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Implementing Operational Investigative Measures to Prevent Crimes: Problematic Issues of Legislation and Key Directions of Implementation

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Abstract

Introduction: crime prevention and solution are crucial tasks of operational units of all subjects conducting law enforcement intelligence operations. At the same time, the study of the regulatory legal framework and scientific literature shows that its legal regulation is characterized by certain shortcomings and significant gaps. So, for example, there is no unambiguous understanding of the relationship between concepts of crime prevention and crime deterrence, the legislation does not provide for the ability to carry out operational investigative measures to solve the problem of crime prevention, etc. *Purpose:* based on the analysis of legislation and available scientific publications, to formulate proposals for improving the Federal Law “On law enforcement intelligence operations” in terms of the legal regulation of crime prevention, consider relationship of the concepts “crime prevention” and “crime deterrence”, as well as briefly characterize key directions and the content of crime prevention. *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 outlines crucial legal problems of crime prevention, formulates proposals for their resolution in the form of draft amendments to relevant articles of the Federal Law “On law enforcement intelligence operations”. The article presents interpretations of the concepts “crime prevention” and “crime deterrence” and concludes about their non-identity – crime deterrence is part of crime prevention. The content of general and individual deterrence is considered, and the reader’s attention is drawn to the active use of operational search forces, means and methods in the work on their implementation. The author argues that the root cause of any crime commission is the microsocial conflict of a person and society, which arose as a result of socio-psychological maladaptation of a person. *Conclusions:* crime deterrence is part of crime prevention and is implemented in the direction of general and individual deterrence by determining and eliminating causes and conditions that contribute to the commission of crimes, as well as identifying persons whose lifestyle and behavior demonstrate possible commission of crimes. It is emphasized that, although crime prevention is fixed as a task of law enforcement intelligence operations in the operational-investigative legislation, the law does not contain the means to solve this problem in the form of grounds for conducting operational search measures. So, there is a gap in the legal regulation of the established socially useful law enforcement

practice. In order to eliminate this shortcoming, it is necessary to amend Article 1 of the Federal Law “On law enforcement intelligence operations”, supplementing the existing possibility to carry out law enforcement intelligence operations “by carrying out operational investigative measures” with the phrase “and other actions”. It also seems appropriate to supplement Article 7 with the basis for conducting operational investigative measures in order to “obtain information for identification, prevention, suppression or solution of the illegal act being prepared, being committed or having been committed, as well as about the persons who are plotting, preparing, committing or have committed it”.

Keywords: law enforcement intelligence operations; operational search measures; tasks; grounds; prevention, deterrence.

5.1.4. Criminal law sciences.

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Introduction. Crime prevention is one of the tasks of law enforcement intelligence operations declared in Article 2 of the Federal Law No. 144-FZ of 12.08.1995 “On law enforcement intelligence operations”: the tasks of law enforcement intelligence operations are ... prevention ... of crimes, as well as determination and identification of persons preparing them”. At the same time, it should be noted that other aspects of operational investigative prevention of crimes are not fixed in the law. The legislator mentions prevention twice more: when regulating conditions of an operational experiment and the possibility of using results of law enforcement intelligence operations. At the same time, the analysis of this normative act allows us to identify a number of problematic points in relation to the stated topic.

First of all, it is necessary to focus on Article 7, which regulates the grounds for conducting operational investigative measures. With regard to the problem under consideration, Part 1 of Article 7 provides for the possibility of carrying out operational investigative measures if the bodies conducting law enforcement intelligence operations “become aware about elements of the criminal act being prepared, as well as persons preparing it”. However, the legal mechanism for it remains unclear. No doubt, citizens can proactively inform operational units about upcoming crimes, but in modern realities these are rather isolated facts than a real possibility. Thus, the main source of information about

the crimes being prepared and the persons involved in it are people assisting operational units, as well as operations officers personally searching for primary operational information (the so-called operational search).

At the same time, extracting information, they carry out operational search measures, which require grounds that are not currently fixed in the law. Thus, the operational search legislation does stipulate the possibility of preliminary actions of an intelligence-search nature in order to collect primary information about the preparation of crimes, although the organization and control over the implementation of a set of measures related to operational search prevention of crimes, information about which is received during the identification of primary operational search data, refers to the priority areas of activity of heads of organizations that have the right to carry out law enforcement intelligence operations.

At the same time, the norms of Article 7 of the Federal Law “On law enforcement intelligence operations” contain a number of grounds for conducting operational search measures in relation to various categories of persons: having access to information constituting a state secret and work related to operation of facilities that pose an increased danger to human life and health, as well as environment; permitted to participate in law enforcement intelligence operations, etc. Such foundations do not correlate with any task of law enforcement intelligence opera-

tions. However, if we consider them from the perspective of crime prevention, it is possible to identify some (albeit indirect) connections.

An important problem also exists in the sphere of solving the private task of law enforcement intelligence operations fixed in Article 84 of the Penal Code of the Russian Federation for correctional facilities, i.e. prevention of crimes being prepared in correctional institutions and violations of the established procedure for serving sentences. On the one hand, as noted in Article 84 of the Penal Code of the Russian Federation, law enforcement intelligence operations in correctional institutions are carried out in accordance with Russian legislation, which does not provide grounds for conducting operational investigative measures, except for data “about elements of the illegal act being prepared ..., as well as about the persons plotting it ...”. At the same time, according to the ruling No. 86-O of July 14, 1998 of the Constitutional Court of the Russian Federation, the Federal Law “On law enforcement intelligence operations” determines only a criminally punishable act, that is, a crime, as illegal. Therefore, crime prevention should be understood as a solution of this task. The same is proposed by S.A. Bazhanov, K.K. Goryainov and A.P. Isichenko: “these violations ... carry a very dangerous criminogenic potential, which, in conditions of extremely high concentration of the most criminally affected part of convicts in a limited area, can lead to penitentiary conflicts, often escalating into criminally punishable acts” [1, p. 9]. On the other hand, Article 84 of the Penal Code of the Russian Federation differentiates prevention of crimes and prevention of offenses; therefore, they are different in their legal nature. Thus, it is not possible to interpret the solution of this task as prevention of crimes.

The Federal Law No. 182-FZ of June 23, 2016 “On the fundamentals of the offense prevention system in the Russian Federation” is a significant regulatory legal act regulating operational and investigative prevention of crimes. Paragraph 9 of Part 2 of Article 6 of this document provides for possible “application of special measures for deterring offenses in accordance with Russian legislation ... that are of an operational investigative nature

in order to prevent violations of the law”. Considering the phrase “in accordance with Russian legislation”, that is, in accordance with the Federal Law “On law enforcement intelligence operations”, we can state that the legislator implies operational investigative measures carried out in order to prevent crimes.

It should be emphasized that this law defines crime deterrence as a set of social, legal, organizational, informational and other measures aimed at identifying and eliminating the causes and conditions that contribute to the commission of offenses, as well as providing educational influence on individuals in order to prevent offense commission or antisocial behavior. This leads to another issue that has repeatedly become the topic of scientific discussion, in particular, the relationship between concepts of crime prevention and crime deterrence.

Nowadays there is no uniform stance on this issue in the theory of law enforcement intelligence operations. For example, V.Yu. Volkov and P.A. Makaida believe that “the basis of their differentiation lies in the entities carrying out activities. Thus, the concept of deterrence is broader than prevention, since deterrence can be implemented by both official state authorities and entities that do not have mandatory rights and special powers” [4, p. 299]. A similar opinion is shared by I.A. Naumov [6, p. 76], R.A. Semenyuk [8, p. 106], M.A. Shakhmatova [12, p. 44], considering these concepts synonyms. The position of M.V. Seregin and A.G. Teteryuk is close to ours: “the preventive activity of internal affairs bodies ... should be carried out by means of preventive measures to eliminate causes and conditions of these criminally punishable acts, determine persons prone to crime commission, and exert preventive influence on these persons, as well as operational investigative measures to identify crimes being plotted and prepared, suppress them and bring to justice those responsible for their commission” [9, p. 23]. Still, we find it important to specify the following: operational-investigative prevention of crimes is the activity of subjects conducting law enforcement intelligence operations to disclose and eliminate causes and conditions conducive to crime commission; identify persons prone

to or capable of committing crimes; prevent planned and prepared crimes. At the same time, the analysis of the norms of the Federal Law "On the fundamentals of the offense prevention system in the Russian Federation" shows that the first and second of the listed areas should be attributed to operational search deterrence of crimes; hence, deterrence is part of prevention. A similar position is expressed by S.I. Vinokurov [3]. It should be emphasized that, though being developed by the theory of law enforcement intelligence operations and repeatedly tested by long-term law enforcement practice, these directions do not have a legislative basis. There are no grounds for carrying out operational investigative measures when searching for primary information, preventing crimes being plotted, etc. Thus, the conduct of operational investigative measures to identify and eliminate the causes and conditions conducive to crime commission, as well as the provision of educational influence on persons should be recognized as illegitimate. At the same time, these actions are socially useful, have a positive effect on the state of crime and are often used by operational units in practice, which makes their legislative consolidation relevant.

Crime prevention measures are very diverse. They can be objective (designed to influence objective circumstances) and subjective (connected with upbringing of people) and be differentiated by levels. General social crime prevention measures are determined by society development patterns and associated with the regulatory impact on prevailing social relations. Any human society address certain contradictions in its development. If these contradictions remain without proper impact, they can build up and take crisis forms.

In addition to general social measures, special criminological measures are of great importance in crime prevention. They are applied by state bodies, including those carrying out law enforcement intelligence operations, and public organizations and are aimed at preventing and suppressing crimes. It is the special purpose and focus on combating crime that distinguishes these measures from general social prevention. They should be inter-

connected and complement each other, thus creating the basis for their effective impact.

Crime prevention measures vary in the scope of their application. They can be national, regional and local in nature. Social conditions have a significant impact on territorial differences in crime. Preventive measures vary significantly among themselves and in the scope of their application. They can be applied not only on the scale of the whole society (prevention of certain types of crimes), but also in relation to individual social groups, in spheres of public life, in certain territorial zones, etc. Moreover, the most important of them are measures to create appropriate living conditions and educate socially vulnerable groups, primarily minors.

Since it is very difficult to cover all areas of operational investigative crime prevention in one article, we will consider only preventive measures, taking into account the specifics of modern crime. Prevention can be more effective in case of timely detection and averting of criminogenic situations. Another direction is to work out inter-sectoral legislative acts, unified for the Eurasian Economic Union, for preventing certain, the most dangerous types of crimes related to manifestations of organized crime, corruption, money laundering, illegal arms and drug trafficking, illegal migration, and terrorism [10].

It should be recalled once again that in accordance with the current legislation, deterrence of offenses is considered as a combination of social, legal, organizational, informational and other measures (in this case, operational search measures are also assumed) aimed at identifying and eliminating the causes and conditions that contribute to the commission of offenses, as well as providing educational influence on individuals in order to prevent the commission of offenses or antisocial behavior. The offense prevention system, according to Paragraph 2.3 of Article 2 of the Federal Law "On the fundamentals of the offense prevention system in the Russian Federation", forms a "set of offense deterrence subjects, persons involved in offense deterrence, and measures taken to prevent offenses, as well as fundamentals for activity coordination and monitoring in the field of offense prevention".

Reasoning about objects of deterrence activity, it is necessary to determine the order of their consideration. First, it is advisable to consider objects of general deterrence. These can be phenomena that have an impact on crime in general, dynamics of its quantitative indicators (state and level) and structure; individual groups of crimes and categories of criminals (classified or typological groups); specific crimes and the identity of a criminal. The objects of individual deterrence, in turn, are persons whose lifestyle and behavior indicate possible commission of crimes.

All general preventive measures in relation to the sphere of combating crimes are designed to help identify and eliminate causes of the latter, as well as conditions conducive to their commission. These measures should be implemented under close attention of their managers. These measures, in particular, are designed to contribute to solving the following tasks: identifying persons who encourage law-abiding citizens to committing offenses and places of probable crime commission (if we are talking about the border area), as well as places of concentration or hiding of persons inclined to commit crimes.

Let us focus on determining and eliminating causes and conditions that contribute to crime commission in more detail. S.V. Obraztsov states that “the main reason contributing to the commission of crimes against life and health in places of deprivation of liberty is the social and psychological maladaptation of an individual in the conditions of the micro-social conflict experienced” [7, p. 177]. Sharing this point of view, we propose to develop it and include the majority of causes contributing to crime commission into this concept. In fact, regardless of the type and conditions (an object of customs control, production facility, housing, correctional institution, etc.) of the crime, and its subject (marginal strata of society, middle class, successful entrepreneurs, representatives of government branches, etc.) the main reason for crime commission will be the microsocial conflict of a person and the society arisen due to the socio-psychological de-adaptation of a person, i.e. his/her unwillingness to live in society according to the established laws, their denial, his/her opposition to social rules. At the same time,

the specific reasons for crime commission may be a person’s desire to improve his/her financial situation with minimal labor costs, take revenge, restore justice, etc.

Conditions for committing crimes, as well as measures to prevent crime, can be objective (arising as a result of objective circumstances) and subjective (depending on persons’ activities). Objective ones include various natural disasters, as well as, with some reservations, military actions and man-made disasters. In such conditions, it is impossible to ensure full protection of public order, which leads to increased crime. As for subjective conditions, we can mention here shortcomings in activities of a wide range of subjects, one way or another contributing to crime commission. These may be non-working lighting and lack of patrolling in places of possible robberies, omissions in educational work with minors who have previously been convicted, but first of all a lack of operational work in terms of crime prevention.

Within the framework of the functions assigned, for example, to the customs authorities, according to Paragraph 6 of Part 2 of Article 254 of the Federal Law No. 289-FZ of August 3, 2018 “On customs regulation in the Russian Federation and on amendments to certain legislative acts of the Russian Federation”, the latter, along with the identification, suppression and disclosure of crimes attributed to their competence, are entitled to carry out their prevention, and since deterrence, as noted above, is an integral part of prevention, they are competent to deal with deterrence of crimes.

According to A.Yu. Kozlovskii, operational units of the customs authorities in the fight against crimes fulfil the task to obtain proactive information about the plotted or committed crime and the persons who are preparing, committing and (or) have committed it. The researcher finds it important to develop a system of preventive measures, contributing to timely averting of customs crimes. It is assumed that this system of measures should be based on strict control at all stages of declaring and transferring goods; regularity and systematic character of information and analytical work, coverage of all information sources and cross-cutting comparative

analysis of available data in order to identify trends related to the dynamics, structure, ways of committing crimes; reliable, well-developed scheme of reception, recording, registration and exchange of information between all divisions of customs authorities and the customs system as a whole according to elements of crimes; stable interaction and regular exchange of operational information about plotted and committed illegal acts with other law enforcement agencies and special services; implementation of joint measures to detection and prevention of offenses; timeliness of operational search measures to verify information about elements of detected crimes [5, pp. 110–125].

To implement these requirements, operations officers should be skilled at operational recognition of material objects, illegal turnover of which entails criminal liability. Special attention should be paid to weapons, ammunition, explosive devices; substances, including explosive, narcotic, psychotropic (and their precursors), potent, poisonous, toxic, radioactive, chemical; strategic raw materials and other items of operational interest.

To identify these objects, persons with special knowledge in the relevant fields of science, art and craft (forensic experts, chemists, nuclear physicists, toxicologists, bacteriologists, etc.) should be involved as specialists. In addition, it is necessary to use modern technical special means – search devices designed to detect hidden objects of operational interest, such as metal detectors, gas analyzers, kits for chemical express analysis of narcotic substances, explosives, thermal imagers, endoscopes, X-ray introsopes, nonlinearity locators for detecting hidden electronic devices, etc. [11, pp. 175–181].

They should be discussed in more detail. For example, for detecting explosive devices, hand-held detectors can be used to detect the odor trace of TNT. Various types of plastic explosives (“Samtex”, “S-4”, “Deta”, “Plastit”, etc.) with practically no smell have been recently used for manufacture of explosive devices. The most effective way to detect them, in addition to marking, is to search other components, such as batteries, detonators, wiring, striking elements, etc. with the help of special devices. When checking the contents

of luggage (bags, suitcases, etc.), it is advisable to use X-ray and fluoroscopic devices. A mail scanner controlled by a microprocessor is very effective, allowing automatic detection of metal components of “mail” bombs, as well as other contraband items hidden in mail correspondence. In the USA, in addition, early detection systems for potentially dangerous objects (weapons and bombs), based on radar scanning, 3D modeling and artificial intelligence, are used for inspection activities. The “HexWave” technology developed by “Liberty Defense” remotely determines whether a person carries a potential threat or not. It detects metallic and non-metallic objects in real time, using automated information systems associated with artificial intelligence to analyze the generated 3D models. The “HexWave” uses low-power radar scanning from panels mounted at the entrance to customs or border control points. Radio signals are reflected from metallic and non-metallic hidden objects, and three-dimensional images are generated based on the reflected signals received. Three-dimensionality makes it possible to obtain comprehensive information (size, shape, volume) about any materially defined object. The image is generated and recognized by special software based on artificial intelligence algorithms. Threat libraries are also stored in the knowledge base of systems deployed in the field, as well as on cloud servers. Similar technologies from another developer “Synapse Technology” currently replace a large number of employees involved in the baggage check at the Kansai International Airport (Osaka, Japan).

British researchers from Nottingham Trent University and Loughborough University retrofitted smartphones with an infrared scanner and a software platform based on artificial intelligence for remote detection of knives and pistols hidden under clothing [2].

All the above-mentioned tools are aimed at identifying and eliminating conditions for committing crimes, i.e. presence of weapons, explosives, and other items that can serve as tools for committing crimes. At the same time, another equally important preventive activity direction of operational units is to identify persons whose lifestyle and behavior indicate their possible commission of crimes, ensure

direct operational control over them and provide preventive influence on them aimed at preventing the formation of criminal intent, with the help of operational search forces, means and methods. This activity in the theory of law enforcement intelligence operations is called individual deterrence.

Identification of this category of persons is possible in various ways, depending primarily on operational search conditions. Thus, in activities of internal affairs bodies, the search is carried out among persons leading an antisocial lifestyle who are regularly brought to administrative liability; operational units of correctional facilities – among convicts brought to disciplinary liability; customs authorities – among persons that have certain ties in a certain area or at facilities. Operational search involves direct examination of documents or sending requests, including in information systems. So, during the operational search measure, such as making inquiries, confidential assistance to operational units is provided, contact or contactless analyzers of a person's emotional state (polygraphs) are used. They help establish with a certain certainty the degree of frankness of a person when answering questions and his/her psychological state.

Having identified a person prone to committing crimes, it is necessary to ensure operational control over him/her, that is, to carry out surveillance activities. There is no other way of conducting operational control, since it is part of law enforcement intelligence operations, which under Article 1 of the Federal Law "On law enforcement intelligence operations" is carried out with the help of operational search measures. Here it should be emphasized once again that there are no grounds for carrying out operational search measures for the purposes of operational control provided for in Article 7, that is, heads and employees of operational units carrying out operational control act in accordance with Paragraph 9 of Part 2 of Article 6 of the Federal Law "On the fundamentals of the offense prevention system in the Russian Federation", Article 2 of the Federal Law "On law enforcement intelligence operations", but in contradiction with Article 7 of the Federal Law "On law enforcement intelligence operations".

At the same time, the operational search measure, such as surveillance, cannot have a preventive effect on a person that can hinder the formation of his/her criminal intent. An operations officer should organize it with the help of operational search forces, means and methods in three main directions: exerting a positive influence on the object, eliminating the source of negative influence, as well as creating conditions that eliminate the possibility of committing a crime. Considering the first indicated method, we note that the purpose of providing a positive impact is to change a person's opinion about the necessity or expediency of committing a crime. In this case, the source of the impact, as it seems to us, can be a conversation, viewing photos, videos, printed products (preferably with comments from the person having a positive impact), as well as other ways of communicating the necessary information. Conversation is the most primitive and straightforward method that has both advantages, such as direct contact of a subject and an object of individual deterrence, possibility of correcting the impact degree depending on the object's reaction, and disadvantages, such as relatively low effectiveness. At the same time, there arises the question about the legal nature of the conducted measure. It is not an operational search measure "survey", since it is not aimed at obtaining operational information, however, it cannot be anything else, since law enforcement intelligence operations are carried out exclusively through operational search measures. Thus, we once again come to the conclusion about the imperfection of operational investigative legislation.

The main condition determining, in our opinion, the degree of effectiveness of preventive conversations is the level of authority of the source of impact in the eyes of the person being treated. The specified level, depending on a specific situation and moral values of a person, may be determined by age, official position or other (for example, religious) status, degree of proximity to the person being treated, nationality, etc. Choosing the source of impact and organizing preventing impact are a private task of the operational staff, arising from the general task

of crime prevention. It is worth emphasizing once again that, in our opinion, this activity carried out with the use of operational search forces and means is law enforcement intelligence operations; however, in accordance with the Federal Law "On law enforcement intelligence operations" it does not relate to such.

The same problem exists when implementing another direction of individual deterrence, i.e. eliminating the source of negative influence. It is usually organized by an operational officer also with the help of forces and means of law enforcement intelligence operations in conjunction with other organizational actions and often in interaction with other departments and organizations. This may be attraction of a person (for example, a minor) to socially useful activities or activation of family or religious values, etc., which will result in the reduction in the time of communication with persons exerting a negative impact (or, for instance, propagandizing the ideology of the AUE international social movement recognized as extremist). It is also possible to organize spatial movements of the subject – creating prerequisites for moving to another area or region, long absences (business trip, change of place of work), etc.

The third direction of preventive impact is to create conditions to deter crime commission. Though it is implemented by operational units, including in interaction with other departments and organizations, in order to solve the task of law enforcement intelligence operations to prevent crimes, it is not fixed in the current operational investigative legislation. So, it is organization of spatial or temporal restrictions for contacts between potential perpetrators and a victim, establishment of public or tacit control over a person, reduction in the vulnerability of a potential crime object (for example, equipping the customs control point with modern equipment described above). The implementation of these organizational actions is also carried out by operational units using, if necessary, their specific capabilities.

Thus, concluding the consideration of key directions of prevention, we emphasize the need to improve the operational search law. The condition specified in Article 1 of the Fed-

eral Law "On law enforcement intelligence operations" that law enforcement intelligence operations are carried out through operational search measures does not currently correspond to actual law enforcement and socially useful practice.

Conclusions. Summing up some results, we should once again pay attention to the key points.

Crime prevention is fixed in Article 2 of the Federal Law "On law enforcement intelligence operations" as a task of law enforcement intelligence operations, however, the law does not contain any means of solving this task in the form of grounds for conducting operational investigative measures. Thus, there appears a situation when operations officers, solving the specified task with the help of operational search forces, means and methods, act in accordance with Paragraph 9 of Part 2 of Article 6 of the Federal Law "On the fundamentals of the offense prevention system in the Russian Federation", Article 2 of the Federal Law "On law enforcement intelligence operations", but in contradiction with Article 7 of the latter. Crime deterrence, in our opinion, is part of crime prevention and is implemented in the direction of general and individual deterrence by identifying and eliminating the causes and conditions that contribute to crime commission, as well as determining persons whose lifestyle and behavior indicate the possibility of committing crimes.

It is reasonable to improve the operational search legislation by making amendments to Article 1 of the Federal Law "On law enforcement intelligence operations", which provides for the condition that law enforcement intelligence operations are carried out through the conduct of operational search measures. Taking into account modern legal practice, we propose the following wording "law enforcement intelligence operations are carried out through operational search measures and other actions". As for the basis for conducting law enforcement intelligence operations fixed in Article 7 as follows "information that has become known to the bodies carrying out law enforcement intelligence operations about elements of the illegal act being prepared, being committed or having been committed, as well as about the persons who

are preparing, committing or have committed it, if there is not sufficient data to resolve the issue of initiating a criminal case”, we suggest the following wording: “the need to obtain information for identification, preven-

tion, suppression or solution of the crime being prepared, being committed or had been committed, as well as about the persons who are plotting, preparing, committing or have committed it”.

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