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ABOUT THE QUESTION OF THE HISTORY OF FORMATION OF OPERATIVE-SEARCH LEGISLATION IN THE REPUBLIC OF KAZAKHSTAN

Abstract. The article discusses the stages of the emergence and development of operational-search legislation in the Republic of Kazakhstan. The subject of the study is historical, theoretical and organizational-management aspects of the formation and development of operational and search legislation of the Republic of Kazakhstan. The methodological basis of the scientific article was the system-structural, comparative-legal, logical-theoretical methods of studying social and legal phenomena. These scientific justifications were applied comprehensively to achieve the objectivity of the results of the research carried out within the framework of the scientific publication. The scientific novelty is that the author investigated several topical problems related to the possibility of expanding approaches to the study of the organizational basis of the search work of the internal affairs agencies. Issues of regulatory and legal regulation of operational and search activities in the Republic of Kazakhstan have been updated. In conducting the study, the author was based on the provisions of the Constitution, the Code of Criminal Procedure and the Operational Investigation Act. The most important is the mutual relationship between the development of the structure of operational units, which has determined the further development of search work, and their connection with scientific research in the field of its organization, the definition and consolidation of legal status, the elaboration of issues of an organizational and managerial nature taking into account changing goals and tasks in the fight against crime.

Key words: operational and search activities, operational and search legislation, criminal investigation, tacit forces, means and methods in the fight against crime.

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Қазақстан Республикасы ІІМ Мақан Есболатов атындағы Алматы академиясы,
Қазақстан, Алматы қ.

Қазақстан Республикасында жедел-іздістіру заңнамасының қалыптасу тарихы туралы сауалға

Аңдатпа. Мақалада Қазақстан Республикасында жедел-іздістіру заңнамасының пайда болу және даму кезеңдері қарастырылады. Зерттеу нысаны – Қазақстан Республикасының жедел-іздістіру заңнамасының қалыптасуы мен дамуының тарихи, теориялық және ұйымдастырушылық-басқарушылық аспектілері. Ғылыми мақаланың әдіснамалық негізі әлеуметтік-құқықтық құбылыстарды зерттеудің жүйелік-құрылымдық, салыстырмалы құқықтық, логикалық және теориялық әдістері болып табылады. Бұл ғылыми негіздемелер ғылыми жариялау аясында зерттеу нәтижелерінің объективтілігіне қол жеткізу үшін жан-жақты қолданылды. Ғылыми жаңалық автордың құқық қорғау органдарының іздістіру жұмыстарының ұйымдастырушылық негіздерін зерттеу тәсілдерін кеңейту мүмкіндігімен байланысты бірқатар өзекті мәселелерді зерттегендігінде жатыр. Қазақстан Республикасындағы жедел-іздістіру қызметін құқықтық реттеу мәселелері жаңартылуда. Зерттеуді жүргізу кезінде автор Қазақстан Республикасы Конституциясының, Қазақстан Республикасының Қылмыстық іс жүргізу кодексінің және «Жедел-іздістіру қызметі туралы» Қазақстан Республикасының Заңының ережелеріне негізделді. Ең бастысы жедел іздістіру жұмыстарының одан әрі дамуын алдын ала анықтаған жедел құрылымдар құрылымының өзара байланысы және олардың оны ұйымдастыру, құқықтық мәртебесін айқындау және шоғырландыру, қылмыспен күрестегі

өзгертін мақсаттар мен міндеттерді ескере отырып ұйымдастырушылық-басқарушылық мәселелерді зерттеу саласындағы үйлесімділігі.

Түйін сөздер: жедел-іздістіру қызметі, жедел-іздістіру заңнамасы, қылмыстық тергеу, жасырын күштер, қылмысқа қарсы күрес құралдары мен әдістері.

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К вопросу об истории становления оперативно-розыскного законодательства в Республике Казахстан

Аннотация. В статье рассмотрены этапы зарождения и развития оперативно-розыскного законодательства в Республике Казахстан. Предметом исследования являются исторические, теоретические и организационно-управленческие аспекты становления и развития оперативно-розыскного законодательства Республики Казахстан. Методологической основой научной статьи послужили системно-структурный, сравнительно-правовой, логико-теоретический методы изучения социально-правовых явлений. Указанные научные обоснования применялись комплексно для достижения объективности результатов проводимого исследования в рамках научной публикации. Научная новизна заключается в том, что автор исследовал ряд актуальных проблем, связанных с возможностью расширения подходов к изучению организационных основ розыскной работы органов внутренних дел. Актуализированы вопросы нормативно-правового регулирования оперативно-розыскная деятельность в Республике Казахстан. При проведении исследования автор основывался на положениях Конституции Республики Казахстан, Уголовно-процессуального кодекса Республики Казахстан, Закона Республики Казахстан «Об оперативно-розыскной деятельности». Наиболее важной представляется взаимообусловленность развития структуры оперативных подразделений, предопределившей дальнейшее развитие розыскной работы, и их сопряженность с научными изысканиями в области её организации, определением и закреплением правового статуса, проработкой вопросов организационно-управленческого характера с учетом меняющихся целей и задач в борьбе с преступностью.

Ключевые слова: оперативно-розыскная деятельность, оперативно-розыскное законодательство, уголовный розыск, негласные силы, средства и методы в борьбе с преступностью.

Introduction

The establishment of operational and search legislation in the Republic of Kazakhstan involves both the development of legal science and the peculiarities (features) of the social and historical development of our country as a whole. Today, the need to strengthen the fight against crime and to ensure public security places special demands on the activities of law enforcement agencies and, above all, on the operational units of the internal affairs agencies.

The basic principles, norms and content of operational and search activities carried out in the territory of the Republic of Kazakhstan are defined by the 1994 Law of the Republic of Kazakhstan “On Operational and Search Activities.” To date, 36 changes and additions have been made to it (last amended on 1 January 2019).

In the current conditions involving the modernization and reform of the law enforcement system, it is necessary to systematize and further improve the operational and search legislation.

Main part

Even since the formation of the sacred scriptures of many world religions, where the whole life experience of people has accumulated, transmitted from generation to generation, it is possible to trace the beginnings of today’s methods of operational and search activity (hereinafter referred to as ORD) (Bibliya. 13 glava «Kniga Chisla»; Koran. Sura 18:19 Al’-Kahf «Peshchera»). We agree with M.A. Shmatov’s opinion that mankind has not yet developed (and is unlikely to ever develop) more adequate and effective methods of combating crime than ORD (Shmatov 2001: 79.).

However, the regulatory regulation of operational and search activities got with the emergence of statehood and law (Izmozik 2002: 3).

In our view, the establishment of statehood was facilitated by the power of privileged sectors of society, which over time began to be isolated from it themselves, and had to create punitive vehicles in the form of law enforcement agencies, whose activi-

ties required appropriate regulatory and legal support in order to protect the territory, maintain law and order in the country, confront and detect external and internal threats in a timely manner.

By now, the study of the evolution of secret detective is devoted to the work of many scientists. Most of them affect the periods of formation and development of police and criminal law enforcement agencies (Vlasov 1997: 126; Elinskyi 1997: 84; Mulukaev 1995: 156), but very little attention was paid to the origin and development of their legislative regulation.

Analyzing the development of operational and search legislation of the Republic of Kazakhstan, it should be noted that in this process is inextricably connected with the history of Soviet operational units. On the third day after the creation of the new revolutionary state, the Soviet militia was established. The main principle of the new police structure was to abandon the previous (bourgeois) methods of solving crimes, to which tacit techniques and methods were identified. During the first year of the new State, the country was hit by banditry, theft, murder and other serious crimes. The leadership of the country decided to take the best of the police of the previous state. The result of these decisions was the establishment of a criminal investigation.

For the first time, criminal investigation bodies were established by the Regulation of the PCIA (People's Commissariat of Internal Affairs of the USSR) of the RSFSR (Russian Soviet Federal Socialist Republic) of 5 October 1918. During that historical period, the country had a very dangerous criminal situation, caused by the power and disorder of the revolutionary period, and the establishment of criminal investigation bodies was a vital fact. Everywhere robberies, robberies, murders and riots were committed. And it was to combat crime that a criminal investigation was established within the Internal Affairs Drug Department.

Since then, after the adoption of the Regulation on the Organization of Criminal Investigation Departments, silent methods and methods of prevention and detection of crimes, search for criminals, work with confidential assistants and much more have been established by law, at the level of departmental normative legal acts of a closed nature, which existed at all times and in all police structures of all States.

In October 1920, the Central Department of Criminal Investigation was formed under the General Directorate of Police of Kazakhstan. Criminal investigation offices have been established in all major cities.

It should be noted that since 1867 Kazakhstan has been part of the Russian Empire as the Steppe Governor-General. Accordingly, as Russian statehood was formed, the functions of State bodies and the bodies authorized to carry out mass activities themselves were periodically subjected to reform, modification, redistribution of powers, elimination of certain areas of activity, in particular, deprivation of judicial and investigative functions to the police.

For the first time, criminal investigation bodies were established by the Regulation of the NKVD of the RSFSR of 5 October 1918. During that historical period, the country had a very dangerous criminal situation, caused by the power and disorder of the revolutionary period, and the establishment of criminal investigation bodies was a vital fact. Everywhere robberies, robberies, murders and riots were committed. And it was to combat crime that a criminal investigation was established within the Internal Affairs Drug Department.

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This was preceded by the adoption on 8 June 1860 by the Government Senate of the Russian Empire of a number of normative legal acts: Law No. 35890 "On the Establishment of Judicial Investigators," Law No. 35891 "Order to Judicial Investigators," Law No. 35892 "Order of the Police on the Conduct of Investigations into Incidents Likely to Commit a Crime or Misconduct" (Polnoe sobranie zakonov Rossiyskoy Imperii. T. 35. Otd. 1. №35890–35892. SPb., 1862).

Subsequently, the provisions of these acts formed the basis of the Statute of Criminal Procedure adopted on November 20, 1864 (Sudebnye ustavy 20 noyabrya 1864 goda, s izlozheniem rassuzhdeniy, na koih oni osnovany. CHast' pervaya // Vvodnaya stat'ya. SPb, 1866. S. III–IV), according

to which the functional duties of the police were to conduct an inquiry on minor crimes.

Thus, the adoption of the Statute of Criminal Procedure of 1864 played a certain role in the legal regulation of the activities of criminal detective and enshrined the right of the police to apply tacit methods of work in the fight against crime.

At the same time, the need to reform the police and to allocate in its structure special bodies authorized to carry out raw activities remained extremely urgent. And on December 31, 1866, Order No. 266 of the Police of St. Petersburg was established for the first time in Russia (Ochkur R. V., 2010: 100). Despite the undisputed merits, the raw parts also had serious shortcomings, mostly of organizational and managerial nature. That is why they have never been able to have a significant impact on reducing crime growth and improving the effectiveness of the fight against it.

A few decades later, the question of their organizational and legal formalization was raised in the State Duma: “the state of detective in the Empire is undoubtedly a direct danger during such a rapid increase in crime” (Mulukaev R. S., Polubinskij V. I., 1990: 37). On July 6, 1908, Law No. 30672 “On Organization of the Raw Part” (Polnoe sobranie zakonov Rossyiskoi Imperii. T. 28. SPb., 1908) was adopted, which contained 12 articles and an annex with a staffing table of raw offices, expenses for their maintenance and the amount of salaries of employees. According to it, in 89 cities (counties) of the Russian Empire, detective branches of four ranks were formed.

However, the law did not cover the Turkistan Governor-General, as the Turkistan region was governed by a special provision and was administratively subordinate to the military minister. A few years later, the need for raw departments arose in the Turkistan region, and since May 1910 raw parts began to be created in Syr-Daryinsky, Samarkand, Fergana, Semirechenskiy and Zakaspian regions (Peregudova 2013: 62). This was the first legal basis for the formation of a State-wide system of criminal detective bodies, which was identified by the legislator as an independent function of the police.

With the establishment of Soviet power, the current unfavourable operational situation required the early development of organizational and legal forms of combating crime, as well as the allocation of raw activities to the independent direction of police work. In October 1920, the Central Department of Criminal Investigation was formed under the General Directorate of Police of Kazakhstan. Criminal

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Since 1922, the criminal investigation has been an independent service of the internal affairs agencies and only in May 1931 was included in the militia. On October 5, 1918, the NKVD of the RSFSR approves the Regulation “On the Organization of the Criminal Investigation Department” (Vestnik Narodnogo Komissariata Vnutrennih Del. 1918. 28 dekabrya. № 24: 8–9), according to which criminal investigation departments with centralized management were established in cities and counties with a population of at least 40–45 thousand people to protect revolutionary order by tacit investigation of crimes and fight against banditry. This Regulation was the first legal basis for the creation of a system of Soviet criminal investigation, and the issues of their legal regulation were formulated during the first year of their operation and are set out in the Instructions on Criminal Investigation issued by Centrorosk in December 1919. (Central’nyi gosudarstvennyi arhiv Oktyabr’skoy revolyucii SSSR (dalee – CGAOR SSSR). F. 393. Op.16. D. 1. L. 321)

The legislative regulation of the ORD has not undergone qualitative changes with the adoption of the first Code of Criminal Procedure of the RSFSR and the Union Republics (UPK v RSFSR, 1922, v Belorusskoy SSR, 1922, v Armyanskoy SSR, 1923, v Kirgizskoy ASSR, 1922). In it we can see only certain “strokes”: the existence of tacit activities of the bodies of inquiry and the adoption of operational and search measures was mentioned in article 93:... “anonymous statements can give rise to criminal proceedings only after prior tacit inspection by their body of inquiry.”

In this way, the legislator noted the importance of the results of the IA (Investigation activities) in deciding on the initiation of criminal proceedings and reflected the existing understanding of the strategy of ensuring conspiracy and the necessary secrecy in combating crime.

In the following, investigative measures were enshrined in the Bases of Criminal Procedure of the Union of SSR and the Union Republics of December 25, 1958 (FZ Rossyiskoy Federacii ot 18 dekabrya 2001 g. № 177-FZ), where, in accordance with Article 29, the bodies of inquiry were entrusted with taking the necessary investigative measures to combat crime, as a result of which the Investigation activities gained a certain legitimacy.

The debate on the need to draft an Investigation activities law was held until the early 1990s: Resolution of the Supreme Council of the RSFSR of 18 April 1991 “On the Procedure for Putting into

Force the Law of the RSFSR” On Militia, “which in paragraph 4 expressly states: “To committee of the Supreme Council of RSFSR concerning legality, law and order and fight against crime together with committees of the Supreme Council of RSFSR on safety and on the legislation in two-month time to draft and present drafts of laws of RSFSR to the Supreme Council of RSFSR:... “On Operational and Search Activities” (O milicii»: postanovlenie Verhovnogo Soveta RSFSR ot 18 aprelya 1991. № 1027-1).

It should be noted that the time of drafting the law in the field of Investigation activities coincided with the collapse of the USSR. Having gained independence, the former Union republics faced an active increase in crime (statisticheskiy sbornik / MVD RF, Minyust RF. M. : Finansy i statistika, 1992: 176). Criminal elements penetrated all spheres of activity of the State and society, which threatened the existence of the State itself.

One solution to the problem was the adoption by the former Union Republics of independent laws on the Investigation activities – as a desire to build a rule of law, to develop similar rules of tacit activity in combating crime, where respect for and respect for human and civil rights and freedoms is a leading principle. During this period, Kazakhstan adopted several normative acts aimed at ensuring the coordinated activities of all branches of State power (Muhamadiev G.N., 2018: 151). Found reflection of situation in again adopted regulations, concerning to Investigation activities that emphasized the importance of formation, formation and further improvement of the operational search legislation.

Conclusion

The analysis of the normative provisions of the current Act on ARD leads to the conclusion that it, acting as the “core” of operational and search legislation, presents a comprehensive normative and legal act, which, first, contains the norms (parts of the norms) of several branches of law and, second, includes a rather monolithic “clot” of rules (concentrated from the provisions of numerous departmental acts) (Zakon Respubliki Kazahstan ot 15 sentyabrya 1994 goda № 154-XIII «Ob operativno-rozysknoy deyatel’nosti»).

The list of legislative acts establishing rules governing certain aspects of operational and search activities (with some degree of detail) shows the

desire of the legislator to solve the problem before him in a comprehensive manner.

Article 3 of the Kazakhstan Republic Act stipulates that investigative activities are carried out following the principles of legality, respect for rights and freedoms, respect for the dignity of the individual, equality of citizens before the law, based on conspiracy, a combination of transparent and tacit methods and professional ethics.

To date, no state on a global scale, regardless of any objective-subjective factors of its development, has abandoned tacit forces, means and methods in the fight against crime. Axiomatic in this regard, the validity of the regulation in departmental acts having a restrictive makeup, the procedure for organizing and tactics for carrying out tacit events and confidential assistance of citizens.

In summary, the historical prerequisites for the establishment and development of operational and search legislation in the Republic of Kazakhstan are divided into three stages:

- Imperial stage (1860-1917)

The beginning of the legislative regulation of the detective of Kazakhstan within the Russian Empire; Is characterized by the allocation of criminal and raw-law activities of the police as an independent part of the inquiry, the adoption of the Law “On the Organization of the Raw Part” and the formation of a State-wide system of criminal mass bodies;

- Soviet stage (1917-1991)

At this stage, the development of legislative regulation of operational and search activities is characterized by a fragmented reference to operational and search measures in the normative legal acts of the country, the development of proactive draft laws in the field of operational and search activities;

- Modern stage (from 1991 to present)

At this stage, the development of legislative regulation of operational and search activities begins with the collapse of the USSR and the creation of an independent legislative framework, in particular the adoption of the Law “On Operational and Search Activities.

Thus, the development of the structure of operational units has determined the further development of search work, which involves scientific research in the field of its organization, the definition and consolidation of legal status, the elaboration of organizational and managerial issues taking into account changing goals and tasks in the fight against crime.

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