

The Principle of Offensiveness in Operational-Search Activities: Applied-theoretical Aspect

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Abstract: The following article analyzes the operational-search activity (hereinafter referred to as police operations) focused on correctional institutions of the penal correction system (hereinafter referred to as penal correction system) in terms of the offensive action approach in conducting operational records, conducting operational-search measures, checking messages and collecting materials about crimes and other offenses. Within the framework of the study, the approaches to the definition of the concept of "offensive action" are analyzed, its main features are highlighted, and the empirical base is used. In the process of considering this topic, several arguments were presented about the necessity and importance of using the principle of offensive actions in the implementation of tasks of operational-search activity. The purpose of the study was the need to identify the most significant theoretical and practical issues related to the understanding and use of offensive actions as a principle of police operations. The goal determined the formulation and solution of the following tasks: consideration of the concept and essence of offensive actions; analysis of the empirical base required for the study; identification of shortcomings in the practical activities of operational units; formulation of conclusions and proposals. During the research, a whole complex of methods was used: general scientific and specific scientific, including methods of empirical and theoretical knowledge. As a result of the study, the author's definition of the concept of "offensive action" was formulated, and a proposal was made to change the list of principles of police operations and supplement it with the principle of offensive actions.

1 INTRODUCTION

With regards to the development of the rule of law and the consistent need to battle dynamically changing structures and types of crime, the issue of understanding, interpreting, and applying in law requirement the initial provisions that form the basis for the implementation of police operations takes on relevance and importance (Tabakov, 2018). Such, as the examination or analysis of the current legislation shows, are straightly forwardly reflected not just in the Federal Law "On Operational Investigative Activities" (hereinafter the Law on Police Operations), but also in other regulatory legal acts (including local laws) regulating relations in the investigated area. Among them, a defined role is played by the principles of police operations, one part of which is considered only at the doctrinal level, and

the other (provided for by the Law on Police Operations) has not yet been defined in the law.

This was indicated in works by A.Yu. Vvedensky, rightly noting that as of now, numerous issues related to the implementation of police operations are not defined and not settled (Vedensky, 2014; Kleymenov, 2017). The ambiguity and ambiguity of several provisions of the Law on Police Operations, according to the author, leads to contradictory law enforcement practice. This was over and over drawn attention to in its decisions not only by the Constitutional Court of Russian Federations (decision of June 29, 2004 №. 13-P, May 27, 2008 №. 8-P, etc.), but also by the European Court of Human Rights (decision on complaint №. 656 / 06, №. 13476/04, etc.), noting that the ambiguity and imprecision of the law can lead (and often leads) to ambiguity of its interpretation and arbitrary application, infringing in

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some cases the rights and legitimate interests of a person and a citizen.

At present, previously mentioned federal law has only four principles of police operations such as: legality, respect and observance of human and civil rights and freedoms, conspiracy, a combination of overt and covert methods and means. Two of them are constitutional, the other two are sectoral. We are convinced that this arsenal of regulators arising in the procedure for the implementation of police operations of relations is not enough to reflect the essence of this activity fully and comprehensively. In this regard, the opinion is formed that the operational-search legislation should be amended and adjusted. Notwithstanding the above mentioned, we agree with the opinion of A.M. Baranov that the principles, being high-level provisions, ensure the proper regulation of emerging social relations (Baranov, 2020).

One such starting point is the principle of offensive action, which, although not currently reflected in the law, is actively implemented in law-enforcement practice, and monitored by oversight bodies. Unfortunately, departmental legislation also does not contain a precise definition of the concept of "offensive action". in the conduct of operational records, the conduct of operational investigations, and the verification of reports of crimes being planned or being committed and of other offences, based on which procuratorial bodies take action on procuratorial violations of the law.

The purpose of this study research is to identify the most relevant theoretical and practical concerns related to the understanding and use of offensive action as a principle of operational and investigative activity. The objective led to the formulation and implementation of the following objectives: Review of the concept and nature of offensive action; Analysis of the empirical basis necessary for the study; Identification of shortcomings in the practice of operational units; Formulation of conclusions and proposals.

2 MATERIALS AND METHODS

A whole complex of methods was used in the process. First, analysis and synthesis, induction and deduction, comparison, and analogy. Additionally, to the above general scientific methods, we have also used private scientific (empirical and theoretical) methods. Empirical learning methods including: an observational method that makes it possible to see the processes and phenomena being studied which are perceptible; a descriptive method based on the

recording of information obtained by the observation process; A survey providing information on the subjective understanding of the concept under consideration. The method of theoretical knowledge is a structural-functional method consisting in dividing the object under study into component parts.

3 RESULTS AND DISCUSSION

The results of the research can be used in the detection of crimes, as well as in the verification of the reliability of information about planned, committed, accomplished crimes require a clear, pre-planned algorithm of actions. In implementing the plan, operational units must work in such a way as to counteract the negative intentions of the perpetrators. The implementation of the above actions would be effective if police operations are active and energetic. In making this point, it should be noted that, in preparing for the commission of crimes, offenders take action to achieve their unlawful aims. The activities of operational units, in turn, must be planned in such a way as to create a countervailing effect.

Additionally, the planning of the combat against crime and the verification of the veracity of reports of crimes being prepared, committed, or accomplished should be carried out in different phases. For example, when checking a certain type of information about a crime after conducting a criminal investigation (hereinafter - Operational Research), inquiries should be conducted by Operational Research, observation of premises, buildings, structures, sites, and vehicles, etc. Other Operational Research procedures may render the verification illogical.

Within the framework of the study of this topic, we conducted a survey among the employees of the operational units of the institutions of a number of territorial bodies penal correction system of the Siberian Federal District (Republic of Khakassia, Tuva, Kemerovo, Tomsk, Novosibirsk Region) In which 94% of respondents reported on the importance of the offensive action principle in the implementation of Operational Researches (of these, 63 per cent consider it necessary to legislate on the principle in question, 31 per cent stress only the importance of implementing it in practice, and 2 per cent do not consider it necessary to use this principle in carrying out their tasks, Another 4% abstained and remained neutral (Diagram 1).

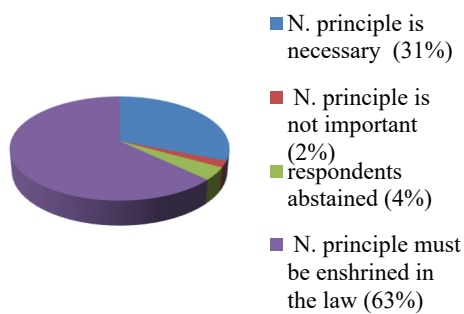


Figure 1: Results of a survey of employees of operational divisions of penitentiary institutions on the importance of the principle of offensiveness

In this way, attention should be drawn to the importance of the actual use of the offensive action principle in the work of operational units, as well as the absence of a legislative framework. Operational units should be provided with a full, comprehensive, and objective analysis of the information available and obtained during the planned activities. It is also important to focus on the initial as well as the subsequent planning of activities and their implementation in accordance with the requirements of the fight against crime.

In the legislation and legal doctrine there is no clear definition of "offensive action activity", but the S.I. Pozhgov's vocabulary contains the notions "to step" and "offensive action", which are one-sided term considered by us "to step", i.e., to move forward (Pozhgov, 1999). Based on the interpretation of S.I. Ogjegov, offense is defined as the kind of activity of the operational units that ensures active action against the offenders, to counteract the crimes being prepared or committed.

V.I. Elinsky addressed the basic concepts and provisions of police operations, albeit without touching on the concept of "offensive action", but such verbs as: "explore", "observe", which are adjacent to the concept we are investigating (Elinsky, 2020). This indicates that the definition of the concept of "offensive actionness" is not sufficiently researched, in the legislation and legal doctrine there is no consensus on what meaning should be given to this word.

A.G. Markushin, interprets the content of the principle of offensive action, explained that it is carried out through the implementation of a constant operational search and detection of the necessary information, and the adoption of appropriate measures. The author also notes that offensive action speaks of the intelligence nature of the Operational Research System, allowing operational units to use the forces and means of the Operational Research

System as efficiently and quickly as possible (Markushin, 2015). V.I. Zazhitsky rightly asserts that offensive action is rightfully considered the fundamental, principal idea of the Operational Research System, namely, the principle. Additionally, V.I. Zazhitsky correlates the concept of "offensive action" with the concept of "efficiency", giving them synonymy (Zazhitsky, 2006). This, in our opinion, confirms the importance of offensive operations in the procedure for carrying out police operations, and also gives importance to the legislative consolidation of the principle we are considering.

Professor Yu.P. Garmayev, considers the term "offensive actions" and, believes that it consists in the orientation of police operations to search for information about the signs of a crime, to identify persons who are planning to commit them (Garmayev, 2016). In this case, the author gives a kind of synonymy to the concepts of "offensive action" and "focus on the search for information." In our opinion, in this case, the activity of actions of the subjects of police operations is not meant and is considered, which, in turn, does not fully reveal the essence of offensive actions as characteristics of the actions of operational units.

There is an opinion that the principle and practice of offensive action is a counterbalance to passivity and lack of initiative. According to S.I. Ozhegova, passive and lack of initiative means not showing activity, devoid of initiative. Considering the opinion that offensive actions should be ensured by active actions of the subjects carrying out police operations, the above judgment is correct (Ozhegov, 2006).

The position of I.A. Abramov, which does not define the concept of «offensive action» but calls it signs, among which stand out: speed, speed of taking measures, display of activity, purpose, initiative in carrying out police operations, the aim is to anticipate the actions of the perpetrators and to prevent and suppress unlawful acts during the preparation and attempt stages, as well as to identify and denounce the perpetrators in a timely manner. In addition, the author claims that the offensive action directly reflects the intelligence nature of police operations, aimed primarily at obtaining primary operational information, which would not have been possible without the use of confidential assistance (Abramov, 2018). It is difficult to disagree with this view, since the prevention of planned, planned and committed crimes and other offences must be carried out by operational units considering the evolving operational situation, directly or indirectly through persons, providing them with tacit assistance.

The term "impact" is close to the concept of "offensive action". A.Y. Schumilov wrote that exposure should be associated with a certain activity of subjects. Any influence on a socially dangerous phenomenon, among which are the control and warning, A.Y. Shumilov called the influence (Noise, 2018). In our opinion «impact» is not synonymous with "offensive action", but it can be part of it or one of the features.

M.V. Sedniev highlights continuity as one of the requirements of the activity in question, which is also related to offensive activity: the term implies the existence and use of permanent control over the objects of interest, enrichment of data for completeness and accuracy of information (Sydetsiev, 2018).

We also agree with Y.A. Lozhkin, who asserts that the effectiveness of the detection of crimes depends, first, on the clear and consistent organization and implementation of the operational support of said process (Lozhkin, 2017). The operational units of the agency must be fully operational to enable them to fully enforce the rule of law in the agency. The lack of reliable information on crime, according to M.Y. Titanov, does not make it possible to carry out a forecast of its development, as well as to develop an effective plan to combat it (Titanov, 2016).

A.A. Serdyuk claims that the identification of the concept of «offensive action» with such categories as «initiative», «activity» etc., is not allowed, and the main condition of offensive activity in carrying out police operations must be confidence in the integrity and understanding of the tasks of the experiment (Serdyuk, 2017). We believe that this judgement is highly unilateral and insufficiently comprehensive. Offensives should be enforced by active and proactive actions of police operations entities, as we have previously asserted.

It is quite interesting to note that nowadays, among all the member countries of the Commonwealth of Independent States (hereinafter CIS), only the Law of the Republic of Moldova on police operations contains the principle of offensive and operational readiness that we consider. We believe that these principles should be distinguished, and it is not entirely appropriate to single them out as one: "operational readiness", in our view, means that operational units have some At the time when preparations for crimes and other offences are under way and prompt action is taken to eliminate them. Offensive activity refers to the activity of police operations entities aimed at suppressing crimes and other offences.

According to Article 21 of the Police Operations Act, the heads of the bodies carrying out police operations submit to the Public Prosecutor's Office, when supervising the activities of the respective units, operational and service documents, which include operational record-keeping cases, Materials on the conduct of police operations using operational and technical means, as well as records and registration documents and departmental regulations regulating the procedure for their implementation. Procuratorial supervision is carried out for the purpose of verifying the legality of the activities of the supervised bodies (Marinicheva, 2020).

Drawing attention to the practical activities of the operational units of the Federal Penitentiary Service, it should be noted that often in the exercise of oversight over the legality of the activities of the institutions in relation to police operations, The Procurator's Office issues numerous reports of violations of certain provisions of federal or departmental regulations. For example, Federal Penitentiary Service regional prosecutors' offices conduct quarterly inspections, not only to assess the lawfulness of procedural decisions, their conformity with criminal procedural law, but also in checking the keeping of operational records, carrying out police operations. As practice has shown, quarterly, because of oversight by the Public Prosecutor's Office of the legality of the activities of the operational units of the Federal Penitentiary Service in each territorial body of the Federal Prison Service, inspection reports end with reports on elimination of identified violations. These include the following:

Violations of departmental regulations; The absence or insufficiency of grounds for the establishment of a register; Incorrect drawing up of operational audit plans; Violations of time limits in the conduct of operational records and in the collection of evidence of crimes and incidents; Insufficient operational and relevant information; Lack of an integrated approach in the implementation of activities, lack of interaction with other divisions and services, etc.

In our opinion, the above-mentioned violations are connected, first, with the inertia and passivity of the subjects of police operations and their lack of activity and speed in carrying out the planned measures. The inaction of operational units may lead not only to the submission of recommendations to remedy the violations detected and to the holding of operational personnel and their superiors accountable, as established by law, but also to the commission of crimes and other offences.

It is important to note that the number of recorded crimes among persons deprived of liberty is increasing each year, as shown in Figure 2. The number was 940 in 2015, 960 in 2016, 974 in 2017, in 2018 - 1025, in 2019 - 1171 crimes.

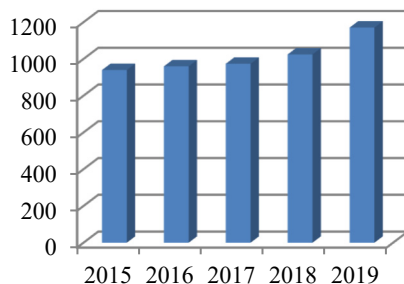


Figure 2: Total number of reported crimes among persons held in places of deprivation of liberty

The annual increase in crimes committed in places of detention is, in our view, due more to a lack of capacity on the part of operational units to carry out the tasks assigned to them by the State. Shortcomings in the activities of operational units are related to a passive and informal approach to the tasks assigned to them and to the involvement of operational personnel in other activities not inherent to them.

O.V. Filippova believes that one of the reasons for the high crime rate, in terms of number and recidivism, is the imperfection of the preventive activities of the authorized entities (Philippine 2020). We are sure that this opinion is hard to disagree with: the quality of crime and delinquency prevention has long been considered poor and inadequate: Disciplinary sanctions are systematically imposed on convicted persons in correctional institutions for various kinds of offences.

In addition, the identification of perpetrators and the collection of records of crimes and other offences that have already been committed and have been committed (which, as shown in Figure 2, are numerous), must be carried out expeditiously for subsequent referral, quickly, providing an integrated approach to establishing the necessary data. It is extremely important to pay great attention to the above-mentioned objectives, since any delay can lead to negative consequences in the form of violation of the social relations protected by criminal law.

A.A. Criminov argues that the importance and importance of police operations in Federal Penitentiary Service institutions cannot be overemphasized. In addition to providing a regime in the institution, operational units, through their staff members, constantly monitor the operating

environment, identify and verify reports of crimes and other offences (Crimea, 2020). Of course, the task of maintaining a stable operational environment and verifying is impossible without an offensive approach.

4 CONCLUSIONS

In this way, it is considered that the system is enshrined in the Article 3 of The Police Operations Act, while containing both constitutional and sectoral principles, is not fully capable of regulating operational and investigative relations at present and therefore needs to be further developed and more fully reflected. It is important to stress the importance of the offensive principle in the practical activities of operational units. First, an offensive approach to the implementation of the tasks assigned to subjects of police operations will make it possible to combat crimes and other offences more effectively. Secondly, the verification of reports of crimes being planned or committed must be swift and expeditious, thereby contributing to a stable and controlled operational environment. Thirdly, an active and comprehensive approach to the implementation of planned activities will make it possible to combat criminal acts in a qualitative, timely and conspiratorial manner.

On the basis of the foregoing, we propose that offensive activity, based on and in accordance with the law, should be understood as a fundamental starting point for rapid response to reports of crimes being prepared and committed, Full and comprehensive collection and analysis of operational and relevant information, quality planning of activities required to achieve the objectives, proactive targeting of offenders, prompt and effective decision-making, Timely identification, denunciation and prosecution of the guilty parties, as well as the display of activity, purpose and initiative in carrying out the tasks assigned to the subjects of police operations. In addition, we propose that the Ministry of Justice should submit a legislative initiative to amend the article. 3 of the Federal Law "On Operational-Investigative Activity", the extension of the list of principles of police operations and, accordingly, the addition of the principle of offensive activity to the mentioned list. We believe that the implementation of this proposal will make it possible to ensure better performance of police operations' tasks and will also be the right step in the fight against crime.

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