

MODERN DOCTRINE OF OPERATIVE AND SEARCH ACTIVITIES IN UKRAINE

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Annotation. The article examines the issue of the formation of the modern doctrine of operational and investigative activity in the plane of Ukrainian law through the prism of the methodology of the general theoretical jurisprudence of Ukraine. The internal structure of the legal doctrine, doctrinal levels in the context of understanding the nature of the doctrine, its connection with practical law enforcement in the field of operational and investigative activities are determined. An analysis of individual doctrinal provisions of the theory of operational and investigative activity, its object and subject, principles and organizational bases of activity, basic theories and teachings, methods of cognition and determination of further development trends is carried out.

Key words: legal doctrine, theory of operational and investigative activity, object, subject, theories, methods of cognition, development trends.

1. Statement of the problem.

The formation and improvement of the doctrinal foundations of the theory of operative and investigative activity is determined by the objective patterns of the use of special forces, means and measures by operational units of law enforcement agencies with the aim of combating crime, protecting the state, society and people from illegal encroachments and obtaining information in the interests of national security. In the conditions of the legal regime of martial law, the presence of crime, its destructive influence on almost all processes taking place in the state, prompts the law enforcement agencies of Ukraine to constantly improve methods and measures to combat criminal offenses. That is why, in the system of state bodies performing law enforcement and special functions, a number of separate divisions (The National Anti-Corruption Bureau of Ukraine, The State Bureau of Investigation, the Economic Security Bureau of Ukraine) were additionally created, which were given the right to carry out clandestine activities for the purpose of detecting and solving crimes.

In the conditions of war, an important aspect of the activity of the law enforcement system is the information provision of state authorities, countering the intelligence and subversive activities of special services of foreign states, organizations and individuals against Ukraine. This system of overt and covert measures in Ukraine is defined in the field of criminal and legal sciences - the theory of operational and investigative activity. The basis of this theory is numerous previous and modern theoretical studies and, most importantly, the legislation adopted in Ukraine, which regulates the operational and investigative activities of law enforcement agencies [1, 2].

It should be noted that the new socio-legal reality in Ukraine continues to be formed against the background of integration processes. Ukraine entered the single European legal space and seeks to integrate into the supranational legal system of the European Union. In this regard, it is necessary to pay attention to the fact that in the legislation of Western countries and the USA, the term "operational search activity" is not used. Other models of the criminal process operate in these countries. In most of them, a covert (secret) police investigation is a criminal procedural activity, consisting of overt and covert procedural actions, which are carried out by the police under the direction of the prosecutor (FRG), or by various police bodies (police agents, detectives) and specially authorized persons (Great Britain, USA, etc.). Officials of criminal (judicial) police bodies of Western countries combine the functions of a domestic investigator and operative or a domestic detective"

[3, p. 558]. L.M. Demydova rightly notes that “in the modern legal systems of Romano-Germanic and Anglo-American law, legal doctrine is an integral, albeit non-normative, element of the mechanism of legal regulation. It primarily fulfills the role of the ideological foundation and theoretical core of rule-making, contributes to the correct understanding and application of legal prescriptions” [4, p. 9]. In the framework of European integration, there is not only a convergence of national legal systems, but also the formation of a new legal order, which is not simply based on the organic unification of achievements, but also ensures their convergence within the legal system of the European Union. In the course of the implementation of the Strategy of Ukraine’s integration with the European Union, such a rapprochement determines the need for the scientific development of a system of general doctrinal views as a legal and ideological basis for the operational and investigative activities of law enforcement agencies of Ukraine.

2. State of problem research.

During the years of independence in Ukraine, as a result of research carried out in various scientific teams, the theory of operational and investigative activity received a fundamental development. The doctrinal foundations of the theory of operational and investigative activity, as an independent field of scientific knowledge, were formed as a result of the integration and differentiation of the sciences of the criminal law cycle. Developing within the framework of criminalistics, the theory of operational and investigative activity began to form a specific system of knowledge that studies the secret actions of criminals, typical signs of latent crimes and the most effective (mostly secret) forces, means and methods used by operational units to detect, prevent and solve crimes. On a scientific basis, the definitions of the object, subject, circle of subjects, means, measures and organizational and tactical forms of operational and investigative activity were proposed, the most important starting points of undercover work, the basis of general and special methods and tactics, detection, prevention and disclosure were formulated certain types of crimes, as well as other areas of operational and investigative activity. In his monograph academician O.M. Bandurka notes that according to the functional purpose, “operational and investigative activity is the activity of specially authorized state bodies of the legislative, executive and judicial authorities and operational units within their competence to perform the duties assigned to them and search and record factual data about the illegal activities of individual individuals and groups, intelligence and subversive activities of special services of foreign states and organizations with the aim of stopping offenses and in the interests of criminal justice, with the aim of obtaining information in the interests of the security of citizens, society and the state” [5, p. 129].

3. The purpose and tasks of the research are determined by the need to consider the doctrinal foundations of the theory of operational and investigative activity, which involves: determining its substantive characteristics and functional purpose, the origins of its formation as a separate scientific knowledge; elucidation of the nature of this scientific category, forms of expression of its substantive part in separate theories and teachings, trends and perspectives of development, as well as justification of the place and role in the system of criminal and legal sciences.

The scientific novelty of the research lies in the fact that for the first time, based on the analysis of the doctrinal foundations of the theory of operational and investigative activity, legal knowledge about concepts, tasks and principles, theories, concepts and legal constructions that reflect the patterns and logic of the organization of operational and investigative activities are determined and characterized in a generalized and theoretical form and are forms of expression of the substantive part of its legal branch doctrine.

4. Presentation of the main material.

Legal doctrine is a multifaceted concept. Provided that the legal doctrine covers a wide range of fundamentally important methodological issues, it can initiate the development of a corresponding

theory of law, but mostly it represents its constituent element. Since the category “doctrine” is key in this context, first of all it is necessary to clarify the issues regarding its concept, place in legal science and use in legal practice. There is some, albeit limited, information about this in the reference literature. Doctrine (*lat. doctrina*) means teaching, in particular, scientific, philosophical, political, military, etc.; it is a theory, system of views, thesis, principles, worldview [6, p. 183]. E.P. Yevgrafova rightly believes that legal doctrine is closely related to legal science, which acts for it as a kind of life-giving source, foundation, origin. Thus, legal doctrine has a derivative character in relation to legal science. Doctrine, doctrinal provisions are created, as a rule, as a result of fundamental scientific research. Therefore, the word doctrine means “theory, science based on certain principles” [7, p. 53].

In the encyclopedic literature, doctrine is defined as “a teaching, a scientific or philosophical theory, a normative formula, a guiding theoretical or political principle (for example, a military doctrine), “a set of recognized scientific or official views on the goals, tasks, principles and main directions of ensuring anything” . In the legal encyclopedia, doctrine is defined as “teaching, scientific or philosophical theory, system of views, guiding political program” [8, p. 275]. According to I.I. Mitrofanov, such general definitions do not bring clarity to the issue of distinguishing the concepts of legal doctrine and legal science [9, p. 168–173].

Some scientists, including I.V. Semenikhin, S.V. Vasiliev, V.M. Tertyshnik, understand legal doctrine as a set of ideas and principles, as well as legal institutions, which are in an inextricable two-way connection with legal science, legislation and practice and determine the basic principles on which the legal system of the state is based. In the context of jurisprudence, scholars understand legal doctrine as the doctrine of law and ideas supported and defended by a corporation of lawyers [10, p. 3; 11, p. 74; 12, p. 149].

In general, it is possible to generalize the methodological approaches of scientists by structuring the legal doctrine - building its hierarchical vertical. For this, it is necessary to distinguish certain “doctrinal levels”. The highest level should be considered overall or general legal doctrine - that is, its broadest manifestation in the legal system. General legal doctrine defines uniform principles and approaches that are common to branches of the legal system. The legal doctrine of the state, or the general doctrine, includes all knowledge that meets the general requirements of the current theory of law, reflected in legislation and used in practice.

The next level in the hierarchy are branch doctrines, which correspond to a particular branch of law. Each of the branch doctrines is served by its own system of scientific knowledge, in particular, the doctrine of operational and investigative activity, respectively, by science - the theory of operational and investigative activity. The scientific knowledge of the theory of operational and investigative activities as a whole forms a certain system, which at the current stage of development can be presented as follows: the general theory of operational and investigative activity; means of operational and investigative activities; operational and investigative tactics; operational and investigative technique. The content of the general theory of operational and investigative activity includes basic ideas, concepts, principles, categories, definitions, terms and theoretical concepts, as well as methods of their cognition and development. It should be noted that the formation of a separate science, as is known, occurs simultaneously in two directions: the accumulation of one's own theoretical knowledge, as well as the knowledge of oneself as a science, in particular, the determination of the essential understanding of its object and subject.

V.A. Zhuravel notes that “under the object of research is usually understood some object, process or phenomenon that exists in the world. That is, everything that the researcher's cognitive activity is aimed at or what is important to obtain a certain result and draw conclusions in the study. An object can contain various constituent parts. It has a direct connection with the subject of research, but is not its synonym” [13, p. 120].

In the context of consideration of the doctrinal foundations of the theory of operational and investigative activity, it is necessary first of all to clarify its object. The majority of scientists, to the object of the theory of operational and investigative activity, traditionally include crime, operational and investigative activity as a type of social practice and legal regulation of this activity. At the same time, we are not talking about all crime, but about a separate, mostly hidden, latent segment of it.

This section covers serious and especially serious crimes, which are extremely difficult or completely impossible to prevent, stop or solve without the use of operational investigative measures, forces and means. Most experts agree with this understanding of the object of the theory of operational and investigative activity, but, along with that, the content of the components that make up the object requires additional scientific understanding, since the object can contain various constituent parts. So, the object of knowledge of the theory of operational and investigative activity is: crime as a socio-legal phenomenon; operational and investigative activity as one of the types of social practice of combating crime; legal regulation of operational and investigative activity.

The subject of research is contained within the object, it is its separate attribute, a separate question or problem. In other words, it is a specification of the object. So, the object is always wider than the subject. Therefore, the clarification of the subject of science is of extremely important theoretical and practical importance. First of all, the presence of a specific subject of research determines the possibility and necessity of independent scientific study and the formation of an appropriate system of knowledge, that is, a separate scientific field. Secondly, without clarifying the subject of science, it is impossible to determine its content, formulate tasks and outline the main directions of further development, develop a system, methods, and determine its place among other sciences. After all, the subject of science determines the forms, methods, limits of application of the provisions of this science in the relevant sphere of social practice.

The subject of the theory of operational and investigative activity is certain regularities of objective reality, which are studied by legal science as a whole. Its content is made up of regularities that manifest themselves: 1) in the system of relations (legal, other) formed in the field of operational and investigative activity; 2) in the characteristics of crime prevention measures, which are carried out with the use of operational and investigative measures, forces and means; 3) in the study of the legal foundations of the operational and investigative activity, the study of operational and investigative practice (the regular connection between the secret nature of the crimes committed and the need to use covert operational and investigative forces and means for their detection and disclosure); 4) in the process of obtaining, checking, recording and using operational and investigative information; 5) in the organization of operational and investigative activity.

The substantive part of the doctrine of operational and investigative activity includes separate theories, the list of which is supplemented according to the level of scientific development and improvement of crime prevention practice. At the current stage of development, the theory of operational and investigative activity focuses its attention on such doctrinal provisions and concepts as: theory of documentation, theory of operational development, theory of operational service; teaching about the language and systematics of operative and investigative activities; the doctrine of operational and investigative versions, the doctrine of operational and investigative information; doctrine of operational combinations and tactical operations; the doctrine of operational and investigative support of criminal proceedings; teaching about scientific methods of operational and investigative activities, etc.

Scientific methods of the theory of operational and investigative activity are a system of cognitive techniques that are used both to build the theory itself and to apply the theory in the practice of knowledge of its subject area. Given the fact that all phenomena and processes occur in a close relationship and interdependence, the methodological basis of knowledge in the field of operational and investigative activity is the dialectical method, as well as the methods of objectivity, scientificity, systematicity, complexity, and logic. As general scientific methods are used: conceptual-comparative, systemic-structural, analytical-synthetic, programmatic-target. Among the interdisciplinary methods, modeling, historical-legal, comparative-legal, statistical, logical-semantic, sociological, and psychological methods should be mentioned. Specific methods of learning the problems of operational investigative activities are also used: operational-heuristic, familiarization-documentary, as well as questionnaires, surveys, interviews of employees of operational units.

A peculiar result of the long process of formation of the legal doctrine of the theory of operational and investigative activity is the integration of the provisions of the doctrine into the texts of legislative acts. Undoubtedly, the adoption of the laws of Ukraine "On operational and investigative activity", "On organizational and legal bases of combating organized crime" and other normative

acts contributed to strengthening the legal basis and legitimacy of investigative activities [14, p. 820]. On the basis of the analysis of the current legislation and the practice of its implementation, it should be concluded that operational and investigative activity is characterized by clear legal regulation of the use of a system of overt and covert measures, operational and operational-technical means, the establishment of state legal guarantees of legality, strict observance of the rights and freedoms of citizens, sub objects of operational and investigative activity and persons involved in its implementation. These doctrinal provisions are a guide for the legislator and a reliable reference point for law enforcement subjects, which is certainly reflected in the legal regulation of this activity.

In Art. 2 of the Law of Ukraine "On operational and investigative activity" gives its official definition as "a system of overt and covert search, intelligence and counter-intelligence activities carried out using operational and operational-technical means"[1]. Therefore, the concept of investigative activity in the current legislation assumes its complex nature. Characteristic for all areas of operational and investigative activity became its protective character, aimed at creating conditions that ensure the protection of objects defined by law from criminal encroachments, at eliminating the causes and conditions of committing crimes, timely detection and cessation of illegal behavior. In addition to the actual theoretical issues of the essence and content of operational and investigative activity, problems related to the scientific and theoretical understanding of legal regulation, organization and tactics of operational divisions of law enforcement agencies occupy an important place in the further development of the theory of operational and investigative activity.

At the present stage, scientists are paying special attention to those trends and prospects for the further development of the theory of operational and investigative activity, which determine and reveal: the social conditionality and state-legal character of operational and investigative activity; ways of improving the legal regulation of this activity; principles of its implementation; problems of using special means, measures and organizational and tactical forms; issues of competence of various subjects of this activity, as well as coordination of their activities; peculiarities of the organization and tactics of operational and investigative activity; problems of state and departmental control in order to ensure the rights and freedoms of citizens guaranteed by the Constitution of Ukraine. We believe that the further development of the theory of operational and investigative activity will be largely connected with the scientific development of these areas of research [15, p. 300].

5. Conclusions.

In conclusion, it should be noted that the right to the independent functioning of science is acquired by such a system of knowledge that focuses its research on specific patterns that distinguish it from other sciences. The theory of operational and investigative activity was formed into an independent branch of scientific knowledge under the simultaneous influence of general scientific principles of integration and differentiation of the system of legal sciences. In the system of legal sciences, the theory of operational and investigative activity is closely related to criminal law, criminal process, criminalistics, criminology, psychology and other fields of scientific knowledge, which have a significant impact on its further development. Developing within the framework of legal sciences, the theory of operational and investigative activity formed its own doctrinal foundations and a system of specific knowledge, which determines its independent place in the system of legal sciences.

Therefore, the theory of operational and investigative activity is intended to arm the crime prevention practice of all investigative agencies with a system of scientific conclusions and recommendations necessary for the effective organization and implementation of operational and investigative activities, the creation of legal, organizational, informational, methodological, personnel and resource prerequisites and conditions for their successful activity.

In conclusion, we consider it expedient to note that in this work only some, in our opinion, the most important directions of formation of the doctrinal foundations of the theory of operational and investigative activity during the independence of Ukraine have been outlined and briefly considered. There are others. They are marked in the writings of domestic scientists and deserve serious attention, so they should be taken into account during further scientific research on the theory of operational and investigative activity.

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