

THE CONCEPT OF CRIMINAL-LEGAL PROVISION OF OPERATIONAL-SEARCH ACTIVITIES AND A BRIEF DESCRIPTION OF ITS DIRECTIONS

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Abstract. The aim of this article is to explore the concept and briefly characterize the directions of criminal-legal provision for operational-search activities.

Studying operational-search activities solely from an investigative (search) or criminal procedural perspective is insufficient, as several issues related to these activities require regulation under criminal law. These issues include, in particular, the criminal-legal response to cases where individuals conducting operational-search activities cause harm to legally protected interests during the implementation of operational-search measures, the problem of provocation of a crime within the framework of operational-search measures, criminal liability of the provocateur and the individual who committed a crime as a result of provocation, as well as the legal modeling (refinement and/or development) of criminal offenses aimed at ensuring the effectiveness of operational-search activities.

Based on the results of the conducted research, the Article develops the concept of criminal-legal provision of operational-search activities. Criminal-legal provision of operational-search activities is the process and outcome of legal regulation aimed at ensuring the effectiveness of operational-search activities and safeguarding them from internal and external destabilizing interference. It also encompasses the application of criminal-legal norms regulating the public relations that arise during the activities of individuals conducting operational-search activities within the scope of their powers.

From the proposed definition, it follows that criminal-legal provision of operational-search activities has both regulatory and protective directions, in accordance with the issues, methods, and means of criminal legislation. These directions are interconnected and complementary mechanisms. The first direction-regulatory-should primarily be expressed through the development of a norm that excludes criminal liability in cases where individuals conducting operational-search activities lawfully cause harm to legally protected interests during the implementation of operational-search measures. The second direction-protective-should manifest itself in the refinement or development of the criminal structures in the Special Part of the Criminal Code.

Keywords - operational-search activities; legal provision; criminal-legal provision; means of criminal-legal provision for operational-search activities; General and Special Parts of the Criminal Code; regulatory and protective directions of criminal-legal provision for operational-search activities; a set of criminal-legal norms; legal modeling.

I. Introduction

Operational-search activities are an important tool in the fight against crime, which can manifest both as an independent activity and as supportive actions within the framework of an initiated criminal proceeding.

Operational-search activities have traditionally been perceived (perhaps continue to be perceived) as a closed field, on which scientific research has been limited to an investigative (search) or criminal procedural nature, although recently researchers engaged in the theory of operational-search activities have outlined the creation of a separate complex branch of law.

However, studying operational-search activities solely from an investigative (search) or criminal procedural perspective is not justified, as several issues related to these activities require regulation under criminal law (by statute). Among these issues are, in particular, the problems of criminal-legal response in cases where individuals conducting operational-search activities (employees of bodies carrying out operational-search activities or individuals cooperating with such bodies) cause harm to legally protected interests while carrying out operational-search measures; the issue of crime provocation within the framework of operational-search measures, the criminal liability of the provocateur and the person committing an offense as a result of provocation; as well as the legal modeling (refinement and/or development) of criminal offenses aimed at ensuring the conduct of operational-search activities.

Individuals conducting operational-search activities may be exempt from criminal liability for causing harm to legally protected interests (committing an offense) while carrying out operational-search measures only if such exemption is provided for by the Criminal Code. In this context, it is necessary to note that the Criminal Code contains certain provisions regarding the issue under discussion; however, these provisions do not regulate the matter in a systematic and comprehensive manner. An example of such a provision is Article 41 of the Criminal Code, which, as a circumstance excluding criminal liability, distinguishes cooperation with bodies conducting operational-search activities.

However, operational-search activities require more comprehensive and detailed criminal legal regulation, which, within the framework of this study, we have referred to as "criminal-legal provision".

It should also be noted that this research constitutes the first paragraph of my dissertation, which serves an introductory nature and outlines the direction of the study.

II. Research

The term "legal provision", as well as the concept of "criminal-legal provision" derived from it, are used quite frequently in legal literature; however, their meaning is not always clearly defined.

In the theory of criminal law, the function of criminal law as a means of legal protection is a widely discussed topic. Scholars have approached it from various perspectives. It has been noted that criminal law is aimed at ensuring the legal protection of individuals, society, and the state¹. It has been discussed from the

¹ Ст. Пудовочкин Ю.Е., Пирвагидов С.С. Понятие, принципы и источники уголовного права: сравнительно-правовой анализ законодательства России и стран Содружества Независимых Государств. СПб., 2003, § 111 [See Pudovochkin Yu.E., Pirvagidov S.S., The Concept, Principles, and Sources of Criminal Law: A Comparative Legal Analysis of the Legislation of Russia and the Commonwealth of Independent States. St. Petersburg, 2003, p. 111.]

perspective of having a protective nature in relation to the “substantive” branches of law¹. It has been emphasized that the regulatory function of criminal law, among other things, includes ensuring the proper functioning of more valuable positive social relations regulated by other branches of law². It has also been noted that criminal legislation ensures various types of socially useful activities. Specifically, this is expressed in the “implementation of operational-search activities in accordance with the established procedure, while protecting it from destabilizing internal and external criminal influences”³.

Some scholars have viewed the protective function within the context of the actual enforcement of punishment, emphasizing the implementation of punishment through criminal-legal means and the resocialization of the offender⁴.

Criminal-legal provision, however, as a distinct systemic phenomenon, has not been sufficiently researched. The systemic study of criminal-legal provision requires an examination of the interbranch connections between the sciences that constitute the criminal-legal complex, namely, criminal law, criminal procedure, and operational-search activities. The identification of interbranch connections also contributes to the harmonization of criminal legislation. Laws (codes) are developed, and amendments and/or additions are made to them (at least, it is reasonably assumed that they should be made) taking these systemic connections into account.

The concept under discussion is also used in official documents, albeit not frequently. For example, the Supreme Court of the Russian Federation, in three of its rulings, addresses the issues of criminal-legal provision in the context of the effective fight against terrorism⁵, corruption⁶ and money laundering⁷.

¹ Տե՛ս Բօյկո Ա.Պ. Սистемная среда уголовного права: автореф. дис. ... д-ра юрид. наук. М., 2008, էջ 10 [See Boyko A.P., The Systemic Environment of Criminal Law: Author's Summary of the Dissertation, Doctor of Law Sciences. Moscow, 2008, p. 10]

² Տե՛ս Ուղղութեան օրենք. Առաջային մաս / Խմբակիչ Հ. Ի. Վետրովա, Յ. Ի. Լյապունովա. Մ., 1997, էջ 32 [See Criminal Law. General Part / edited by N. I. Vetrova, Yu. I. Lyapunova. Moscow, 1997, p. 32.]

³ Տե՛ս Կուզմին Ս.Ս. Պրоблемы уголовно-правового обеспечения оперативно-разыскной деятельности // Проблемы применения уголовного закона при осуществлении оперативно-разыскной деятельности: материалы регионального круглого стола (Рязань, 9 апр. 2015 г.) / под ред. Е.Н. Билоуса, Г.С. Шкабина. Рязань, 2015, էջ 18 [See Kuzmin S.S., Problems of Criminal-Legal Provision of Operational-Search Activities // Problems of Applying Criminal Law in the Implementation of Operational-Search Activities: materials of the regional round table (Ryazan, April 9, 2015) / edited by E.N. Bilous, G.S. Shkabin. Ryazan, 2015, p. 18.]

⁴ Տե՛ս Գամանենկո Լ.Ի. Ուղղութեան օրենքում պահպանական պահանջման ռազմական առաջարկ. Պերմ, 2012, էջ 14 [See Gamanenko L.I., Criminal-Legal Provision of the Implementation of the Assigned Punishment. Perm, 2012, p. 14.]

⁵ Տե՛ս Օ некоторых вопросах судебной практики по уголовным делам о преступлениях террористической направленности: постановление Пленума Верховного Суда Российской Федерации от 9 февраля 2012 г. № 1 // СПС «КонсультантПлюс» [See On Certain Issues of Judicial Practice in Criminal Cases Related to Terrorist Offenses: Resolution of the Plenary Session of the Supreme Court of the Russian Federation No. 1, dated February 9, 2012 // SPS “ConsultantPlus”]

⁶ Տե՛ս Օ судебной практике по делам о взяточничестве и об иных коррупционных преступлениях: постановление Пленума Верховного Суда Российской Федерации от 9 июля 2013 г. № 24 // СПС «КонсультантПлюс» [See On Judicial Practice in Cases of Bribery and Other Corruption Offenses: Resolution of the Plenary Session of the Supreme Court of the Russian Federation No. 24, dated July 9, 2013 // SPS “ConsultantPlus”]

⁷ Տե՛ս Օ судебной практике по делам о легализации (отмывании) денежных средств или иного имущества, приобретенных преступным путем, и о приобретении или сбыте

The term “criminal-legal provison” has not yet been used in the legal or judicial acts of the Republic of Armenia. It appears in the draft law on amending the Criminal Code of the Republic of Armenia, dated 2009, with the following content: “... as a result of the adoption of the draft amendments to the Criminal Code, the mechanism for controlling export, import, and transit transportation will receive criminal-legal provision, which will strengthen and make this mechanism more effective”¹.

Thus, the term “criminal-legal provision” is used quite frequently in the theory of criminal law, and occasionally in judicial practice. However, its essence is not revealed in legal literature. This is perhaps explained by the fact that authors use this expression in their publications as a familiar term that does not raise questions. As a result of examining the content of publications on criminal-legal provision, it can be concluded that this term refers to a set of criminal legal norms aimed at regulating and/or protecting certain groups of social relations².

In our opinion, the term “criminal legal provision” has not been sufficiently studied; therefore, within the framework of this article, we will attempt to uncover the essence of this phenomenon. To that end, we believe it is necessary to also explore the concept of legal provision in other branches of law, as well as to consider the term “provision” from an epistemological perspective, which will allow us to form our own concept applicable in criminal law.

The word “to provide”, according to its dictionary definition, means to create the necessary conditions for the implementation or realization of something, to guarantee it³. The word “provision” has the same meaning⁴.

A review of scientific sources shows that the term “criminal-legal provision” became the subject of scholarly study starting from the second half of the 20th century. In the works from that time, the first proposals were made regarding the need

имущества, заведомо добытого преступным путем: постановление Пленума Верховного Суда Рос. Федерации от 7 июля 2015 г. № 32 // СПС «КонсультантПлюс» [See On Judicial Practice in Cases of Legalization (Laundering) of Criminally Obtained Funds or Other Property, and on the Acquisition or Sale of Property Knowingly Obtained Through Criminal Means: Resolution of the Plenary Session of the Supreme Court of the Russian Federation No. 32, dated July 7, 2015 // SPS “ConsultantPlus”]

¹ Տես Հայաստանի Հանրապետության քրեական օրենսգրքում փոփոխություն կատարելու մասին օրենքի նախագիծ, Կ-683-21.08.2009-ՊԱ-010/0, <http://www.parliament.am/drafts.php?sel=showdraft&DraftID=3624&Reading=0> (մուտք՝ 30.10.2024) [See Draft Law on Amendments to the Criminal Code of the Republic of Armenia, K-683-21.08.2009-PA-010/0, <http://www.parliament.am/drafts.php?sel=showdraft&DraftID=3624&Reading=0> (accessed on 30.10.2024)]

² Տես Պրաբենկո Օ.Н. Уголовно-правовое обеспечение предметов управленческой деятельности: дис. ... канд. юрид. наук. М., 2013; Титов С.Н. Уголовно-правовое обеспечение охраны интеллектуальной собственности: дис. ... канд. юрид. наук. М., 2013; Саркисова В.Г. Уголовно-правовое обеспечение безопасности объектов транспортной инфраструктуры: дис. ... канд. юрид. наук. Краснодар, 2014 [See Ryabchenko O.N., Criminal and Legal Provision of Management Activity Subjects: Dissertation for the Degree of Candidate of Legal Sciences. Moscow, 2013; Titov S.N., Criminal and Legal Provision of Intellectual Property Protection: Dissertation for the Degree of Candidate of Legal Sciences. Moscow, 2013; Sarkisova V.G., Criminal and Legal Provision of the Security of Transport Infrastructure Objects: Dissertation for the Degree of Candidate of Legal Sciences. Krasnodar, 2014.]

³ Տես Է. Աղայան, Արդի հայերենի բացարական բառարան, «Հայաստան» Հրատարակչություն, Երևան, 1976թ., էջ 96 [See E. Aghayan, Explanatory Dictionary of Modern Armenian, “Hayastan” Publishing, Yerevan, 1976, p. 96.]

⁴ Տես նույն սեղմ [See the same source.]

for a scientific definition of the concept under discussion. One must agree with the idea that the foundation for the formation of the new legal category of "legal provision" lies not so much in the characteristics of the object of legal regulation, but rather in the problems present in the law, related to the need for regulating a new direction¹.

According to one of the existing viewpoints, legal provision is, in fact, only a legal basis, meaning the entirety of legal norms that regulate certain social relations.² However, scientific publications draw attention to the fact that the concept under analysis is broader in scope than the notions of "legal basis" and "legal regulation"³. As a result, many scholars have studied this issue in greater detail.

Professor Dralov, for example, points out the dual nature of the concept of legal provision. He argues that, on the one hand, it is a system of rules (norms) established by legal acts, while on the other hand, it is norm-creating activity aimed at the formation of that system of norms⁴.

Professor Kozbanenko, in general, defines the concept of "legal provision" as a system of socio-legal elements and legally significant measures (means, techniques, and methods) that influence the formation and implementation of law⁵. Moreover, the author distinguishes between the broad and narrow meanings of legal provision. In the broad sense, it is the entire system of socio-legal elements and the development of legally significant measures (means, techniques, and methods), as well as the entire process of their application in the practical activities of legal subjects, aimed at influencing the object of legal regulation in order to achieve tangible results in a specific area of social relations. In the narrow sense, legal provision is the system of legislative, normative, and other acts that regulate the activities of legal subjects in a specific area of social life. In this sense, the term under analysis generally coincides with the concept of legal regulation and implies the regulation of certain relations

¹ Տե՛ս Բաչիլո Ի.Լ. Организация советского государственного управления. Правовые проблемы. М., 1984, էջեր 202, 205–206 [See Bachilo I.L. Organization of Soviet State Administration: Legal Issues. Moscow, 1984, pp. 202, 205–206.]

² Տե՛ս Правовое обеспечение предпринимательства / под ред. М. П. Ринга. М., 1996, էջ 116; Շիտкина И.С. Правовое обеспечение деятельности акционерного общества. М., 2001 [See: Legal Provision of Entrepreneurship, edited by M.P. Ring. Moscow, 1996, p. 116; Shitkina I.S. Legal Provision of the Activities of a Joint-Stock Company. Moscow, 2001.]

³ Տե՛ս Լայտ Ե.Բ. Правовое обеспечение стабильности рынка банковских услуг. М., 2008, էջ 40 [See Lauts E.B. Legal Provision of the Stability of the Banking Services Market. Moscow, 2008, p. 40.]

⁴ Տե՛ս Դրալով Վ.Վ. Теоретические и организационно-методические вопросы совершенствования правового обеспечения управления органами внутренних дел : дис. ... канд. юрид. наук. М., 2001, էջ 38; Տոլմաчева Н.Н. Правовое обеспечение деятельности законодательного (представительного) органа государственной власти субъекта Российской Федерации: дис. ... канд. юрид. наук. М., 2002, էջ 18 [See Dralov V.V., Theoretical and Organizational-Methodological Issues of Improving the Legal Provision of the Internal Affairs Authorities' Management: Dissertation for the Degree of Candidate of Legal Sciences. Moscow, 2001, p. 38; Tolmacheva N.N., Legal Provision of the Activities of the Legislative (Representative) Body of State Power of a Subject of the Russian Federation: Dissertation for the Degree of Candidate of Legal Sciences. Moscow, 2002, p. 18.]

⁵ Տե՛ս Կօզբանենկո Վ.Ա. Правовое регулирование и правовое обеспечение государственного управления: сущность и содержание. М., 2002, էջ 20 [See Kozbanenko V.A., Legal Regulation and Legal Provision of Public Administration: Essence and Content. Moscow, 2002, p. 20.]

through normative legal acts¹. This approach is also shared by other scholars².

Thus, in a broader sense, legal provision should be understood as the entirety of the process of forming legal norms and their implementation in the legal regulation of social relations. Based on the analysis of the concept under consideration, it can be concluded that criminal-legal provision is the entirety of the implementation of criminal law norms in the process of forming those norms and regulating social relations through criminal law.

Criminal law provides various types of activities, including operational-search activities. The concept of operational-search activities is defined by law. According to Part 1 of Article 3 of the Law on Operational-Search Activities, operational-search activities, aimed at protecting the rights and freedoms of individuals and citizens, as well as state and public security, from unlawful encroachments, through the use of both covert and overt methods and means, involve the preparation, execution, and documentation of operational-search measures, as well as their implementation and enforcement, carried out by bodies authorized by law to conduct such activities. It should be noted that the aforementioned definition in operational-search science is subject to criticism. Some authors rightly draw attention to the fact that such a definition is narrow and does not correspond to the actual situation³. However, due to the fact that the study of the concept of operational-search activities falls outside the scope of this research, we will not make it the subject of discussion, and issues related to operational-search activities, including those arising from the Law on Operational-Search Activities, will be addressed only insofar as they are relevant to the subject of this research. Therefore, in this research, we will adopt the concept defined by the aforementioned Law as the basis.

In general, issues of criminal law during operational-search activities are more

¹ Ст. 1 Дралов В.В. Теоретические и организационно-методические вопросы совершенствования правового обеспечения управления органами внутренних дел : дис. ... канд. юрид. наук. М., 2001, л. 18–19 [See **Dralov V.V.**, Theoretical and Organizational-Methodological Issues of Improving the Legal Provision of Internal Affairs Authorities' Management: Dissertation for the Degree of Candidate of Legal Sciences. Moscow, 2001, pp. 18–19.]

² Ст. 1 Макарова Т.В. Правовое обеспечение коллегиальности в уголовно-исполнительской системе // Управление и экономика в условиях модернизации: проблемы и пути их решения: материалы науч.-практ. конф. (г. Вологда, 12 апр. 2013 г.). Вологда, 2013, л. 79–84; Зубарев С.М. Правовое обеспечение реформы уголовно-исполнительской системы. М., 2004. л. 73–74 [See **Makarova T.V.**, Legal Provision of Collegiality in the Penal System // Management and Economics in the Context of Modernization: Problems and Solutions: Materials of the Scientific and Practical Conference (Vologda, April 12, 2013). Vologda, 2013, pp. 79–84; **Zubarev S.M.**, Legal Provision of the Reform of the Penal System. Moscow, 2004, pp. 73–74.]

³ Ст. 1 Захарцев С.И. Оперативно-розыскные мероприятия. Общие положения. СПб., 2004, л. 4; Шумилов А. Ю. Оперативно-разыскная наука в Российской Федерации: в 3 т. М., 2013. Т. 1: Оперативно-разыскная деятельность и формирование науки о ней. С. 125–162; Омелин В.Н. Проблемы совершенствования законодательного регулирования оперативно-разыскной деятельности // Алтайский юридический вестник. 2017. № 18, л. 124–125 [See **Zakharcev S.I.** Operational-Search Activities. General Provisions. St. Petersburg, 2004, p. 4; Shumilov A.Yu. Operational Search Science in the Russian Federation: in 3 Volumes. Moscow, 2013. Vol. 1: Operational-Search Activities and the Formation of the Science of It. pp. 125–162; **Omelin V.N.** Problems of Improving Legislative Regulation of Operational-Search Activities // Altai Legal Bulletin. 2017. No. 18, pp. 124–125.]

often studied by representatives of the field of investigative (search) science¹. Among the first to develop this issue in the second half of the 20th century were M. P. Karpushin and A. F. Vozniy². Today, issues related to the interbranch connections under discussion are addressed either in a general manner in educational literature³, or in scientific articles⁴, or in monographs or dissertations dedicated to specific issues⁵. This situation, as noted by A.A. Chistyakov, has arisen not only due to the psychological and methodological issues of the aforementioned interbranch studies⁶. One of the reasons for this is the so-called issue of research confidentiality, which, most likely, causes representatives of criminal law to avoid research in this area. At the same time, attention has often been drawn in the field of operational-search science to the fact that the issues of legal regulation of operational-search measures are of an open, non-confidential nature⁷.

Moreover, from the perspective of criminal law, the need for research is initiated by representatives of operational-search science itself⁸. In this regard, the works of A. Yu. Shumilov are quite interesting, in which he analyzes certain criminal-legal aspects

¹ Ст. Шумилов А.Ю. Оперативно-разыскная наука в Российской Федерации: в 3 т. М., 2014. Т. 2: Философия оперативно-разыскной науки, 153–164 [See Shumilov A.Yu. Operational-Search Science in the Russian Federation: in 3 Volumes. Moscow, 2014. Vol. 2: Philosophy of Operational-Search Science, pp. 153–164.]

² Ст. Шумилов А. Ю. Оперативно-разыскная наука в Российской Федерации. М., 2013. Т. 1, № 89. [See Shumilov A.Yu. Operational-Search Science in the Russian Federation. Moscow, 2013, Vol. 1, p. 89.]

³ Ст. 3 Теория оперативно-розыскной деятельности: учебник / под ред. К.К. Горяинова, В.С. Овчинского. М., 2018, §27, 80–98 [See Theory of Operational-Search Activities: Textbook, edited by K.K. Goryainov, V.S. Ovchinsky. Moscow, 2018, pp. 80–98.]

⁴ Ст. Галахов С.С. Роль уголовно-правовых норм в регулировании оперативно-разыскной деятельности в Российской Федерации и возможные направления их совершенствования // Вестник Уфимского юридического института МВД России. 2013. № 4, ¶26–31 [See: Galakhov S.S., The Role of Criminal Law Norms in Regulating Operational-Search Activities in the Russian Federation and Possible Directions for Their Improvement // Bulletin of the Ufa Law Institute of the Ministry of Internal Affairs of Russia. 2013. No. 4, pp. 26–31.]

⁵ Ст. Назаров А. Д. Провокации в оперативно-разыскной деятельности. М., 2010 [See Nazarov A.D. *Provocations in Operational-Search Activities*. Moscow, 2010.]

⁶ Ст. Чистяков А.А. Уголовное право и оперативно-разыскная деятельность: проблемы межотраслевых исследований // Проблемы применения уголовного закона при осуществлении оперативно-разыскной деятельности: материалы регионального круглого стола (Рязань, 9 апр. 2015 г.) / под ред. Е. Н. Билоуса, Г. С. Шкабина, т. 6–9 [See Chistyakov A.A. Criminal Law and Operational-Search Activities: Issues of Intersectoral Research // Problems of Applying Criminal Law in the Conduct of Operational-Search Activities: Materials of the Regional Round Table (Ryazan, April 9, 2015), edited by E.N. Bilous, G.S. Shkabin, pp. 6–9.]

⁷ Ст. Луговик В.Ф. О концепции правового регулирования оперативно-розыскной деятельности // Актуальные вопросы законодательного регулирования оперативно-розыскной деятельности: материалы Всерос. науч.-практ. конф. Омск, 2012, №77, 71–86; Захарцев С.И., Игнащенков Ю.Ю., Сальников В.П. Оперативно-розыскная деятельность в XXI веке. М., 2015. №77, 119–120 [See Lugovik V.F., On the Concept of Legal Regulation of Operational-Search Activities // Current Issues of Legislative Regulation of Operational-Search Activities: Materials of the All-Russian Scientific and Practical Conference. Omsk, 2012, pp. 71–86; Zakharcev S.I., Ignashchenkov Y.Y., Salnikov V.P. Operational-Search Activities in the 21st Century. Moscow, 2015, pp. 119–120].

⁸ Ст. Захарцев С.И., Игнащенков Ю.Ю., Сальников В.П. Оперативно-розыскная деятельность в XXI веке. М., 2015, № 104 [See Zakharchev S.I., Ignashchenkov Y.Y., Salnikov V.P. Operational-Search Activities in the 21st Century. Moscow, 2015, p. 104].

of operational-search activities¹. However, comprehensive monographic studies on the criminal-legal provision of operational-search activities are practically absent today.

Thus, the definition of criminal-legal provision proposed by us and the legislative definition of operational-search activities allow us to formulate the content of the criminal-legal provision of operational-search activities. Criminal-legal provision of operational-search activities is the process and outcome of legal regulation aimed at ensuring the effectiveness of operational-search activities and protecting against internal and external destabilizing interventions, as well as the implementation of criminal-legal norms regulating social relations arising during the activities of individuals conducting operational-search activities within the scope of their authority.

From the definition presented above, it follows that the criminal-legal provision of operational-search activities is characterized by the following features:

- Normativity: a characteristic derived from the positivist essence of Armenian criminal law.
- Constructive influence on operational-search relations: aimed at the effective, goal-oriented activities of the bodies conducting operational-search activities and the realization of the set objectives.

The means of criminal-legal provision for operational-search activities are the entirety of norms directed at regulating social relations that arise during the implementation of operational-search activities, as outlined in the General and Special Parts of the Criminal Code.

From the proposed definition of criminal-legal provision for operational-search activities, it follows that criminal-legal provision has regulatory and protective directions, in accordance with the issues, methods, and means of criminal legislation. These directions are interconnected and complementary mechanisms, of which the first - the regulatory direction - should primarily be reflected in the formulation of a norm that excludes criminal liability in cases where individuals conducting operational-search activities cause lawful harm to interests protected by criminal law while carrying out operational-search measures. The second - the protective direction — should be manifested in the refinement or development of criminal offenses in the Special Part of the Criminal Code. In essence, the distinction between these two directions corresponds to the structure of the Criminal Code, as divided into General and Special Parts. Norms related to the regulatory direction should be placed in the General Part, while norms related to the protective direction should be placed in the Special Part.

It should also be noted that the issues of criminal legislation are not limited to only the regulatory and protective effects. Article 2 of the Criminal Code distinguishes other issues of criminal legislation, such as the issues of prevention, fair liability, and

¹ Ст. Шумилов А.Ю. Основы уголовно-правовой оценки сыскной информации. М., 2000; Шумилов А.Ю. Проблемы законодательного регулирования в оперативно-разыскной деятельности: десять лет спустя (конституционные, административные, уголовные, уголовно-процессуальные и уголовно-сыскные аспекты). М., 2008; Шумилов А. Ю. Оперативно-разыскная наука в Российской Федерации. М., 2013. Т. 1 [See Shumilov A.Yu. Foundations of Criminal Law Evaluation of Investigative Information. Moscow, 2000; Shumilov A.Yu. Problems of Legislative Regulation in Operational-Search Activities: Ten Years Later (Constitutional, Administrative, Criminal, Criminal Procedure, and Criminal Investigative Aspects). Moscow, 2008; Shumilov A.Yu. Operational-Search Science in the Russian Federation. Moscow, 2013. Vol. 1.]

reintegration/re-socialization. However, in line with the provision of the same issues, the implementation of the regulatory and protective directions is singled out as an initial guideline for establishing the essence of criminal-legal provision for operational-search activities. The realization of the other mentioned issues is only possible in the case of legal regulations developed in accordance with the regulatory and protective directions.

III. Conclusion

As a result of the research conducted within the framework of this work, a number of conclusions have been drawn, the main ones of which are summarized as follows:

1. Operational-search activities have traditionally been perceived (and may still be perceived) as a closed field, with scientific research in this area being limited to investigative (search) or criminal procedural aspects. However, in recent years, researchers focusing on the theory of operational-search activities have started to outline the creation of a distinct and comprehensive branch of law.

2. It is not justified to study operational-search activities solely from the perspective of investigative (search) or criminal procedural aspects, as a number of issues related to operational-search activities require regulation by criminal law (by statute). These issues include, in particular:

- the issues related to criminal legal responses when individuals conducting operational-search activities (employees of bodies conducting operational-search activities or individuals cooperating with these bodies) cause harm to interests protected by criminal law during the implementation of operational-search measures;
- the provocation of a crime within the framework of operational-search measures;
- the issue of criminal liability of the provocateur and the person who committed a crime as a result of provocation;
- the issues of legal modeling (refinement and/or development) of criminal offenses aimed at providing operational-search activities.

3. The term "criminal-legal provision" is quite often used in the theory of criminal law, and occasionally in judicial practice. However, its essence is not fully revealed in legal literature. This is perhaps explained by the fact that in their publications, authors use this expression as a widely recognized term that does not raise any questions. Based on the analysis of the content of publications on criminal-legal provision, it can be concluded that this term refers to a system of criminal-legal norms aimed at regulating and/or protecting a specific group of social relations.

4. Criminal-legal provision of operational-search activities is the process and outcome of legal regulation aimed at ensuring the effectiveness of operational-search activities and protecting against internal and external destabilizing interventions, as well as the implementation of criminal-legal norms regulating social relations arising during the activities of individuals conducting operational-search activities within the scope of their authority.

5. The means of criminal-legal provision of operational-search activities are the set of norms aimed at regulating social relations that arise during the implementation of operational-search activities, as outlined in the General and Special Parts of the Criminal Code.

6. From the proposed definition of criminal-legal provision for operational-search activities, it follows that criminal-legal provision has regulatory and protective directions, in accordance with the issues, methods, and means of criminal legislation.

These directions are interconnected and complementary mechanisms, of which the first - the regulatory direction - should primarily be reflected in the formulation of a norm that excludes criminal liability in cases where individuals conducting operational-search activities cause lawful harm to interests protected by criminal law while carrying out operational-search measures. The second - the protective direction — should be manifested in the refinement or development of criminal offenses in the Special Part of the Criminal Code. In essence, the distinction between these two directions corresponds to the structure of the Criminal Code, as it is divided into General and Special Parts, because the norms related to the regulatory direction should be placed in the General Part, while the norms related to the protective direction should be placed in the Special Part.

ՕՊԵՐԱՏԻՎ-ՀԵՏԱԽՈՂԱԿԱՆ ԳՈՐԾՈՒՆԵՈՒԹՅԱՆ ՔՐԵԱԿԱՎԱԿԱՆ ԱՊԱՀՈՎՄԱՆ ՀԱՍԿԱՑՈՒԹՅՈՒՆԸ ԵՎ ՈՒՂՈՒԹՅՈՒՆՆԵՐԻ ՀԱԿԻՐԾ ԲՆՈՒԹԱԳԻՐԸ

Գևորգ Բարսեղյան

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Համառոտագիր: Սույն հոդվածի նպատակը օպերատիվ-հետախողական գործունեության քրեական իրավական ապահովման հասկացության և ուղղությունների հակիրծ բնութագրի հետազոտումն է:

Օպերատիվ-հետախողական գործունեությունը միայն հետախողական կամ քրեադատավարական դիտանկյունից հետազոտելն արդարացված չէ, քանի օպերատիվ-հետախողական գործունեությանը վերաբերող մի շարք հարցեր քրեական իրավունքով (օրենքով) կարգավորման անհրաժեշտություն ունեն: Այդ հարցերի թվին են դասվում, մասնավորապես, օպերատիվ-հետախողական գործունեություն իրականացնող անձանց կողմից օպերատիվ-հետախողական միջոցառումներ իրականացնելիս քրեական օրենքով պաշտպանվող շահերին վճառ պատճառելու դեպքում քրեական արձագանքման խնդիրները, օպերատիվ-հետախողական միջոցառումների շրջանակներում հանցագործության պրովլկացիան, պրովլկատորի և պրովլկացիայի հետևանքով հանցանք կատարած անձի քրեական պատասխանատվության հարցերը, ինչպես նաև օպերատիվ-հետախողական գործունեության ապահովմանն ուղղված հանցակազմերի իրավական մոդելագորման (լրամշակման և/կամ մշակման) հարցերը:

Իրականացված հետազոտության արդյունքներով հոդվածում մշակվել է օպերատիվ-հետախողական գործունեության քրեական ապահովման հասկացությունը. օպերատիվ-հետախողական գործունեության քրեական ապահովումը օպերատիվ-հետախողական գործունեության արդյունավետության և ներքին ու արտաքին անկայունացնող միջամտությունից ապահովման նպատակով իրականացվող իրավածկանական գործընթացն ու արդյունքն է, ինչպես նաև իրենց լիազորությունների շրջանակներում օպերատիվ-հետախողական գործունեություն իրականացնող անձնաց գործունեության ընթացքում ծագող հասարակական հարաբերությունները կարգավորող քրեական նորմերի կենսագործումը:

Առաջարկվող սահմանումից հետևում է, որ օպերատիվ-հետախողական գործունեության քրեական ապահովումն ունի կարգավորող և պաշտպանող ուղղություններ՝ քրեական օրենսդրության խնդիրներին, մեթոդներին ու միջոցներին համապատասխան: Այս ուղղությունները փոխկապակցված և փոխլրացնող մեխա-

Այսօներ են, որոնցից առաջինի՝ կարգավորող ուղղության ծևավորումը հիմնականում պետք է արտահայտվի օպերատիվ-հետախուզական գործունեություն իրականացնելով անձանց կողմից օպերատիվ-հետախուզական միջոցառումներ իրականացնելիս քրեական օրենքով պաշտպանվող շահերին իրավաչափ վնաս պատճելու դեպքում քրեական պատասխանատվությունը բացառող նորմի մշակմանը, իսկ երկրորդի՝ պաշտպանող ուղղության ծևավարումը պետք է դրսնորվի Հատուկ մասի հանցակազմերի լրամշակման կամ մշակման տեսքով:

Բանալի բառեր – օպերատիվ-հետախուզական գործունեություն; իրավական ապահովում; քրեակազմական ապահովում; օպերատիվ-հետախուզական գործունեության քրեակազմական ապահովման միջոցներ; Քրեական օրենսգրքի Ընդհանուր և Հայուկ մասեր; օպերատիվ-հետախուզական գործունեության քրեակազմական ապահովման կարգավորող և պաշտպանող ուղղություններ; քրեակազմական նորմերի համալիր; իրավական մոդելավորում:

ПОНЯТИЕ УГОЛОВНО-ПРАВОВОГО ОБЕСПЕЧЕНИЯ ОПЕРАТИВНО-РОЗЫСКНОЙ ДЕЯТЕЛЬНОСТИ И КРАТКАЯ ХАРАКТЕРИСТИКА ЕГО НАПРАВЛЕНИЙ

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Абстракт. Целью настоящей статьи является исследование понятия и краткой характеристики направлений уголовно-правового обеспечения оперативно-розыскной деятельности.

Изучение оперативно-розыскной деятельности только с разведывательной или уголовно-процессуальной точки зрения не оправдано, поскольку ряд вопросов, касающихся оперативно-розыскной деятельности, нуждаются в регулировании уголовным правом (законом). К числу этих вопросов относятся, в частности, проблемы уголовно-правового реагирования в случае причинения вреда охраняемым уголовным законом интересам лицами, осуществляющими оперативно-розыскную деятельность, при осуществлении оперативно-розыскных мероприятий, вопросы провокации преступления в рамках оперативно-розыскных мероприятий, уголовной ответственности провокатора и лица, совершившего преступление в результате провокации, а также вопросы правового моделирования (доработки и/или разработки) составов преступлений, направленных на обеспечение оперативно-розыскной деятельности.

По результатам проведённого исследования в статье разработано понятие уголовно-правового обеспечения оперативно-розыскной деятельности: уголовно-правовое обеспечение оперативно-розыскной деятельности - это процесс и результат правообразования, осуществляемого с целью обеспечения эффективности оперативно-розыскной деятельности и защиты от внутреннего и внешнего дестабилизирующего вмешательства, а также реализация уголовно-правовых норм, регулирующих общественные отношения, возникающие в ходе

деятельности лиц, осуществляющих оперативно-розыскную деятельность в рамках своих полномочий.

Из предложенного определения следует, что уголовно-правовое обеспечение оперативно-розыскной деятельности имеет регулятивное и охранительное направления в соответствии с задачами, методами и средствами уголовного законодательства. Эти направления являются взаимосвязанными и взаимодополняющими механизмами, формирование первого из которых, регулятивного направления, в основном должно выражаться в разработке нормы, исключающей уголовную ответственность в случае причинения лицами, осуществляющими оперативно-розыскную деятельность, правомерного вреда охраняемым уголовным законом интересам при осуществлении оперативно-розыскных мероприятий, а формирование второго, охранительного направления, должно проявляться в виде доработки или разработки составов преступлений в Особой части Уголовного кодекса.

Ключевые слова – оперативно-розыскная деятельность; правовое обеспечение; уголовно-правовое обеспечение; средства уголовно-правового обеспечения оперативно-розыскной деятельности; Общая и Особенная части Уголовного кодекса; регулятивное и охранительное направления уголовно-правового обеспечения оперативно-розыскной деятельности; комплекс уголовно-правовых норм; правовое моделирование.