

System of Principles of Operational-search Activity

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Abstract: The theory of law has developed general principles that are a reflection of common provisions, ideas and patterns of legal regulation in any area of social relations. And already specific branches of law, based on the characteristics of the subject of regulation, develop and highlight in their content the basic and special principles that belong only to it. The principles of operational-search activity are guidelines that permeate all of its activities, and find expression in operational-search relations. The authors considered the existing system of principles of operational-search activity, which includes both general legal and their own special (industry) principles.

1 INTRODUCTION

Modern legal regulation is nothing more than a system of interrelated structural elements, each of which is endowed with its own functional load and performs specific tasks.

In its content, legal regulation has components that are fundamental and special – these are norm-principles. It is they who determine the structure, functioning and set the progressive movement of a particular industry, express the internal unity of its norms.


The principles of law have a decisive impact on lawmaking and law enforcement, since they act as a direct reference point for the legislator and law enforcement officer, but at the same time they also have an independent impact on public relations subject to legal regulation (Baranov, 2016).


The science and practice of operational-search activity (hereinafter – OSA) organically interact due to the dynamic and specifically reflected legal regulation of OSA. Today, the science of OSA is on a par with the leading branches in the field of


combating crime, such as criminal law, criminal procedure and others.

Among foreign studies, scientists also turn to theoretical problems and the legislative structure of regulations governing public relations in the field of combating crime (Bashirova, Ibragimov, 2019; Bitton, 2019; Matchanov, 2020; Wang, Lin, Shieh, Deng, 2003; Gutnik, 2010).

The principles of the OSA are enshrined in Article 3 of the Federal Law "On Operational-search Activities ". Their number is very modest, in comparison with other similar branches of law in the legal cycle, only four. They include general legal and cross-sectoral principles. The small volume of the norms and principles of the OSA can be explained by several reasons. First, of course, this branch of legal regulation of combating crime can be called relatively "young" and developing, despite the fact that it has a rather long history of existence. But the independence of the sectoral affiliation of the OSA can be considered from the moment of its separation from other branches of law, in particular from the criminal process.

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Secondly, the insufficient and unspecified scientific elaboration of the theoretical provisions and the terminological apparatus of the OSA. In particular, the principles of OSA are often considered in the study of organizational and tactical issues of conducting operational-search measures (hereinafter – OSM) and, to a lesser extent, in the science of OSA, and there are very few works in the field of OSA theory.

Thirdly, some principles are present in the law, but have not yet received independence. So, for example, in Art. 11 of the Federal Law "On Operational-search Activities" there is the principle of publicity of the OSA, to the extent that it meets the requirements of conspiracy: the results of the OSA can be sent to the tax authorities for use in exercising the powers to control and oversee compliance with the legislation on taxes and fees, to ensure the representation of the interests of the state in bankruptcy cases, as well as when exercising powers in the field of state registration of legal entities.

2 MATERIALS AND METHODS

The methodological basis of the research is made up of a set of methods of scientific knowledge necessary to fulfill the assigned tasks and achieve the goal of the research, in particular, such methods as formal legal, comparative legal, sociological methods of polling and interviewing.

3 RESULTS AND DISCUSSION

The modern system of principles by which the OSA is carried out is not fully represented. In 1966 A.G. Lekar formulated the following system of principles: 1) strict observance of the rule of law; 2) daily communication with public organizations, reliance on workers; 3) a combination of tacit and public events; 4) observance of conspiracy and offensiveness when conducting OSM (Lekar, 1966). A significant contribution to the further development of the principles of OSA was made by G.K. Sinilov, defining them as "fundamental ideas, the most important rules for organizing and conducting the fight against crime, mainly by secret means and methods" (Sinilov, 1975).

More broadly considers the principles of OSA I.A. Klimov, including in them such as science, planning, legality, respect for the rights and freedoms of the individual, ties with workers, democratic

centralism, collegiality and one-man management, objectivity, forecasting, a combination of vowel and unspoken OSM, specialization, interaction and reflexivity (Klimov, 1993). These judgments were supported by D.V. Rivman, who noted that although the legislator included in Art. 3 of the Federal Law "On Operational-search Activities" only four principles, this does not mean at all that other principles developed by the science of OSA should be rejected (Rivman, 1999). Taking into account the specifics of work with persons who secretly assist the subjects of the OSA, the above point of view is, in our opinion, fair even now.

In most cases, scientists who adhere to this approach in considering principles divide them into two complementary groups – general principles and special ones (Goryainov, Ovchinsky, Sinilov, 2006). This approach is fully justified. General principles are the guiding principles for all subjects of the OSA. Special (sectoral) principles are implemented only in the OSA, subject to a number of requirements – the adequacy of the principles, that is, their compliance with the rule of law; in the basis of the formulation of principles, it is necessary to take into account the practice of working with confidants; the principles should fully stimulate the solution of the tasks of the OSA; all principles should be relatively autonomous from each other.

In his monograph "Formation of Evidence Based on the Results of Operational-Investigative Activities" Ye.A. Dolya defines the principles of operational intelligence as the most general ideas of an operational-search nature, expressing one of the essential aspects of this activity, defining the operational-search form in all its manifestations and serving to solve its problems (Dolya, 2014).

Thus, the modern science of OSA already has the prerequisites for expanding the system of its principles, in view of the presence of various scientific judgments on this issue. But it still remains open and incomplete and, therefore, further we will consider the system of principles that is enshrined in the current Federal Law "On OSA", consisting of two general legal and two special (sectoral) principles.

The principle of legality is proclaimed by the Constitution of the Russian Federation, which consists in the supremacy of the Basic Law, unconditional and exact observance of the Constitution of the Russian Federation and the fulfillment of all its instructions by all participants in operational-search legal relations, and primarily by officials conducting ORM. This principle is reflected not only in article 3 of the Federal Law "On OSA", its presence can be traced in many articles and

provisions, both of the law itself and in other normative legal acts regulating the OSA. So, the requirements of legality are clearly observed in Art. 5 of the Federal Law "On OSA", the requirements of which prohibit the implementation of an OSA for solving problems not provided for by law. Article 6 of the Federal Law "On ORD" admits a real likelihood of changing or supplementing the above list of ORM, but only by law. And article 8 sets out the conditions for conducting an ORM, which can significantly restrict constitutional rights.

Interesting, in our opinion, judgments about the principle of legality are presented in the work of D.A. Babichev (Babichev, 2020). The author discusses a lot about the essence of this principle, focusing on the fact that it is presented in the literature in the "style of general formulations characteristic of educational literature" (Babichev, 2020), and also "is a consequence of the adoption by many researchers of conceptual interpretations developed by masters of different branches of law the legality and use of essentially close terminological and explanatory provisions as pillars in modern projects of legal doctrine" (Babichev, 2020). But, the position of the author is twofold. Drawing conclusions, D.A. Babichev calls legality "a social and legal phenomenon that can be viewed as a principle, method or regime." Of course, legality is a multidimensional component. Understanding its essence depends on the position from which it is viewed and for what purposes. If from the point of view of consolidation in the law, then this will be a regime, if from the point of view of implementation in the activities of a subject endowed with power, then it will be a method. And there are a lot of such aspects: from the standpoint of the behavior of the subject, from the standpoint of implementation in social relations, etc.

We believe that the essence of this principle is reduced from the idea, which is mediated by consciousness, is embodied in the understanding and conviction of the subjects of legal relations in the rule of law and is realized in their behavior. The main point here will be the transformation of the idea-slogan to its mandatory and natural execution and observance by the subjects. The principle of legality needs a mechanism for its implementation, otherwise the principle of legality will be meaningless.

In the content of the principle of legality, we include strict and strict observance of the requirements of the law by all subjects and participants of the OSA (operational units, citizens, prosecutors, courts, etc., all who participate in

operational-search legal relations), regardless of their degree of participation.

The principle of respect and observance of human and civil rights and freedoms is also a constitutional principle, which is rightfully considered an equally important and valuable general legal principle. The uniqueness of this principle of the OSA is also determined by the fact that, in addition to Art. 3 of the Federal Law "On OSA" Art. 5 of the same law gives him a detailed interpretation.

Respect and observance of rights and freedoms is understood in two meanings:

- firstly, the procedures for conducting OSM, which can significantly relate to the constitutional rights of citizens, or affect them, are clearly defined by law, to what extent this is permissible;
- secondly, in case of violation of rights, a procedure for their restoration is provided.

Thus, this principle of respect and observance of human and civil rights and freedoms is also expressed in a number of articles of the Federal Law "On OSA" and other regulations governing the OSA.

In the procedures for the implementation of the OSA, this principle applies to citizens who may be among the close relatives of the objects of the OSA. This category of citizens is under special protection, since most often they are ordinary law-abiding citizens and in respect of them no interference with their constitutional rights and freedoms is permissible.

The prohibition on the collection, storage, use and dissemination of information about the private life of a person without his consent is implemented in the OSA norms of Art. 24 of the Constitution of the Russian Federation. The collection of this information without the consent of the person to whom they relate is possible only if it is necessary to solve operational-search tasks.

Among the constitutional rights and freedoms of a citizen and a person, some of which are inalienable, and therefore they cannot be limited under any circumstances. These include the right to:

- the dignity of the person;
- compensation for harm caused by illegal actions of officials of state authorities;
- judicial protection.

Substantially, this principle consists of two different categories of "respect" and "compliance".

Respect for rights and freedoms implies their priority in relation to other social values. The legislator notes their importance, inalienability and highest value. All activities of the OSA are aimed at protecting life, health, human and civil rights and

freedoms. Therefore, respect in the OSA process is paramount.

Observance of the rights and freedoms of citizens consists in the implementation of a set of legal, organizational and other measures that are designed to create the necessary prerequisites for the unconditional implementation of legal requirements, where unreasonable restriction of rights and freedoms during OSM is prohibited.

For example, the current legislation does not provide a clear list of what is meant by the phrase private life. But, the clarification of the constitutional provisions is reduced to the fact that this concept includes personal, family and other relationships of a person that are not related to official activities. This also logically applies, for example, the secrecy of correspondence. This right is guaranteed and protected by the Constitution of the Russian Federation in Part 2 of Art. 23. The observance of this constitutional right of citizens when conducting OSM is ensured by a court decision, on the basis of which such a procedure can be carried out.

Thus, the general legal constitutional principles of the OSA that we examined, although they were formulated by the general theory of law and are acceptable for any branch of law, are an integral attribute of the highest value of law and a guarantee of ensuring rights and freedoms in the implementation of the OSA, which in turn indicates the legal regime in the state.

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A characteristic and very specific feature of information of operational-search interest is the way and the possibility of obtaining it. And since the OSA of authorized state bodies is legislatively defined in public and private forms, therefore the legislator determines, although rather sparingly, to its own sectoral principles, such as conspiracy, a combination of public and secret methods and means.

The principle of conspiracy, despite the fact that the law does not disclose its content and complexity, since the solution of operational tasks seems impossible without conspiratorial support.

The controversy over what is the secret in securing the principle of conspiracy seems obvious. So, for example, N.V. Pavlichenko refers to the secrecy of information related to state or official secrets, as well as other information, the dissemination of which may cause its decryption and its use against the interests of law enforcement agencies, to conspiracy (Pavlichenko, 2010).

Another position of the authors and scientists is based on the understanding of conspiracy as keeping secret its forces, means and methods, organizational and tactical aspects of the implementation of the OSA (Goryainov, Ovchinsky, 2018).

M.P. Smirnov, interprets conspiracy as keeping secret from criminals the actions of law enforcement agencies to expose them, protection from unauthorized access to information about certain aspects of operational-search activities (Smirnov, 2002).

A.A. Sheludko believes that the principle of conspiracy is to conduct operational-search activities in complete secrecy from those being inspected and developed, as well as from other persons who have no direct official relation to their organization and conduction (Sheludko, 2011).

Observance of conspiracy in the OSA provides an opportunity to prevent and disclose the most dangerous crimes committed in secret, in disguised ways, especially those prepared and committed by members of organized groups and criminal communities, as well as illegal armed groups (Gabzalilov, Kuznetsov, Omelin, 2020).

Thus, the variety of definitions and understanding of the essence of the principle of conspiracy is quite large both in open literature and in special literature. The obvious and unfavorable moment is that there is no common understanding and interpretation of it. The lack of legislative consolidation of the principle

of conspiracy negatively affects the science of the OSA. Apparently the legislator believes that the principle of conspiracy is generally recognized and understandable and there is no need for its disclosure and description. Of course, this is economical and convenient for lawmaking and the construction of a normative act, but it greatly impoverishes the science and practice of OSA, which in turn gives rise to the diversity of its scientific understanding and practical interpretation by operational staff. So, as a result of our survey of employees of operational divisions of law enforcement agencies, the overwhelming majority (almost 79 %) understand the hidden nature of activities from other persons as conspiracy, 19 % of those surveyed admit the information obtained as a secret. And at the same time, 83 % of those who participated in the survey noted that access to the information received can become a condition for its dissemination, and therefore there is a threat of possible damage to the state and the individual, law-protected interests in general.

Unified and uniting different judgments about understanding the essence of conspiracy is to define secrecy or secrecy, something known, but hidden from others. And here its value will depend on the purpose for which and for what tasks it is oriented, for example:

- to hide tactical techniques and methods of carrying out an independent reconnaissance mission;
- keep secret information related to state or other official activities;
- to provide a condition for the implementation of confidential assistance of citizens to operational units;
- to protect and protect other persons who are not objects of the conducted OSM and ensure their awareness of them;
- to guarantee the receipt of the necessary and operatively significant information;
- create conditions and opportunities for receiving operational information;
- to prevent unjustified and premature compromise of objects of operational interest.

In other cases, the OSA is completely legal and open, which is directly indicated by the Federal Law "On OSA", noting the subjects vested with the appropriate right, which in itself is no longer a secret.

This principle is also disclosed in the norms of other normative legal acts, for example, in article 5 of the law of the Russian Federation of July 21, 1993 No. 5485-1 "On state secrets", state secrets in the field of OSA are information:

- about the forces, means, sources, methods, plans and results of activities to ensure the safety of protected persons, data on the financing of these activities;
- about persons providing confidential assistance to the operational-search bodies, as well as about persons embedded in organized crime groups;
- about the full-time covert employees of the operational-search bodies.

In scientific articles devoted to conspiracy in the OSA, scientific discussions about the legislative definition of the list of conspiracy rules are often noted and conducted, thereby confirming the necessity and essential importance of this principle.

So, B.P. Mikhailov and E.N. Khazov in their work give the following definition of the rules of conspiracy – this is a code representing a system (procedure) for the application of legal, organizational measures, operational-tactical actions, methods and means that ensure secrecy (secrecy) of conducting OSM and exclude the leakage of operational information and decoding of forms and methods covert work, in order to solve the tasks of the OSM to ensure public safety and combat crime (Mikhailov, Khazov, 2016).

Another team of scientists has also developed a definition of the rules of conspiracy - these are rules developed by operational-search practice, the observance of which by the operational units of the bodies authorized to carry out the OSA can ensure that the content of the OSM they conduct and other operational actions are kept secret from unauthorized persons (Gabzalilov, Kuznetsov, Omelin, 2020).

Both definitions are similar in that these are certain measures aimed at ensuring the secrecy of the OSM. Therefore, the operation and observance of the principle of conspiracy is of particular importance for the OSM, since it is aimed at keeping secret information of operational interest – information about specific OSM, their organization and tactics.

The principle of combining vowel and tacit methods and means is another special (sectoral) principle of OSA. A characteristic feature of this principle is the inclusion in its content of two independent concepts "means" and "methods". Traditionally, the means include objects, objects of the material world, with the help of which the implementation of the OSA is ensured. And the method is understood as a set of techniques and methods used to solve the problems of OSA when conducting OSM.

This principle grants and secures the right of operational units to conduct ORM both publicly and

secretly. The ability to combine vowel and tacit methods and means allows you to use various combinations of them from the opened OSM publicly to its transition to tacit and vice versa, or simultaneous use in any sequence is allowed. Moreover, the results of one OSM can in the future become the basis for conducting subsequent OSM publicly or secretly, in a complex.

Undercover measures are the most effective for obtaining information about the reasons and conditions conducive to the commission of crimes, as well as about persons who are prone to committing illegal acts. They are used intensively throughout the confidential cooperation of convicts with operational units. Vowel measures are used to a greater extent when receiving statements, reports of crimes, complaints, during prevention (Zabrodin, Cheremin, 2020). Or they can be used to verify the accuracy of information obtained as a result of the use of covert methods and means.

In its essence and purpose, the principle of combining public and private methods and means is a continuation and development of the principle of conspiracy, which provides an opportunity to distinguish publicly available information from secret information that is not subject to publicity or is protected.

On the other hand, this principle makes it possible to distinguish between the types of activities of various law enforcement agencies that carry out the fight against crime, either publicly or secretly.

Thus, the ability to combine vowel and unspoken OSM, as well as their competent implementation, allows solving the OSA tasks in full.

4 CONCLUSIONS

Summing up our research, we would like to note once again that the existing list of OSA principles is not exhaustive. Science and practice about the OSA does not stand still, but is dynamically developing in accordance with the modern conditions of the development of society and the transformation of crime.

The current system of OSA principles is the basis that expresses the most essential features of the OSA. Scientific thought and its ideas have accumulated sufficient experience for the legislative addition and consolidation of other principles. It is especially worth noting the need for a legislative definition of the concepts of OSA principles, for the purpose of a common understanding and interpretation.

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