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**TERMS OF COVERT INVESTIGATIVE (DETECTIVE) ACTIVITY (REVIEW OF NEW LEGISLATION)**

**Summary.** The paper analyzes the general provisions of covert investigative (detective) action. We study the relevant provisions of the new KPC and the Law of Ukraine «On the operational activities.» Some rules KPC could substantially affect the rights and legitimate interests of persons not involved in the crime. Declares that the need for changes to the current device that will prevent conducting undercover investigation (detective) actions against persons who are not relevant to a criminal investigation.

**Keywords:** covert investigative (detective) action promptly, the legitimacy of the criminal proceedings, state secret, the person who committed the crime.

**Formulation of problem**. November 20, 2012 enacted a new Criminal Procedural Code of Ukraine (hereinafter - CPP), the emergence of a society waiting 20 years and who was born in a hurry. (Four months were spent on the discussion, not enough to account for all sensible suggestions and comments received from MPs, law enforcement officials, academics, etc.). New PDA (the project) during the period since the introduction of the bill (13/01/2012) and its adoption (13/04/2012) has devoted a lot of speeches and publications, including research papers, and in the legal literature and in the media. The most heated debate going on about the innovations, one of which is the emergence of previously unknown institute criminal proceedings - Institute undercover investigation (detective) actions actually on the agenda gave rise to the main question of the relationship between measures of operational activities (hereinafter - ERA) and covert investigative (detective) actions. Analysis of the latest research and unresolved separation issues. This question is updated in terms of the limits of invasion of privacy rights, restricting their constitutional rights to privacy of communication, security of housing and so on. These above problems are not new to the legal science, as they have been the subject of scientific research in the works of such scholars as BI Baranenko, BT Byezlyepkin, A. Belousov, GM Hapotchenko, V. Hevko , V. Glazkov, EA Didorenko, I. Doronin, S. Ilchenko, Y. Kobyets, E. Kovalenko, IP Koziakov, VA Kolesnik, M . I. Hen, VT Malyarenko, V. Marino, VI Nindypova, VA Selyukov, IV Servetskyy, GP Wednesday, VM Tertyshnyk, M. Is . Shumylo and others. However, given the introduction of the new PDA, which governs the procedural order of undercover investigative (detective) actions and current trends and issues in the use of pre-trial investigation results of operational activities require new scientific developments in order to search and forecasting their solutions . Consequently, the proposed memoir dedicated legislative regulation of the legal procedures for undercover investigative (detective) action to clarify intentions of the legislator and the possible ways of their implementation (implementing regulations CCP in modern criminal proceedings).Presentation of the material. Undercover investigation in accordance with Art. 246 CCP - a kind of investigation (detective) measures, that action on receipt (picking) evidence or verification is obtained evidence in particular criminal proceedings, information about the facts and the methods of which are not subject to disclosure, except as provided by this Code. Undercover investigation conducted if information about the crime and the person who committed it, it is impossibleget otherwise. Analysis of the device indicates that this investigation is carried out without the knowledge of the person against whom they perform. This audio-video control persons arrest of correspondence, inspection and seizure of correspondence, interception of telecommunications transport networks, interception of electronic information systems (in terms of actions undertaken on the basis of the decision investigating judge), a survey of publicly inaccessible places home or otherpossession of a person, observing a person, a thing or a place, audio and video control space, control of committing the crime, execution of the special task of disclosing criminal activities of an organized group or criminal organization unspoken obtaining samples, necessary for comparative studies conducted exclusively in criminal proceedings concerning serious or especially grave crimes. Criminal Procedure Code of Ukraine of 1960 list of actions under consideration are not included. However, chapter 21 current CPC clearly defined all kinds of undercover investigative (detective) actions. In Part 1, Art. 8 "Right units engaged in operational activities" of the Law of Ukraine "On Operational Activities" contains a list of search operations that can be operational departments (Ministry of Internal Affairs of Ukraine - criminal, transport and special police, special units to combat Organized crime units internal security and judicial police, the Security Service of Ukraine - counterintelligence, military counterintelligence, protection of national statehood, special units to combat corruption and organized crime, operational, technical, internal security, operational documentation, counterterrorism and protection of participants criminal justice and law enforcement officials, the Foreign Intelligence Service of Ukraine - human intelligence, operational, technical, own security, the State Border Service of Ukraine - an intelligence agency of the specially authorized central body of executive power in the State Border (human intelligence, operational, technical, own safety ), search operations units under the specially authorized central executive body for the border service and its territorial bodies, subdivisions of the state border of border and maritime security, internal security, to ensure their own safety, operational documentation and operational and technical the management of public health - the operative provision of the sole purpose of ensuring the safety of people and objects for which the state security; government tax service - available tax militia units, agencies and penal institutions and detention centers of the State Penitentiary Service of Ukraine; intelligence authority of the Ministry of Defense of Ukraine - operational, operational and technical, their own safety, the state customs service - operational units responsible for combating smuggling) on ​​the grounds set out in Part 1 of Art. 6 of the Law of Ukraine "On Operational Activities": 1) sufficient information obtained in the manner prescribed by law, which requires verification by search operations and facilities of: - crimes that are being prepared - people who prepare crime - persons fleeing from the pretrial investigation, the investigating judge, court, or shy away from serving criminal sentences - of missing persons - intelligence and subversive activities of special services of foreign states, organizations and individuals against Ukraine - a real threat to the life, health ' yu, housing, property court staff and law enforcement agencies in connection with their official duties, and persons involved in criminal proceedings, their families and relatives in order to create the conditions necessary for the proper administration of justice; employees of the intelligence agencies Ukraine in connection with the official duties of these individuals, theirrelatives and persons who confidentially cooperate or cooperated with intelligence agencies of Ukraine and members of their families to the proper exercise of intelligence activities, and 2) requests authorized state bodies, institutions and organizations on the verification of individuals with regard to their access to state secrets and to work with nuclear materials and nuclear facilities, and 3) the need to obtain intelligence in the interests of public safety and the state, and 4) the presence referrals central executive body that implements the state policy in the area of ​​prevention and counteraction to legalization (laundering) proceeds of crime or terrorist financing obtained in accordance with established procedure. It should be pointed out that the name of search operations and covert investigative (detective) acts somewhat unusual. For example, in accordance with paragraph 2 of Part 1 of Art. 8 of the Law of Ukraine "On Operational Activities" operational units to perform the tasks of operational activities if under Art. 6 hereof grounds have the right to conduct a controlled delivery and controlled and timely procurement of goods, items and substances, including banned for trafficking in persons and entities regardless of ownership for the purpose of identifying and documenting evidence of wrongful acts. Conducting a controlled delivery, controlled and operational procurement in accordance with the provisions of Art. 271 of the Criminal Procedure Code of Ukraine in the manner prescribed by regulations of the Ministry of Internal Affairs of Ukraine, the central authority, which ensures the formation of government financial policy of the State Tax Service of Ukraine, the Security Service of Ukraine, State Customs Service of Ukraine, agreed with the Prosecutor General of Ukraine and registered with the Ministry of Justice of Ukraine. A centuries. 271 CCP, in turn, expands the list of such measures, recognizing that in accordance with Part 1 of Art. 271 CCP control of committing a crime may be in cases there is good reason to believe that the commission is prepared or committed a serious or especially serious crime, and held in the following forms: 1) controlled delivery, 2) controlled and operational procurement, 3) special investigative experiment and 4) a mock crime situation. In Part 2 of Art. 8 of the Law of Ukraine "On Operational Activities" provides a rule by which the decision to conduct search operations, the submission and consideration of the motions, conducting search operations, fixing and using their results, these activities to the adoption of resolution investigator judges and other aspects of their conduct regulated under the provisions of Chapter 21 of the Criminal Procedural Code of Ukraine with regard to the characteristics prescribed by this Act, for the purpose of search operations, the entity initiating and conducting these activities justify a request for their conduct and grounds for his meet the investigating judge, using the results of search operations and other issues caused by the specific purpose of the meeting. Decisions to conduct search operations that do not require the permission of the investigating judge or prosecutor's decision, is head of the relevant operating unit or his deputy with notification of the decision of the prosecutor. In this regard, there is a fair question: what changes and changes in general or CCP in obtaining and using evidence by covert means and forces? Meanwhile, the legal procedure of covert investigative (detective) action varies considerably. First of all, changing the status of the legal procedures to obtain information through covert means and forces. If legislation Operational activity - Operational performance, then the rules of the CPC of Ukraine is defined as the process of Criminal Procedure, the investigator (detective) action. While any Operational performance has a status of state secrets (given stamp "secret"), and some "top secret", according to the Law of Ukraine "On State Secrets" and the Order of the Security Service of Ukraine "On Approval of Summary of data that state secrets "(LIISS) on August 12, 2005 № 440. Yesaccording to Art. 4.4.4 LIISS data for indicators separate from the content, the organization, the results of complex or specific operational and investigative, counterintelligence or intelligence measure, the disclosure of which poses a threat to national interests and security. When classifying the degree of secrecy set varies depending on the size and importance of relevant information for decision the officer authorized to establish secrecy stamp on: complex or separate search operations carried out for finding and fixing evidence of the commission of grave or especially grave crimes; intelligence or counterintelligence event - "top secret", and on complex or separate search operations carried out for finding and fixing evidence of the commission of other crimes - a "secret". It is clear that such initiation search operations significantly complicates the use of evidence obtained in this way in the criminal proceedings. In addition, the decision to hold or not carrying out specific operational steps today is the right authority, authorized by the Law of Ukraine "On Operational di yalnist" engage in investigative operations. Conducting operational activities of other departments, listed clearly delineated Part 1 tbsp. 5 of the Law of Ukraine "On Operational Activities", units of other ministries, NGOs, private organizations and individuals is prohibited. The question of the authority of the investigator to conduct their own undercover investigation (detective) actionsthat the content is operative-detective? According to PM 2, 3, 5 § 1 of Art. 40 Code of Ukraine investigator authorized to conduct undercover investigations (ODA) of yourself, delegate of the undercover investigation (Investigation-local) actions relevant operational units, to seek agreement with the prosecutor before the investigating judge with a request for undercover investigative (detective) actions. In turn, in accordance with Part 3. 41 CCP commission investigator, prosecutor to conduct undercover investigations (investigation) actions are binding operational unit. And Part 2 of Art. 41 CCP contains fundamental principle that makes it impossible to proceed in the criminal proceedings on its own initiative or staff carries out the appeal of their petitions to the investigating judge or prosecutor to conduct such operations. Thus, the investigator, based on their powers, perform undercover investigators (develop-shukovyh) actions put into operational units. And whether the investigator physically to self-decision to conduct such action as, for example, performance of special tasks is to obtain information, goods and documents relevant to pre-trial investigation, interception of telecommunications transport networks or publicly inspection of inaccessible places, housing or other property, etc.. Therefore, a logical question about the possible substitution of the terms "tacit investigative (detective) action" and "operational-search measure." Actually, PDA those actions that previously were called operational-detective, now offers call undercover investigator (detective) that automatically removes them from the ambit of the Law of Ukraine "On State Secrets". In addition, Part 3. 223 CCP introduced a special rate at which the decision to conduct undercover investigations (investigation) action takes investigator, and in cases prescribed by this Code, - investigating judge at the request of the prosecutor or at the request of the investigator, agreed with the prosecutor. The investigator must inform the prosecutor's decision to conduct some covert investigative (detective) actions and results. The prosecutor has the right to prohibit or suspend the further conduct of undercover investigative (detective) actions. Thus, the investigator and the prosecutor appears a significant number of legal instruments, which they previously did not possess. Based on Part 1 of Art. 256 of the CPC protocols to conduct undercover investigations (investigation) actions, audio or video recordings, photographs, other results obtained through the use of technical equipment seized during their execution items and documents or copies thereof may be used in proving for the same reasons that and the results of other investigators (detective) actions during the preliminary investigation. Article 252 CCP determines the order fixing the progress and results of undercover investigations. In particular, it appears that the fixation process and results of undercover investigative (detective) actions must comply with the general rules of fixing criminal proceedings under this Code. The results of tacit investigation (Investigation) of the protocol, which in case of necessity attached application. Information concerning persons who conducted the undercover investigation (detective) the acts or were attracted to their conduct, in the case of security measures to them may be mentioned ensuring privacy of such persons in the manner prescribed by law. That tacit investigative (detective) formal legal action has more simplified legal procedures to conduct, and therefore easier to use and documents drawn from the results of the undercover investigation (investigation) activities compared to search operations. This means that tacit investigative (detective) action acquires the status of an ordinary procedural steps and the results can be fully used along with other already investigating (detective) actions. However, using the results of operational search actions in criminal proceedings complicated by restrictions imposed by the Law of Ukraine "On State Secrets" and the Order of the Security Service of Ukraine "On Approval of Summary of information constituting state secrets." That is why the legislator limits the use of materials of operational activities in art. 10 of the Law of Ukraine "On Operational Activities", indicating that they may be pretexts and reasons for early pre-trial investigation or serve basis for evidence that might be evidence in criminal proceedings. Thus, analysis of legislation gives reason to believe that the decision on conducting operational search actions accompanied winding operational case against a particular person, the terms for its conduct strictly limited centuries. 91 Law of Ukraine "On the operational activities." Furthermore, the existence of a criminal case shall provide exclusivity applications and ensuring that the rights and freedoms during search operations. The current device is not defined category of persons to whom the investigating judge at the request of the prosecutor or investigator request, agreed with the prosecutor, will decide on the use of covert investigative (detective) actions. For this reason, such a person could be anyone. And it provided a much longer period of covert investigative actions (if extending), as opposed to actual opportunities during the relevant search operations. Interesting in this context is the general destruction of information obtained as a result of undercover investigators rozshukovyhta operational search actions. Part 12. 9 of the Law of Ukraine "On Operational Activities" contains provisions under which yielded operational activities information relating to privacy, honor, dignity, if they do not contain information about the commission of acts prohibited by law, can not be stored and must be destroyed. Information obtained by operatyvnorozshukovoyi activities to prepare for terrorist acts or their commitment by individuals and groups are stored up to 5 years. According to Part 1, Art. 255 PDA information, things and documents obtained as a result of undercover investigation (detective) actions that the prosecutor did not consider necessary for further pre-trial investigation must be immediately destroyed on the basis of his decision, except in accordance with Part 3. 255 and Art. 256 of the CPC of Ukraine. Under Part 3. 255 CCP if the owner objects or documents obtained as a result of the undercover investigation (detective) actions may be interested in their return, the prosecutor must inform him about such things or documents available to the prosecutor and determine whether he wants them back. Admissibility of action under part 3. 255 CCP, and the time it was committed, determined prosecutor while ensuring the rights and legitimate interests, and to prevent the damage to the criminal proceedings. That share information, things and documents obtained as a result of undercover investigation (detective) actions that have no meaning for criminal proceedings decides prosecutor. Message to the person against whom were undercover investigators (ODA) actions on the results of relative thereto specified action within the calendar year following the expiration of such action seems quite elusive and weak guarantee enforcement. In addition, in our opinion, generally unregulated under consideration of the issue of action against persons who are not complicit in the crime. What about the rights and freedoms of a person against whom began conducting undercover investigation (detective) action, and it was irrelevant to the offense provided for in the Special Part of the Criminal Code, is not the subject of the offense (insane person who has not reached the age of criminal responsibility, not endowed with special characteristics of the subject, etc.)? Therefore, in our opinion, should be in Article 246 of the CCP "Foundations of undercover investigative (detective) action," The regulation under which clearly state that the undercover investigator (detective) action should be stopped immediately due to the fact of a person not involved in the establishment to the crime, and the information obtained as a result of their conduct - immediately destroyed. Otherwise, you can raise the issue of creating a police state and the possibility of covert investigation with respect to any person and the rights and legitimate interests of our society can be forgotten. In addition, we noted the difficulty of implementing rules to conduct undercover investigations (investigation) activities using confidential cooperation undertaken pursuant to Art. 275 CCP "Using confidential cooperation." According to this article the CCP during the undercover investigation (detective) actions investigator may use information obtained in a confidential co-operation with other persons, or to attract these individuals to conduct undercover investigations (investigation) action in cases stipulated by this Code. The question of readiness, including psychological and investigator to work with the intelligence apparatus and have permanently open and covert staff and freelance employees. It is clear that the experience of operational units in this direction is certainly richer than the investigator who does not have the people with whom he established a confidential co-operation or operational skills and more. Everything considered above gives grounds to conclude that the general provisions of undercover investigators (ODA) of the need not only a separate and deep study, but relevant scientific understanding and reasoning. This will lead to significant changes of current PDAs, since a significant number of these provisions in practice is very problematic, and some of them directly violate constitutional rights and legitimate interests of man and citizen, declared in the Constitution of Ukraine.

**Омельяненко А.С. Общие положения о негласных следственных (розыскных) действия (обзор нового законодательства)**

**Аннотация.** В статье анализируются общие положения о негласных следственных (розыскных) действия. Исследуются соответствующие положения нового УПК и Закона Украины «Об оперативно-розыскной деятельности». Некоторые правила КПК могут существенно затронуть права и законные интересы лиц, не причастных к совершенному преступлению. Констатируется необходимость внесения изменений в действующее КПК, что сделает невозможным проведение негласных следственных (розыскных) действий в отношении лиц, которые не имеют отношения к определенному уголовному производству.

**Ключевые слова:** негласные следственные (розыскные) действия, оперативно розыскные мероприятия, законность уголовного производства, государственная тайна, лицо, совершившее преступление.

**Omelyanenko A.S. Terms of covert investigative (detective) activity (review of new legislation)**

**Summary.** The paper analyzes the general provisions of covert investigative (detective) action. We study the relevant provisions of the new KPC and the Law of Ukraine "On the operational activities." Some rules KPC could substantially affect the rights and legitimate interests of persons not involved in the crime. Declares that the need for changes to the current device that will prevent conducting undercover investigation (detective) actions against persons who are not relevant to a criminal investigation.

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