

ppi 201502ZU4645

Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185 Depósito legal pp
197402ZU34

CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela



Vol.41

Nº 78

Julio

Septiembre

2023

Use of criminal analysis in operational and search activities

DOI: <https://doi.org/10.46398/cuestpol.4178.29>

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Abstract

The purpose of the research was to consider the essence of the use of criminal analysis in operational and search activities. The rationale is that it is necessary to improve the existing ways of using criminal analysis methods in operational and search activities. The methodological basis of the article is a dialectical approach. Moreover, during the research, a system of methods of scientific knowledge has been used: formal logic (abstraction, analogy, deduction, induction, synthesis) for detailed clarification of the content of the issues under consideration; empirical research method - during experimental research and interviewing experts; the method of system analysis - to determine the directions for the introduction of innovative approaches to solving the problem. As a conclusion it is proposed to make changes in the Law of Ukraine "On operational and search activities", in particular, to supplement clause 4 of the first part of Article 8 with the following provision: in order to perform the tasks of operational and search activity to obtain information held by telecommunications operators and providers, about communications, subscribers, provision of telecommunications services, in particular, about the reception of services, their duration, content, transmission paths, etc.

Keywords: operational unit; criminal analysis; operational and search measures; operational and search activities.

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Uso del análisis criminal en actividades operativas y de búsqueda

Resumen

El propósito de la investigación fue considerar la esencia del uso del análisis criminal en actividades operativas y de búsqueda. Se fundamenta que es necesario mejorar las formas existentes de utilizar métodos de análisis criminal en actividades operativas y de búsqueda. La base metodológica del artículo es un enfoque dialéctico. Además, durante la investigación, se ha utilizado un sistema de métodos de conocimiento científico: lógica formal (abstracción, analogía, deducción, inducción, síntesis) para la aclaración detallada del contenido de los temas en consideración; método de investigación empírico - durante la investigación experimental y entrevistando a expertos; el método de análisis del sistema - para determinar las direcciones para la introducción de enfoques innovadores para resolver el problema. Como conclusión se propone realizar cambios en la Ley de Ucrania “Sobre actividades operativas y de búsqueda”, en particular, para complementar la cláusula 4 de la primera parte del artículo 8 con la siguiente disposición: con el fin de realizar las tareas de actividad operativa y de búsqueda de obtener información en poder de los operadores y proveedores de telecomunicaciones, sobre comunicaciones, abonados, prestación de servicios de telecomunicaciones, en particular, sobre la recepción de los servicios, su duración, contenido, vías de transmisión, etc.

Palabras clave: unidad operativa; análisis criminal; medidas operativas y de búsqueda; actividades operativas y de búsqueda; procedimientos de investigación.

Introduction

Within the limits of the given powers, criminal police units acquire a sufficient mass of information about criminal activity, in particular about representatives of organized crime. In view of the mentioned, an extremely important task consists in using tools that would provide an opportunity to process significant amounts of available data.

Criminal analysis is one of such tools in activities performed by operational units of the National Police of Ukraine - it is a specific type of information and analytical activity, which consists in identifying and as accurate as possible determining internal connections between information (facts, data) related to a crime and any with other data obtained from various sources, their use in the interests of operational, search and investigative activities, their analytical support.

In the countries of the European Union and the USA, the use of criminal analysis capabilities is mandatory for all law enforcement agencies. Its content, rules and procedures are clearly defined and regulated in the legal field (Korystin, 2019).

Law enforcement agencies of foreign countries have been using criminal analysis in their work for a long period time. In particular, this type of activity began to be considered as a separate profession back in the 60s of the last centuries. In the subsequent decades, criminal analysis gained significant development in such countries as the USA, Canada, Great Britain, Australia, and Belgium. In the 70s of the 20th centuries, the process of scientific substantiation and provision of this activity began alongside with creation of a system of special education and professional development.

In the 1980s and 1990s, at all levels (local, federal, regional, national ones) separate units (departments) of criminal analysis began to be created or separate positions of analysts were introduced in the units of law enforcement agencies carrying out detection and investigation of crimes, and with development of computer technologies an active use of special software for criminal analysis began.

It can be stated that criminal analysis is the basis of the “Intelligence Led Policing” model, aimed at making effective management decisions based on the use of a complex of methods and techniques for collecting, processing, evaluating, analyzing and implementing information, as well as for exchange of information during criminal proceedings, operational and search activities, and development of tactical and strategic measures to combat crime.

Its main difference is that criminal analysis units having legal access to various information bases that operate on the territory of our state, as well as possessing the skills of intelligence analysis, significantly facilitated the work of operational officers. Criminal analysts have demonstrated that they are able to find the most hidden patterns in activities performed by criminal elements, as well as to build systemic connections in situations of non-obviousness.

In today’s conditions, criminal analysis as a separate type of professional activity is carried out at law enforcement agencies of most developed countries. In the structure of the Interpol’s General Secretariat, a separate unit of criminal analysis functions, and activities performed by the Europol headquarters is based mainly on the use of criminal analysis technologies (Kalynovskyi and Shkolnikov, 2017).

Criminal analysis is one of the main activities of the European Police Office. In accordance with Article 4 and 5 of the Agreement on the establishment of Europol (Europol Convention), criminal analysis is one of the main tasks of this Organization. In addition to that Articles 14-16

of this Agreement determine the grounds and procedure for creating the so-called Europol Analysis Workfiles (AWF) which are analytical projects. Importance of this line of work is evidenced by the fact that more than 100 analysts work at the headquarters (Korystin, 2019).

At the same time, legal aspects of using criminal analysis methods during operative proceedings and pre-trial investigation require improvement.

1. Literature review

Criminal analysis is a specific type of information and analytical activity, which consists in identifying and as accurate as possible determining internal connections between information (facts, data) related to a crime and any with other data obtained from various sources, their use in the interests of operational, search and investigative activities, their analytical support.

In the process of criminal analysis, targeted search, detection, recording, extraction, organization, analysis and evaluation of criminal information are provided alongside with presentation (visualization), transmission and implementation of such information.

The purpose of collecting and analyzing information consists in creating and verifying hypotheses and conclusions about past, present and future illegal actions, and this procedure is related to description of the structure and sphere of activity of criminal groups as well as to transfer of clear information to the management regarding operational and search measures and investigative (search) procedures.

All forms of analysis are related to each other, if analysis accompanies operational and search and investigative activities, it simultaneously supports these activities and provides grounds for conducting investigative (search) procedures and operational and search measures (criminal intelligence). During the analytical process, information about the criminal, the course of events, the instrument of the crime, the time and place of its commission, etc. are evaluated. Circulation of this information takes place between operational workers and investigators and consists not only in providing or receiving information, but also in active acquisition (search) of such information (Farion, 2021).

Processing of large volumes of information is possible only thanks to the use of intelligent technologies that reduce the burden on investigative or operational workers and help them during implementation of relevant measures and adoption of a procedural decision.

IBM i2 Analytics delivers powerful analysis and visualization capabilities to improve analytics productivity and reduce the time it takes to deliver high-value intelligence across rapidly growing data sets. In the field of criminal analysis, i2 is used mainly with iBase, iBridge, iGlass, Analyst's Workstation software products (Tsyhykal, 2017).

The set of factual data collected as a result of these actions creates sufficient prerequisites for information support of the further course of the respective investigation at the initial stage of the pre-trial investigation of the criminal proceedings. However, this becomes possible only when the specified actions are carried out taking into account all the features of the search and cognitive activity performed by investigative and operational workers, as well as the specifics inherent in display of the crime event information (Halaburda *et al.*, 2021).

However, the procedure of understanding principles of criminal law and particularities of their implementation under conditions of war has not been covered by the scientists.

2. Materials and methods

This research is based on works of foreign and Ukrainian researchers regarding methodological approaches to understanding the use of criminal analysis in operational and search activities and their specific implementation under conditions of war, etc.

With the help of the epistemological method, the use of criminal analysis in operational and search activities, etc., has been clarified, thanks to the logical-semantic method, the conceptual apparatus has been deepened, the use of criminal analysis in operational and search activities and peculiarities of their implementation in conditions of war has been revealed etc. Thanks to the existing methods of law, we have managed to analyze the essence of using criminal analysis in operational and search activities, etc.

3. Results and discussion

In today's conditions, solution of high-profile, serious and especially serious criminal offenses is impossible without participation of criminal analysts and appropriate analytical intelligence work conducted during operational and search activities and criminal proceedings.

While standards of criminal procedural legislation determine principles of criminal proceedings, at the level of operational and search legislation, this issue remains unresolved (Villasmil Espinoza *et al.*, 2022).

In our opinion, a due proposal was made by the authors of the draft law “On Operational and Search Activities”. According to this proposal operational and search proceedings are interpreted as covert implementation of a complex of operational and search measures against a person or a group of persons (in particular, unidentified ones) who are reasonably suspected of preparing to commit a crime, for the purpose of prevention of such crime or for the purpose of searching for a criminal who is trying to flee from investigation and trial, when it is impossible or extremely difficult to achieve the specified goals by other means (Law of Ukraine, 1992).

Timely and effectively conducted analytical studies contributed to disclosure of a significant number of high-profile crimes, primarily those on “hot scents”, as well as to arrest of criminals and the general increase in pressure on criminality.

Emphasis on criminal analysis is extremely important in the context of law enforcement in view of the profound impact it can have on police strategy, tactics, and methods. Currently, criminal analysis has already begun active implementation of technological innovations through the constant updating of software analytical tools, modernization of technical means, introduction of innovative technologies (for example, systems for quick review and analysis of surveillance camera materials using the program “Video Synopsis”, innovative image processing technology). (Kalynovskyi and Shkolnikov, 2017).

In the process of criminal analysis, with temporary access to information on communications, operational units provide targeted search, detection, recording, extraction, organization, analysis and evaluation of criminal information alongside with presentation (visualization), transmission and implementation of such information.

The purpose of collecting and analyzing during temporary access to information about relations consists in creating and verifying hypotheses and conclusions about past, present and future illegal actions, and this procedure is related to description of the structure and sphere of activity of criminal groups as well as to transfer of clear information to the management regarding operational and search measures and investigative (search) procedures.

After the entry into force of the new Criminal Procedure Code of Ukraine and introduction of certain changes to other legislative acts, factors were identified that prevent the use of the criminal analysis mechanism as an evidentiary basis within the framework of pre-trial investigation of criminal proceedings (Matviichuk *et al.*, 2022).

In accordance with Chapter 15 of Section II of the Criminal Procedure Code of Ukraine, access to information about communications, subscribers, provision of telecommunication services, in particular about the receipt

of services, their duration, content, transmission routes, etc. (hereinafter referred to as “information on communications”), is carried out according to the procedure of temporary access to things and documents on the basis of the decision made the investigating judge, the court, obtained at the request of the investigator, agreed with the prosecutor (Tylchyk *et al.*, 2022).

According to part 1 Art.159 of the Criminal Procedure Code of Ukraine, temporary access to information on communications consists in providing the investigator or the prosecutor with an opportunity to get acquainted with this information (it is provided by telecom service operators and providers in whose possession it is) and receive copies in accordance with the procedure established by the Criminal Procedure Code (Law of Ukraine, 2012).

It should be noted that the Law of Ukraine “On Operational and Search Activities” does not provide for the right of operational units to receive information on communications by telecom service operators and providers in whose possession it is (Law of Ukraine, 1992).

In accordance with 3, Part 2 of Art.40 of the Criminal Procedure Code of Ukraine, the investigator is authorized to entrust execution of investigative (search) actions to the relevant operational units by means of issuing a procedural document (a mandate or order) and the respective operational unit shall be obliged to perform these actions in accordance with Art.41 of the Criminal Procedure Code of Ukraine. Chapters 20 and 21 of the Criminal Code of Ukraine provide a comprehensive list of investigative (search) actions and covert investigative (search) actions.

At the same time, according to Chapter 15 of Section II of the Criminal Procedure Code of Ukraine, temporary access to things and documents does not belong to investigative (search) actions, but is a measure to ensure criminal proceedings, and such a procedural action as analysis of information on communications and radio-technical examination is not normatively defined in the Criminal Procedure Code of Ukraine (Law of Ukraine, 2012).

In connection with the fact that according to Chapter 20 of the Criminal Procedure Code of Ukraine it is not possible to perform such types of investigative (search) actions as information on communications and radio technical examination, establishing owners of telephone numbers, etc., carrying out specified instructions of investigators and drawing up the corresponding protocol (Law of Ukraine, 2012).

In addition, investigators sometimes issue a mandate (order) to carry out investigative (search) actions, in order to entrust implementation of investigative (search) actions to employees of the respective operative unit with their involvement as specialists, namely, to carry out an analysis

of telephone connections (by means of conducting an inspection of the DVD-R disc) within the framework of the resolution on involvement of representatives of operational divisions as specialists.

However, according to Art.237 of the Criminal Procedure Code of Ukraine, inspection is an investigative (search) action carried out with the aim of identifying and recording information about the circumstances of a criminal offense. That is, such an investigative (search) action as an inspection, in particular that of material carriers of information, in practice consists in identifying and recording external physical signs and properties of the object (weight, color, size, shape, etc.) (Law of Ukraine, 2012).

Such an analysis of the content of mandates (orders) certifies that when issuing relevant mandates (orders), investigators aim to obtain from the employees the analysis of information on communications contained on the provided physical storage media, as set out in the protocols based on the results of investigative (search) actions (Zhukova *et al.*, 2023).

However, in the absence in the Criminal Code of Ukraine of such investigative (searching) actions as analysis of information on communications, specialists are forced to use terminological constructions not provided for by law (“perform an analysis by conducting an inspection”, etc.), and in the case of using such materials, the court may recognize this evidence to be inadmissible because it was not obtained in the manner prescribed by the Code of Criminal Procedure.

In our opinion, measures indicated in orders given by the investigator can be carried out by an authorized employee of the respective operational unit on the basis of a resolution on involvement of specialists, with a direct description of the circumstances that need to be clarified, investigated, analyzed, or directly sent a corresponding letter about analysis or examination (Leheza *et al.*, 2022).

In addition, it is possible to involve specialists in the field of telecommunications (who have special knowledge) to conduct such events.

Based on the results of the analysis, authorized employees of the operative unit shall prepare the relevant information, and resolution of the issue regarding the role of the specified information in the respective criminal proceedings, its use for giving evidence belongs to the competence of the investigator (Kobrusieva *et al.*, 2021).

So, analysis of information on communications is an information processing process which is based on logical and creative thinking and is aimed at obtaining qualitatively new information

Conclusions

The proposed legal aspects of using criminal analysis methods during operational proceedings and pre-trial investigation will facilitate the use of materials of temporary access to information on communications and the results of their analysis (references, protocols or expert opinions) as evidence in criminal proceedings.

In addition, it is necessary to introduce amendments to the Law of Ukraine “On Operative and Search Activities”, in particular, paragraph 4, Part 1 Art. 8 should be amended with two new paragraphs of the following content:

For the purpose of performing tasks of operational and search activities the procedure of obtaining information possessed by operators and telecommunication service providers, about communications, subscribers, provision of telecommunication services, in particular, about the receipt of services, their duration, content, transmission routes, etc. shall be carried out in accordance with the provisions of Articles 159 -166 of the Criminal Procedure Code of Ukraine, taking into account the features established by part two of Article 8 of this Law.

Permission to provide access to such information shall be granted by the investigating judge without a court summons to the person in whose possession it is. Access to such information may be carried out in accordance with the procedure provided for by Articles 159, 163 and 165 of the Criminal Procedure Code of Ukraine.

The decision of the investigating judge may be issued to carry out one or more of the above-mentioned operational and search measures and to provide temporary access to information held by operators and telecommunication providers about communications, subscribers, provision of telecommunication services, in particular about the receipt of services, their duration, content, transmission routes, etc.

Bibliographic References

- FARION, Oleh. 2021. “Method of strategic criminal analysis of threats to Ukraine’s border security” In: Collection of scientific works of the National Academy of the State Border Guard Service of Ukraine. Vol. 83, No. 2, pp. 223-241.
- HALABURDA, Nadiia; LEHEZA, Yevhen; CHALAVAN, Viktor; YEFIMOV, Volodymyr; YEFIMOVA, Inna. 2021. “Compliance with the principle of the rule of law in guarantees of ensuring the legality of providing public

services in Ukraine” In: Journal of law and political sciences. Vol. 29, No. 4, pp. 100-121.

KALYNOVSKYI, Oleksandr Valeriiiovych; SHKOLNIKOV, Vladyslav Ihorovych. 2017. “Using the method of criminal analysis to counter organized crime” In: Journal of the Kyiv University of Law. No. 1, pp. 300-303.

KOBRUSIEVA, Yevheniia; LEHEZA, Yevhen; RUDOI, Kateryna; SHAMARA, Oleksandr; CHALAVAN, Viktor. 2021. “International standards of social protection of internally displaced persons: administrative and criminal aspects” In: Jurnal cita hukum indonesian law journal. Vol. 9, No. 3, pp. 461-484.

KORYSTIN, Oleksandr Yevheniiiovych. 2019. Tactical criminal analysis: theory and practice. A study guide. Odesa, Ukraine.

LAW OF UKRAINE. 1992. About operational and investigative activities: *Zakon Ukrainy vid 18 liut. 1992 r. No. 2135-XII*. Available online. In: <https://zakon.rada.gov.ua/laws/show/2135-12#Text>. Consultation date: 01/03/2023.

LAW OF UKRAINE. 2012. Criminal Procedure Code of Ukraine from April 13, 2012, No. 4651-VI]. (n.d.). *zakon5.rada.gov.ua*. Available online. In: <http://zakon5.rada.gov.ua/laws/show/4651-17>. Consultation date: 01/03/2023.

LEHEZA, Yevhen; PISOTSKA, Karina; DUBENKO, Oleksandr; DAKHNO, Oleksandr; SOTSKYI, Artur. 2022. “The Essence of the Principles of Ukrainian Law in Modern Jurisprudence” In: *Revista Jurídica Portucalense*. Available online. In: [https://doi.org/10.34625/issn.2183-2705\(32\)2022.ic-15](https://doi.org/10.34625/issn.2183-2705(32)2022.ic-15). Consultation date: 01/02/2023.

MATVIICHUK, Anatolii; SHCHERBAK, Viktor; SIRKO, Viktoria; MALIEIEVA, Hanna; LEHEZA, Yevhen. 2022. “Human principles of law as a universal normative framework” In: *Cuestiones Políticas*. Vol. 40, No. 75, pp. 221-231.

TSYHYKAL, Petro Oleksandrovych. 2017. “Criminal analysis as an element of the system of information support of operative-search activity” In: *Collection of scientific works of the National Academy of the State Border Guard Service of Ukraine*. Vol. 2, pp. 234-240.

TYLCHYK, Vyacheslav; MATSELYK, Tetiana; HRYSHCHUK, Viktor; LOMAKINA, Olena; SYDOR, Markiiian; LEHEZA, Yevhen. 2022. “Administrative and legal regulation of public financial activity” In: *Cuestiones Políticas*. Vol. 40, No. 72, 573-581.

VILLASMIL ESPINOZA, Jorge; LEHEZA, Yevhen; HOLOVII, Liudmyla. 2022. "Reflections for the interdisciplinary study of the Russian Federation's invasion of Ukraine in 2022" In: Cuestiones Políticas. Vol. 40, No. 73, pp. 16-24.

ZHUKOVA, Yevheniia; BRYL, Kostyantyn; SVYSTUN, Larysa; KOBRUSIEVA, Yevheniia; LEHEZA, Yevhen. 2023. "Legal regulation of public administration of education and science" In: Cuestiones Políticas. Vol. 41, No. 76, pp. 336-346.



UNIVERSIDAD
DEL ZULIA

CUESTIONES POLÍTICAS

Vol.41 N° 78

*Esta revista fue editada en formato digital y publicada en julio de 2023, por el **Fondo Editorial Serbiluz**, Universidad del Zulia. Maracaibo-Venezuela*

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