



## EXPERIENCE OF DEVELOPED COUNTRIES OF THE WORLD IN REGULATING THE LEGAL STATUS OF AN OFFICER CARRYING OUT OPERATIONAL INQUIRY ACTIVITIES

Sultanov Mirkabil Mirvalievich

Self-Employed Applicant

### Resume

The article analyzes the legal norms defining the legal status of an operative in the developed countries of the world. Some problems of conducting operational-search activities and attracting citizens to confidential cooperation by employees of operational police units are considered.

**Keywords:** operational-search activity, an employee of a body carrying out operational-search activities, an operative, operational-search activities, the legal status of an employee of a body carrying out operational-search activities.

### INTRODUCTION

Currently, as a result of the intensification of the processes of globalization and integration all over the world, the issues of legal regulation of general and special legal measures to combat crime are being implemented. This is primarily aimed at uniting efforts to ensure the inevitability of punishment for a crime committed, as well as international cooperation in new, effective forms to achieve this, is recognized as one of the priority areas attracting the attention of the international community. The results of UN lawmaking today [1] also indicate the relevance of this issue.

The Republic of Uzbekistan, remaining committed to its obligations arising from almost 50 international treaties in the field of ensuring justice against crime, pursues consistent cooperation with states and international organizations on the basis of its national interests. In this direction, proceeding from the international standards of transparency of ensuring human rights and freedoms and increasing their effectiveness, provided for by the Strategy of Action [2], in its essence and content is fully consistent with the UN Sustainable Development Goals, through the wide involvement of information and communication technologies, are consistently implemented measures aimed at improving criminal and criminal procedure legislation [3].





## RESULTS AND ITS DISCUSSION

It should be noted that for many years the legal status of an official of an operational unit carrying out operational-search activities (ORD) was regulated by departmental regulations with the appropriate secrecy label. This was primarily due to the closeness of the ORD itself and the historically formed view of it as a secret and covert activity of the state's law enforcement agencies. In the opinion of some scientists, the activities of its subjects, as it was assumed, should mainly be of a secret nature and be regulated by secret regulatory documents intended exclusively for them [4, p. 117-118].

The transition to building a democratic state determines, first of all, the protection and protection of the rights of the individual, and then society and the state. In this regard, it became necessary to move from the subordinate level of legal regulation of the OSA to the legislative level of legal regulation.

Meanwhile, as a number of scientists rightly point out, the ORD is the only real tool for the timely detection of crimes [5, p. 88], which, as a state-legal form of combating crime and a type of law enforcement activity, will exist as long as there is crime and criminal legislation [6, pp. 29-31].

Unfortunately, the Law of the Republic of Uzbekistan dated December 24, 2012 "On operational-search activities" (the Law on ORD) does not determine the legal status of an operational officer as an official, a subject of operational-search activities (ORM). At the same time, only when determining the ORM in the form of operational implementation, the term "employee of the body carrying out operational-search activity" was used [7].

An analysis of departmental regulations indicates that they are often drawn up in violation of legal techniques, and are replete with many unreasonable restrictions and procedures. We agree with V.F. Lugovik, who, pointing out the need to improve the legislation governing legal relations in the field of OSA, says that there are restrictions on a number of ORM that are not provided for by the OSA Law (operational implementation, operational observation, wiretapping of conversations conducted from telephones and other intercom and etc.). Conducting some activities is associated with the need to establish operational records, for other activities, a list of officials has been established who authorize their implementation in order to strengthen control over the ORD. However, according to scientists, their presence negatively affects the legal status of an operative, limits his independence, fetters initiative and does not provide a quick response to information about violations of citizens' rights [8].



In the study of this issue, foreign experience of legal regulation of the status of an official carrying out OSA is of certain interest. In the developed countries of the world, the OSA for a long time, before the adoption of the first legal acts at the end of the 60s. XX century, developed in the complete absence of legislative regulation of this area of law enforcement. Of fundamental importance is the fact that these legal acts provide the detective agencies with quite extensive powers, combined with their high responsibility and developed forms of control, such as parliamentary, government, judicial, prosecutorial.

First of all, it is necessary to pay attention to such developed countries as the USA, Germany, France and some others, by the example of which one can judge about this field of activity.

The term "operational-search activity" is absent in the legal and official documents of the police of these countries. Most of the covert actions of an investigator, related to the non-procedural form of his activities, fall within the scope of the crime investigation and the so-called "police intelligence". A number of authors, describing the detective activities of the police of foreign countries, under "police intelligence" understand such elements as the process of collecting and processing information, types and methods of police intelligence activities, methods of obtaining the necessary information, sources of information, work with knowledgeable persons, organization and structure intelligence systems and units, ensuring the process of collecting information, and other specific functions of covert policing [9, p. five]. At the same time, in the police investigation of many states, there is no clear distinction between overt and covert methods of obtaining evidence. The covert activity of the person conducting the investigation at the stage of pre-trial proceedings is central, in this connection, the investigative activity and the ORD are closely related, and the operative acts as both an investigator and a detective (as in some foreign countries the position of a police officer carrying out detective activity).

The most radical approach to the convergence of the operational search and criminal procedure functions is observed in the United States. With a covert method of collecting information, the operative can hide his official person or disguise himself as any person who does not cause suspicion of his involvement with the police. The purpose of such actions is to obtain information or evidence about the case under investigation, which cannot be obtained in any other way. At the same time, the results of covert measures are used in proving in criminal cases, along with evidence obtained by public means.





It should be noted that even in countries with a developed legal system and a high level of legal regulation of law enforcement, the ORD is mainly regulated by departmental regulations. They reveal the organization and tactics of the independent reconnaissance patrol, they are classified documents. In the open legal sources of the United States, the operational-search and investigative work of the US Federal Criminal Police - FBI, is mainly governed by the following regulations issued by the Attorney General and the President:

- 1) Instruction letter from the Attorney General to the FBI Director "Use of informants in the investigation of internal security, organized crime and other criminal cases" (1976);
- 2) Instruction of the Attorney General on the procedure for conducting secret operations of the FBI (1981);
- 3) Executive Order of the President of the United States No. 12333 "US Intelligence Activities" (1981);
- 4) Instruction of the Attorney General "On the procedure for investigating cases of common crimes, activities of enterprises, organized crime, internal security and terrorism" (1983).

These regulations give the operative wide discretionary powers. They declare the provision that when choosing a method of operational verification, an employee must take into account possible adverse consequences for the interests of protecting the privacy and reputation of citizens.

However, taking into account the specifics of the police intelligence, the legislator stipulates that the choice of the method is a matter of the value judgment of the FBI employee. A prerequisite for the implementation of covert activities is to obtain the approval of the immediate supervisor. At the same time, the operative determines the organization and tactics of such an investigation independently. The main condition for such an investigation is that the use of covert methods should be carried out according to the rules established by the heads of the relevant department and approved by the Prosecutor General.

Having received an assignment from a supervisor to carry out an investigation, an investigator, as a rule, remains responsible for its conduct until the case is brought to court. When he believes that the collected evidence is sufficient, he reports the materials to the local attorney, who has the right to prosecute in court on behalf of the state. The latter either transfers the materials to the court and supports the



prosecution, or returns the materials to the employee to collect additional evidence [10, p. 13].

In France, all commissioners and police officers as well as officers and privates of the gendarmerie (who have served for more than five years) are competent to investigate the judicial police. This activity is carried out by police officers under the supervision of an investigating judge and a prosecutor.

In Germany, prosecution is the responsibility of the prosecutor's office, so police officers usually only carry out ORM and initial investigative actions. At the same time, in this country, the legislator is consistently taking the path of expanding the powers of the police. Every police officer, according to the legislator, must have the skills to detect crimes and carry out the necessary investigative actions at the place of their detection.

Great importance in Western countries is given to the work of the police with persons providing confidential assistance (confidential). In the UK, police officers recruit informants at their own discretion and do not report to anyone about their use. This provision testifies to the rather broad powers and the special legal status of the employee. The possibility of independent planning and organization of work with confidants serves as the most important guarantor of non-interference in the activities of the operative.

In the United States, in the process of implementing unspoken ORM, police officers and persons providing them with confidential assistance are allowed to pose as accomplices in a crime without fear of being prosecuted. For these purposes, in US law, there is an institution of false or imaginary complicity.

By normatively fixing the institution of imaginary complicity and the possibility of provocation by law enforcement agencies, the legislator thereby shows a high degree of trust in the operative.

In our opinion, a provocation on the part of employees of the operational unit should include those actions when they are carried out against a person who, knowingly for the police officers, does not commit a crime, and by their actions the police officers induce him to unlawful activity.

In such circumstances, additional conditions must be met, expressed in the need to restrict the confidant from questions, the answers to which may help to establish his identity. This proposal was supported by representatives of law enforcement agencies: detectives, prosecutors and court officials. These questions, according to the respondents, should include questions about time (76% of respondents), place (65%),



method of obtaining information about the event under investigation (51%), as well as the source of awareness of the witness (43%) [7, p. 78].

Unfortunately, an employee of a body carrying out operational-search activities does not have such an opportunity, the current regulatory legal acts do not provide for the use of information received from confidential sources as evidence in a criminal case by interrogating an employee who received such information.

Based on the foregoing, we believe that it is necessary to take into account foreign experience and the opinion of domestic scientists in the legislation in order to develop a clearer legal regulation of the activities of an employee of a body carrying out operational-search activities.

It should be summarized that in Western countries the legal status of an employee of a body carrying out operational-search activities during ORM is mainly regulated by departmental regulations. Due to the fact that he, as a rule, performs simultaneously the functions of an investigator and a person carrying out ORM, he is endowed with broader powers. The detective independently chooses the direction and tactics of the investigation, while bears personal responsibility for its organization and results. To carry out a number of measures that restrict the constitutional rights of citizens, he needs to obtain the approval of the relevant officials. The decision to complete the investigation and send the case to the prosecutor's office or to the court is taken at his own discretion, when he believes that the collected evidence of the suspect's guilt is sufficient to bring him to criminal responsibility. This approach allows us to conclude that the legal status of an employee of a body carrying out operational-search activities in Western countries seems to be more preferable in the ratio of the powers granted to him with those whose provision is dictated by the emerging law enforcement practice.

## CONCLUSIONS

Thus, we can conclude that in the developed countries of the world there is no unified approach to the legal regulation of the status of an employee of a body carrying out operational-search activities. Legislative acts regulating OSA, as a rule, contain provisions defining the grounds and procedure for its implementation, ORM, a list of operational units acting as subjects, their competence. However, they do not contain norms establishing the right status of an operative as a direct subject of ORM. In this connection, when determining his competence, one should proceed from the competence of the unit where he is serving.





At the same time, in a number of countries, the legislator, granting broader powers to the operative in the independence of the choice of forms and methods of investigation, pays special attention to tightening the normative consolidation of the legality of certain measures, primarily limiting the constitutional rights of citizens. The main idea in this case is the fact that the final decision on the guilt of a person in the commission of a crime is made by the court, and accordingly, the right to assess the evidence remains with it.

Evidence is usually subject to generally accepted requirements of legality, sufficiency, relevance, admissibility and reliability. The activity of an investigator is not limited by a set of mandatory conditions and rules, in case of non-observance of which its results, even actually indicating the guilt of a particular person, are not accepted by the court as evidence in a criminal case.

In conclusion, it should be noted that such an approach cannot be accepted by the legislator unconditionally, and we must not forget the history and specificity of the legal regulation of the OSA in our state. Obviously, this issue requires more careful study and detailed study.

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