




Intersectoral Assessment of Criminal Law Harm in the Implementation of Law Enforcement Intelligence Operations

Alexey Alekseyevich Chistyakov^{1,2,3}^a, Liudmila Aleksandrovna Bukalero²^b, Alexandra Sergeevna Vasilenko⁴^c and Oksana Vladimirovna Kurlaeva⁵

¹Peoples' Friendship University of Russia (RUDN University), Moscow, Russian Federation

²The State University of Management, Moscow, Russian Federation

³Ryazan Branch of Moscow University Ministry of Internal Affairs of Russia named after V. Ya. Kikot, Ryazan, Russian Federation

⁴Peoples' Friendship University of Russia (RUDN University), Moscow, Russian Federation

⁵Enterprise Law group, Chicago, USA


Keywords: Criminal law, law enforcement intelligence operations, problems of law, science and practice, harm caused in the course of law enforcement intelligence operations, criminal responsibility, criminal and legal assessment of the harm caused in the course of socially useful activities, intersectoral regulation of institutions of criminal law, criminal procedure and law enforcement intelligence operations, circumstances precluding criminality of the act, law enforcement intelligence operations, criminal procedural possibilities of intersectoral institutions.


Abstract: The article considers the problems of revealing the relationships that exist between criminal law and law enforcement intelligence operations. These relationships are analyzed and established at both sectoral-legal and sectoral-legislative levels. A key aspect of the study is the hypothesis on the possibility of consideration of these relationships in terms of unity of assessment of the harm caused by illegal actions of persons engaged in the law enforcement intelligence operations. The relevance of the selected topic of the study lies in the active use of means of legislative codification in the implementation of evaluation processes aimed at establishing the specifics of manifestation of assessment of those consequences that are a direct consequence of the actions of officers and assistants, carrying out their activities under operational cover. Legislative regulation does not bring the expected results, and therefore the article analyzes the possible causes of the current condition. The analysis of basic scientific and legislative concepts reveals the main obstacles of general theoretical, methodological and practical aspect, which affect the effectiveness of the circumstances precluding criminality of the act, when assessing the harm in the implementation of law enforcement intelligence operations. The aim of the study is to identify and demonstrate the presence of functional relationships between two branches of law and legislation – criminal law and law enforcement intelligence operations in relation to the criminal law assessment of the harm caused in the course of law enforcement intelligence operations. The objectives of the study are to analyze the main elements of the mechanism of interrelation of law enforcement legislation with criminal law, determine the main aspects of intersectoral order between law enforcement legislation and criminal legislation, and establish the possibilities of methodological aspect in determining intersectoral order between the categories in question.


1 INTRODUCTION

Considering the legislative possibilities of implementing the principle "each branch needs its own sanction

provision" invariably faces obstacles in the Russian legislation created by long-standing legal traditions. It seems that the simplest solution to this situation would be legal structures that allow each branch using its own levers of responsibility and sanction

^a <https://orcid.org/0000-0003-4266-2515>

^b <https://orcid.org/0000-0003-2794-5074>

^c <https://orcid.org/0000-0003-4029-8502>

mechanism based on the example of such branches of law as civil, labor, criminal and administrative law. Regarding the responsibility and sanction procedure for implementing the effectiveness of any legal branch, it would be useful to consider the mechanism of criminal law regulation. It is the so-called second type mechanism, the main distinguishing feature of which is a certain step-by-step transition and influence of one element, stage, on another. In this case, the previous stage exerts the kind of impact, at which the subsequent element appears, having new, previously non-existent qualities. These deterministic relationships can be observed in the development, formation and legal regulation (Olga G. Tavstukha, Alla A. Korzhanova, Alexey A. Chistyakov, Kirill A. Chistyakov, Irina I. Shatskaya, Alexandra S. Vasilenko, Lyudmila D. Starikova, Elena V. Maleko. 2018). Talking about such determinants and mechanisms, both in social and jurisprudence aspects, it is necessary to point out that these terms (mechanism of criminal law regulation, mechanism of perception of criminalistic reality, mechanism of criminal procedural coverage of the territory, mechanism of regional security, mechanism of perception of emotional prohibitions, etc.) are used quite often both when describing systems and when analyzing elements of these systems. That is, in the most general terms, mechanisms are understood as devices, prefabricated structures, notional models and dynamic social systems, the totality of elements of which, interacting with each other, has some impact on the elements and phenomena for the sake of achieving a certain goal. (Aleksandra S. Vasilenko, Vladimir M. Filippov, Maria A. Simonova, and Sergey A. Kovalenko. 2020).

We have just attempted to express the notion of mechanism through the category of dynamic system, since any mechanism is ultimately a system of involuntary elements.

Therefore, it is quite right to correlate the mechanism as a phenomenon with the structure, the ordered totality, the systematicity of a certain group of elements.

Professor S.S. Alekseev pointed out this circumstance in the work «Mechanism of legal regulation in a socialist state». By the way, exactly after the publication of this work, in Russian jurisprudence there appeared many works devoted to this topic (V.S. Prokhorov, N.M. Kropachev, A.N. Tarbagayev, 1989).

Unfortunately, scientific criminal law studies in recent decades quite rarely address the category of legal mechanisms, but it is thought that the potential of this scientific phenomenon, both in the institutional

and ontological sense, is not fully used. (V.N. Protasov, 1995).

The aim of this study is the problem of the presence of substantial functional relations between the institutions of criminal law and law enforcement intelligence operations. Intensive processes characterize traditional methods and ways of assessing and identifying these relations. It is proposed to conduct research from the point of view of extensiveness, namely, to consider the proposed problem from the position of criminal law assessment of harm caused in the course of legal law enforcement intelligence operations.

The objectives of the study are as follows: defining (outlining) the main features of the existing problem of establishing determinant relations between criminal law and law enforcement intelligence operations, establishing the possibility of using the criminal law assessment of the harm caused in the course of law enforcement intelligence operations as a link in the intersectoral relations between criminal and law enforcement legislation.

2 MATERIALS AND METHODS

Materials used in this study:

- Works devoted to the problem of intersectoral relations of functioning of the main elements of the mechanism of legal regulation;
- Current scientific studies devoted to the problem of criminal law assessment of harm caused in the achievement of socially beneficial goals;
 - Publications devoted to the problem of non-criminalization of persons who willfully caused harm, subject to criminal law assessment, during the implementation of law enforcement intelligence operations;
 - Current scientific developments that analyze the complex of social relations regulated by the set of norms relating to various branches of legislation;
 - Official statistical data of law enforcement and judicial bodies of the Russian Federation, reflecting the intensity of the application of criminal legislation in terms of implementation in the non-criminalization due to the lack of evidence of criminality of the act;
 - Criminal, law and intelligence legal acts regulating the issues of judicial implementation in terms of circumstances precluding criminality of the act in the implementation of law enforcement intelligence operations.

Research methods: logical-legal, formal-legal, method of comparative analysis, as well as

scientific modeling, complex method and classification.

3 RESULTS AND DISCUSSION

When the term "regulation" is used, it usually refers to some kind of organization, bringing into proper order, a system, some kind of systematization. We have already noted that any mechanism of regulation is a certain system, the elements of which have some impact either on the elements themselves, or on the environment. That is the mechanism of influence affects some elements, phenomena and circumstances, regulating and ordering elements and relations.

The above-mentioned mechanism of criminal law regulation is a socio-legal unity of means and methods of legal impact on social relations (S.S. Alekseev, 1982). These elements of the mechanism of criminal law regulation affecting social relations are norms and relationships that turn after the legal impact of criminal law norms into criminal law relationships. Within the framework of these criminal law relationships, a criminal responsibility arises. The considered dynamic system of criminal law impact represents an integral part of the overall mechanism of legal regulation, which is derived from it. Due to this circumstance we can assert for sure that at this stage the social relationships arising in the implementation of law enforcement intelligence operations need criminal law regulation.

The needs of operational and service practice determine the emergence of specific means and methods of collecting information, decision-making, detection and suppression of crime, and searching for criminals. Due to the fact that these activities are directly related to the suppression of crimes and offenses in the early stages of criminal activity, then it for sure needs criminal law regulation at these stages. That is, the criminal law acts as a kind of servicing mechanism, without the support of elements of which law enforcement intelligence operations are doomed to ineffectiveness or, even worse, doomed to the commission of offenses.

Links and elements of the mechanism of criminal law regulation function with a consistent phasing (A.M. Pleshakov, G.S. Shkabin, 2020). With criminal law impact, the subject of criminal law regulation is not just social relations, but precisely those that bear in their potential an extremely negative, dangerous, threatening other social relations. This is the sense that gives rise to the need for the emergence of criminal law prohibitions under threat of punishment.

Subsequently, the sanction-responsible mechanism begins to work with the violation of the criminal law prohibition. However, on the other hand, criminal law also carries incentives in its content. This is expressed in the need to create a mechanism of criminal law protection of persons carrying out law enforcement intelligence operations and forced, for the sake of achieving socially beneficial goals, to commit actions that are considered as deeds involving the infliction of socially dangerous consequences.

The mentioned mechanism of criminal law protection, as well as the mechanism of sanction-responsible order, is characterized by such a kind of impact, which we usually call external or objective. However, external manifestation and application causes a subjective assessment of the impact of some internal psychological attitude to this impact (A.M. Pleshakov, G.S. Shkabin, 2020). In this regard, it cannot be denied that the ultimate goal of ordering social relations, which carry a threat to other links within society, is the emergence of criminal responsibility. And not in its usual retrospective understanding, but responsibility as a duty to treat properly the criminal law prohibitions.

That is, any system having characteristics of a mechanism of criminal law regulation is characterized by the presence of elements of both social and legal properties. These elements either experience the socio-legal impact of a set of means and methods, or they themselves have an impact on the socio-legal relations. Meanwhile, we should not forget that social relations are not the only ones and not so much a set of rights and legitimate interests, but also activities that arise in relation to these rights and interests, correlating with obligations. (L.A. Bukalerova, A.V. Ostroushko, N.E. Rustamov, 2016).

These social relations act as social matter, experiencing the means of legal impact – the criminal law norm. That is, the rights and obligations in criminal law relations are formed by the criminal law norms. However, these relations have in their content some actions, activities. This is the object of criminal law relation that is tied to the activity of subjects. And this activity can act as a scientific phenomenon researched by us – law enforcement intelligence operations. (A.M. Pleshakov, Shkabin. 2018). In this regard, another aspect of the relationship between criminal law and law enforcement intelligence operations is manifested – in the part of criminal law relations, the material content may be law enforcement intelligence operations, and the legal form – criminal law norms. Such kind of criminal law

relations can be called intelligence criminal law relations.

Thus, the term mechanism is also understood as a certain way of functioning of social relations; the system of means of direct impact of legal regulation is a system of legal means, producing an effective legal impact on social relations (S.A. Komarov, 1994).

Consequently, the responsibility and sanction part of the mechanism of legal regulation of any branch is located in the legal norm, without affecting the general methodological postulates and requirements relating to the subject and methods of legal regulation, because the norm accepts indicating both the range of social relations, which will be subjected to legal impact, and those methods of impact that will be applied.

The general theory of law does not deny the postulate that a number of law branches has service-supporting functions. The proof is the fact that in a number of branches of Russian law (for example, transport, environment, labor, forestry, land, tax, etc.), there are no separate norms with a sanction mechanism, because these functions are implemented by criminal and administrative law. At the same time, Tax and Labor Codes have provisions stipulating tax liability, on the one hand, and the administrative and criminal law have norms providing for sanctions serving the main tort cases of tax aspect, on the other hand. A similar picture is observed not only in some branches of Russian legislation, but also in some branches of Muslim law (L.V. Bertovskii, A.K. Manna, M.Ya. Murkshtis, N.A. Selezneva, M.A. Ignatova, 2017).

Thus, in the science of criminal law, there is a problem of determining the scope and limits that are necessary for law enforcement intelligence operations. On the one hand, determining the scope of criminal responsibility for illegal actions or illegal law enforcement intelligence operations. On the other hand, determining the scope of recognition of harm during the implementation of law enforcement intelligence operations, that is, as lawful ones.

Due to the bipolarity of harm assessment, the intersectoral nature of the implementation of legal regulation, the presence of relations between criminal law and law enforcement intelligence operations as a complex inter-legislative problem, its development would be required within the framework of the promotion of the scientific concept of "Theoretical foundations of criminal law jurisdiction in law enforcement intelligence operations".

Whether to choose the intensive or extensive way of developing this concept is a question of the near

future. It should be noted that many years of intensive research on this problem have brought some scientific results, but they have not led to a legislative solution of the problem. (L.V. Bertovskii, S.M. Kurbatova, 2020).

Intensive developments are being conducted in the direction of methodological support for interdisciplinary and intersectoral developments. There is no denying that this kind of research is undoubtedly in great demand, having obvious scientific attractiveness. From a scientific point of view, discovery is made precisely at the junction of sciences and branches of cognition.

However, representatives of both sides (Natalia A. Orekhovskaya, Alexey A. Chistyakov, Nina I. Kryukova, Julia A. Krokchina, Yuri V. Ospennikov and Elena V. Makarova. 2019) most often criticize interdisciplinary researches. Often, both studies that have already been conducted and those that are yet to be conducted are declared unacceptable. This kind of opposition and rejection can be explained both psychologically and methodologically.

From the psychological point of view, fear is aroused by everything new, previously unknown, and unconventional. It is perceived as hostile. (S.S. Oganesyanyan, S.K. Shamsunov, 2018). In this sense, interdisciplinary researches are perceived with greater difficulty.

Methodological assessment of interdisciplinary works is often reduced to a negative assessment of the methodology used by the author. In this case, opponents often point to the disadvantages of using the new methodology instead of its positive aspects (L.V. Bertovskii, P.A. Lutcenko, I.V. Maslov, V.A. Sinitsyn, A.A. Nichiporenko, 2020). Because of this, the proposed complex problem begins to be considered not as a single whole, but as two parts of a single problem. While one part begins to be opposed to the other part, and both parts to the whole.

The problem of identifying and establishing relations between criminal and law enforcement legislation belongs to this kind of problems. It seems that the connection between these two branches is quite tangible and obvious. The following arguments can be raised in favor of this thesis:

- First, materials identifying and exposing the subjects involved in the commission of crimes, are carried out by means of law enforcement intelligence operations as well. Of course, the evidence obtained operationally, is not a source of evidence. Nevertheless, law enforcement intelligence operations carried out properly lead to the exposure of the perpetrators.

- Second, those persons who carry out law enforcement intelligence operations are protected by norms of criminal law, and those who cause harm in the course of law enforcement intelligence operations are held criminally liable.

- Third, persons carrying out law enforcement intelligence operations without special powers are held criminally liable.

- Fourth, when carrying out law enforcement intelligence operations, the subject of such operations can cause harm to the rights, freedoms and legally protected interests of institutions, organizations and individuals in circumstances that exclude the criminality of his act. Harm is considered as non-criminal, but it is the criminal law that determines its non-criminal nature.

- Finally, fifth point stating that the mere existence of a criminal law carries out general prevention, and this is of particular importance for the law enforcement intelligence operations. Planning law enforcement intelligence operations is often made on the basis of the potential to prevent criminal behavior. For example, using law enforcement intelligence means and methods, it is possible to establish and expose various systems and schemes of fraudulent actions (L. Bertovskii, E. Petuchov, L. Suhanova, 2019). This is especially relevant to the budgetary sphere; therefore, the role of criminal law and law enforcement intelligence prevention lies in the fact that the measures of law enforcement intelligence operations are aimed at preventing the commission of crimes. And the purpose of criminal law is to achieve non-criminal behavior. That is, in this case, the purposes of law enforcement intelligence operations and the criminal law coincide with each other.

The above circumstances are clearly manifested in the implementation of law enforcement intelligence measures, judged by the courts as either quite legitimate, or as a provocation-criminal.

the introduction into the text of the criminal code of the Russian Federation (1996) of norms not previously known to Russian criminal law surely opens up the broadest prospects for the study of new criminal law institutions. but we have not witnessed a relatively large number of works devoted to a completely new topic. to a greater or lesser extent, this applies to the criminal law assessment of such a phenomenon as crime provocation.

the presence in the current code of articles regulating the issues of punishment for provocation of bribery or commercial bribery (article 304 of the criminal code of the Russian Federation) does not fully solve this problem for a number of the following

circumstances. firstly, should the introduction of the mentioned norm be considered only as a special case of falsification of results of law enforcement intelligence operations, or is it a knowingly false accusation, which in this case is combined with falsification of prosecution evidence? secondly, it is not quite clear why we are talking about criminal responsibility only for provocation of bribery or commercial bribery? thirdly, the relationship between provocation and incitement to commit a crime is not quite clear. finally, in these situations, the further fate of the provoked person is not clear: whether he/she will be released from criminal responsibility; whether the criminal responsibility will be mitigated against him/her; what should be done by the criminal justice further, if the crime committed by the provoked person is the sole consequence of the actions of the provocateur; to what limits does the operation experiment and similar measures extend; is it permissible for law enforcement officer not to prevent the forthcoming crime, but to wait for its beginning to obtain tangible evidence; when this will allow applying proper means of state-legal coercion to the guilty person, etc.

These circumstances are quite correlated with general theoretical criminal law researches and are generally approved by representatives of the law enforcement intelligence science. In this case, consideration of this problem as certain artificially integrated problem does not give effective results and, first of all, it affects the quality of law enforcement intelligence operations.

Recently we have managed to overcome a certain negative perception of stimulation of obtaining results of law enforcement intelligence operations by means of criminal law, as well as by application of norms on extreme necessity in the process of implementation of law enforcement intelligence operations. We have attempted to assess the harm caused in the course of law enforcement intelligence operations by means of criminal law exactly in order to identify additional arguments in support of the specified scientific position.

4 CONCLUSIONS

Thus, the relationship between criminal law and law enforcement intelligence operations can be traced in the issues of criminal law regulation of law enforcement intelligence operations, despite the fact that they violate a number of constitutional rights and freedoms of human and citizen, are implemented on the basis of and within the framework of the federal

legislation on law enforcement intelligence operations and other bylaws, and therefore recognized as lawful from the perspective of criminal law.

In addition, we should not forget that causing harm in the course of law enforcement intelligence operations may be inflicted within the criminal law institute of reasonable risk, and this also excludes criminality of an act. In this case, this issue is regulated by norms of criminal law.

Obviously, risk is never considered reasonable if it knowingly involves a threat to the lives of many people. And all of these circumstances relate to criminal law. At the same time, the theory of law enforcement intelligence operations recognizes the fact that such operations are associated with increased risk, and therefore a concept of operational risk, which clearly demonstrates the connection of law enforcement intelligence operations with the criminal law, has been developed.

Consequently, any type of law enforcement intelligence operations that cause harm must be considered either from the perspective of administrative law or criminal law.

REFERENCES

- Alekseev, S. S., 1982. General Theory of Law: in 2 volumes. 2. p. 24.
- Bertovskii, L., Petuchov, E., Suhanova, L., 2019. Legal support of the participation of foreign lawyers in the criminal proceedings of Russia and Kazakhstan as border regions Advances in Social Science, Education and Humanities Research. International Conference on Sustainable Development of Cross-Border Regions: Economic, Social and Security Challenges (ICSDCBR 2019). 364. pp.463-468.
- Bertovskii, L.V., Kurbatova, S. M., 2020. Protecting the Rights of Persons With Disabilities as a Constitutional Value Proceedings of the XIV European-Asian "The value of law" (EAC-LAW 2020) Series:Advances in Social Science, Education and Humanities Research.
- Bertovskii, L.V., Lutcenko, P. A., Maslov, I. V., Sinitsyn, V. A., Nichiporenko, A. A., 2020. Comparative analysis of anglo-american and continental models of judicial investigation involving the jury. *In Revista Genero & Direito*. 9(5). pp. 523-545.
- Bertovskii, L. V., Manna, A. K., Murkshtis, M. Ya., Selezneva, N.A., Ignatova, M. A., 2017. Adultery and Rape in the Muslim Criminal Law. *In Comparative Law Analysis Journal of Advanced Research in Law and Economics*, 8(1): JARLE Volume VIII Issue. 1(23).
- Bukalerova, L. A., Ostroushko, A.V., Rustamov, N. E., 2016. Determinants of murders motivated by political, ideological, racial, national or religious hatred or enmity, or motivated by hatred or enmity towards a social group. *In All-Russian Journal of Criminology*. 10(1). pp.40-49.
- Komarov, S. A., 1994. General Theory of State and Law: Course of lectures. *In Mordovian University Press*. pp. 286 – 287.
- Oganesyan, S. S., Shamsunov, S. K., 2018. Civilization mentality and environmental problems. *In Ecology*. 27 (106). pp. 1639–1644.
- Orekhovskaya, N. A., Chistyakov, A. A., Kryukova, N. I., Krokhina, J. A., Ospennikov, Yu. V., Makarova, E.V., 2019. Orthodoxy and modernity their contact facets in russian societ. *In European Journal of Science and Theology*. 15(2). pp. 67-77.
- Pleshakov, A. M., Shkabin, G. S., 2020. Animals as crime victims. *In Journal of Gender and Law*. 1(1). pp. 419-428.
- Pleshakov, A. M., Shkabin, G. S., 2020. Methodology of the initial stage of the preparation of the master's thesis on criminal law. Theory and Practice of Project Management in Education: Horizons and Risks. International Scientific and Practical Conference. p. 2011.
- Pleshakov, A. M., Shkabin, G. S. Animal sacrifice as a form of zoological violence. *In Contemporary Dilemmas-Political Education and Values*.
- Prokhorov, V. S., Kropachev, N. M., Tarbagayev, A. N., 1989. Mechanism of criminal law regulations. p. 4.
- Protasov, V. N., 1995. What and how the law regulates: A textbook. p. 64.
- Tavstukha, O. G., Korzhanova, A. A., Chistyakov, A. A., Chistyakov, K. A., Shatskaya, I. I., Vasilenko, A. S., Starikova, L. D., Maleko, E. V., 2018. Personality Ecological Consciousness: Values Ethical Vector of Nature Safety Sustainable Development. *In Ecology*. 27 (106). pp. 1355 – 1364.
- Vasilenko, A. S., Filippov, V. M., Simonova, M. A., Kovalenko, S. A., 2020. Probabilistic Model of Implementing Mediation into Russia's Criminal Procedure in the Conditions of Society's Digital Transformation. Conference materials: Scientific and Technical Revolution: Yesterday, Today and Tomorrow. *In Lecture Notes in Networks and System*. 129. pp. 1286–1293.