

Research article

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Recording Investigation into Activities of Criminal Leaders and AUE Extremist Organization Members

ALEKSEI V. AGARKOVVladimir Law Institute of the Federal Penitentiary Service of Russia, Vladimir, Russia, oper72.kum@mail.ru, <https://orcid.org/0000-0001-5326-9757>**ANTON A. SHIKOV**Vladimir Law Institute of the Federal Penitentiary Service of Russia, Vladimir, Russia, antonshikov@mail.ru, <https://orcid.org/0000-0002-2442-7434>

Abstract

Introduction: the study of scientific literature, regulations and law enforcement practice indicates that at present, due to introduction of Article 210.1 of the Criminal Code of the Russian Federation “Occupation of the highest position in the criminal hierarchy”, there is a need to consider this concept. In addition, after recognition of the AUE international public movement (AUE international public movement (Convict’s Codex) as extremist and prohibition of its activities on the territory of the Russian Federation, it is important to determine features of its activities in institutions of the penal system. It is also advisable to formulate key directions of recording identified features of these concepts for their subsequent use in activities of operational units. *Purpose:* on the basis of generalization of incoming requests from operational and investigative units, available scientific publications and experience of our own practical activities, we will formulate the main criminological characteristics of a person occupying the highest position in the criminal hierarchy, AUE cell’s activities, and identify conditions for effective use of results of operational search documentation of these features in proving criminal cases. *Methods:* comparative legal, theoretical methods of formal and dialectical logic; private scientific methods: empirical, legal-dogmatic and method of interpretation of legal norms. *Results:* the article presents the author’s formulations of concepts of criminal environment, criminal ideology, criminal hierarchy, position in the criminal hierarchy, organizational and administrative functions in the criminal environment, thieves’ way of life, position holders, watchers, and game watchers. It is concluded that bearers of these statuses, like thieves in law, can occupy highest positions in the criminal hierarchy, due to presence of organizational and administrative functions. The authors identified features of the activity of AUE cells in penal institutions and disclosed their content. Key directions for recording these factors are outlined, as well as recommendations on preparing investigation results for further research are formulated. *Conclusions:* the authors emphasize that the above-mentioned changes in legislation make it possible to take effective measures to qualitatively change the operational situation in places of deprivation of liberty by bringing criminal leaders and AUE active participants to criminal liability. To do this, operational units should carry out work on identifying and documenting specific facts of criminal leaders’ fulfilment of organizational and administrative functions, reproduction and imposition of criminal rules and traditions of an antisocial nature, and other illegal actions. The information obtained in the course

of operational investigative activities, provided they are properly processed, can be sent to specialists for research, the results of which will not only become grounds for initiating criminal cases, but can subsequently be used as evidence in criminal proceedings.

Keywords: investigation; recording; highest position in the criminal hierarchy; thief in law; watcher; (AUE international public movement (Convict's Codex).

12.00.12 – Criminalistics; forensic examination activities; law enforcement intelligence-gathering activities.

5.1.4. Criminal legal sciences.

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Introduction. Operational units of the penal enforcement system of the Russian Federation function in conditions of constant counteraction to criminal environment, which includes most of the convicts held in places of deprivation of liberty. Personal experience of the authors' work in detention facilities, as well as study of numerous scientific and journalistic works show that criminal environment is heterogeneous and includes groups in its hierarchy that differ in the composition of informal authorities, rights and duties. Scientific papers [4, 9, 14] provide various options for informal stratification of persons in the criminal environment and their characteristics, but we do not share all the opinions. Without setting the task to criticize other views, we consider it appropriate to state our vision of the circumstances that determine informal statuses of persons occupying highest positions in the specified structure, with regard to their subsequent use by operational units to record illegal activities and bring perpetrators to liability. Besides, it is noteworthy that the use of criminal jargon in this article in no way pursues the goal of spreading the AUE ideology, but is exclusively scientific in nature.

It should be emphasized that conduct of the work was triggered by repeated oral and written inquiries of operational and investigative units of various law enforcement agencies. Introduced by the Federal Law No. 46-FZ of April 1, 2019, Article 210.1 of the Criminal Code of the Russian Federation "Occupying the highest position in the criminal hierarchy" gave operational units, including in places of

deprivation of liberty, effective tools to counteract activities of criminal leaders. The Decision of the Supreme Court of the Russian Federation No. AKPI 20-514c of June 17, 2020 on recognition of the AUE international public movement (Convict's Codex) as extremist and banning its activities on the territory of the Russian Federation is another effective measure, capable, in our opinion, of changing the current operational situation in places of detention. Thus, diverse illegal activities of persons convicted and detained in pre-trial detention facilities, negatively related to measures of penal institution administrations, were criminalized. Currently, operational units of the penal enforcement system and other law enforcement agencies take pains to identify and suppress extremist activities of members of AUE numerous cells in places of detention.

Practice of preparing responses to the above-mentioned inquiries has shown that at present, in connection with formation of the evidence base for relevant criminal cases, there is a need for scientific interpretation of the basic terms used in the criminal environment. In the framework of this publication, we will try to present our view on the content of some of them.

Problematic issues of proving person's occupation of the highest position in the criminal hierarchy

The content of the term "criminal hierarchy" used by the legislator in Article 210.1 is worth discussing. Literal interpretation of this term, in some cases used by lawyers as a defense

position, is that the criminal hierarchy is a hierarchy of criminals, i.e. persons who commit crimes within this hierarchy, whereas only a court can recognize a person as a criminal. Thus, persons who have not been convicted by a court for committing other crimes are not criminals, therefore, they cannot be brought to criminal liability under this article.

This position is partly based on the following statement given in one of the educational publications: the criminal hierarchy is an established system of relationships of persons committing crimes, depending on their status, i.e. a certain order of subordination of the lower elements of this system to the higher ones [16, p. 324]. However, we disagree with the above definition and believe that the terms “criminal hierarchy” and “prison hierarchy” mean the same concept, which we will try to clarify in the article.

The hierarchy can be concisely defined as an “order of subordination of the lower to the higher according to precisely defined degrees, gradations” [8]. We believe it reasonable to consider criminal environment members as persons who recognize and comply with criminal ideology rules, recognize the authority and execute orders of persons with a higher criminal status. It should also be clarified that the criminal ideology is a part of a criminal subculture, which includes a system of concepts and ideas that has developed in group consciousness of criminals; a kind of philosophy that justifies, substantiates and encourages a criminal lifestyle. In turn, the criminal environment is a historically formed and relatively stable part of the social environment that denies supremacy of legal norms, is guided by informal rules of criminal ideology and uses material and moral resources for its functioning.

The criminal environment consists of persons with an antisocial illegal past or present, a significant part of whom have served their sentences in prison, who comply with criminal subculture rules, recognize the authority and carry out orders of persons with a higher criminal status.

Thus, the criminal hierarchy is the order of subordination of persons occupying a lower position in the criminal environment to persons occupying a higher position, the estab-

lished system of relationships between them. It should be emphasized once again that synonym of the term “criminal hierarchy” is “prison hierarchy”, and the fact that a person is not recognized by the court as guilty of committing a crime does not cancel the possibility of a person belonging to the criminal hierarchy.

It should be pointed out that criminal hierarchy extends not only to places of deprivation of liberty. Having received, as a rule, an informal status in the penitentiary institution (in the lingo it means “having determined who you are in life”), a person retains this status both in any place of deprivation of liberty and outside it. Moreover, a person is obliged to answer the truth to the question: “Who are you in life (in the life of a convict)?”, otherwise he may be subjected to physical harm, up to murder. The status can be subsequently changed both upward and downward, but only persons with a higher informal status can do this.

It seems necessary to briefly list categories (informal statuses) of persons who are part of it (from the highest to the lowest): thief in law, “polozhenets” (position holder), “smotryashchii” (watcher), “kozyrnyi fraer” (trump frayer), tramp, convict (decent convict), hook, “blatnoi” (trusties), “stremyashchiysya” (ambitious), man, red (goat, household service), offended (merked). It should be noted that this list is approximate in nature, because it depends on criminal traditions of a particular region, penitentiary institution, etc.

It is noteworthy that Russian penal enforcement agencies consider not only persons occupying the highest position in the criminal hierarchy as objects of operational interest and, possibly later, persons brought to criminal liability under Article 210.1 of the Criminal Code of the Russian Federation. In our opinion, supported by the current judicial practice, criminal liability under Article 210.1 of the Criminal Code of the Russian Federation is subject not only to the so-called thieves in law, but also to other persons occupying a position in the criminal environment that allows them to exercise organizational and managerial functions. So, in particular, by the Verdict of the Vologda Oblast Court of December 2, 2021 in case No. 2-2/2021, five persons were found guilty of committing a crime under Article 210.1 of the RF Criminal

Code, and only one of them was the so-called thief in law, and the rest were appointed by them and performed functions of watchers (or rather, position holders), i.e. persons responsible for certain objects, including some penitentiary institutions.

For a more precise definition of the circle of such persons, it seems appropriate to formulate the following definitions, some of which were given in the above-mentioned sentence:

position in the criminal hierarchy – an informal social status of a person in the criminal environment that determines his rights and obligations. The position in the criminal hierarchy is determined by self-esteem, confirmed by persons who have an equal or higher informal social status in the criminal environment;

organizational and administrative functions in the criminal environment – informal powers of a person that are associated with creation and (or) involvement of new participants in an organized criminal group; and (or) management of the specified group consisting of criminal environment participants; and (or) planning of activities of the specified group, distribution of roles between participants, organization of communication between its members and with other organized groups; and (or) generation and distribution of income received due to activities of the specified group; and (or) formation of antisocial values among members of the specified group; and (or) establishment and maintenance of corrupt ties with representatives of government and law enforcement agencies to back activities of the group or introduction of group members in state, including law enforcement, bodies;

thieves' way (way of life) – a set of norms and rules of conduct created, disseminated and enforced by persons enjoying authority in the criminal environment, aimed at regulating criminal activities of AUE extremist organization members, settlement of intergroup relations while committing crimes and in daily lives.

It is necessary to briefly describe key categories of persons included in the criminal hierarchy, including those performing informal organizational and administrative functions in the criminal environment.

A thief in law is a person who occupies the highest position in the criminal hierarchy, en-

joys unconditional authority among representatives of the criminal environment, performs organizational and administrative, regulatory and disciplinary functions [7, p. 98]. A thief in law is a particularly dangerous and authoritative professional criminal who received his title in a special procedure – “kreshchenie” (“coronation”). Several recognized thieves in law must recommend him for it. This person, as a rule, has a criminal record, inflated self-esteem, sufficiently high level of intelligence, sociability, ability to adapt to the current situation, influence people and use them for his own selfish interests. A thief in law can lead (and more often supervise) a certain organized criminal formation, territory, segment of criminal business [6, p.53]. The structure of this social group is heterogeneous: the theory of criminology distinguishes thieves in law of the old formation and new «thieves in law; spade (Caucasian) thieves in law and diamond (Slavic) thieves in law. Besides, they can be divided based on their belonging to a particular clan (“family”) [1].

It should be emphasized that the top of the criminal world reacted quickly and accurately to the introduction of Article 210.1 of the Criminal Code of the Russian Federation. If earlier the thief in law was not allowed to hide his status even in front of law enforcement agencies and, in most cases, they answered evasively (“I am a citizen”, “and who is a thief in law?”, etc.), now the so-called concepts (i.e. unwritten behavior norms of AUE members) permit to deny the existence of such a status and make even louder statements. So, it is possible to mention an interesting dialogue between the judge and the thief in law Tengiz Gigiberiya, nicknamed Tengo Potiiskii, [12] cited in the materials on the website “Prime Crime”: “During investigation, the man had not admitted the accusation and refused to testify. Everything changed already in court... Gigiberiya turned to the judge: “Your Honor, I agree with everything, I admit my guilt, everything is true what the Prosecutor has said. I have been crowned as a thief in law since 1996... I admit my guilt, if you want, punish me”. The judge asked the defendant why he had not given up the status of a thief in law and how this procedure had taken place. “Since 2019, when the law was issued, all my thoughts have

been only about how to get free. I declare to you from the bottom of my heart, not to engage in any criminal actions... Since 2019, I have not thought of engaging in criminal actions. All I want is to be free". The judge asked about a procedure of uncrowning of a thief in law. "Either someone claims that you are not a thief, or you claim it yourself", Tengö Potiiskii replied. "Whom should you declare this to, so that the status of a thief in law is removed from you"? "Either other thieves remove it, or you do it yourself... I was going to do it when I was free. I wanted to see the thieves. I wanted to be free and do business. If some miracle happens and I am released, I give you my word not to engage in criminal activity and live with my family. Your Honor, I am a decent man and I swear by all that is holy..." [15]. At the same time, Tengiz Gigiberia, nicknamed Tengö Potiiskii, by the Decision of the Lipetsk Regional Court of June 4, 2021 was acquitted under Article 210.1 of the Criminal Code of the Russian Federation (this Decision was canceled on the application of the Prosecutor's Office); still he is defined as a thief in law on the Prime Crime website [12].

The next status in terms of importance is occupied by a "polozhenets" (position holder) – a person occupying the highest position in the criminal hierarchy, authorized by a thief in law to perform informal organizational, administrative, regulatory and disciplinary functions within a certain territory (at a certain facility), including in places of forced isolation from society.

"Smotryashchii" (watcher) is a person occupying a high position in the criminal hierarchy, authorized by a position holder or by a general decision of a "skhodka" (gathering), i.e. by a joint decision of several persons with authority in the criminal environment, to perform informal organizational, administrative, regulatory and disciplinary functions within a certain territory (at a certain facility), including in places of forced isolation from society.

A game watcher is a person occupying a high position in the criminal hierarchy, authorized by a position holder, watcher or by a joint decision of several persons with authority in the criminal environment to perform certain informal organizational and administrative, regulatory and disciplinary functions in the

field of organizing illegal gambling in places of forced detention.

It should be emphasized that a watcher, game watcher and position holder are not informal statuses that can be assigned to a specific person. These are kind of informal positions, which persons with authority among criminal environment members can have.

Turning directly to investigative support of bringing to justice criminal leaders, it should be noted that the introduction of Article 210.1 "Occupying the highest position in the criminal hierarchy" into the Criminal Code of the Russian Federation eliminated a number of gaps and contradictions that existed in the legal regulation of conducting investigation in correctional institutions. Operational units of correctional facilities had been facing the task to deter activities of criminal leaders since the 1940s. However, the legislative regulation of investigative activities introduced in 1992 (previously it had been regulated exclusively by closed departmental acts) did not stipulate solution of this task. The legislator outlined them rather succinctly: identification, prevention, suppression and disclosure of crimes, as well as search for certain categories of persons. Unfortunately, the task of countering activities of criminal leaders was not reflected in the 1995 Federal Law "On investigative activities", declaring that their purpose is protection ... from criminal encroachments. Thus, operational units did not have legal grounds for launching investigation, since taking leading positions in the criminal hierarchy was not a crime. Thieves in law appointed position holders, they, in turn, – watchers of cities, towns, colonies, etc. Implementing informal organizational and administrative powers, the listed categories of persons formed a shadow administration, which, in some cases, had real power based on the use of physical force and other illegal methods and means. Nowadays, the situation is different: criminal leaders do not declare their belonging to the elite of criminal environment and have also made changes to informal rules of the criminal subculture. In addition to denial of their status in a conversation with law enforcement officers, position holders and watchers refuse to sign the so-called "progon" (mandatory directions initiated by authoritative prisoners). In order

not to form evidence of their highest position in the criminal hierarchy, they use signatures "Side Brothers", etc., and in some cases they generally abandon practice of using them in favor of oral messages.

There is a range of issues that require recording of operational investigative measures and subsequent submission to a preliminary investigation body. The first and most significant aspect, in our opinion, is availability of facts that a person performs informal organizational and managerial functions. They are as such: a person can resolve third parties' disputes, including those not included in the criminal hierarchy (with subsequent compliance of the decision), give various orders and control their implementation, including by persons occupying lower levels in the criminal hierarchy, appoint people responsible for any objects (position holders, watchers), etc. These facts can be fixed with the help of video and audio recordings, as well as other technical means. In addition, it is possible to confirm them in the operational search measure "survey" with the possibility of subsequent procedural actions.

Presence of informal statuses of a thief in law, position holder, watcher is, in our opinion, only indirect evidence. We believe that there may be situations when these statuses are of a formal nature, and either a person does not exercise real power functions, or they are carried out by persons from the leader's entourage, being a kind of gray cardinals. In this case, a person with a certain status does not pose a significant public danger. In particular, one of the lines of defense was built on this during criminal prosecution of one of the thieves in law, but it was broken up by the evidence of facts of his appointment of watchers.

At the same time, it is necessary to record the fact of having an informal status and it is not a problem nowadays. To do this, it is proposed to conduct an operational search measure "making inquiries" and study the above-mentioned website "Prime Crime", positioning itself as the registered mass media since 2006, all materials of which ("the fruits of 20-year work on collecting and summarizing information on history of the thieves' world") are copyrighted [10]. The specified

resource not only provides background information of all thieves in law, but also traces their locations and discloses their activities (for example, "in the early 1990s, after serving out his time, Sh. settled in Cherepovets, from where he controlled the Vologda Oblast for more than a quarter of a century, up to his last arrest" [11].

In addition, the facts of existence of a stable privileged informal status or occupation of a position providing for the exercise of informal organizational and administrative powers can be confirmed both at the preliminary investigation and at the court session by employees and convicts who agreed to testify as witnesses. For it operational officers are to identify such persons, get their consent and ensure safety of their participation in the criminal process, since both employees and convicts may fear physical violence in connection with their assistance in the crime investigation.

Problematic issues of proving the facts of AUE cell's activity in the penitentiary institution

Considering operational search support for proving facts of illegal activities of AUE members in places of detention, it is reasonable to list its main features, which we formulated when preparing responses to inquiries of law enforcement agencies. First of all, it should be emphasized that the AUE international public movement (Convict's Codex) is a decentralized organization consisting of many interconnected groups (cells), whose members are united by common goals of ensuring their livelihoods by conducting illegal activities, extremist ideology based on legal nihilism, permissibility and desirability of illegal behavior, hatred and hostility to representatives of state authorities and citizens who do not share their views.

Features of the AUE cell operating in a penitentiary institution are the following:

- presence of the cell leader with a special informal social status in the criminal environment (thief in law, watcher, position holder, etc.), which guarantees him a high, steadily privileged (but not always the highest) position in the criminal (prison) hierarchy, is an optional feature, as in some cases there is no explicit leader, and the cell's activities are

worked out and implemented by a group of persons occupying a steadily privileged position in the criminal hierarchy (by tramps, convicts, etc.). In the criminal world jargon, such a situation is called “lager’ na bratve” (the facility is controlled by bratva);

- high degree of cell members’ consolidation due to presence of an intra-group hierarchy, distribution of social roles and functions;
- AUE members’ adherence to informal norms – the “thieve” way of life: they impose criminal rules and traditions (the so-called concepts) in places of forced isolation from society, monitor their compliance by suspected, accused and convicted persons, and apply measures of influence to violators of informal regulations and prohibitions;
- practice of illegal (prohibited by the criminal-procedural and criminal-executive legislation of the Russian Federation) secret communication between AUE cell members and persons held in detention places, including through the use of specific documentation (illegal correspondence) and gatherings (“skhodka”);
- joint commission of illegal acts by AUE cell members;
- use of nicknames (“human names”) to identify AUE cell members;
- production, use, storage, distribution of AUE symbols and AUE attributes.

Characterizing the latter indicator, it should be noted that the international public movement “Convict’s Practice” has its own marks in the form of an eight-pointed star with black and white rays with an epaulette with a tiger’s head, an eight-pointed star, wings and a swastika [5]. Thus, it is not possible to attribute other symbols characteristic of the criminal environment to the AUE movement symbols.

Attributes of the extremist organization “Convict’s Practice” are not described in this Decision, which allows us to formulate its definition and key features. The Russian Wiktionary defines attributes as a set of essential distinctive (often external) features of belonging to something, signs common to a number of objects, phenomena [3]. Russian Explanatory Dictionary by S.I. Ozhegov and N.Yu. Shvedova interprets the term “attribute” as a “necessary, permanent feature, accessory” [11, p.

30]. Thus, based on the above, we consider it possible to define AUE attributes as a set of essential features inherent in objects of the material world used by members of the AUE extremist organization, as well as their actions that have a traditional (established) character.

We can classify AUE attributes into several groups:

- phrases often used in illegal correspondence or gathering, such as “Peace and prosperity to the our overall house!”, “May course of thieves be prosperous!”, “AUE. Life to thieves!”, “May thieves thrive and flourish!” “May the human be and flourish!”, symbols: – of employees of the penitentiary institution administration and employees of other law enforcement agencies, X – “khata” (camera), M – “malyava” (note of an illegal nature), etc.;
 - accounting forms used by AUE cell leaders to ensure its stable functioning: the so-called house register (to register persons who arrived, departed and are in the penitentiary institution), “tochkovki” (from the word “tochkovat”, i.e. to fix – to take account of received or directed financial or other material values in the so-called “obshhak” (common fund), etc.), globes (schemes of penitentiary institutions);
 - records of words (names, surnames and “human names” (nicknames) of thieves in law) and numbers (dates of their birth or death, indicated per month) according to established rules of the criminal subculture. Correspondence periodic congratulations and commemorations of thieves in law are one of the traditions characteristic of AUE cells.
- Thus, operational units need to focus their efforts on detecting and recording the above-listed features of AUE cells operating in a penitentiary institution. It is important to consider the following:
- implementation of informal organizational and administrative functions by a group leader (if any);
 - distribution of social roles and functions in the gang (performance of informal functions of a SHIZO watcher, squad watcher, canteen watcher, etc.);
 - reproduction and dissemination of criminal rules and traditions (concepts) by members of the gang: correspondence periodic congratulations and commemorations of

thieves in law, formation and distribution of “obshhak”, including to persons in the penitentiary institution, organization of gambling with contribution of part of the winnings to “obshhak”, stories about actions that need to be taken in a particular situation arising in the criminal environment (for example, if a loser is not able to pay);

- presence of “progon”, “malyava”, and illegal use of mobile communications;

- use of nicknames (“human names”) to identify AUE cell members;

- production, use, storage, distribution of AUE symbols (in the form of an eight-pointed star with black and white rays with an epaulette with a tiger’s head) and AUE attributes, the main types of which were listed above.

At the same time, it should be emphasized that the list we have formulated is approximate and by no means exhaustive. It is quite possible that there are other circumstances indicating activities of AUE cells.

It should also be emphasized that the identified circumstances should be assessed in aggregate. Estimation depends not only on presence of any features, but also on their semantic content. It is impossible, for example, to assert presence of extremism only when identifying illegal correspondence containing information of a domestic or even personal nature. It is not reasonable to state that a person has the highest position in the criminal hierarchy, if he does not perform informal organizational and administrative functions, although he has the status of a thief in law or tattoos with appropriate symbols, etc.

Correct recording of the materials provided for research is another significant point: documents should be drawn up as close as possible to the form used for sending documents for examination. A photo table is the most accurate form of providing images of various objects and documents (“malyava”, “progon”, house registers, playing cards, rosaries, etc.). Each sheet should be numbered, contain brief circumstances of receiving the depicted object (where, when, as a result of what), signed by an official and stamped. It is advisable to send only those materials for research that can presumably carry information relevant to the purpose of the study. All

questions to a specialist should be correct. Implementation of these recommendations not only reduces the time for preparing a specialist’s conclusion, but also eliminates the possibility to complain its results.

Conclusion. It should be emphasized that according to the provisions of Article 74 of the Criminal Procedural Code of the Russian Federation, which establishes an exhaustive list of types of evidence, results of the specialist’s conclusion relate to other documents that, in accordance with Article 84 of the Criminal Procedural Code of the Russian Federation, can be used in evidence if the information contained in them is relevant for establishing the circumstances specified in Article 73 of the Criminal Procedural Code of the Russian Federation. At the same time, the Criminal Procedural Law does not establish requirements for the procedure for requesting and compiling such documents. While not claiming to be unambiguous in the conclusions and recommendations formulated in this publication, we hope, however, that they will contribute both to further scientific discussion and improvement of law enforcement in the area we have considered.

Conclusions. Summing up certain results, we should once again pay attention to key findings. The changes listed above in the legislation currently allow us to take effective measures to qualitatively change the operational situation in places of deprivation of liberty by bringing leaders and active members of AUE cells to criminal liability. To do this, operational units, including penal enforcement agencies, should carry out work on identifying and documenting specific facts of their illegal activities, expressed in implementation of organizational and administrative functions by leaders occupying the highest position in the criminal environment (thieves in law, position holders, watchers), dissemination of criminal rules and traditions, and other actions listed above. The results of operational investigative activities, provided they are properly executed, can be sent to specialists for research, the results of which are not only the basis for initiating criminal cases, but can subsequently be used as evidence in criminal proceedings.

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INFORMATION ABOUT THE AUTHORS

ALEKSEI V. AGARKOV – Candidate of Sciences (Law), Associate Professor, Head of the Department of Operational Investigative Activities of the Faculty of Law of the Vladimir Law Institute of the Federal Penitentiary Service of Russia, Vladimir, Russia, oper72.kum@mail.ru, <https://orcid.org/0000-0001-5326-9757>

ANTON A. SHIKOV – Senior Lecturer of the Department of Operational Investigative Activities of the Faculty of Law of the Vladimir Law Institute of the Federal Penitentiary Service of Russia, Vladimir, Russia, antonshikov@mail.ru, <https://orcid.org/0000-0002-2442-7434>

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