

Official of operating units: status and powers

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Abstract. The scientific article is dedicated to the research of the status and powers of an official of operating units and official and legal relations arising when enforcing the norms of law legislated in the Federal Law “On Operational Investigative Activities”. Objective: to perform the scientific research of the status and powers of an official of operating units; to analyze the legislation regulating this legal status, powers of the official of operating units. Methods. In the work, the authors used the formal, logical, sociological, historical, and dialectic methods. The scientific article is based upon the sociological, theoretical, and historical methods, on the knowledge technique of the legal status of an official, theory of powers, and the comparative analysis of the legislative regulations. The main methodological approach used in the scientific article is the criminal intelligence theory developed in the works by Russian lawyers. Main results: the research allowed revealing the advantages and disadvantages of the legislative and regulatory framework regulating the legal status and powers of an official of operating units and also the significant mistakes in the case law. Conclusion and grounding of the novelty of work: basing upon the analysis of the current Federal Law “On Operational Investigative Activities”, it can be concluded that officials can be logically subdivided into the main and derivative types according to their powers. The main types of officials are the following: 1) officials of operating units; 2) derivative positions – criminal intelligence investigator. A complex of federal laws and other statutes and regulations of the Ministry of Internal Affairs of the Russian Federation that legislate the concept of the official of operating units determine the structure and content of the legal status of an official; in general, it can be called legislation regulating the legal status of the officials. The novelty of the work is in the grounding of the new approach to the understanding of the legal status of officials of operating units and their powers; this approach is based upon the theory of legal status and the theory of operational and investigative activity. The criteria of the novelty are corresponded to: the authors’ understanding of the concept “official of operating units”; improvement of the characteristics of the legal nature and legal status of an “official of operating units”; evaluation of legal norms of the Federal Law “On Operational Investigative Activities”; recommendations of improvement of the Federal Law “On Operational Investigative Activities”; development of the methods of the legal status of an “official of operating units” aimed at creating a sequential algorithm for

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solving qualified tasks. The main objective of the research in this scientific article is the creation of a detailed and clear concept of an “official of operating units” and also revealing the main powers of these officials.

Keywords: official, legal status, operating investigative legislation, criminalistics powers, head of the operating unit, general powers of official

1 Introduction

One of the subjects of the operating investigative activity (the Federal Law “On Operational Investigative Activities” [1]) is an official of an operating unit who solves the tasks, has functions and powers in the field of operating investigative activity. Making administrative decisions in the field of operating investigative activity and executing the operating investigative activity, the law-maker lodges this official with certain rights, liabilities, and powers, and at the same time, it lodges the official with legal status. The determination of the legal status of an official in the field of operational investigative activity is a primary task of the law-maker.

The monographic study by Lugovik and Lugovich “Legal Status of a Criminal Intelligence Investigator When Performing the Criminal Intelligence Operations” [2] contributed to the study of the problems related to the legal status of an official of operating units. The authors reveal the main legal problems that officials of operating units face when determining their powers and legal status when performing the operational investigative activities.

In the research by Savinskii “Current Problems of Legal Regulation of Criminal Intelligence Operations” [3], the author of the monography reveals the statutory code of the legal status of an official of an operating unit, describes the legal problems that arise when performing the operating investigative activities.

The mentioned monographic studies are related to the study of the legal status of officials of operating units, the study of their powers, criteria of powers, and the problems of the legal collision of the legal norms regulating the operational investigative activity.

In his thesis “Operating Investigative Legislation of Russia: Ways of Improvement and Development” [4], Surkov also formulated the main problems related to the determination of the legal status of an official of an operating unit, his powers, and the ways of improvement and development.

Analyzing the international experience of scientific studies related to the determination of the legal status of officials of operating units and the powers of these officials, one of the authors, Michael Scheibenreif, in his thesis “Europol and European Security or How the Agency Is Trying to Serve Its Purpose” [5] considers the ways of improvement of the operating investigative legislation, problems of the legal status of officials of Europol operating units, their main functions and powers.

In his scientific article “Theoretical problems of understanding the essence of operational investigative activities”, Toktorov reveals the main theoretical problems of understanding the legal status of officials of operating units and also their functions and powers.

The scientific interest is connected to the fact the law-maker has not legislated the judicial definitions of the status of the official and legal categories for the executor of law and in the established practice in applying the law by the subjects who perform the operational investigative activity, the definitions “official” and “powers” cause the certain collisions in the law.

To solve the collision legal problems, the research was performed among investigation officers of operating units to reveal the defect in the law and develop the recommendations for the executor of law.

One hundred and fifty-six officers who perform the operational investigative activity participated in the research. The objective of the research was to provide the scientific society the variants of solution to the collision legal problems in the field of the status of “official” and “powers” of the operating units.

The research used the individual methodology for collecting and processing information, a questionnaire for officers, and also the formal and logical conclusions making it possible to generalize the information and to make conclusions for every fact of research.

The Federal Law “On Police”, the Federal Law “On Operating Investigative Activity”, and information obtained from the questionnaire of the officers of the internal affairs bodies became the legal base of the research.

Target setting

- 1) research of criteria of formation of officials of operating units.
- 2) study of peculiarities of the content of this legal status of officials of the operating units and their powers.
- 3) research of the legislation, regulating the legal status of officials of internal affairs bodies who perform the operational investigative activity.
- 4) “legal status of an official” as a factor of quality improvement of the legislation in the operational investigative activity in law-enforcement agencies;
- 5) development of legislative suggestions directed to the improvement of the legal status of an official of operating units.

2 Results

The group of authors performed the analysis of the “theory of operational investigative activity” as well as the “theory of competencies” and “theory of powers” to reveal the criteria of determination of the status of an official and use them as a base to develop the new methodology for the determination of the legal status of an official.

Shumilov is one of the first scientists who studied the legal responsibility of an official dividing the status “police investigator” and “senior officer”. The author used the individual classification of the legal responsibility of a police investigator as an official of the internal affairs bodies who performs the operational investigative activity through certain types of responsibility: disciplinary, administrative, material, civil, and criminal [7].

Lapin includes the following into the powers of officials of operating units:

- 1) state protection according to the Federal Law of April 20, 1995 No. 45-FZ “On State Protection of Judges, Officials of Law-Enforcement Bodies and Regulatory Agencies”,
- 2) state protection for the parties of a criminal proceeding;
- 3) operational official proceeding with regard to criminal records;
- 4) search for missing people,
- 5) cooperation and assistance in the operational investigative sphere with other operating units and international law-enforcement bodies.

Also, the authors performed the sociological research in the form of a questionnaire in which 307 officers of the internal affairs bodies participated (57 heads of operating units; 93 officers in the position of senior criminal investigators of operational investigative activity and senior criminal investigators; 151 criminal investigators). They also used the statistical data published in the mass media and provided by the Federal State Institution “Main Information and Analysis Center of Ministry of Internal Affairs of Russian Federation” for the period from 2017 till 2020. As a result of the research, the majority of officers believe that they are officials, perform a certain level of power and bear legal responsibility for it. Analyzing the obtained responses, most of the officers share the opinion that all the specified categories of people in the responses correspond to all the criteria of the status of the official,

but there are exceptions as not all respondents could determine the main criteria of the status of officials of operating units and their powers precisely and clearly.

3 Conclusion

The legal status of an official of operating units is a category that determines the position (place and role) of this person regulated by the legal norms in regard to other people of operational investigative activities.

The base of the legal status of the official as a subject of the operational investigative activity is made up of the following unified elements: legal personality (legal capacity, dispositive legal capacity, passive dispositive capacity) of the official; legal jurisdiction of the official.

Practical significance consists in the determination of the legal status of officials of operating units, powers, development of the solutions to conflicts of the legal norms regulating the operational investigative activity for the executor of law.

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