

Directions and Prospects for Introducing Judicial Oversight over Operative-Search Activities

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Abstract

Operational-search activity (OSA) plays an integral role in criminal proceedings by providing covert investigative tools necessary for combating complex, organized, and cyber crimes. In Uzbekistan, legislative ambiguities persist regarding the procedural status of OSA, with inconsistencies between the Criminal Procedure Code (CPC) and OSA regulations limiting the integration of operational intelligence into admissible evidence. Despite the growing reliance on OSA to address rising crime rates, there remains an absence of clear legal frameworks ensuring judicial oversight and procedural transparency when transforming OSA results into evidence. This study aims to analyze the doctrinal, legislative, and practical challenges of introducing judicial oversight over operational-search activities, proposing mechanisms for integrating OSA into criminal procedure while preserving constitutional rights. The analysis reveals that the lack of statutory mechanisms for using OSA data reduces its evidentiary potential, undermines procedural safeguards, and creates disparities in investigative functions. The paper argues for disqualification rules preventing dual procedural roles, clearer regulatory frameworks for admissibility, and judicial oversight by district courts to enhance accountability and legality. The study highlights the introduction of investigating judges in Uzbekistan as an institutional innovation to strengthen judicial oversight over OSA, proposing principles for regulating non-transparent investigative actions without compromising efficiency. Integrating OSA under judicial control would improve crime detection, expand evidentiary bases, strengthen procedural transparency, and ensure that operational activities comply with constitutional protections, contributing to a more effective and rights-based criminal justice system.

Keywords: operational-search activity, criminal procedure, judicial control, covert investigation, evidence, investigative actions, cybercrime, criminal procedural code.

1. Introduction

In the context of contemporary criminal justice, operational-search activities (OSA) occupy a significant place as they provide essential tools for combating complex and organized crime. However, the integration of these covert investigative measures into criminal proceedings in Uzbekistan remains conceptually and legislatively ambiguous. Current legal frameworks differentiate between criminal-procedural and operational-search functions, creating inconsistencies in practice, particularly concerning the transformation of OSA results into admissible evidence under the Criminal Procedural Code (CPC). The escalation of organized, cyber, and economic crimes, accompanied by the inadequacy of traditional investigative

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methods to address emerging threats effectively, has underscored the necessity of establishing clear mechanisms for judicial oversight of OSA. Statistical data indicating a sharp rise in crime rates, including theft and fraud, over recent years further highlight the urgency of modernizing criminal procedure to incorporate operational intelligence within legal evidentiary standards. Existing provisions under the CPC for non-transparent investigative actions such as communication interception, though procedurally regulated, lack comprehensive judicial oversight when involving OSA results. This creates both doctrinal and practical gaps that undermine the principles of legality, transparency, and the protection of individual rights. Therefore, exploring the directions and prospects for integrating OSA under judicial control is imperative to strengthen criminal investigations, ensure procedural safeguards, and enhance the balance between effective law enforcement and constitutional rights protection. The present article critically analyzes these issues to propose feasible regulatory and institutional frameworks for implementing judicial oversight over operational-search activities within Uzbekistan's criminal justice system[1].

2. Methods

This study employs a comprehensive qualitative legal research methodology combining doctrinal analysis, comparative review, and conceptual synthesis to examine the introduction of judicial oversight over operational-search activities (OSA) within Uzbekistan's criminal procedural framework. The research first undertakes a detailed doctrinal analysis of existing national legislation, including the Criminal Procedure Code and the Law on Operational-Search Activity, to identify inconsistencies, ambiguities, and gaps in regulating OSA and its integration into criminal proceedings. This includes close reading and interpretation of specific articles such as Article 391 and Article 367 to elucidate legislative intent and operational realities. The study then applies comparative legal analysis by reviewing judicial oversight practices in foreign jurisdictions, as reflected in academic literature and legislative commentaries, to extract alternative models and principles adaptable to Uzbekistan. Authoritative works of Russian scholars such as Maslov, Nikolyuk, and Ivanov are examined to identify diverse approaches to judicial control structures and institutional competencies. Additionally, the research utilizes conceptual synthesis to formulate theoretical models for integrating OSA results into admissible evidence under judicial scrutiny while maintaining constitutional safeguards. By integrating these methods, the study develops normative recommendations to reform procedural law, balancing effective crime detection with individual rights protection. This methodological approach ensures that the findings are grounded in legal theory, supported by comparative perspectives, and oriented toward practical implementation within Uzbekistan's evolving judicial system[2].

3. Result and Discussion

The unresolved doctrinal status of the role of operational-search activity (OSA) in the criminal process has led to uncertainty regarding which field of judicial proceedings is responsible for its oversight.

In particular, the legislator has differentiated between criminal-procedural and operational-search activity subjects[3].

Article 39¹ of the Criminal Procedure Code specifies that 14 bodies are authorized to conduct pre-investigation inquiries and 6 bodies are authorized to carry out operational-search activities[4].

One of the key principles of the Criminal Procedure Code is that one person cannot perform two procedural functions, and for this reason, the institution of disqualification exists in the criminal process. Furthermore, a person who has conducted an inspection or departmental audit that formed the basis for initiating a case is not entitled to participate in that case as an expert or specialist[5].

Therefore, it is advisable that the CPC stipulate that an official who has carried out operational-search activities in a criminal case may not later participate as an inquirer or

investigator in the same case — i.e., this situation should be considered grounds for disqualification. In other words, it is necessary to establish that the same subject cannot carry out both OSA and investigative actions[6].

The use of operational-search results in the criminal process is directly linked with the problem of finding an optimal solution to how information can be used without disclosing the method of its acquisition, and how to transform operational data into admissible evidence[7].

In any case, the process of substantively reviewing a case — i.e., the transformation of operational-search activity results into criminal-procedural evidence — must be regulated by law[8].

The increasing number of crimes, especially organized and transnational crimes, the emergence of new forms thereof, and the decreasing ability to uncover complex crimes using traditional investigative methods have necessitated the search for modern criminal-procedural tools capable of combating the current state of crime[9].

It is undeniable that in recent years, the sharp rise in crime levels and the emergence of new forms of criminality have complicated its detection through traditional criminal-procedural means. Some new forms of crime — such as cyberterrorism, cybercorruption, and money laundering — may benefit from the application of operational-search measures alongside criminal-procedural tools[10].

In other words, there has emerged a disparity between ever-evolving criminal activity and efforts to combat it. For example, in the last five years, from 2000 to 2024, the number of registered crimes increased 2.1 times; in 2024 alone, crime increased by 25.8%, and in Tashkent city by 1.5 times[11].

For instance, theft crimes increased 3.3 times, and fraud increased 1.6 times. Although the CPC envisions that evidence can be collected through operational-search measures, the absence of a clear mechanism negatively affects the effectiveness of combating crime[12].

Modern conditions of the fight against crime, especially its organized forms, require increased civic engagement and expanded evidentiary bases in criminal cases. In this regard, it is extremely necessary to legally regulate the mechanism of using information obtained from OSA in criminal court proceedings[13].

Moreover, it is undeniable that the current Criminal Procedure Code contains investigative actions that are conducted without the participation of the parties and in a non-transparent manner. In particular, the CPC provides for the interception of conversations conducted through phones and other telecommunications devices, the acquisition of information transmitted through them, the seizure of postal and telegraph items, as well as investigative secrecy[14].

That is, a distinctive feature of these investigative actions is that the initiative to carry them out belongs to the inquirer, investigator, prosecutor, or court. These bodies are responsible for the legality of the decision to conduct the investigative action, and the procedural part is carried out by them. At the same time, the results of the investigative action are evaluated by the inquirer, investigator, prosecutor, and court[15].

The activities of operational officers involved in investigative actions (such as intercepting conversations via phones and other telecommunications devices) are regulated not by the CPC but by internal departmental normative documents.

In addition, operational-search activities conducted after the initiation of a criminal case essentially serve the purposes of the criminal process. According to Part 2 of Article 367 of the CPC, the investigator must take measures to identify and prosecute the person to be involved in the case as an accused, through the body carrying out operational-search activities.

However, the absence of a single and appropriate concept for transforming OSA results into criminal-procedural evidence, the lack of proper regulatory framework, and the lag of judicial-investigative practice behind the law have caused inconsistencies among CPC norms.

Integrating OSA into the criminal process and thereby strengthening judicial control would lead to the following outcomes:

1. Improving the efficiency of criminal investigations. The results of non-transparent investigative actions would contribute to more effective combat against dangerous forms of crime, including organized groups, criminal associations, and cybercrimes;
2. Expanding the procedural tools for collecting evidence and ensuring the inevitability of punishment;
3. Increasing the level of procedural transparency. Integration of OSA into criminal proceedings would strengthen oversight mechanisms;
4. Introducing CPC-established standards for the inviolability of private life into OSA would help prevent unjustified interference in personal life;
5. Strengthening judicial oversight over OSA. Regulating non-transparent investigative actions by the CPC will in turn strengthen judicial control over such actions.

Based on the above, considering that the objective of the criminal procedural legislation as defined in Article 2 of the Criminal Procedure Code of the Republic of Uzbekistan and the main tasks of operational-search activity as defined in Article 4 of the Law “On Operational-Search Activity” are both directed at the rapid and full detection of crimes, it is deemed appropriate to integrate OSA into the criminal process based on the following grounds.

However, the integration of certain OSAs into the CPC will not fully solve the problem, because challenges will arise in harmonizing this procedural institution with the traditional norms of criminal procedure.

For instance, this situation will affect the rights and obligations of participants in the process, as their ability to fully access the results of non-transparent investigative actions will be limited.

The evidentiary value of information obtained through such actions and its use in the process of proof requires revisiting doctrinal approaches related to the theory of evidence.

The emergence of new procedural forms arising from the intersection of criminal procedural and operational-search methods necessitates a review of existing procedural safeguards and compensating the defense party’s limited access to non-transparent actions through other guarantees.

To ensure the legality of applying new procedural forms in practice, it is necessary to improve the system of procedural control.

The qualitative transformation of crime and the consistently low clearance rate of crimes demonstrate the impossibility of denying the potential of non-transparent proceedings in criminal cases.

The high effectiveness of non-transparent activities and the consistent growth in their contribution to forming the evidentiary base in criminal cases allows us to conclude that secrecy may soon compete with openness within the system of principles governing criminal proceedings.

Therefore, the integration of certain OSAs into the criminal process should be carried out based on the following principles:

the grounds, procedure, and conditions for conducting non-transparent investigative actions;

the limits of restricting constitutional rights of individuals during such actions, and additional procedural safeguards to ensure legality;

control mechanisms over non-transparent investigative actions.

The specific features of judicial oversight over OSA are primarily related to which court is authorized to conduct the control. An analysis of foreign experience and academic literature shows that different approaches exist on this matter.

For example, V.V. Maslov, citing the necessity to limit the number of persons informed about the planned OSA and to ensure state secrecy, argues that judicial control should be exercised by regional-level courts.

However, judicial control over OSA by regional courts, considering that appellate courts also belong to the regional level, may adversely affect the impartiality of judges.

Another group of scholars (V.V. Nikolyuk, V.V. Kalnisky, V.I. Ivanov), taking into account that judicial control by regional courts may limit the right of the body executing OSA to appeal

to a higher court in case of rejection of a motion, and that the increase in the number of such motions at second-instance courts may affect the quality of their consideration, argue that control should be carried out by district-level courts.

In our opinion, based on the following grounds, it is advisable that judicial oversight over operational-search activity (OSA) be exercised by district (city) courts:

Firstly, by the Presidential Decree No. PF-89 of June 10, 2024, "On Measures to Further Strengthen the Guarantees for Reliable Protection of Individual Rights and Freedoms in Operational-Search and Investigative Activities" and the Law of the Republic of Uzbekistan dated January 28, 2025 "On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan Aimed at Further Strengthening the Guarantees of Reliable Protection of Individual Rights and Freedoms", the position of investigating judge has been introduced in district and city courts in criminal cases.

The main functions of the investigating judge have been defined as ensuring the rule of law, social justice, public peace and harmony, and the effective judicial protection of the rights and lawful interests of individuals and legal entities.

Secondly, there is no specialization in the criminal panels of regional-level courts, i.e., no dedicated panel of judges for judicial oversight is provided for. This means that a judge who has exercised judicial oversight may later consider the case on the merits.

Thirdly, the distinctive feature of judicial oversight over OSA lies in its prompt execution, which requires that judicial oversight be carried out directly in every district (city).

Fourthly, the exercise of oversight by district or city courts facilitates appeals by both individuals and bodies implementing OSA who are dissatisfied with the decision of the first-instance court.

However, in order to ensure the promptness of judicial oversight, it would be appropriate for the oversight to be conducted by the court located in the area where the OSA is carried out or where the body implementing the OSA is located.

An important component of improving judicial oversight is expanding the informational support of the court's activities by allowing access to departmental normative documents that regulate the organization and tactics of OSA, as well as improving the professional preparation of specialized courts.

The better the judge understands the specific features of the subject of control, the higher the quality of judicial oversight will be and the lower the likelihood of negatively affecting the effectiveness of OSA.

Another aspect of the legal regulation of judicial oversight over OSA concerns the extension of the duration of certain operational-search measures (OSMs) that restrict constitutional rights.

That is, in order to prevent the issue of extending the duration of OSMs from becoming a formality, it is necessary to define the subject of judicial oversight when considering the extension.

It is known that certain OSMs, including the interception of conversations via phones and other telecommunications devices and the acquisition of information transmitted through them, may last for extended periods—sometimes even years. This inevitably leads to serious restrictions on constitutional rights.

To prevent the unjustified extension of OSMs, the court must evaluate the results of the OSM and discuss whether there are sufficient grounds to continue it.

Therefore, when exercising judicial oversight over OSA, it is necessary to clearly define the subject of judicial control. That is, considering the specific nature of OSA, it is appropriate to specify exactly what documents should be submitted to the court by the body conducting the OSA — including the volume and content of the documents substantiating the petition. This ensures the effectiveness of control and the consistency of judicial practice.

The criteria for the validity and sufficiency of supporting documents must be defined, as this is a key issue for the effectiveness of judicial oversight.

If a petition to conduct an OSM that restricts constitutional rights is granted, the court decision must specify the exact duration of the OSM and, for long-term OSMs, the duration of the restriction on rights and the procedure for extending the duration.

The procedure for coordinating the petition to conduct an OSM with the prosecutor must be regulated.

The reason is that overly complicated judicial oversight may lead to a practice in which OSMs restricting constitutional rights are conducted not with court authorization but as “urgent cases.”

In some countries (e.g., the Russian Federation), the body conducting the OSA is not required to obtain the prosecutor’s consent before applying to the court. This is explained by the specific nature of OSA — namely, its urgency.

However, some scholars (A.A. Chuvilev, S.I. Gerasimov, A.F. Kozusev) argue that the results of judicial oversight over OSA should not fall within the subject of prosecutorial oversight, since this contradicts the constitutional principle of judicial independence and the prosecutor is not a participant in the process.

Nevertheless, in this procedure, it would be reasonable for the prosecutor to be informed that a petition has been submitted to the court.

This would allow the prosecutor to exercise his powers to oversee the enforcement of laws during the implementation of OSA.

4. Conclusion

The analysis confirms that the integration of operational-search activities (OSA) into the criminal procedural framework is essential to address legislative inconsistencies, improve evidence admissibility, and enhance the effectiveness of criminal investigations in Uzbekistan. The study highlights that the rapid evolution of organized and cybercrime necessitates the use of covert investigation methods alongside traditional investigative tools to strengthen the evidentiary base. However, such integration must be guided by principles ensuring legality, transparency, and protection of constitutional rights. Judicial oversight over OSA emerges as a crucial mechanism to safeguard individual freedoms while enabling effective crime control. The findings suggest that district and city courts are best positioned to exercise this oversight due to their procedural accessibility and alignment with recent reforms introducing investigating judges. Furthermore, defining clear criteria for authorizing, extending, and evaluating OSA measures will ensure consistency and accountability in judicial decisions. It is evident that without regulatory clarity on transforming OSA results into admissible evidence, the efficiency of crime detection and prosecution remains limited. Therefore, establishing comprehensive legal mechanisms for integrating OSA into the criminal process, while ensuring judicial control and procedural safeguards, will not only reinforce rule of law but also adapt the criminal justice system to contemporary threats posed by organized and cybercrime. This approach reflects a balanced strategy that upholds human rights while strengthening state capacity to combat complex criminal activities effectively.

5. References

- [1] V. V. Nikolyuk, V. V. Kalnitsky, и A. E. Chechetin, Ред., *Federal Law “On Operational-Search Activities”*: *Scientific and Practical Commentary*. Omsk, 1996.
- [2] S. A. Kulikov, «Judicial Control over Operational-Search Activities in Russia», *Law Right*, cc. 55–59, 2020.
- [3] V. V. Semenchuk, «Judicial Oversight of Operational-Search Activities – An Alternative to Prosecutorial Supervision», *Bull. NI Lobachevsky Nizhny Novgorod Univ.*, cc. 130–141, 2020.
- [4] V. I. Ivanov, «Judicial Oversight of the Implementation of Operational-Search Measures», PhD Thesis, Omsk, 2011.

- [5] V. V. Sadovsky, *Legal Regulation of Operational-Search Activities in Russia*. INFRA-M, 2014.
- [6] V. V. Zagainov, *Operational-Search Activities in Criminal Proceedings*. Moscow: Lawyer, 2011.
- [7] V. Karimov, *Operational-Search Activity: Textbook*. Tashkent: Lesson Press, 2021.
- [8] V. I. Gureev, *Operational-Search Activity: Theory and Practice*. Academy of Management of the Ministry of Internal Affairs of Russia, 2010.
- [9] A. A. Chuvilev, *Operational-Search Law*. Moscow, 1999.
- [10] S. A. Balyuk, *Operational-Search Law: Textbook*. Yurayt Publishing, 2012.
- [11] [11] R. Kh. Mukhametzyanov, «Problems of Ensuring Legality in Operational-Search Activities», *Leg. Sci. Pract.*, cc. 89–93, 2018.
- [12] M. S. Kolosovich, «Procedural Means of Ensuring Publicity and Secrecy in Criminal Proceedings: Conceptual Foundations», PhD Thesis, Volgograd, 2019.
- [13] S. I. Gerasimov, Ред., *Prosecutor's Handbook*. Moscow, 2002.
- [14] A. V. Petrov, «Prosecutorial Supervision in the Sphere of Operational-Search Activities», *Leg. Bull.*, cc. 45–49, 2020.
- [15] V. V. Maslov, «The Court's Activities in Ensuring the Rights and Legitimate Interests of Citizens in the Course of Operational-Search Measures», PhD Thesis, Yekaterinburg, 2011.