field adhere to a single position that procedural and operational-search instruments for obtaining, verifying and proving information, although they initially had a single genesis and were aimed at a common final goal, gradually developed and were distinguished, and until a certain time were even legally "polar". This issue has previously been repeatedly, purposefully and deeply studied, examined in detail in a number of scientific works and partially covered due to the fact that it went beyond the scope of the study[4].

During the emergence and development of society and the state, the general and specific knowledge of the activities of state functions in the military, law enforcement, judicial and criminal-executive types, as well as the subjective, functional and legal unity of instruments, were associated with the integrity and indivisibility of these state institutions at the beginning of their development[5]. The subsequent independent formation and development of each of the indicated directions led to the gradual but inevitable formation, autonomous evolution and, just as gradually, the transformation of the initially general methods of obtaining information into separate specialized instruments aimed at solving narrow departmental problems.

Procedural instruments have developed through the development of uniform unified procedures and forms that ensure the proof of a person's involvement in a crime and his guilt through the facts of finding, obtaining and examining material

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юрид. наук. Санкт-Петербург: СПбУ МВД России, 2004. 397 с.; *Шахматов А.В.* Агентурная работа в оперативно-розыскной деятельности (историко-правовое исследование российского опыта): дис. … д-ра юрид. наук. Санкт- Петербург: СПбУ МВД России, 2005. 438 с.; и др.

[4] *Тамбовцев А.И., Павличенко Н.В.* Эволюция оперативно-розыскных мероприятий: монография /– Москва: Академия управления МВД России, 2021. – С 11.

[5] Шартли равишда қадимги давр давлат арбобларининг *(доҳийлар, князлар, подшолар ва бошқалар)* давлатнинг ҳарбий, ҳуқуқ-тартиботни таъминлаш, суд ва жиноят-ижроия фаолиятини дастлаб ибтидоий ва вақт ўтиши билан ривожланиб бораётган норматив тартибга солишга бўлган илк уринишларини ҳуқуқий деб ҳисоблаш мумкин *(бизнинг фикримизча)*.

and intangible traces, which are potential evidence, confirmed by documents, carried out in a standard manner and formalized in the form of templates.

The advantage of procedural methods is that they are strictly regulated at the level of law and are provided with evidence. Some practical rules of criminal proceedings and measures to protect human rights and freedoms applied in it have gradually found their normative expression in constitutional principles, rights and freedoms. In the Criminal Procedure Code, departmental practical "developments" and some constitutional rules have been incorporated into the principles of criminal proceedings, strictly algorithmized procedural actions and procedures. At the same time, it has constantly and purposefully developed to its current state[6]. The main shortcomings of the procedural instruments were excessive standardization and the associated frequent delays, which were of critical importance, as well as the incorrect attitude of the prosecution to the actions/testimonies of the participants in the trial, which was originally envisaged in the text.

Unlike the investigation, the genesis of rapid search tools has been more free and creative. They do not have templates and stereotypes, but are maximally variable, covert, invasive, and therefore use more rapid, effective and efficient methods of obtaining reliable information that provides the criminal process with the information necessary to identify the perpetrators and expose crimes. Sometimes, to the detriment of their evidentiary value, this can still be considered pragmatic in some cases. The priority of rapid search tools was speed in terms of speed, confidentiality of information acquisition and its impeccable reliability.

The main advantage of rapid search tools has always been and remains the ability to quickly and non-standard, reliable information and use it. This is undoubtedly better than the absence of information at all, since it is impossible to obtain it through investigation. Non-procedural but true information cannot be used in the process of proof, but it can be worked with in a non-procedural way: it can be examined, analyzed, logically operated on, drawn conclusions, based on it,

[6] *Тамбовцев А.И., Павличенко Н.В.* Эволюция оперативно-розыскных мероприятий: монография /– Москва: Академия управления МВД России, 2021. – С 12.

searched for other sources of evidence, and as a result, procedural information, that is, evidence, can be obtained.

At the same time, the classic search has existed in practice and has been functionally developed, providing the criminal process with the necessary information and actions. Until recently, there was practically no regulatory document, not only in terms of normative and legal terms, but also in general. This, combined with the generally recognized main shortcomings of search tools, namely the legal uncertainty of the tools, the controversial nature of the grounds and conditions, the insufficient recognition of the results obtained as evidence, and sometimes the objective inability to present them to the court, influenced the formation of a negative attitude of citizens towards search tools. Unfortunately, this has persisted to this day.

In the 19th and 20th centuries, the basic concepts of both (criminal procedural and search tools) were practically formed. Their further development is no longer of a sharp radical-revolutionary nature, but of a relatively slow, gradual and gradual nature, associated with progressive changes in society in politics, state structure, economy, industry and social technologies, jurisprudence, the social sphere and other areas, which, having changed, transformed the world around them and demanded timely and adequate changes in the methods of obtaining and recording search information.

In the 20th century, several attempts were made by scientists in the field to improve procedural and search tools, especially in the field of collecting information and presenting it to the court. Within the framework of the issue under consideration, we will dwell on their most notable aspects.

As early as 1922, A. Vollmer formulated the conceptual principles of increasing the effectiveness of police work, which have not lost their relevance until now[7]. Among the interesting and supposedly promising universal proposals for

[7] *Carte G.E., Carte E.H.* Police reform in the United States: The era of August Vollmer, 1905–1932. Berkeley: University of California Press, 1975. P. 56–57; *Свон Р.Д.* Эффективность правоохранительной деятельности и ее кадровое обеспечение в США и России. Научное издание / под общ. ред. В.П.Сальникова. Санкт-Петербург: Санкт-Петербургский университет МВД России, издательство «Алетейя», 2000. – С 23.

simplifying the judicial process, reducing the time of investigation, reducing the cost of criminal proceedings, and others, only the rapid search component - a novelty related to the direct submission of information obtained by rapid methods to the court - was proposed. This would eliminate the “bureaucratic multi-stage” and long duration inherent in the investigation of a criminal case, and would give the court the right to directly assess the evidentiary value of rapid materials and subsequently make a decision. In our opinion, this initiative can be considered as an attempt to qualitatively improve rapid search tools, to give them even greater speed and "evidentiary value". Unfortunately, to date, the Uzbek legal system has not implemented this idea. Although this idea is not widespread, it has been partially implemented in Europe and America. Undoubtedly, the reasons for this could be the unknown nature of this innovative and rational proposal in the Soviet Union, as well as the objective difference between the judicial and law enforcement systems of the West and the Soviet Union, as well as the personal political ambitions of the country's top leadership and the reluctance to receive any, even progressive and prospectively useful concepts from the West.

In the case of Russia, this is also the case, that is, in the 1970s in the Soviet Union, legal scholars A.V. Dulov and P.D. Nesterenko proposed an interesting innovative idea to enshrine in law a universal set of investigative actions and operational-search measures - a “tactical experiment”. Its essence was to covertly, but at the same time, monitor the expected actions of the suspect[8]. In fact, they proposed an investigative experiment, a functional-legal symbiosis of rapid experiment and surveillance, with all their inherent advantages - secrecy, speed, procedure and ultimately high evidentiary potential. Although this initiative was not implemented for reasons unknown to us, the proposal itself clearly demonstrates the constant attempts of Soviet law enforcement officers to optimize rapid search tools as an integral part of general criminal proceedings.

In addition, the rules and scientific works on the relevant topic, which are being defended in numerous dissertation studies on the problem of rapid search tools in

[8] *Дулов А.В., Нестеренко П.Д.* Тактика следственных действий. Минск, 1971. – С. 210–231.

the late 20th and early 21st centuries, should also be recognized as theoretical attempts to update, optimize and improve these tools.

Despite the objective need to reform this area of activity, the legislative body is limited to making only partial amendments to the law on search and rescue, postponing the issues of fundamentally improving the use and use of search and rescue tools. An exception to this rule is the amendment to the Law "On Search and Rescue Activities" (Article 14). According to it, search and rescue activities can be carried out using information and communication technologies, including in cyberspace and (or) using its capabilities[9].

It should be recognized that a number of CIS member states, having in their fundamental legal bases of investigative activities a complete analogue of the Law of the Republic of Uzbekistan "On investigative activities", have decided to take more modern steps and reform their investigative and criminal procedural legislation, which are aimed at optimizing the receipt of information exposing criminals and simplifying the procedure for their introduction into the criminal process. This applies, first of all, to the Republic of Belarus and the Republic of Kazakhstan.

The above indicates that operational investigative measures are a living matter that must be improved and transformed depending on changes in objective reality. The most important circumstance and basis for putting forward this point of view is that the genesis of operational investigative tools did not end with the creation and adoption for "armament" of a number of operational investigative measures of some universal nature, but continues to this day. This is due to scientific and technological progress, evolutionary and revolutionary changes in society, legal relations, etc. Research by a number of scientists in various fields clearly demonstrates the continuous interest in the genesis and prospects of operational investigative tools[10].

[9] Ўзбекистон Республикасининг 2012 йил 25 декабрдаги "Тезкор-қидирув фаолияти тўғрисида"ги қонуни / https://www.lex.uz/uz/docs/2107763

[10] *Гордеев С.Н.* Тергов ва суддан яшириниб юрган шахсларнинг қидирувини такомиллаштириш (ички ишлар органлари тезкор бўлинмаларининг материаллари бўйича): Юрид. фан. бўйича фал. д-ри (PhD) дис. автореф. – Т., 2018. – 49 б.; *Каримов В.*

We are pleased to note that our legal scholars have deeply and comprehensively analyzed the genesis, prospects, trends and directions of further development of operational investigative tools. However, despite this, we consider it necessary to note that this problem is still relatively unfinished and further research can be carried out in this area. Like any tool, search does not appear suddenly or out of nowhere. Rather, it was created based on emotional and communicative methods of gradually obtaining information. With the development of society and technology, the most rational and cultivated for the most effective achievement of the main goal of this type of activity, that is, obtaining fast, open, mythological or completely hidden information. It is completely based on objective socio-economic, political, spiritual-legal, technical and similar long-term realities and includes their manifestations.

The Law "On Operational Investigative Activities" adopted in 2012 did not "present" the society with new operational investigative tools, but only legally secured them and at the same time implemented the final list of operational investigative measures formed by that time in practice in a normative and legal manner. These measures had long been successfully carried out to solve the problems of operational investigative activities. However, time has objectively forced the society to adjust not only the list itself, but also the functional component of operational investigative measures in accordance with changes in almost all spheres of life. The entry into force of the Law "On Operational Investigative Activities" not only legalized operational investigative activities, in particular, operational investigative measures, but also duly activated individual, the first

Тезкор-қидирув фаолиятида қонунийликни таъминлаш механизмини такомиллаштириш: Юрид. фан. д-ри (DSc) дис. – Т., 2018. – 331 б.; *Рахимхўжаев Р.Н.* Ички ишлар органлари томонидан тезкор-қидирув тадбирларини ўтказишни ҳуқуқий таъминлашни такомиллаштириш: Юрид. фан. бўйича фал. д-ри (PhD) дис.– Т., 2018. – 40-б.; Оперативно-розыскная деятельность в XXI веке: монография / *С.И.Захарцев, Ю.Ю.Игнащенков, В.П.Сальников*. Москва: Норма, 2015. 400 с.; *Осипенко А.Л.* Сетевая компьютерная преступность: теория и практика борьбы: монография. Омск: Омская акад. МВД России, 2009. 479 с.; *Чечетин А.Е.* Обеспечение прав личности при проведении оперативно-розыскных мероприятий: монография. Санкт-Петербург: СПбУ МВД России, 2016. 232 с.; и др.

scientific research in the field of operational investigative activities, which began earlier, in the late 50s – early 60s. It initiated the next important series of studies in this area, including those devoted to the study of the essence, organizational, legal, psychological, technical and other aspects of conducting operational-search activities enshrined in law. Researchers, having retrospectively analyzed the genesis of one or another operational-search activity, having considered the history of their formation and development from the moment of their emergence to the present state, studied their cognitive compatibility with modernity, i.e. the time of the study, the possibilities and directions of further optimization.

In general, the conceptual foundations of the theory of operational-search activities, methodological, organizational-tactical, legal, technical, informational, psychological and other support for operational-search activities, in particular, were developed as operational-search tools and presented in the monographs of the founders of operational-search activities of the second half of the twentieth century - A.A. Khamdamov, T.R. Saitbaev, V. Karimov, A.A. Alekseev, A.F. Volynsky, D.V. Grebelsky, V.V. Dyukov, G.K. Sinilov, A.G. Lekar, E.A. Lukashev, V.A. Mitrofanov, S.S. Ovchinsky and others, which was long before the adoption of the Law "On operational-search activities".

This clearly confirmed the objective existence of the socio-legal institute of operational-search activities and operational-search measures in the state as its integral part, regardless of the legal recognition, availability and completeness of the normative-legal regulation of these social relations. Operational-search instruments were formally in force in the norms of the law. This socio-legal phenomenon can be explained by the following considerations:

Firstly, law as a secondary structure – "basis – mechanism", as a "mechanism" of dualistic social formation, is always a result and objectively depends on the cause – "basis". The basis determines the mechanism, and the mechanism not only reflects and strengthens the basis, but also creates normative and legal conditions for its development[11]. Operational-search relations are not an exception to this rule (axiom), therefore their legal regulation is always a more or less delayed

[11] https://iphlib.ru/library/collection/newphilenc/document/ HASHad6abc624895ad21e87aad

consequence of the continuous development of social relations. That is, in this case, the implementation of the wisest views of ancient lawyers, expressed in their rule (axiom): "Per varios actus, legem experiential facit - through many actions, experience creates law (that is, law creates experience)" becomes obvious. The practice of applying practical law over time has turned into legal norms;

secondly, operational investigative activity for a long time was not independent and did not require legal regulation, but was an integral, and even more so an auxiliary part of the criminal process, already regulated by the Criminal Procedure Code;

thirdly, given the traditional confidentiality inherent in these centuries-old relations, which provide certain tactical advantages in solving law enforcement tasks, the state was in no hurry to disclose them, having adopted a normative legal act at the level of a law in the person of its authorized bodies and officials. It was expected and known in advance that this would subsequently lead to large-scale critical and biased discussions, condemnations, attacks, attempts at discrimination and prohibition. In fact, this happened immediately after the publication of the law "On operational-search activities" and continues to this day.

Since 2012, when the list of operational-search activities was enshrined in law, comprehensive studies have been conducted on individual operational-search activities (Zh. Makhkamov, Kh.Sh. Yakubov, Sh. Saidov, etc.).

Theoretical views on the fundamental principles of this problem and the essence of operational-search activities have been studied by A.A. Khamdamov, T.R. Saitbaev, V. Karimov, S.N. Gordeev, R.N. Rakhimkhodzhaev, V.M.Atmazhitov, V.G. Bobrov, N.S. Zheleznyak, Yu.F. Kvasha, A.E. Chechetin, A.Yu. Shumilov and other scientists.

The dissertation research is carried out on the tactics of conducting operational-search measures of operational entry, at present the tactics of conducting other measures are also being studied. However, scientific research on various aspects of operational-search measures, namely psychological, technical, informational and others, have not been carried out. This does not allow to fully form a modern scientific understanding and functional-legal status of the institute of operational-search measures. The results of all studies are undoubtedly important in the science of operational-search activities, knowledge of the essence of specific operational-

search measures, synthesis of basic theoretical concepts, documentation, determination of the most effective algorithm for preparation, implementation and registration of the results of the event, as well as determination of other characteristics of this operational-search tool.

However, it should be recognized that any tool, as a "targeted means of influencing an object"[12] especially such unique highly specialized operational-search tools, are a reflection of the existing reality, demonstrating its (the tool's) compliance with legal, technical, psychological and other modern achievements and technologies, as well as the ability to understand the current areas of activity of society and the individual at the present time.

Despite the fact that it is based on only two ways of obtaining information (apparently not related to technology) – sensory perception and communication, operational-search tools represent a practical material-technical and functional-legal embodiment of technologies and achievements of a certain historical period of society's life into a means of cognition or influence on certain aspects of this life (mechanism, algorithm, methodology, etc.). Consequently, with the objective change of socio-economic, political, technological and many other realities, there arises a need for a proportional, corresponding change in the tools of cognition, their adaptation to changed or even newly emerging conditions and requirements.

In other words, the format, pace, legal environment, morals, values, technical equipment, etc. of the life of modern society and the individual, which have changed rapidly and radically over several decades at the end of the 20th and beginning of the 21st centuries, objectively affect the effectiveness and efficiency of existing operational investigative tools in a complex of means and methods. Regardless of our wishes, this requires timely updating, adaptation, supplementation and, possibly, "writing off", refusal to use. For example, technical progress led to the appearance of a landline telephone, and the search activated its technical feature, such as the ability to monitor (listen to) subscriber conversations. This is how the operational investigative measure "Telephone wiretapping" appeared. At that time, it did not yet have an official name. However, the refusal

[12]https://ru.wikipedia.org/wiki/Инструмент

of society almost everywhere to use fixed (wired) telephones and the mass transition to mobile wireless communication and text messaging (SMS) in connection with subsequent progress have seriously questioned the relevance of operational-search measures "Wire tapping of telephone conversations" in terms of fixed wired and partially mobile (cellular) telephones. At the same time, the relevance and significance of operational-search measures "Obtaining information about connections between subscribers or subscriber devices" has increased.

An even more striking example of the loss of significance of some operational-search activities and the need to review operational-search activities is the fact that people have practically stopped communicating by mail (letters) and have switched to cheap and fast online communication services. In such conditions, the operational-search activity "Control of postal, courier shipments and telegraph messages", the interception part - secret access to the content of the text, which was relevant and appropriate 20-30 years ago, today seems somewhat primitive, especially from the point of view of control of the text of letters, and not the material content of parcels and packages.

Due to the functional "similarity" and practice of use, according to the Criminal Executive Code (Article 79), the practice of censoring the correspondence of convicts, which is still actively used as "Correspondence of Convicts", may cause certain disputes. However, it should be noted that its definition, target orientation and legal status are fundamentally different from the operational-search activities under consideration.

In conclusion, it can be concluded that operational-search activities as an object of scientific knowledge, as well as in a practical sense – as a tool for operational-search activities in the modern sense of this term were formed only at the end of the 20th century. At the same time, theoretically, disputes continue to this day about the concept, essence and content of operational-search activities, their difference from the methods of operational-search activities, as well as actions and measures. In addition, the evolution of operational investigative measures, arising as a result of objective changes in socio-economic, political, technological and many other realities, is a continuous process. We will prove this in the following paragraphs of our study.