



Research Article

ISSUES OF LEGAL REGULATION OF SEARCH ACTIVITY: FOREIGN EXPERIENCE

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ABSTRACT

Democratic reforms in the political, legal and economic spheres are being implemented step by step in Uzbekistan. The implemented reforms are aimed to protect the rights and freedoms of citizens. A lot of work has been done in our country in connection with the extensive reform of the judicial system in the direction of such goals. In particular, it is worth to note that the work carried out in our country in connection with the harmonization of criminal and criminal-procedural legislation with humanitarian principles. Emphasizing that it is not enough to fight against crime only through criminal-procedural means, the effective organization of activities in this regard can be achieved by a combination of quick-search activities and investigative activities. Author consider the necessity to create an opportunity for timely prevention, elimination and exposure of criminal acts by opposing the special measures corresponding to the hidden, masked and organized actions of the persons committing the crime.

KEYWORDS

Crime, research, investigation, legislation, criminal code, fighting crime.

INTRODUCTION

In accordance with the Law of the Republic of Uzbekistan dated April 25, 2016 "On Amendments and

Additions to Certain Legislations of the Republic of Uzbekistan" No. ORQ-405, the 16 rapid search activities



mentioned in Article 14 of the Law "On Rapid Search Activity" were given a relevant understanding.

Also, in order to regulate the issues related to the use of the results of operational search activities in criminal proceedings, as provided for in Article 19 of this law, Article 81 of the Code of Criminal Procedure "Since the results of the operational search activities carried out in compliance with the requirements established by law have been checked and evaluated in accordance with the norms of this code then it can be recognized as evidence in the criminal case", was supplemented with the third part. In addition, a number of articles of the Criminal Procedure Code were amended according to the requirements of this law.

At the same time, the current system of rapid search activity does not fully meet today's requirements, and there is a need to improve it in every way. Currently, as a convenient solution to this issue, it is possible to propose amendments and additions to this law, which, in our opinion, should take into account the following basic provisions.

Since the search activity is related to the most important rights of citizens defined in the Constitution of the Republic of Uzbekistan, it should be carried out in strict accordance with the law. Fighting crime requires swift and decisive action against lawbreakers. Therefore, it is necessary to catch a person who is preparing to commit a crime, has committed a crime, or is suspected of committing a crime, because criminals who are left at large may try to hide the traces of a crime or commit a crime. Since the search activity is related to the most important rights of citizens defined in the Constitution of the Republic of Uzbekistan, it should be carried out in strict accordance with the law. Fighting crime requires swift and decisive action against lawbreakers. Therefore, it is necessary to catch a person who is preparing to

commit a crime, has committed a crime, or is suspected of committing a crime, because criminals who are left at large may try to hide the traces of a crime or commit a crime.

It should be noted that the process of development and implementation of forensic innovations, in fact, has no limit. Innovation always opposes tradition, and then gradually displaces it. However, the regularity lies in the fact that over time, any innovation is transformed into a tradition, which in turn will be replaced by a subsequent innovation [1].

A quick assignment is a covert operation that is carried out to find out the activities of criminal persons [2]. Damage during such an event is used as a last resort to identify a person or several persons who have committed a socially dangerous act. In the conditions of liberalization of the criminal law by the employees of the agencies fighting against crime in our country, it is necessary to give a proper assessment to such situations and apply a preferential norm. The reason is that even if a person commits a crime, protecting his rights and freedoms, life and health, treating a person as a supreme value has become one of the priorities in the democratic society we are building today.

Therefore, in our current criminal legislation, harming a person or persons who committed a socially dangerous act during a quick assignment should be defined as one of the circumstances excluding the criminality of the act, and its concept should be given a perfect definition. After all, the concept of an urgent assignment is not given in the Law "On Operational Search Activity", and although the list of "urgent activities" is described in detail, the general concept of an event is not revealed at all. Therefore, the shortcomings and problems associated with this definition can be shown in the following:

- the concept of "quick action" expressed in the law and its various forms are not widely expressed in the explanation of the terms of the criminal law or in other normative documents;
- the law states that an employee included in a criminal association for the purpose of exposing them will be exempted from criminal liability for illegal acts if there are circumstances that exclude the criminality of the act in accordance with the law, but this norm has not been confirmed in the criminal legislation;
- the standards of damage caused by the disclosure of criminal acts are not clearly specified in the legislation;
- the necessary signs of damage during the quick assignment are not stated
- the types of damage (physical, property, mental) are not explained in detail;
- distinguishing this legal measure from other similar legal measures remains problematic in some cases;
- the law does not specify all the signs that should be taken into account when assessing the legality of damage caused to a person who committed a socially dangerous act during the prompt action;
- the legislation does not describe in detail all the issues (signs) related to the circumstances in which cases of intentional serious or moderately serious injury to the body, deviating from the limits of the necessary measures to cause harm during a quick action, cause criminal liability.

Also, it is important to develop a definition that fully explains the meaning and nature of "harm during the urgent task" and distinguish between necessary

defense and last necessity. In turn, the fight against crime and ensuring legality by harming a person while secretly entering a criminal gang is one of the most urgent issues today. Currently, one of the promising approaches to the inspection of the scene is the use of various imaging devices, including those installed on unmanned aerial vehicles. The advantage of this approach is a significant increase in the completeness of the collected visual information, an increase in the efficiency of the inspection, the possibility of obtaining images of places where it is either difficult or dangerous for the expert [3].

In the theory of criminal law, based on the analysis of the definitions given by most scientists to the general concept of harm during the arrest of a person who has committed a socially dangerous act, the following signs can be cited:

- 1) objective signs of harming during a quick assignment: the person performing a quick assignment has committed a socially dangerous act defined as a crime by law; that the victim is a criminal or a member of a criminal association, organized group; the fact that the need to cause damage has arisen for the operational employee and that he did not deviate from the limit of causing damage;
- 2) subjective signs of harm during an urgent assignment: the presence of a goal to carry out an urgent assignment and put an end to the activities of an organized group, a criminal association, and not to deviate from the limits of harm. Here, we will touch on some of the more controversial aspects of taking damage during a quick mission.
- 3) tezkor topshiriqni bazharish vaktida ijtimoiy havfli qilmish sodir etgan shakhsga zarar etkazishning umumiy tushunchasini ishlab chiqqan mualliflar shahsni



konunda zhinoyat deb nazarda tutilgan ijtimoiy havfli qilmishni sodir etgan larkidiligi belgidilishi belgisi bulgi.

In particular, in the special literature on the theory of criminal law, this criminal-legal measure is called “apprehension of a criminal” [4], “harm during the apprehension of a criminal” [5] etc....

One of the cases that is not clearly regulated in the Criminal Code of the Republic of Uzbekistan and does not correspond to the cases that exclude the criminality of the act provided for in the criminal law is the case of damage to the interests protected by the criminal law as a result of the implementation of “quick action”. In the theory of criminal law, the question of giving a legal tone to this situation that excludes criminality is now being raised, but this situation has already found its place in the criminal law of some countries.

For example, the US legislation goes the way of recognizing the implementation of "quick action" as a condition that excludes criminality in practice. Pursuant to paragraphs (k) and (n) of the FBI Covert Operations Manual (1987) approved by the US Attorney General, FBI agents and their informants are authorized to engage in criminal activity when necessary:

- obtaining information that is extremely important for criminal prosecution of the employed persons;
- maintaining the validity of a quick “legend” in the eyes of members of a criminal organization;
- prevention of danger to human life and health.

In this case, the criminal liability of secret agents and persons assisting them is excluded, since their actions do not have the intention to commit a crime. Under US law, participation in felony activity is subject to prior sanction by the FBI, while involvement in less serious crimes requires authorization from the FBI's state division chief [6]. At the same time, the range of action of an undercover officer in the performance of his duties is limited by a specific police law: “A police officer performing his duties as an agent must comply with the official instructions of a higher authority, he must not perform other duties based on this law. should choose measures that are acceptable and do not harm the rights of other citizens”[7].

In particular, there is Article 38 of the Criminal Code of Belarus entitled “Being among the participants in a crime on a special assignment”, according to which “in accordance with the current legislation, while performing a special assignment to prevent or detect a crime, acting together with other participants, he is forced to commit a crime a person cannot be held criminally liable” (Part 1 of Article 38) [8].

It was noted that one of the most important conditions for ensuring that the crime is not illegal is that it was in a mandatory state. Participation in a crime is considered compulsory if the refusal to commit a crime exposes a person involved in a criminal gang and threatens his safety, or may lead to the destruction of the possibility of exposing criminals, preventing or stopping more serious crimes. It is also noted that a person can be an executor or joint executor, an assistant or even an organizer [9].

However, part 2 of Article 38 of the Criminal Code of the Republic of Belarus sets certain restrictions on the permissibility of causing harm, which states that the provisions of the first part of this article shall not be applied to a person who has committed a serious or



serious crime involving an attack on human life or health. The rules for causing damage during the execution of an "urgent mission" are defined in detail in the Criminal Code of Ukraine (2001), which includes Article 43 entitled "Performance of a special mission to prevent or expose the criminal activities of an organized group or criminal organization"[10].

In 2001, the Criminal Code of Kazakhstan (1997), which introduced Article 34-1 entitled "Implementation of urgent search measures", deals with this issue in a unique way.

Part 2 of Article 34-1 of the Criminal Code of Kazakhstan provides the scope of harm, according to which an act related to danger to human life or health, environmental destruction, social disaster or other serious consequences is punished. It is interesting that the consideration of the issue of whether the infliction of damage is not against the law, according to the rules of the situation excluding the criminality of the act, applies not only to the activities related to the rapid introduction of persons into the criminal gang, but also to the conduct of other rapid search activities.

In particular, Article 13.2 of the Criminal Code of Estonia (1961), valid until 2002, entitled "Factory crime", states that "although having the characteristics of the act provided for in this Code, it is aimed at identifying the crime or the criminal and is authorized by a competent state body to commit a fictitious crime. The act committed by the given person is not considered a crime" [11].

However, these issues are directly within the scope of criminal law regulation. Therefore, it is necessary to include in the Criminal Code of the Republic of Uzbekistan from the point of view of legalization of the institution of harm during the "execution of an "operational task" in order to solve this issue. In the

process of implementation of the "quick action", the person who has forcibly harmed the interests protected by the law acts in order to identify, prevent, detect and expose the crimes committed by the organized criminal groups according to the order of the law enforcement agencies. The reviewed experience of foreign criminal legislation, which, in our opinion, deserves attention, allows us to put forward a proposal to include "execution of an urgent task" in the Criminal Code of the Republic of Uzbekistan as a condition that excludes the criminality of the act.

REFERENCES

1. Lyudmila Yugay. Biometric identification as an innovation in criminalistics, Society and innovations, Special Issue – 07 (2022), P.289
2. Forensic tactics: Darslick/TB Mamatkulov. - T., 2013. - B.169.
3. Abdullaev R.K.(2022). Inspection of the scene of the incident using advanced technologies. The American Journal of Political Science Law and Criminology, 4(10), 62–65. <https://doi.org/10.37547/tajpslc/Volume04Issue10-09>
4. Baulin Yu.V. Criminal law problems of the doctrine of circumstances that exclude crime (social danger and wrongfulness) of an act. Autoref. dis.... Dr. jurid. sciences. - Kharkov, 1991. - S. 22.
5. Bikmashev V.A. Criminal legal aspects of the use of firearms by employees of the internal affairs bodies. Autoref. dis.... cand. jurid. sciences. - M., 1997. - S. 23.; Rabadanov A.S. Application of criminal law norms on the necessary defense and detention of criminals in the activities of the internal affairs bodies. Autoref. dis.... cand. jurid. sciences. - M., 1998.
6. Smirnov M.P. Operational-search activities of the police of foreign countries. M., 2001. S. 193-194.



7. Vodko N.P. Federal Law "On Operational-Search Activities" in the system of Russian legislation: problems and solutions. M., 2007. S. 40.
8. Criminal Code of the Republic of Belarus. St. Petersburg, 2001.
9. Criminal law of the Republic of Belarus. General part: textbook/under the general. ed. V. M. Khomich. Minsk, 2001. S. 187; Scientific and practical commentary on the Criminal Code of the Republic of Belarus/edited by A. V. Barkov, V. M. Khomich. Minsk, 2010. S. 114-115.
10. Criminal Code of Ukraine. St. Petersburg, 2001.
11. Penal Code of the Republic of Estonia. St. Petersburg, 2001

