

THE EVIDENTIARY SIGNIFICANCE OF THE RESULTS OF OPERATIONAL-SEARCH ACTIVITY

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Abstract

The issue of transforming the results of operational-search activity into evidence is considered relevant. In accordance with Article 19 of the Law of the Republic of Uzbekistan “On Operational-Search Activity”, factual data obtained as a result of operational-search activity shall be recognized as evidence in criminal proceedings only if they are duly verified and formalized in compliance with the procedural law regulating the collection, verification and evaluation of evidence, and subsequently introduced into criminal proceedings. This article examines the use of operational-search activity results in accordance with the requirements of criminal-procedural legislation, the collection of evidence in criminal cases, circumstances subject to proof, and the significance of such results in detecting and solving crimes.

Key words

operational-search activity, results of operational-search activity, evidence, collection, verification and evaluation of evidence, proof, criminal-procedural legislation, pre-investigation check, inquiry officer, investigator.

The results of operational-search activity are understood as information obtained by authorized subjects of this activity, in the manner prescribed by law, regarding signs of crimes and persons who committed them, as well as individuals, events, actions (or inaction) posing a threat to state security.

The effectiveness of operational-search activity is largely connected with ensuring criminal proceedings. If operational-search activity is considered separately from the criminal process, it loses its practical significance. Operational-search legislation defines the main directions and criminal-procedural aspects of using the results of operational-search activity both within operational-search proceedings and in criminal proceedings. The operational-search directions for using such results are regulated by a number of provisions of the Law “On Operational-Search Activity”.

The results of operational-search activity are information obtained in accordance with the Law “On Operational-Search Activity” concerning signs of crimes being prepared, committed or already committed, as well as persons preparing, committing or having committed crimes, or persons hiding from inquiry bodies, investigative authorities or the court.

When operational-search activity results are submitted and used in criminal proceedings, the focus is not on documented information sources themselves, but rather on the sources of such information and/or circumstances that may be procedurally confirmed. Operational-search documents serve as a means of recording information and facilitate the collection and verification of evidence, as well as documenting signs of socially dangerous acts and information about persons preparing, committing or having committed them [1].

The use of operational-search activity results in proving a criminal case presupposes their submission to inquiry bodies, investigators or the court. That is, the results of operational-search activity are submitted to the prosecutor or relevant preliminary investigation bodies authorized to investigate a specific criminal case [2].

During the investigation of criminal cases, an investigator who has access to information obtained through operational means may use it to conduct investigative actions or as evidence in criminal cases. The use of operational-search activity results by an investigator does not cause difficulties, since operational documents do not have independent evidentiary value but serve only to guide the investigation. At the same time, the issue arises of using such information without disclosing that it was obtained by covert methods. The investigator may receive information about procedurally unproven circumstances of the crime, accomplices of the suspect (accused), weapons used in committing the crime, and other similar data. Upon obtaining such information, the investigator gains the opportunity to collect necessary evidence through additional interrogation of the suspect (accused), properly conducted searches and other investigative actions [3].

Criminal-procedural legislation establishes that operational-search measures carried out by officials of bodies conducting pre-investigation checks constitute results of operational-search activity, and such results may be recognized as admissible evidence only after being collected, verified and evaluated in accordance with the requirements of the Criminal Procedure Code [4].

In cases where the person who committed a crime has not been identified, the investigator may instruct inquiry bodies, including operational-search officers, to conduct interrogations of persons suspected of committing the crime (not in the formal procedural status of a suspect). Since operational-search officers are more

familiar with operational information and skilled in using it, they can more effectively obtain truthful testimony during interrogation.

Preliminary information about perpetrators obtained during operational-search measures performs a guiding function, helping to correctly select further investigative actions aimed at collecting and verifying evidence in a criminal case.

The use of operational-search activity results as evidence in criminal cases creates serious difficulties, as it is necessary to find ways to convert operational information into evidence while preserving the covert nature of operational-search measures [5].

Thus, the problem of using operational-search activity results in criminal proceedings, particularly at the stage of preliminary investigation, is especially relevant today. This is primarily due to the growth and specialization of organized crime, increased resistance to law-enforcement agencies, and the rise in violence and intimidation against witnesses, victims and other persons.

Operational-search activity, conducted openly and covertly by authorized state bodies and operational units, is carried out in the interests of the state and society, with the aim of protecting property and individuals. By its nature, operational-search activity involves studying the criminal environment. Its documents, due to their legal nature, unlike inquiry actions, cannot be directly used as evidence in criminal cases.

Although operational information, like evidence, has a source, its forms significantly differ from those of evidence, as does the degree of reliability of the information reflected therein. The existence of a common source allows the use of operational-search activity results in proving criminal cases. If results in the form of objects and documents meet criminal-procedural requirements, they may be transformed into evidence and used accordingly.

In addition, operational-search activity results may be used in the following ways:

- to indicate the location of information;
- to obtain objects and documents as a result of measures restricting constitutional rights of citizens;
- as signal information (covert information received from informants).

They may also serve as:

- grounds for initiating a criminal case (but not as sufficient basis);
- guiding information for preparing and conducting investigative actions;
- sources of factual data obtained in compliance with Criminal Procedure Code requirements.

Such factual data must be disclosed, and persons providing them must be interrogated as witnesses [6].

Operational information is one of the main means used in proving criminal cases and may be submitted to investigators or inquiry bodies on the initiative of operational units or requested by investigators. Information obtained in this way may be given procedural form through inspection, expert examinations, or interrogation of persons who directly carried out operational-search measures.

The evaluation of evidence during operational-search activity is based on internal conviction formed by the totality of available evidence and is carried out in accordance with criminal-procedural legislation. No evidence, including operational-search activity results, has predetermined force and is recognized as evidence only after proper procedural formalization.

In support of this view, B.A. Radjabov states that “the consolidation of evidence is an element of the stage of evidence collection within the process of proof,” while some authors recognize the stage of evidence collection itself as an element of proof [7].

In criminal proceedings, each piece of evidence and their totality are evaluated. Some evidence is formed on the basis of operational-search activity results obtained during operational-search measures. The issue of using such results in criminal proceedings remains controversial, which necessitates further study.

Operational-search activity results are significant when submitted and used in criminal proceedings. The focus is not on documented sources of information but on their sources and/or circumstances that may be procedurally confirmed. Operational-search documents record information and facilitate the collection and verification of evidence, documenting signs of socially dangerous acts and information about persons involved.

Due to their specific nature, operational-search activity results may not always have procedural significance and may not be formally applied in criminal proceedings.

Operational-search activity results are included in the list of evidence specified in the Criminal Procedure Code. However, the primary purpose of operational-search activity is not proof, but the collection of information to detect and solve crimes.

Evidence obtained from unknown sources or sources that cannot be identified during criminal proceedings, as well as testimony based on assumptions, guesses or rumors of victims, witnesses, suspects, accused or defendants—except when

confirmed by the totality of evidence—may not be used as evidence in criminal cases [8].

Evidence serves, first, as a means by which unknown facts are established—for example, identifying the motives of an accused through witness testimony. This constitutes the subject of proof, through which the probandum fact (factum probans) is derived. Second, evidence has a cognitive nature, linking and clarifying the fact being established.

Evidence plays a crucial role in solving and investigating crimes; proof through evidence is the core of any criminal case. Some scholars argue that operational-search activity results should not be used as evidence in criminal cases, since they are not procedurally formalized in accordance with Criminal Procedure Code requirements. This raises the question: is it possible to effectively combat crime using only procedurally formalized evidence? Effective crime control is possible through the combined use of procedurally formalized evidence and properly formalized operational-search activity results.

As noted, evidence may be collected not only through investigative and judicial actions, but also by accepting submitted objects and documents. When evaluating such items as evidence, it is necessary to consider essential characteristics without which they cannot be used as evidence.

For evidence to be deemed admissible, it must meet the following requirements:

- legality of the source (obtained from sources specified in Article 81, Part 2 of the Criminal Procedure Code);
- legality of the method of obtaining evidence (obtained using methods provided in Article 87 of the Criminal Procedure Code);
- proper procedural formalization (in accordance with relevant provisions of the Criminal Procedure Code);
- evidence must be obtained only by authorized subjects conducting proof (inquiry officer, investigator, prosecutor or court, as specified in Article 86 of the Criminal Procedure Code).

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