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Abstract: The article analyzes the legislation that made significant changes and additions to some legislative acts of the Republic of Kazakhstan on the operational-search activity. According to the authors, these changes and additions not only have disadvantages and in some moments worsened ex-post version of the law. Based on the analysis formulates proposals aimed at improving the operational-search legislation. Further improvement of legal regulation of the operational-search activity. As the operatively-search practices, the existing Law "On Operational-Investigative Activities" does not fully meet its needs. Very weakly expressed in it rules on making operational search actions, interaction of special services and law enforcement agencies in operational and investigative work and delimitation between the subject of so-called operational-investigative conduct, regulatory and legal protection of the operative-investigative activities, etc. All this creates certain difficulties for operational staff in the timely detection of persons who commit or have committed crimes.

Key words: Analysis · Interaction · Bill · Using the results of the OSA · The operational-search activity · Operatively-search law · Operative-search measures · Preliminary investigation · The contradiction · Improvement · Criminal procedure · Criminal procedure legislation

INTRODUCTION

The law of the Republic of Kazakhstan "On amendments and additions to some legislative acts of the Republic of Kazakhstan on operatively-search activity" dated 17.07.2009, ¹ 187-IV significant changes were made for the whole period of validity of the Law of the Republic of Kazakhstan "On investigative activities" since 1994.

We recognize that certain provisions of the Law "On investigative activities" were significantly improved and the authors of the development of the draft law will undoubtedly contribute to the development of investigative law.

But the purpose of this article is to convey to the professionals involved in the operational-search activity, their vision on certain issues, which, in our opinion, remained outside lighting or, on the contrary, worsened certain provisions of the previous investigative law.

The Main Part: Analysis of the Law of the Republic of Kazakhstan "On amendments and additions to some legislative acts of the Republic of Kazakhstan on operatively-search activity" dated 17.07.2009, ¹ 187-IV [1], in our opinion, allows us to formulate a number of conclusions and proposals decision and which will have a positive impact on the operational-investigative law.

Set out in the new article 1, "Basic concepts used in this Law the" Law of the Republic of Kazakhstan "On operative-search activity" [2] raises a number of questions.

What guided developers, specifying the order of presentation of basic concepts, this causes many controversial issues. But if so, logically, most likely, would be the first to make the concept operational-search activity and other concepts to classify for blocks (groups) and present, for example, together concepts of each article, then the concepts of operational search activities
and the other as needed. In our opinion this will cause the subject of much debate among both theorists and practitioners. Taking into account the proposed basic concepts used in article 1 of the Law "On operative-search activity" list in alphabetical order, that will remove a lot of questions. In the analyzed article explains the concept of operative-search actions outlined in Art. 11 "Operative-search activities" Law "On operative-search activity" and here, in our opinion there are significant gaps. First, in article 1 is not given to the concept of operatively-search actions. Secondly, from 18 General investigation activities is given to the concept of only 9 and concepts such investigation activities:

- Establishment of open and secret relations with citizens, using them in the operational-search activity;
- Application of a model of conduct imitating a criminal activities;
- Creation of secret enterprises and organizations;
- The use of technical means;
- The use of military working dogs;
- Scan for devices illegal removal information;
- The prosecution of individuals preparing, committing or has committed a crime and his detention;
- Implementation of the presence of witnesses personal examination of detained persons, inspection and confiscation of things which are with them and documents could relate to criminal activity, as well as inspection of premises, workers and other places, searches of vehicles;
- Operations to capture armed criminals - it is not given.

Thirdly, outlined the concept of operative-investigative activities are, in our opinion, is not entirely successful. In the modern theory of the OSA (in the works of specialists: Kazakhstan - B.A. Abdrakhmanov, S.V. Patashkov, T.B. Tokalov, Zh.T. Uspanov, A.D. Shaimukhanov, ZH.M. Chokin and others, Russia- Y.G. Blinov, O.A. Vagin, A.V. Vedin, K.K. Goryainov, Kalnitsky, V.S. Ovchinsky, A.Y. Shumilov and others), is, in our view, a more comprehensive and inclusive definition of these investigative measures, which more accurately and completely reveals their essence. The law of the Republic of Kazakhstan "On operative-search activity" [1] the name and contents of Art. 14 of the Law of the Republic of Kazakhstan "On operative-search activity" [2] stated in new wording, which, in our opinion, made ??a confusion (contradictions) and have not solved the basic problems. The problem of converting the results of the OSA, documented on the technology of operative administration in materials suitable for use in the open judicial proceedings, has always been one of the most pressing and complex problems and till now is not solved. In our opinion, should abandon the new title of the article "The use of the materials of operative-search activity" and to return to the old title - "The use of the results of operative-search activity". This offer is that senior 130 of the criminal code of Kazakhstan are called "using the results of operative-search activity in the proof in criminal justice" [3]. Currently in Kazakhstan, one of the current, maybe the most important, is the problem of utilization of the results of the OSA in criminal proceedings as evidence that requires urgent resolution. The changes made contradictions in the Law "On operative-search activity" uses the term "materials", the CPC RK "results". In the end, questions arise:

- What is the "materials" and what is "results"?
- They are identical concepts or there are differences, as it would be perceived by the investigator or the judge?

Based on the above, we believe that in the near future it is necessary to solve the following questions.

The two major problems, as in the theory, in investigation and criminal procedure legislation of Kazakhstan, in our opinion, at the moment is the lack in the legislation:

- Concepts "of the operational-search activity";
- The concept of "utilization of the results of the operational-search activity" in criminal proceedings (to be proved in criminal cases);
- The lack of a consistent legal framework for the use of the results of the operational-search activity in criminal proceedings (to be proved in criminal cases).

In Art. 130 Code of Criminal Procedure governing the use of OSA results in proving criminal cases, not given its definition, but only outlines the main directions for their use. Russian lawmaker in 36.1 of Art. 5 of the CCP identified: " The result of operational and investigative activities are information obtained in accordance with the Federal Law "On Operational -Investigative Activities" on the signs preparing and committing the offense or,
persons preparing, committing or having committed a crime and hiding from the bodies of inquiry, investigation or trial"[3]. Previously operated in the Russian Interdepartmental "Instructions on how to submit the results of operational and investigative activities inquiry body, investigator, prosecutor or court" determined OSA results differently than the Code. By the results of the OSA used in criminal proceedings understood: "evidence from operational units in the established order of the Federal Law on OSA, of the signs of preparing and committing the offense or, on the persons of his preparing, committing or having committed, hiding from the bodies of inquiry, investigation and trial evading the penalty and missing persons, as well as events or actions that endanger the state, military, economic or ecological security of the Russian Federation. " Interesting, in our opinion, is the point of view of A.V. Vedin that result to the above definition OSA adds: "... as well as other legally significant information related to the implementation of the objectives and tasks of the operational- search bodies "[4].

Analysis of the provisions of Art. 14 of the Law "On operative-search activity" indicates that the legislator actively uses the phrase "OSA results" obtained during the OSA, "but did not disclose it to invest in content. A similar provision in Art. 11 of the Federal Law "On Operational-Investigative Activities"[5].

To fill this gap in the legal literature suggests the political, military, economic security of the Republic of Kazakhstan. Chokin write: "The results of the OSA - the actual data obtained during ORM"[6]. Other scientists believe that the results of the OSA represent information collected in relation to operational units audited entities and facts. Within the meaning of Art. 11 of the Federal Law " On Operational - Investigative Activities" they must have some documented, for example in the form of written documents, photos and video, etc.

Other Russian scientists and experts believe that "the results of the operational-search activity - you should read information (information) received during the implementation of ORM specified in Art. 11 and fiduciaries and recorded in the records of operational records. This information should reflect the circumstances of the crime and other circumstances of importance for the quick and full disclosure of a crime by way of criminal proceedings"[7].

In our opinion, the above definition, along with others, may not give a comprehensive description of the results of the OSA, as they lack a very important indication that various information about the circumstances of the crime and the persons involved in it, can be obtained by carrying out OSA not only secretly, but openly.

So, A.V. Vedin characterizes the results of the OSA by the following features:

- The results of the OSA in procedural order represent information product, typically based on aggregate data from different sources and proven operational by;
- The operational investigative value of the results of the OSA may be specific events, actions and their consequences in the form of prevention, repression specific crimes, exposing criminal groups, elimination of conditions for committing crimes, disinformation criminals and others"[4].

The analysis of the above mentioned legal acts, different points of view of the specialists allows to extend understanding. So, the results of the operational-search activity is the actual data got in the operative devices in the legally prescribed manner, of the signs of being prepared, committed or committed crime on individuals, it is preparing, committing or has committed, in hiding from the bodies of inquest, investigation and court evading execution of punishment and missing persons and also about events or actions that threaten the political, military, economic security of the Republic of Kazakhstan.

Considering the above, we believe that the evidence may be contained in:

- The information (reports) operating officer conducting operational and search activities;
- Messages confidential sources;
- Business accounting;
- The conclusions of various enterprises, institutions, organizations and officials;
- Photo- film materials, audio and video records made during operatively-search actions;
- Various material objects received publicly and behind the scenes when carrying out operatively-search actions by operational units of the state authorities about the presence or absence of a socially dangerous act, the guilt of the person who committed that act and other circumstances of importance for the correct settlement of the case.

Considering the above, we offer you to make changes and additions in the Law "On operative-search activity":

1883
In article 1, "Basic concepts used in this Law:
To transfer the basic concepts used in the Law in alphabetical order;
To complete the considered article the notions of the other nine General OSM;
Change the definitions of the concepts described in this article, taking into account the state of the modern theory of the OSA and the practice of the operational units of the agencies competent to exercise the OSA;
In Art. 14, "Using materials of operative-search activity":
To abandon the new title Art. 14, "Using materials of operative-search activity" and to return to the old title - "the use of the results of operative-search activity". This offer is that senior 130 The CPC called "Using the results of operatively-search activity in proving criminal" and should not be included in the law of contradiction;
Complement the art. 1 or art. 14 of the notion of "the results of operatively-search activity" as follows: "the results of the operational-search activity - is evidence from operational devices in the legislatively prescribed manner, of the signs of preparing and committing the offense or, on the persons of his preparing, committing or committed, hiding from the bodies of inquiry, investigation and trial, deviating from the penalty and missing persons, as well as events or actions that endanger the public, military and economic security of the Republic of Kazakhstan."

In order to develop a common policy for legislative recognition of the key terms of the concepts used in the law, to hold scientific-practical conference (seminar) involving representatives of the operational units of the agencies competent to exercise the OSA and departmental educational institutions which teach OSA in full. To consider the participation of leading Russian specialists in the field of OSA.

CONCLUSION

The process of further improvement of investigative legislation should strictly follow the principles of the supremacy of the Constitution and compliance with norms of acts of a lower level acts of higher level.
Correct, in our opinion, the improvement of the norms of the current investigative legislation must be conducted through the following measures:

Fill gaps in the legal regulation and deepening it in the most important spheres of public relations arising in the process of implementing operative-search activity;
Continue and expand the practice of holding scientific examination of draft legislation with joint involvement of theorists and practical workers, including for compliance with the interests of the operational-search activity;
As pointed out earlier to accelerate the formation to unify investigative legislation unified list (conceptual apparatus) used terms in the state and Russian languages;
To improve implementation in the enforcement of laws and regulations should develop a real mechanism of financial and material support to this process;
Mandatory introduction of criminological expertise of draft normative legal acts, to identify assumptions, directly or indirectly, create conditions for crime, corruption and administrative offences;

You should plan the work on systematization of the array of national legislation in the medium term, to carry out scientific analysis of social relationships, requiring legal regulation. Such predictive analysis will allow to identify spheres of social relations that are not regulated by normative legal acts and requiring multi-level regulation.

Systematization of the legislation should be implemented through the application of all three forms: incorporation, consolidation and codification.

Today legislative acts contain a large number of blanket (reference) of the rules allowing public authorities to adopt secondary legislation, the content of which does not correspond to the will of the legislator and sometimes directly contradicts it. In the normative practice of state bodies of the living sectoral, departmental approach, resulting has corruption, infringement of rights, freedoms and legitimate interests of citizens and organizations. Besides, this situation leads to the actual substitution of laws and subordinate acts. In this regard, the process of legislative development must be determined by the reduction of the number of reference rules and best possible elaboration of laws. Along with this should improve the mechanism of introduction in action of the adopted laws to ensure their full implementation, including the timely adoption of the relevant bylaws.
For the purposes of building a legal state and the implementation of legal policy must implement the state bodies and officials in their daily activities. The main principles should be fully approved:

- Legality, that is, compliance and the proper application of the norms of the Constitution and laws based on them subordinate regulatory legal acts;
- Priority of rights and freedoms, the rule of position signifying the rights and freedoms of man and citizen;
- Humanism, that is, the recognition of the Supreme value of the human person, its rights to free development and manifestation of abilities, establishing the good of the individual as the criterion for assessing the quality of social relations.

This legal policy should reflect the government's vision of the main directions, basic mechanisms of development the legal system and the improvement of law enforcement on a certain period of time and developed this Concept, the realization of which is expected to be completed until 2010.

**Summary:** Further development of the legal system of the Republic of Kazakhstan, the strengthening of the state guarantees of observance of the constitutional rights and freedoms of man and citizen should be provided with the following, in our opinion, the complex of measures - should ensure the consistent implementation of the law enshrined in the Constitution of the Republic of Kazakhstan the course of the construction of democratic, legal, secular and social state based on the principles of priority of rights and freedoms of man and citizen, the rule of law, separation of the state power branches and their coordinated functioning with use of system of checks and balances.

Thus the priority of human rights should harmoniously combine with the interests of society and state.

The necessity of development of the legal system in this direction, consistent bring it into conformity with generally accepted principles and norms of international law.

**REFERENCES**

5. Federal Law "On Operational - Investigative Activities" from 12.08.1995 § 144 -FZ.