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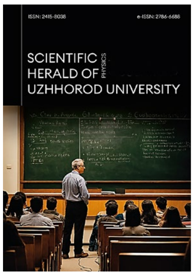

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Problems of crime prevention by operational-investigative units in Kazakhstan

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Abstract

Relevance. Crime prevention by operational-investigative units is an integral part of effective law enforcement, yet it is increasingly being overshadowed by a punitive approach focused on arrests rather than proactive prevention measures. This reactive approach results in significant societal costs and fails to address the root causes of criminal behavior.

Purpose. This study aims to examine the challenges faced in organizing effective crime prevention efforts by operational-investigative units in Kazakhstan and propose clear criteria to evaluate and improve the efficacy of such preventive measures.

Methodology. An integrated approach combining theoretical principles from related legal branches and practical insights from the activities of operational-investigative units in Kazakhstan is employed. Various research methods, including system-structural, comparative, logical, and transition from general to particular concepts, are utilized.

Results. The study identifies several key issues hindering preventive efforts, such as a lack of conceptual understanding, a prevailing punitive mindset among law enforcement officers, and an absence of clear evaluation criteria. To address these challenges, the authors propose specific criteria focusing on early detection of criminal intent, timely intervention to prevent crime completion, and retrospective analysis of preventive measures' effectiveness.

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Conclusions. Implementing the proposed criteria consistently can reorient the operational-investigative units' approach toward a stronger emphasis on prevention. This shift is crucial for addressing the root causes of crime, reducing societal costs, and enhancing the overall effectiveness of law enforcement efforts in Kazakhstan.

Keywords: criminal genesis; methods of struggle; criminal punishment; confidentiality; operational-investigative crime prevention.

Introduction

V.N. Kudryavtsev [1] emphasizes that "crime all over the world takes such dangerous forms that criminal justice, which uses conventional means, completely fails to cope with". M.M. Babaev [2] note that "this is a social disease of all humankind, and not of its individual ethnic or other groups inhabiting some unfavourable territory". Accordingly, one of the most important tasks of all legal sciences is to develop effective methods of crime prevention. The main role here is played by criminal policy and criminal punishment, which affect persons who are capable of committing a particular crime under certain circumstances. Such opportunities include psychological impact, which is expressed in the severity and inevitability of the incurrence of liability [3, 4]. Furthermore, the task of criminological science is also to prevent future crimes, and to explain to the malefactor the danger of committing such actions. Thus, the main function of prevention is to change the malefactor's negative behaviour to positive or neutral. The algorithm for achieving these tasks in general is as follows:

– identification of persons whose behaviour indicates the possibility of committing a crime;
– study of such persons and the surrounding criminogenic situation;
– elimination of negative influence factors;
– educational impact (if necessary, coercive measures);
– monitoring over the subsequent behaviour of these individuals;
– periodic checks of the results of the activities carried out [3].

The preventive activities of the are based on the provisions of the special Law "On Operational-Investigative Activities" [5], where Article 2 presents crime prevention as a two-component task; the first component is prevention, and the second is the suppression of crimes. Therewith, it is not always possible to carry out preventive activities in the operation of possible to prevent it for objective reasons. The only thing that remains in this case is to solve it in a timely manner, ensuring the principle of the inevitability of punishment.

This refers to other situations where the crime is thought out in advance and carefully, the appropriate tools and accomplices are selected, possible victims are identified, etc. Such crimes are most difficult to detect, prevent, and solve [6]. It is in such conditions that crime prevention by operational search measures constitutes an extremely effective and promising line of work. It allows achieving the goals in a short time, with less material losses, provides reliable prevention of harmful consequences, and narrows the scope of criminal penalties. In the future, the importance of crime prevention and suppression measures by operational-investigative units will considerably increase [7-9].

Therewith, a distinctive feature of crime prevention by criminal intelligence is that its impact on objects is implemented mainly in a hidden form: from obtaining unspoken information to exerting influence to eliminate illegal behaviour, illegal situation [10, 11]. For example, here the warning is organised through confidential assistants that can:

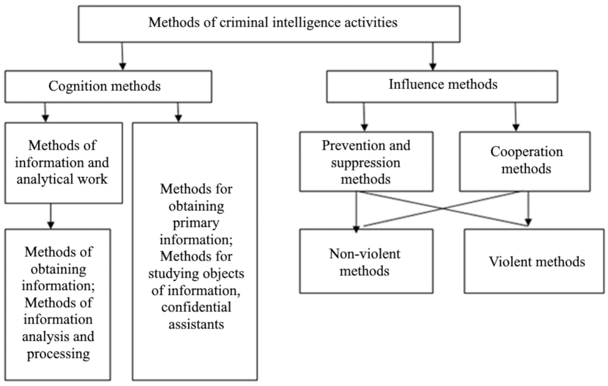
– incline a person to voluntarily renounce a crime at the stage of maturing intent;
– divert the person to a different, non-criminal line of conduct;
– covertly deprive accomplices of the means and objects of committing crimes, etc. [12]

Therewith, the conducted studies demonstrate that this very promising and economical model of crime prevention by criminal intelligence continues to be unpopular both in Kazakhstan and several other countries. The main reason for this situation is the lack of a conceptual understanding of its advantages, since in the minds of most law enforcement officers, the punitive approach still prevails over the preventive one.

Materials and Methods

The study of the problems of crime prevention by operational-investigative methods requires a certain methodological framework based on an integrated approach. This methodology should include both theoretical principles of related branches of law, and knowledge of the immediate issues that arise in the activities of operational-investigative units of the police of Kazakhstan. Scientific cognition of intra-industry relations involves the use of a system-structural method of research, which lies in the analysis of the essence and connections between various elements. This allows identifying the specifics and nature of the interaction that occurs between the various elements of the legal institutions under consideration: criminology, operational-investigative and administrative activities. These institutions are closely connected, forming the basis for the organisation of the work of operational-investigative units.

The following research method used in this study – comparative – helps to identify the continuity and specificity of the approaches of law enforcement agencies in different countries to the development of an optimal model of crime prevention by operational-investigative units. Apart from the above, the study applies a logical method and a method of transition from general to particular concepts. Accordingly, the methods of operational-investigative activities will be techniques or systems for the implementation of law enforcement and special functions, solving the arising tasks of operational-investigative activities. These methods can be classified according to different criteria (Figure 1).



Classification of methods of operational-investigative activities (OIA)

Operational investigation by its functions is a type of activity, the main content of which is cognition and influence (transformation). Cognitive activity is expressed in information and analytical work (including information extraction), in the study of interests and confidential assistants. This impact is reflected in measures to prevent and suppress illegal activities (law enforcement function). Therefore, the methods of operational investigation should first of all be included in the methods of cognition and impact (transformation).

Methods of cognition can be divided into general scientific methods (observation, probing, experiment, modelling, analysis, synthesis, etc.). And special, applicable only to operational-investigative activities with the use of special forces and means (operational observation, operational testing, transportation, operational experiments, operational modelling, operational combination, etc.). Methods of cognition are also divided into methods of information and analytical work (methods of obtaining operational and investigative information; methods of analysing and processing information; methods of forecasting) and methods of obtaining primary information on objects of interest and confidential assistants, the method of their research. Methods of influence (transformation) are divided into methods of prevention and suppression, methods of assistance. The methods of influence include the so-called non-violent (misinformation, promotion of specially selected information, operational combination) and violent (influential actions, special events and operations).

Article 1 of the Law of the Republic of Kazakhstan "On Operational-Investigative Activities" provides the following definition of operational-investigative activities: operational-investigative activities are a scientifically based system of criminal intelligence, organisational and managerial activities of the state and society. The Constitution of the Republic of Kazakhstan, in accordance with other laws and regulations, has the competence of specially authorised state bodies to protect the life, health, rights, freedoms, and legitimate interests of citizens, property, ensuring public and national security from criminal encroachments, as well as intelligence and special services of foreign and international organisations.

The objectives of operational-investigative measures are formulated by law in accordance with the provisions of the Constitution of the Republic of Kazakhstan and include: protection of life, health, rights, freedoms and legitimate interests of citizens of the Republic of Kazakhstan; protection of property (state, private); ensuring the security of society and the state from criminal encroachments, as well as intelligence and subversive activities of foreign and international organisations. The tasks of the bodies responsible for operational-investigative activities are defined by Article 7 of the Law of the Republic of Kazakhstan "On operational-investigative Activities", which stipulates as follows: when performing the tasks of operational-investigative activities defined by this Law, the authorised bodies must perform the following:

a) take the necessary measures within its competence to protect the rights, freedoms and interests of individuals and legal entities, property, society, national security and strengthen their economic and defence potential;

b) ensuring the prevention, suppression, and solving of crimes by conducting criminal intelligence measures, recording their results for use in criminal proceedings, executing written instructions of the investigator and the prosecutor's instructions, as well as court decisions on conducting criminal intelligence operations in criminal cases that are in the production of these bodies;

c) immediately inform the authorities of the Republic of Kazakhstan about the facts and information that they know and threaten the security of society and the state;

d) fulfil the requests of the relevant international law enforcement agencies and foreign law enforcement agencies based on the agreement (contract) on the provision of legal aid;

e) take measures necessary to ensure collusion upon the conduct of operational-investigative activities, as well as to transfer documents reflecting the results of operational-investigative activities for use in criminal proceedings, as well as to prevent declassification of information sources.

The duty of the executive bodies of the OIA is to immediately inform the State Body and the Administration of the Republic of Kazakhstan of the facts and data known to them that indicate a threat to public and national security. One of the main tasks of operational-investigative activities is to ensure the security of society and the state. In accordance with the agreements on legal aid, performance of the requests of international organisations responsible for law enforcement agencies and those of foreign states is an obligation based on the international obligations of the Republic of Kazakhstan. In this case, the nature and scope of operational investigations should be determined by the organisation conducting the OIA. The obligation to take measures necessary to ensure collusion in the conduct of intelligence investigations and to prevent the declassification of sources of information from their individual principles of security and secrecy of operational investigations.

Results and Discussion

The results of long-term observations of the organisation of preventive activities of operational-investigative units of the police in Kazakhstan confirm a similar trend that exists in Russia. As evidenced in practice, the majority of those brought to criminal responsibility before committing crimes were not subjected to preventive measures, although a considerable part of them repeatedly committed administrative, disciplinary, and other offences. This indicates a weak information support and a decrease in the level of professionalism of operational-investigative officers, which is why many individual preventive measures are ineffective, and some remain formal [13-15].

Therefore, the authors of this study support the opinion of S. S. Galakhov and V. I. Kozlov [16], who state that the system of crime prevention by intelligence units failed to justify itself. The hidden positive opportunities that are inherent in the use of forces, means and methods of operational-investigative activity in the prevention of crimes were forgotten. However, in comparison with criminal procedure and criminal law prevention, crime prevention by operational-investigative units is more effective. It allows achieving goals in a short time, with less material and moral losses, provides prevention of the occurrence of harmful consequences and, ultimately, narrows the scope of criminal penalties. Therewith, one of the main reasons for this situation is that there are still no clear criteria for crime prevention by operational-investigative units in law enforcement activities. Accordingly, the practice cannot objectively assess the amount of real work that an operational-investigative officer must perform to prevent a planned or prepared crime.

There is no unambiguous interpretation of the concept of the results of criminal intelligence activities in the scientific and educational literature. The most common opinion, according to which the results of the OIA are interpreted as actual data obtained by operational-investigative units in accordance with the law of the OIA, on the signs of a prepared, committed crime or offence, on the persons involved, which are concealed by the law enforcement, investigation, trial, and missing persons, as well as events or actions that threaten the national political, military, economic, environmental, and other national security. Notably, the interpretation of the results of the OIA in the form of information and evidence allows to consider these results only in a narrow meaning as information, documents, and elements obtained in the course of operational investigation, this is an activity that plays an important part in solving the problem of OIA.

At the same time, the results of the OIA do not always find expression in certain materials and data obtained during the OIA, which can be seen, read, and comprehended. For example, helping the country's leadership to hold an important political or economic event, forcing the target to abandon their criminal intentions are important results of the OIA. The result of the OIA can be the detention of a suspect or the detention of a criminal, the finding of the requested person, document, case. In accordance with the objectives of the OIA set forth in the Law, the results of the OIA are to ensure the security of the president, the preservation of state secrets, the protection of the state border, etc. It follows that the results of operational investigations should be considered not only in a narrow, but also in a broad meaning, i.e., as the degree of solving one or more OIA tasks.

The results of the OIA can find their practical expression in the following forms:

1) information; documents; objects and substances; traces; persons; corpses and their parts obtained, received, discovered necessary for solving the tasks of the OIA;

2) initiated as a result of an attack on the objects of a separate intelligence patrol, the actions of these objects are useful from the standpoint of solving operational-investigative tasks;

3) created situations that are desirable from the standpoint of solving the tasks of the OIA (in political, economic, intelligence, and other areas);

4) detentions of suspects, arrests of criminals.

The results of the OIA are specified or displayed in service documents (reports, certificates, summaries, actions, reports, etc.). Items, objects, and documents received during the OIA may be associated with a performance guarantee document. In particular, when operational and technical (OT) processes are implemented within the framework of the OIA, the results of the OIA can be recorded on light media (phonographs, videos, films, photographic films, gravity films, laser discs, cement, etc.) (Figure 2).

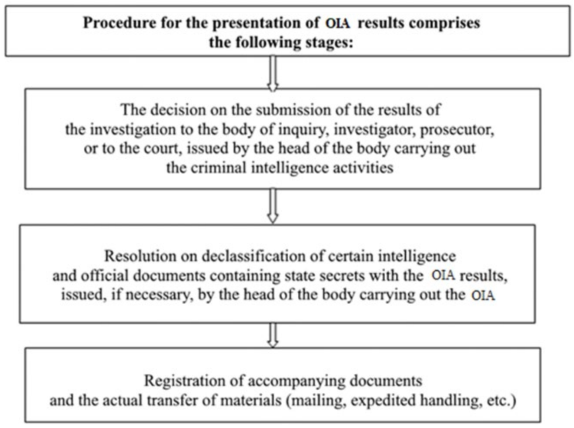


Figure 2. Stages of the procedure for providing the results of the OIA

The results of the OIA are not presented in cases where:

1) it is impossible to ensure the safety of the subjects (participants) of criminal intelligence activities in connection with the presentation and application of the OIA results.

2) the use of the OIA results in criminal proceedings creates a real opportunity to decipher (disclose) the following information: forces, means, sources, methods, plans, and results of operational-investigative activities that are used for conducting cover operational-investigative activities; about persons belonging to organised criminal groups; for full-time secret employees of operational-investigative activities and persons providing them with confidential assistance; in terms of organising and conducting research activities selected by law as a state secret (if the information provided is not published in accordance with the procedure established by the corporate legislation "On Criminal Intelligence Activities").

Therefore, it is not surprising that, based on a narrow professional opinion, it is preferable to solve a crime than to prevent it, since the results of solving crimes are more stable in terms of the evaluation criteria: they are confirmed by objective data (detention, arrest, indictment, sentence). In such circumstances, the position of intelligence officers becomes clear, who believe that in a situation where the task is to prevent a crime, but there is a prospect of bringing a person to criminal responsibility for committing a crime, the officers would always prefer the latter. In fact, the arsenal of tactics for bringing to criminal responsibility is more polished, outwardly they are much more effective than the methods of warning. According to the established tradition, the result of crime solving is more significant, which means that the enforcer's performance is higher. When solving a crime, operational-investigative officers act clearly within the framework of the system of performance evaluation criteria, because the detection rate was and remains the most important performance indicator [16-18].

There are numerous additional reasons why such a negative situation has developed: a sharp rejuvenation of the operational staff after numerous reforms; the lack of special prevention units in the intelligence services; the underdevelopment of the criminological culture of operational-investigative officers; weak scientific support for operational-investigative and preventive work [3, 19]. Therefore, the operational-investigative officers prefer such an approach that the best prevention is the solution of crimes [20-22]. Therewith, it is evident that this approach contradicts logic, since the prevention of crimes is the most important result of law enforcement activities for society and the state [23, 24]. In such conditions, first and foremost, it is necessary to develop such criteria for evaluating the effectiveness of crime prevention by operational-investigative activities, which would stimulate purposeful activities for early identification of persons of interest and facts, covert influence on them to eliminate criminogenic factors [3, 25, 26].

Russian experts in this area have developed several models of such criteria. The authors of this study believe that the following criteria are the closest to real practical activities:

1. The share of persons under administrative supervision who are undergoing intelligence and preventive surveillance cases from the total number of persons under administrative supervision.
2. The number of crimes stopped at the stage of committing serious and especially serious crimes per 100 units of the regular number of intelligence units.
3. The number of detected crimes per 100 units of the regular number of intelligence units.
4. The number of minors found and returned to their place of residence engaged in vagrancy [27-33].

Therewith, analysing these opinions, the authors come to the conclusion that they also do not reflect the real criteria of operational-investigative and preventive work and mainly describe the punitive side of law enforcement practice, as opposed to the preventive one. It is necessary to define such criteria that express the qualitative indicators of this study. The first of them is the degree of early detection of signs of planned crimes, primarily at the stage of development of intent before it transforms into the stage of preparation for the commission of a crime. In operational practice, this is usually ignored until later and more dangerous stages occur. The indicators of this criterion are proposed as follows:

– the level of information support of the served territory (the density of overt and covert sources of information);
– the regularity of receiving messages from them;
– completeness of their verification;
– completeness of response to the message: a set of measures – monitoring of persons of interest, conversation, influence directly or through other persons, conducting tactical combinations, etc.;
– interim or final results of operational-investigative and preventive work;
– conclusions on the expediency and forms of further influence on the persons involved by the operational-investigative unit or the transfer of information to other police services.

The next criterion refers to the stage when the first stage of early detection was not covered for some reason. Then the operational-investigative and preventive activities begin when there is information about the developed criminal intent and the beginning of its implementation. The purpose of the activities at this stage is to quickly localise the developing act and prevent its finalisation into a completed crime. The indicators of this criterion are proposed as follows:

– at what stage of the development of the crime, the operational-investigative unit received initial information about it;
– were there any objective opportunities at this point in time to stop it in a timely manner, without bringing the criminal plan to completion;
– what measures of public and secret response (including using the capabilities of other services) were implemented, to what extent their list was complete, taking into account the current intelligence situation;
– whether they yielded the necessary result or the crime was brought to an end due to objective circumstances (limited time, lack of resources, lack of professionalism of the police, etc.).

The last proposed criterion reflects a retrospective analytical review for each grave and particularly grave crime committed in the service area of a particular operational-investigative unit. Such a review in the form of an internal audit should be carried out by independent specialists from higher authorities who have the appropriate access to the cases of operational-investigative records management. The indicators of this criterion are proposed as follows:

– determination of the presence or absence in the verified cases of early intelligence information regarding the early signs of the occurrence of criminal intent in malefactors and its development into a completed act;
– if such information is available – the completeness and quality of the preventive measures carried out, the reasons for their ineffectiveness-objectively existing circumstances or shortcomings of the organisation of preventive work;
– in the absence of any information about the crime committed – the presence and extent of deficiencies in the information support of this criminal intelligence unit.

If necessary, in the case of identifying the objective guilt of a particular operational-investigative officer or their manager, measures of their strict disciplinary punishment can be taken. Such an approach, being implemented ubiquitously and consistently, will gradually lead to a reorientation of the consciousness of the employees of the operational-investigative units of the police to strengthen the preventive approach and move away from the usual punitive direction. The results of the intelligence operations can be used for solving not only by law enforcement agencies, but also for special functions of the OIA, in particular, to prepare information messages to the President and other state bodies; training and implementation; in security measures of the President and other protected persons; in measures to ensure operational security of the state border; in security measures of executive bodies; in support of organisations [34-37].

Thus, the consumers of the results of the OIA in the form of information, documents, objects in this case can be the President and government bodies of the state, ministries, enterprises, and institutions of the Republic of Kazakhstan, bodies conducting intelligence operations. When applying these results, as well as the law enforcement function of the OIA, a certain order must be observed, which mainly concerns the guarantee of security and decoding of information sources, methods of extraction, opportunities, aspirations, and interests of the implementation of criminal intelligence activities [38-40].

This order includes the following rules:

1. Upon realising the materials obtained during the search, the sources and circumstances of their receipt are to be considered, the procedure for using the materials to prevent decryption, including indirect sources, is developed and delivered to the consumer.

2. Sources of obtaining materials are not provided to the consumer, as a rule, only the degree of their reliability is indicated.

3. Measures to investigate special operations are developed and implemented, the true source of material acquisition is concealed and such measures are called material legalisation.

4. If the nature and circumstances of the receipt of the materials do not hide the source of their receipt, the transfer of these materials is usually unacceptable or possible only to the extent that encryption allows it.

5. Before the transfer (provision to the consumer) of materials obtained in the course of measurement operational-investigative studies, their mandatory analysis and evaluation is carried out, and if possible – a new verification to determine the degree of compliance with reality.

Conclusions

The problems of organising effective operational-investigative and preventive activities in countering crime are multifaceted. This paper merely considers certain aspects of the subject matter. Therefore, further serious scientific research remains to be carried out. They should be based on the principle of saving operational-investigative forces and funds. This system also includes: identification and study of a set of measures to be taken into account upon analysing the cost of the activities of operational-investigative units for the prevention and suppression of crimes; development of working matrices for combining time and material and financial costs; development of an average indicator of time and material and financial costs for operational-investigative measures; calculation of the amount of financial support required for such activities.

At the same time, the authors if this study believe that there is no other alternative to the development of operational-investigative activities, as well as all law enforcement activities. Without this, criminal policy would be focused not on the actual prevention of crime, but exclusively on the punishment of criminals.

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Conflict of Interest

None.

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Проблеми запобіганню злочинів оперативно-розшуковими підрозділами в Казахстані

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Анотація

Актуальність. Запобігання злочинів оперативно-розшуковими підрозділами є невід'ємною складовою ефективної правоохоронної діяльності, проте воно все частіше затьмарюється каральним підходом, орієнтованим на арешти, а не на проактивні превентивні заходи. Такий реактивний підхід призводить до значних суспільних втрат і не усуває першопричини злочинної поведінки.

Мета. Це дослідження має на меті проаналізувати виклики, з якими стикаються оперативно-розшукові підрозділи в Казахстані в організації ефективного запобігання злочинам, і запропонувати чіткі критерії для оцінки та підвищення ефективності таких превентивних заходів.

Методологія. Застосовано комплексний підхід, що поєднує теоретичні положення суміжних галузей права та практичні висновки з діяльності оперативно-розшукових підрозділів Казахстану. Використано різноманітні методи дослідження, зокрема системно-структурний, порівняльний, логічний, а також метод переходу від загального до часткового.

Результати. У дослідженні визначено кілька ключових проблем, що перешкоджають превентивним заходам, таких як брак концептуального розуміння, переважання карального мислення серед правоохоронців та відсутність чітких критеріїв оцінки. Для вирішення цих проблем автори пропонують конкретні критерії, які зосереджуються на ранньому виявленні злочинних намірів, своєчасному втручанні для запобігання доведенню злочину до кінця та ретроспективному аналізі ефективності превентивних заходів.

Висновки. Послідовне впровадження запропонованих критеріїв може переорієнтувати підхід оперативно-слідчих підрозділів у бік більшого акценту на превентивну діяльність. Цей зсув має вирішальне значення для усунення першопричин злочинності, зниження суспільних витрат і підвищення загальної ефективності роботи правоохоронних органів Казахстану.

Ключові слова: генезис злочинності; методи боротьби; кримінальне покарання; конфіденційність; оперативно-розшукова профілактика злочинів.