



Conspiracy in the activities of law enforcement agencies of the Russian Federation and foreign states: issues of terminology

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Conspiracy in the activities of law enforcement agencies of the Russian Federation and foreign states: issues of terminology

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Abstract. Based on the analysis of regulatory legal acts relating to the activities of law enforcement agencies of different states, this paper presents an ambiguous interpretation of the legal concept of "conspiracy" and the expediency of using this term in regulatory legal acts that determine the content and regulate the organization of international cooperation with law enforcement agencies of the Russian Federation and foreign countries.

Keywords: conspiracy, operational investigations, secrecy, secret investigation, police intelligence, illegality



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Introduction. Today both domestic and foreign legal practice widely uses the term "conspiracy", which has no unambiguous legal interpretation and is often used within different meanings.

An insight into the educational and scientific sources of the theory of operational investigations leads us to the idea that most authors who were engaged in the study of the concept of "conspiracy" in their writings understand conspiracy as preservation of the information relating to state and official secrets, as well as other information, which disclosure can serve as a reason for its decoding [1].

However, there are representatives of the theory of operational investigations, which draw attention to the fact that the word "conspiracy" in its original meaning is a sign of a criminal offense and is used to define the secret nature of the activities of illegal, underground organizations [2, 3].

The legal discourse of foreign countries uses instead of "conspiracy" such concepts as "secrecy", "confidentiality", "privacy", "investigation privilege", "privacy regime", etc. [4] This can be traced not only at the legislative level of the respective states, but also in the outcomes of the lawmaking of states, which has taken place with the active application of the implementation of Western European rules and under the significant influence of foreign partners. Thus, the Criminal Procedure Code of Ukraine, which largely imitates similar documents of the United Kingdom, the United States and Germany, introduced a separate Chapter 21 "Covert investigative (search) actions" which is understood as "a variety of investigative (search) actions, the information about the fact and methods of which is not subject to disclosure, except for cases provided for by this Code".

We shall identify the reasons for the lack of unity in the understanding of the concept of conspiracy by legislators, scientists, and practicing lawyers of Russia and some foreign countries.

Methodology. In our study we used general scientific methods and techniques of logical knowledge: systemic, analysis and synthesis, abstraction, and formal-logical approaches. Linguistic-legal, formal-legal, comparative-legal methods, as well as content analysis facilitated in covering the topic.

Discussion and results. Conspiracy in the activities of law enforcement agencies of Russia has its long history, going back centuries. The beginning of the first stage of the formation and development of such conspiracy in pre-revolutionary Russia is thought to be the



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establishment of the Robbery Order in 1539 [5]. However, at that time and before the beginning of the XX century, the term "conspiracy" was not used in legislative and subordinate regulatory legal acts.

Since the beginning of the last century and to this day, the studied term is used in law-making activities throughout the post-Soviet space. This is due to the consequences of the seizure of power in the Russian Empire in 1917 by the Bolshevik Party. Being illegal, the revolutionaries made their activities secret and widely used the corresponding term. After the overthrow of the autocracy, the fall of the Provisional Government, the Bolshevik Party came to power and obtained a legal status. At the same time, the term "conspiracy" remained to denote the unofficial activity of special units of the power bodies of the Soviet state, which were assigned police and counter-intelligence functions [3].

The study of the specialized literature on operational search activities of Russia, published in recent decades, allows us to formulate the definition of conspiracy of operational investigations as keeping from revealing the information related to state and official secrets, as well as any information, which disclosure may be the reason for its decoding from persons who are able to use this information against the interests of law enforcement [6].

The analysis of the current regulatory sources of the Russian Federation in relation to operational investigations shows that, despite such a frequent use of the term "conspiracy", none of them gives its definition, which is probably due to the fact that the legislator does not see the need to comment on the definition of the term, which is generally recognized, and, therefore, generally understood.

Perhaps this is good for regulatory legal acts, but certainly bad for the theory of operational investigations, since it provides no opportunity for equal interpretation of such important concept whose applicative purpose is crucial for subjects of law enforcement activity.

The term "conspiracy" as the principle of operative investigations was first set forth in the Law of the Russian Federation No. 2506-1 of March 13, 1992 "On Operational Investigations in the Russian Federation"; then it was repeated in the Federal Law "On Operational Investigations" No. 144-FZ of August 12, 1995.

Such rules are found in the operational investigation legislation of the republics of the former USSR [7]. The study of the operational investigation laws of these countries and the Model Law "On Operational Investigations" adopted by the Interparliamentary Assembly of the Member States of the Commonwealth of Independent States allows us to argue a uniform



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approach of their legislators in securing the principle of conspiracy of the operational investigations (Article 3 of the Law of the Republic of Kazakhstan of 15.09.1994 "On Operational Investigations", Article 4 of the Law of the Kyrgyz Republic "On Operational Investigations" of 05.10.1998, Article 3 of the Law of the Republic of Azerbaijan of 28.10.1999 "On Operational Investigations", Article 4 of the Law of the Republic of Belarus of July 15, 2015 "On Operational Investigations", etc.).

In addition to mentioning "conspiracy" as a principle, this term is used in the legislative definition of the operational investigations of the Republic of Belarus, and Article 8 of the above-mentioned law is entirely devoted to the questions of conspiracy.

A number of articles of the Law "On Operational Investigation" of the Republic of Uzbekistan set forth the procedure and rules of conspiracy. The legislator refers thereto the right to establish gratuitous or non-gratuitous cooperation with persons who have expressed a desire to provide assistance on a confidential basis (Article 12); a duty to comply with the principle of conspiracy in operational investigations (Article 13); and the requirement to create conditions for the protection of information about the operational investigations (Article 20).

Clause 6 of Art. 6 of the Law of the Republic of Azerbaijan "Obligations of the Subjects of Operational Investigations" sets forth the duty of these bodies to take appropriate measures to comply with the rules of conspiracy during operational investigations.

In clause 5 of Art. 7 "Rights of the Subjects of operational investigations", the Azerbaijani legislator, as one of such rights, determined the obligation to create for the purpose of conspiracy a fictitious institution, enterprise or organization (legal entity), to use documents not disclosing the identity of authorized persons of operational investigations, departmental affiliation of the divisions, organizations, buildings and vehicles of these bodies, as well as the identity of citizens cooperating with these bodies with respect for the confidentiality.

The principle of conspiracy has its more detailed explanation in classified departmental regulatory legal acts of the CIS countries, which can be provided only to the officials, who have access to information constituting state secrets.

Before proceeding to the concept of "conspiracy" in foreign countries, we should emphasize that in Russia there is a system of separation of operational and investigative work: policemen are engaged in carrying out unsanctioned operational search activities, while investigators conduct an investigation by conducting investigative actions. The legislation sets forth this separation in two federal laws: "On Operational Investigations" and the Code of



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Criminal Procedure. As for a number of foreign countries (the USA, Great Britain, Germany), there is a rapprochement of operational investigative and criminal procedural functions, without any distinctions made between operational investigations and investigative activities conducted within the framework of criminal investigation.

It is important to emphasize that the regulatory legal acts of these states do not contain the concept of operational investigations. Most of the covert actions of the investigator, which relate to the non-procedural form of his/her activities, are included in the scope of the investigation of the crime and the so-called "police intelligence". The "police intelligence" is understood to mean such elements as the process of collecting and processing information, types and methods of intelligence activity of the police, methods of obtaining the necessary information, sources of information, intelligence work, organization and structure of intelligence systems and units, support in information collection, and other specific functions of covert police activity [8]. At the same time, the police investigation of many countries makes no clear distinction between the public and covert methods of obtaining evidence. The covert activities of the person conducting the investigation in the pre-trial stage are central, therefore, the investigative activity and operational investigations are interrelated, and the investigator acts as both an investigator and a detective (in some foreign countries, a job title of a police officer engaged in detective activity).

The legal discourse of foreign countries uses instead of "conspiracy" such concepts as "secrecy", "confidentiality", "privacy", "investigation privilege", "privacy regime", etc.

For example, in Germany there is a special type of investigation called "verdeckte Ermittlung". At the same time, the literal interpretation of the given phrase allows us to reveal a certain conventionality in the use of the term "investigation", since in Russian it means belonging to a criminal process, while German researchers consider verdeckte Ermittlung in the context of prevention of danger by police [4], that is, activity beyond the criminal process, which is carried out for preventive purposes and corresponds to other meanings of the term "Ermittlung": "clarification, establishment, collection of information".

The term "verdeckt" can be translated as "secret, covert, hidden, confidential". Analysis of the meaning of the given words in Russian [9] allows us to use any of the terms. At the same time, it is obvious that, from the point of view of the legal lexicon, the above terms are not equal. For example, the law "On Operative Investigations" of the Russian Federation uses them in the following context: "covert staff members of the operational investigative bodies", "covert



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methods and means", "surreptitious obtaining of information"; "The person providing assistance on a confidential basis to the bodies performing operational investigations", "maintaining confidentiality of provision of assistance to the bodies conducting operational investigations", "state secret", "personal and family secrets", "correspondence secrecy", "secret of correspondence, telephone conversations, postal, telegraph and other means of communications".

Thus, the word "private" is used both to describe the form of relations with the special apparatus, and to characterize operational investigations that have a special status inaccessible to third parties. The word "confidential" is used only as a characteristic of relations with covert employees. The words "hidden", "secret" are not used at all in the regulatory legal acts of the Russian Federation in terms of the conduct of operational investigations.

The regulatory legal acts of the foreign countries, as well as the scientific literature, use the term "conspiracy" in its "original" meaning:

- as a characteristic feature of the activities of underground and illegal organizations [2];
- as an essential element of offence [10];
- as the content of criminal activity, in the form of planning and committing a crime, and is the object of the principle of "Actus Reus", i.e. it is considered as part of a crime, the commission of which entails criminal punishment [11].

The modern legislation of Ukraine is worth noticing. The term "conspiracy" is mentioned as the principle of counterintelligence activity (the Law of Ukraine "On Counterintelligence Activity") and the principle of operational investigations of the operational divisions of the Security Service of Ukraine (Law "On the Security Service of Ukraine").

The Criminal Procedure Code of Ukraine in 2012, copying in many respects similar documents of the United Kingdom, the United States and Germany, introduced operational investigations of operational divisions in the procedural legal field by granting an official procedural status to a large number of operational investigations. To date, the Criminal Procedure Code of Ukraine refers to a variety of investigative actions that are not subject to disclosure and are called covert investigative actions in the Law (Article 246). The concept of "conspiracy" has not found its legal confirmation in this document.

Summary. To denote secret, covert activity of law enforcement bodies, lawyers from foreign countries use other concepts, such as "privacy", "confidentiality", "secrecy", etc. instead of the term "conspiracy". This can be traced not only in the regulatory legal acts of the respective



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states, but also in the works by foreign lawyers. Within the framework of legality, the principle of secret activity of their law enforcement bodies is formed in the term "covert". While the use of the concept of "conspiracy" by lawyers of foreign countries is perceived as a sign of undergroundness, illegality, unlawfulness.

Conspiracy in the treatment of foreign lawyers will bear signs of illegal activities, the facts and methods of implementation of which are kept secret from the general public and are carried out illegally. It seems that, within the framework of legal assistance in criminal matters, international cooperation in combating crime, drafting official documentation, developing regulatory acts, it is necessary to distinguish between the concepts of "conspiracy" and "covert", since they convey different meanings in different states.

At the same time, despite the formation and development of the concept of conspiracy in Russian and its understanding in the foreign languages, changing the established traditions of domestic rulemaking seems to be irrational. The use of the term "conspiracy" in domestic law is advisable, but it is not desirable to use it in regulatory legal acts (or parts thereof) that determine the content and regulate the organization of international cooperation with law enforcement agencies of other states. In addition, the content of this term must be clearly defined legally.

In conclusion we shall emphasize that the domestic legislator may not admit unambiguously this approach, but must have regard to the history and specifics of the legal regulation of operational investigations in our state.

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