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CERTAIN ISSUES OF THE ORGANIZATION OF UNDERGROUND INVESTIGATORS (DEVICE) ACTIONS IN THE INVESTIGATION OF CRIMINAL OFFENSES

Володимир Приловський. ДЕЯКІ ПИТАННЯ ОРГАНІЗАЦІЇ НЕГЛАСНИХ СЛІДЧИХ (РОЗШУКОВИХ) ДІЙ ПРИ РОЗСЛІДУВАННІ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ. В науковій статті досліджуються деякі аспекти організації негласних слідчих (розшукових) дій (далі – НСРД) при розслідуванні кримінальних правопорушень. Розглядаються існуючі проблемні питання сьогодення щодо організації проведення НСРД та можливостей спрощення й оптимізації для досконалого розслідування кримінальних правопорушень (злочинів), особливо у теперішній час. Розглядаються погляди вчених щодо вказаного аспекту як взагалі протиправної (злочинної) діяльності, так і в умовах сучасних реалій в Україні.

Автором зазначено необхідність та безперечність певної процесуальної послідовності при організації проведення НСРД без виключення методики розслідування кримінальних правопорушень. Адаже як розуміння так і визначення сутності й наповнення і зазначеної, і будь-якої іншої наукової категорії визначає подальше її дослідження та й окремих її складових. Тобто визначення сутності організації проведення НСРД при розслідуванні кримінальних правопорушень так чи інакше має важливе значення для структуризації й оптимізації зазначеного процесу. В той же час, вагомим елементом визначеної категорії є поняття організації (тобто організації діяльності), що є підґрунтям будь-якого процесу при розслідуванні кримінальних правопорушень, виявленні, фіксації, вилученні й дослідженні фактичного (доказового) матеріалу. Вказана складова існує в структурі методики й тактики розслідування, і вона посіла відповідне місце в її структурі. Тому її дослідження в розрізі загальної наукової категорії має значення для удосконалення дієвої методики розслідування кримінальних правопорушень (злочинів).

На основі дослідження наукових думок та висновків вчених, практики оперативних підрозділів Національної поліції України визначено основні питання якщо не гальмування, то пробуксування процесу якісної оперативної організації проведення НСРД.

Ключові слова: організація, розслідування, кримінальне правопорушення, злочин, слідчі дії, розшукові дії, негласні слідчі (розшукові) дії, оперативні заходи, оперативно-розшукові заходи.

Relevance of the study. The processes of modernity, which have recently been taking place in Ukraine, necessitate the prompt obtaining of true information, its quick and timely analysis, systematization and use for the purpose of qualitative investigation of criminal offenses not only of a general criminal orientation, but also of specific crimes committed in modern conditions. An extremely important element of society's functioning is its fundamental values and ensuring their proper implementation by citizens.

It would be appropriate to emphasize the importance of conducting a systematic analysis of the objective modern conditions in which criminal acts are committed. In addition, when investigating the above-mentioned direction, it is important to establish the hindering factors. Therefore, consideration of this issue is necessary and timely.

Recent publications review. Considering the importance of the institute of secret investigative (detective) actions in criminal proceedings and the presence of a number of problematic issues, including the organizational nature of its functioning, it was the object of scientific research by specialists, in particular, M. Bagrieya, B. Baranenko, O. Bochkovo, V. Hlushkova, S. Hrynenko, M. Hribova, Yu. Groshevoy, K. Husevuyi, O. Drozdova,

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V. Kolesnyka, I. Komarnytska, S. Kudynova, D. Nikyforchuka, M. Pohoretskyi, D. Sergeeva, O. Tatarova, M. Tsutskiridze, R. Shehavtsova. They made noise and others, however, the problematic issues of the organization of secret investigative (search) actions in the studies of the mentioned authors were either investigated indirectly, or are of a debatable nature, which is not very positively reflected in law enforcement practice.

The article's objective is the analysis of problematic issues in the organization of the NSRD in the investigation of criminal offenses (crimes), including in modern conditions.

Discussion. Undoubtedly, the implementation of a pre-trial investigation into a criminal proceeding is carried out exclusively at the expense of the entities authorized to do so. That is why only a clear and consistent regulation of the procedural capabilities of all subjects of criminal proceedings will allow to fully ensure the fulfillment of the main tasks of criminal proceedings specified in Art. 2 of the Criminal Procedure Code (hereinafter – the Criminal Procedure Code) of Ukraine [1], as well as to ensure the legal and impartial exercise of authority with full compliance with the provisions of the Constitution of Ukraine, the Convention on the Protection of Human Rights and Fundamental Freedoms, and criminal procedural legislation of Ukraine [2, p. 265].

In exceptional urgent cases related to saving people's lives and preventing the commission of a serious or particularly serious crime, provided for in Chapters I, II, VI, VII (Articles 201 and 209), IX, XIII, XIV, XV, XVII of the Special Part of the Criminal Code of Ukraine, an undercover investigative (search) action may be initiated prior to the decision of the investigating judge in cases provided for by the Criminal Procedure Code of Ukraine, by the decision of the investigator, agreed with the prosecutor, or the prosecutor. In such a case, the prosecutor is obliged to apply to the investigating judge immediately after the start of such secret investigative (search) action [1, Art. 250].

Therefore, a so-called "procedural chain" can be seen: "investigator" – "prosecutor" – "investigating judge" (between the prosecutor and the investigating judge, also with the consent of the prosecutor, there is an investigator, receiving the consent of the prosecutor to conduct the NSRD, the head of the operational unit, who by his powers will appoint an executor and an operative who will be entrusted with the implementation) for the implementation of the main organizational measures of the NSRD. The latter, unfortunately, refutes one of the main provisions of the rapid investigation of criminal offenses – efficiency.

In most cases, during the investigation of criminal offenses (crimes), investigative situations are quite complex (the suspect is known, but material and personal evidence is not enough to notify him of suspicion; the criminal is known, but is hiding from the investigation and the court; the identity of the criminal has not been established, etc.).

In this regard, along with conducting investigative (search) actions to establish all necessary data about a criminal offense (crime) and persons who could be involved in its commission, who could be eyewitnesses (witnesses) or have any important for investigation of information, it is considered necessary to carry out NSRD (audio and video monitoring of the suspect; removal of information from transport telecommunication networks and electronic information systems, etc.) [3, p. 120-122].

In order to obtain information regarding the fastest and most optimal investigation of a criminal offense (crime), it is necessary to carry out search and overt and covert investigative (search) actions aimed, among other things, at the search for accomplices [4, p. 103].

It should be noted that the indisputable fact is that the investigation of crimes is closely related to investigative activities and largely depends on the effectiveness of the organizational actions of the investigator and investigative activities carried out by the investigative bodies on his behalf, as well as the actions carried out by these bodies in the execution of their functional duties. It is known that the investigation of a crime is a rather difficult cognitive process that takes place within specific time (often limited) and spatial boundaries and in certain environmental conditions.

In modern conditions, when conducting investigative actions, there are time limits for the operative (fastest) search for sources of information important for the investigation, and obtaining it is the most urgent of what could be in other conditions, in peacetime conditions. Although in any state of society and the state, this question of relevance does not lose its operative status. We will publish several important provisions regarding important elements of investigative (search) actions in the investigation of criminal offenses (crimes). Operative – are able to correctly and quickly perform certain practical tasks; active [5, p. 845].

Organization is an action with the meaning of organizing, organizing and being organized. To organize is to carry out certain events of public importance, developing their

preparation and implementation [5, p. 853]. Unspoken – unknown to others; hidden, secret [5, p. 753]. Investigative (search) actions are actions aimed at obtaining (collecting) evidence or checking already obtained evidence in a specific criminal proceeding. The grounds for conducting an investigative (search) action are the availability of sufficient information indicating the possibility of achieving its goal [1, Art. 223]. We will analyze the latest statements regarding any situation related to the investigation of a criminal offense (crime).

Suppose an experienced operative (employee of an operational unit) when conducting investigative actions (or on the authority of an investigator - operational and search actions), to achieve the goal of obtaining (collecting) evidence or checking already obtained evidence in a specific criminal proceeding, at the place of the commission of a criminal offense the offense (crime) was discovered by a person who has factual information about the persons who committed this crime.

The information must be verified, but for this it is necessary to obtain the written permission (order) of the investigator. The identified person (source of information) wishes to remain anonymous, confidential to law enforcement agencies, cannot wait and refuses to publish (record in a protocol or other document) data about himself, including the possibility of contacting him through any networks. What should the operator do in this case? An experienced operative would have carried out all the necessary measures by himself without any notifications and instructions, and would have obtained the maximum amount of information necessary for the investigation. But how to officially record it? According to the current legislation – either not at all, or very difficult, almost impossible! Although the operative did not waste time to obtain and verify information important for the investigation.

With perfect monitoring of the chain of legally regulated actions of the operative, it is possible to improve without special research that the most important value in the investigation, especially on "hot leads", is lost during the implementation of procedural norms - time. It will take time until the investigator is notified, then the investigator's decision as to what exactly the warrant should be, until he fills out the necessary form in which he will write the warrant... And if the investigator, according to his departmental instructions, wants to notify his immediate supervisor to did he confirm his decision? And if the investigator does not have the necessary forms, there is no communication, and the investigator hesitates in making an independent decision?

And if the manager wants to consult with the prosecutor or investigating judge? Unfortunately, procedural legislative acts take into account the human factor or factors of so-called force majeure situations or circumstances (force majeure circumstances (circumstances of force majeure) are extraordinary and unavoidable circumstances that objectively make it impossible to fulfill the obligations stipulated in the terms of the contract (contract, agreement, etc.), obligations in accordance with legislative and other regulatory acts, namely: the threat of war, armed conflict or a serious threat of such a conflict, including but not limited to enemy attacks, blockades, military embargoes, actions of an external enemy, general military mobilization, military actions, declared and undeclared war, actions of the public enemy, riots, terrorist acts, sabotage, piracy, disorder, invasion, blockade, revolution, mutiny, uprising, mass riots, introduction of curfew, quarantine established by the Cabinet of Ministers of Ukraine, expropriation, forced seizure, seizure of enterprises, requisition protest, public demonstration, blockade, strike, accident, illegal actions of third parties, fire, explosion, long interruptions in the operation of transport, regulated by the terms of relevant decisions and acts of state authorities, closure of sea straits, embargo, prohibition (restriction) of export/import, etc., as well as caused by extreme weather conditions and natural disasters, namely: epidemic, strong storm, cyclone, hurricane, tornado, storm, blizzard, snow drift, hail, hail, frost, freezing of the sea, ports channels, passes, rain flows, lightning, fire, drought, subsidence and landslides, other natural disasters, etc.) [6] are covered briefly or not at all.

The situation is even simpler. And yet, at the same time, efficiency, non-publicity, and organization are practically included. It remains only the main purpose of investigation: "to complete the difficult process of recognition, which occurs in specific sentinels and expanses of space and in the singing minds of an insane middle ground". It takes a real sense to understand "operationality", "non-publicity", that "organization" is transformed into an untrue bureaucratic routine. Particularly note the situation in the event of the presence of a police-operational group at the scene of criminal offense under the hour of special minds. An operative, carrying out searches, come in (for example, when eyewitnesses were detected), for example, having revealed a military malice (svidome, rude, violation of the laws of that kind of war, for some kind of guilt (participants of combative acts and individuals, if they were given a significant punishment)

decisions of international military tribunals [7]) military serviceman of the guardian army (abo kimos inshim). There is no possibility of inflicting evil, but there is also the possibility of a negain (operational) covert photo or video fixation of illegal actions. If and how have similar minds taken away allowed to carry out the NSRD?

A lot of names are accumulating a lot of other meanings. For example, a witness in court against a police officer is guilty not just of asking, but of goiter to present sufficient factual evidence of his dishonesty or innocence? The video fact from the cameras of the video warning or from the mobile phone serves as evidence against the police officer, but sometimes you can't see it, as there is a confirmation of the illegal actions of the suspect, that is, the withdrawal without a legal procedural procedure. And yet, without any procedure, the fact remains a fact.

I have a thought about those who are right-wing defense lawyers thinking about the innocence of right-wing guardians in the world, that the law is signed for right-wingers and evil-doers. From where? By itself, it is important that the conclusion, that the legislator behind the statutes of legislative acts, may grant the status of suspected and judicial offenses (which can be attributed to the most severe violations of the rights of the victims, often even to the violent victims of the victims).

Conclusions. Summarising up, we note that based on the research of the opinions of scientists, the practice of operational units of the National Police of Ukraine, the main problematic issues that arise during the investigation of criminal violations at the present time have been determined:

- 1) legal restrictions on the initiative of operational units to organize the NSRD, which is necessary for a quick investigation of a criminal offense (crime);
- 2) procedural limitations of the initiative of operative units to organize the NSRD in any realities of today, but it is too necessary for the timely investigation of a criminal offense (crime);
- 3) organizational delays or obstacles in the coordination of documentation regarding decisions and obtaining permission to conduct NSRD.

In modern conditions, the same illegal acts are committed in Ukraine as at any other time, but the importance of their prompt investigation, identification and exposure of the guilty in the shortest possible time from the moment of commission or receipt of a notification of a committed criminal offense (crime) becomes especially relevant. The legislative and procedural simplification of the procedure for the organization of secret investigative (search) actions is a real contribution to solving issues of operational and optimal investigation, especially in modern conditions.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The scientific article examines some aspects of the organization of undercover investigative (search) actions (hereinafter – NSRD) in the investigation of criminal offenses. The existing problematic issues of today regarding the organization of NSRD and the possibilities of simplification and optimization for perfect investigation of criminal offenses (crimes), especially at the present time, are considered. The views of scientists regarding the specified aspect of illegal (criminal) activity in general, as well as in the conditions of modern realities in Ukraine, are considered.

The author indicated the necessity and indisputability of a certain procedural sequence in the organization of the NSRD without excluding the methodology of investigation of criminal offenses. After all, both the understanding and definition of the essence and content of both the specified and any other scientific category determine its further research and its individual components. That is, the determination of the essence of the organization of the NSRD in the investigation of criminal offenses is one way or another important for the structuring and optimization of the specified process. At the same time, an important element of the defined category is the concept of organization (that is, the organization of activities), which is the basis of any process in the investigation of criminal offenses, detection, fixation, extraction and examination of factual (evidential) material. This component exists in the structure of the methodology and tactics of the investigation, and it took the appropriate place in its structure. Therefore, its research in the context of a general scientific category is important for improving effective methods of investigating criminal offenses (crimes).

On the basis of the study of scientific opinions and conclusions of scientists, the practice of operational units of the National Police of Ukraine, the main issues, if not inhibitions, then slippage of the process of high-quality operational organization of the NSRD, have been determined.

Keywords: *organization, investigation, criminal offense, crime, investigative actions, detective actions, covert investigative (detective) actions, operational measures, operational and investigative measures.*

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FEATURES OF THE CONDUCT SEARCH UNDER THE CONDITIONS OF THE STATE OF WAR

Олена Солдатенко, Володимир Кіяниця. ОСОБЛИВОСТІ ПРОВЕДЕННЯ ОБШУКУ В УМОВАХ ВОЄННОГО СТАНУ. Збройна агресія російської федерації кардинально змінила життя кожного українця, а разом з тим призвела до ряду викликів під час здійснення кримінального провадження на території України. І тому, з метою наближення кримінальної процесуальної діяльності до воєнних реалій, Верховна Рада України прийняла низку законів, що спрямовані на регламентацію

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