

UDC 343.14:351.745.7:343.974
DOI: 10.33270/04221201.48

The Covert Cooperation in the Mechanism of Ensuring Human Rights

Mykhailo L. Hribov*

National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine

Abstract

The urgency lies in the fact that uninformed cooperation is not effectively used to protect human rights from unlawful encroaching, and sometimes harms these rights. This is largely due to the unsystematic nature of legal regulation. Systematic regulation of covert cooperation should be based on an ideological basis that would ensure its focus on the fulfillment by the state of the basic obligation to ensure human rights. The development of such a system of legal regulation of the use of covert cooperation should be based on the proper theoretical foundation: the reasonable role and place of covert cooperation in the mechanism of human rights protection. Creation of such foundation is the purpose of this research. The study uses the general dialectical method of scientific knowledge of real phenomena, their relations with practical activity of law-enforcement agencies, as well as general scientific and special methods of legal science. The covert cooperation is subject to legal regulation at all stages included in the dynamic dimension of the mechanism of human rights protection, defendant and realization. At the stage of human rights protection, the covert cooperation is embodied in measures aimed at prevention of criminal offenses, clarification, prevention or elimination of the causes of them. At the stage of human rights protection, the covert cooperation is used to restore violated rights, ensure compensation for damages, and bring the guilty to justice. At the stage of realization of human rights, the covert cooperation is used for the purpose of hidden control over proper fulfillment of the duties of authorized subjects to create the necessary conditions for transformation of declared social benefits into a state of their possible and actual use by a specific person

Keywords:

covert actions; defense of rights; protection of rights; legal mechanics

Introduction

The Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations and the European Convention for the Protection of Human Rights and fundamental freedoms, is an absolute guide for legislators in all civilized countries of the world. So, at Art. 3 the Constitution of Ukraine¹ stipulates that the main duty

of the state is to promote and protect human rights and freedoms.

Law-enforcement agencies play an important role in this duty. Today, they perform their functions of preventing, detecting, stopping and investigating crimes under difficult conditions. The current situation in Ukraine is

¹Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

Article's History:

Received: 16.11.2021

Revised: 13.12.2021

Accepted: 15.01.2022

Suggest Citation:

Hribov, M.L. (2022). The covert cooperation in the mechanism of ensuring human rights. *Law Journal of the National Academy of Internal Affairs*, 12(1), 48-58.

*Corresponding author

characterized by the acute confrontation of different political forces, crisis phenomena in the economy and social sphere, which leads to the intensification of various manifestations of crime. For example, today a high level of criminal activity has a positive and violent character; the drug business is developing rapidly; criminal acts related to trafficking in persons are widespread; ways of illegal actions in the spheres of economic activity, computer systems and computer networks are improving; organized corruption crime is strengthening its positions. All of this has an extremely negative impact on the state of human rights, both directly (through the assumption of encroaching on life, health, will, honor and dignity of the person, sexual immunity, property, etc.) and indirectly (due to damage caused to society and the state by crimes against national security, environment, public security, public order and morality, criminal offenses in the sphere of work and professional activity, etc.). Such a state of affairs takes place not only in Ukraine, but also in many other countries of the world.

At the same time, representatives of all spheres and branches of the criminal world take active measures to ensure the safety of their illegal activities, using corrupt relations in the executive power and judicial administration, following the latest achievements of science and technology. A well-thought-out system of conspiracy measures, used by criminal groups and individuals, makes it necessary for law-enforcement agencies to use covert methods of work widely and actively. This is lead Ukrainian scientists to conduct research aimed at improving the organization [1] and legal regulation [2] of these methods, increasing their effectiveness in crime-fighting [3].

Scientists from Western Europe and the United States study of covert methods of prejudicial inquiry is carried out at the level of their legal regulation in general [4], regulation and organization of application of certain of them [5], and their application within the framework of counteraction of certain types of crimes [6]. Among these methods, special attention should be paid to the use of the services of persons who obtain and provide the necessary information to law enforcement agencies, create the conditions necessary for carrying out certain actions, measures, operations, etc., i.e. covert cooperation. This is one of the oldest method of obtaining the information needed to fight crime. Despite the rapid development of science and technology, the informatization of all spheres of common life, it does not lose its relevance today. Due to the covert cooperation in Ukraine in Soviet times and the first decades of independence of Ukraine, up to 93% of the total number of serious and especially serious crimes of latent nature were discovered and successfully investigated. As for serious and especially serious crimes, which do not have such a character, but are committed with the use of means

of conflict of illegal activity, the secret cooperation was used in almost 81% of the investigations. Today, this percentage has decreased considerably, as well as the effectiveness of detection and investigation of crimes prepared and committed under the conditions of the death. Accordingly, human rights, interests of the individual, society and the state, to which the crimes are committed, often remain unprotected. The said stipulates the necessity to clarify the reasons for ineffective use of the institute of covert cooperation and search for ways of its improvement [7].

The urgency of the issues of covert cooperation is conditioned by the activity of scientific research in this direction. Scientists from Western Europe conduct fundamental research on the possibilities of using covert cooperation for detection, stopping and investigation of crimes in modern conditions [8], questions of professional training of police officers for silent work with informers [9]; problems of mutual perception, interaction and information exchange between law enforcement officials and their undercover employees [10-12], in particular, in the mode of telephone conversations [13]; involvement of representatives of different social groups and informal associations [14]; impact of the COVID-19 pandemic on the organization of work with undercover employees [15].

Ukrainian scientists (representatives of the theory of operative search activity, criminal process and criminalistics) also made a significant contribution to the development of organizational principles and applied methods of the use of covert cooperation in the fight against modern crime in Ukraine. However, today in practical application of the institute of uninformed cooperation there are a number of important unconnected practical problems, which require critical thinking and scientific solution. For example, today's tacit cooperation is not effectively used to protect human rights from unlawful encroaching, and sometimes harms those rights. The solution of these problems, among other things, should be found in the area of legal regulation and organization. In order to solve them effectively, it is necessary to rely on the proper theoretical foundation, the basis of which should be an understanding of the role and place of unannounced cooperation in effective implementation, provisions defined by Art. 3 of the Constitution of Ukraine¹. But today there is no such understanding in science. The given statement makes it necessary to carry out the corresponding scientific research.

The purpose of the article is to define the role that covert cooperation in the promotion of human rights plays today, as well as to establish the place that such cooperation should take in the mechanism of ensuring these rights. To achieve this goal, we consider it necessary to fulfill the following tasks: to reveal the content of the mechanism of human rights protection; to formulate the

¹Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

concepts of covert cooperation; to define the directions of application of covert cooperation for human rights protection; to find out the problems that arise in the use of covert cooperation for the protection of human rights in modern times and to propose ways of solving these problems.

Materials and Methods

The methodological tools of the research are chosen taking into account the set goal, specificity of the object and subject of the research. It is based on the general dialectical method of scientific knowledge of real phenomena, as well as their relations with practical activity of law-enforcement agencies (their operative subdivisions and bodies of pre-trial investigation), as well as general scientific and special methods of legal science, in particular: **system-structural** – to define the content of the investigated categories and legal phenomena, in particular formation of the understandable-category apparatus, systematization of scientific knowledge of the chosen direction of research in general, complex analysis of the provisions of normative-legal acts and their application practice; **comparative-legal and comparative** – for the complex analysis of Ukrainian legislation and subordinate normative-legal acts, norms of international law, which constitute the legal basis of the mechanism of human rights protection and institute of covert cooperation; **logical-legal (dogmatic)** – at development of the understandable apparatus, formulation of proposals on introduction of changes and additions to legislative acts.

These methods were used at all stages of the study: identification of scientific problem, setting of the purpose and objectives of the study; detailed content of the mechanism of human rights protection; definition of essence of covert cooperation; definition of directions of covert cooperation for the protection of human rights, problems arising in this sphere and ways of their solution.

As a theoretical basis of the research the results of the latest fundamental researches of domestic and foreign scientists in the sphere of protection of human rights and fundamental freedoms, counteraction of crime, carrying out of secret investigative actions by law enforcement agencies, in particular, involving silent employees, legal regulation of the institute of covert cooperation were used.

The analytical base of the study is the data of official statistics, materials of criminal proceedings within which persons involved in confidential cooperation (covert employees): Firstly, actual data on preparation or committing crimes is given, which in the future became grounds for the initiation of prejudicial inquiry – 33; secondly, provided information that was actually used by the prosecution party for tactical, organizational and procedural decisions – 57; thirdly, involved in controlling the crime in the form of prompt procurement – 27 (including 10 cases in which the court found the act of provocation); Fourthly, they were involved in the control

of the crime in the form of a special investigative experiment – 15 (including 8 cases in which the court found the fact of the provocation of the crime); fifthly, they were involved in the control of the crime in the form of imitation of the criminal situation – 8; sixthly, they were involved in the execution of a special task to disclose the activities of an organized group or criminal organization – 3.

Results and Discussion

The content of the mechanism of ensuring human rights

The achievement of the above-mentioned objective, among other things, should be based on the definition of the content and general principles of the mechanism of protection of human rights. The theory of law has different approaches to understanding the mechanism of human rights protection: From broad, fundamental, based on the results of thorough scientific research [16; 17] to narrow, elementary, such, which are applied in connection with the solution of certain applied problems. We will consider some of them, moving according to the principle: from simple to complex.

Modern researchers often reveal the essence of this mechanism by determining the whole combination of individual elements that are part of its content. At the same time, only certain state and non-state institutions, such as the Prosecutor General's Office of Ukraine, the Committees of the Verkhovna Rada of Ukraine (on human rights, national minorities and inter-ethnic relations; on legislative support of law enforcement activities and others), the Commissioner of the Verkhovna Rada of Ukraine for Human Rights, the Prosecutor General of Ukraine; The National Police of Ukraine (in terms of formation and development of internal control over observance of human rights and prevention of torture); the Ministry of Justice of Ukraine; other central executive bodies (in terms of provision and protection of human rights); public human rights organizations; research institutions; mass media.

These institutions are undoubtedly an important static element in the structure of the mechanism for ensuring human rights. But this understanding of the content of this mechanism is considered narrow, purely institutional. It does not take into account the fact that state bodies and public organizations are created and realized their functions only on the basis of legal norms, which in itself are an integral component of the mechanism of human rights protection.

From these positions, the results of O.N. Grishko are quite logical. The mechanism of ensuring human rights in Ukraine is determined by the combination of its elements (normative and institutional) [18].

An even wider and more rational approach applies K.V. Stepanenko, he investigates the mechanism of ensuring human and civil rights in the European Union. It defined this mechanism as a structurally interconnected set of legal and organizational guarantees, implemented

by EU institutions and bodies, aimed at regulation of legal relations in this area [19]. Thus, in addition to the normative (legal) and institutional components of the mechanism of human rights protection, the researcher mentions organizational. These components are static in nature.

But the static elements themselves (or their aggregate) cannot be directed at achieving a certain goal. They can only be means used for a certain purpose by specific actors in their activities. The goal itself can be achieved by actors who have set it only through a set of actions they are taking. Such actions should be organized and directed at the fulfillment of certain tasks, the solution of which will lead to achievement of the goal. Actually, one of the specific actions of the specific subjects, which have a certain purpose and consists of the content of the activity. This conclusion is based on the analysis of the provisions of fundamental works, devoted to the content of activity, including legal. From our point of view, the protection of human rights should be placed in the category of activity.

Therefore, it is well-grounded that specialists in different fields of law, along with the definition of the static elements of the mechanism of human rights protection, separate the areas (sub-systems) of ensuring these rights. In these directions (subsystems) the dynamic component of the mentioned mechanism is implemented. The following areas (sub-systems) are usually: Implementation (promotion of realization, creation of conditions for realization, implementation); protection, defence, restoration, improvement of the national legislation of the country and bringing it to international standards in the field of human rights, etc.

For example, O.P. Kuchynska notes that the structure of the mechanism of ensuring the rights of participants in criminal proceedings includes: "1) the legal and regulatory grounds for ensuring the rights in criminal proceedings, which are obtained by certain persons the procedural status of participants in criminal proceedings and the appearance of procedural legal relations in this regard; 2) legal means of ensuring the rights of participants of criminal proceedings, which are legal guarantees of these rights; 3) general social conditions of ensuring the rights of participants of criminal proceedings, which are conditioned by various political, economic and social factors, and determine the effectiveness of the legal provision of the rights and freedoms of participants of criminal proceedings; 4) institutional or institutional guarantees, which are officials and bodies whose activities are aimed at ensuring the rights of participants in criminal proceedings".

At the same time, the researcher notes that the mechanism of protection of rights of participants of criminal proceedings consists of three main sub-systems: "1) mechanism of realization of means capable to create conditions for realization of rights and freedoms; 2) mechanism of protection of means for prevention of

violations of rights and freedoms, and also confirmation of legal behavior; 3) mechanisms for the protection of means that promote the restoration of rights violated by unlawful acts, as well as the prosecution of persons who have committed violations of the law of protection" [20, p. 274]. In fact, these sub-systems reflect the dynamic components of the mechanism of ensuring the rights of participants in criminal proceedings.

Such an approach to the problem under investigation is fully consistent with the doctrinal provisions proposed by the leading experts in the field of state theory and law. It is and is quite acceptable for use within the framework of this study in order to determine the ratio of covert cooperation (as an institute) with specific static elements of the mechanism of human rights protection. However, we consider it necessary to reveal more detailed dynamic components of this mechanism in order to determine exactly the place of covert cooperation (as activity) in it.

A thorough study of the dynamic dimension of the mechanism of ensuring human rights and freedoms includes the work of N.M. Opolska, the position and conclusions of which are quite logical and grounded. Among other things, the researcher notes: "Due to the analysis of the dynamic dimension of the mechanism of ensuring human rights and freedoms due to the combination of processes that occur through the functioning of components, one can conclude that protection, realization and protection are procedural stages of the mechanism of ensuring human rights and freedoms".

The procedural stage of the mechanism of ensuring the rights and freedoms of the individual is a separate, relatively separated time and logically connected with a combination of actions of the subjects aimed at achieving the purpose of the mechanism of ensuring the rights and freedoms of the individual. The procedural stages of the mechanism of ensuring human rights and freedoms, protection, realization and protection have a certain consistency, can change from one to another depending on legal facts. The exception is the stage of protection of human rights and freedoms, which is continuous.

The stage of protection of rights and freedoms is a combination of legal measures carried out by international organizations, state bodies and public structures aimed at prevention of violations, prevention, elimination of causes, and promotion of the unimpeded realization of rights and freedoms of the person. The process of protection of the rights and freedoms of the individual in time is continuous.

The stage of realization of rights and freedoms is direct activity of authorized subjects, aimed at creation of necessary conditions for transformation of declared social benefits into the state of their possible and actual use by a specific person. It may be manifested in the use, performance and observance of rights and freedoms. The peculiarity of this stage is that its dynamics depends on the subjective will of the carrier of law.

The stage of protection in the mechanism of ensuring the rights and freedoms of the individual is a combination of actions of authorized subjects in the procedure established by law with the purpose of restoring violated rights, compensation of damages, bringing the guilty to justice. It occurs in case of threat of law, encroaching, non-recognition or as a result of its violation" [21]. It is the mentioned approach that we consider it expedient to use for research functions of non-covert cooperation in the mechanism of protection of the rights of the person in its dynamic aspect.

The essence of covert cooperation

Achieving the goal declared in this article is impossible without understanding the essence of unannounced cooperation. Since ancient times, law enforcement, reconnaissance agency and counter-reconnaissance agencies of all countries of the world have secretly used the services of persons who have agreed on the basis of the association to obtain and provide them with the necessary information, to create conditions necessary for carrying out certain actions, measures, operations, etc. Different countries use different names to indicate it. And even Ukrainian scientists and practices are served by different terms when drawing out exactly this type of activity: confidential cooperation, covert cooperation, confidential (covert) cooperation, agency work, agency-operative work, agent method, work with non-skilled workers, etc.

The authors of the departmental normative-legal acts have repeatedly made attempts to regulate the use of the mentioned terms, determine their correlation and formulate the deflation. But in each department it was done on its own discretion and, as a rule, without scientific substantiation. As a result, there are significant differences in their understanding, contradictions and ambiguity of the norms of legal acts. Ukrainian science has not yet developed clear approaches to understanding the content of the relevant concepts. Moreover, there is no unity among the theorists of operative search activity and criminal process regarding the removal of the mentioned phenomenon to a certain category. It is defined as an institute, as activity (work, a set of measures), as a method of HUMINT investigation, etc. Undoubtedly, this has a negative effect on the practice of legal creation and legal application.

On this occasion, the authors of the article conducted a special study, according to which the authors reached an unambiguous conclusion, under the covert cooperation should be understood the secret interaction between the authorized officials of law-enforcement agencies (agents, investigative bodies of pre-trial investigation, detectives of NABU) and persons involved in the fulfillment of tasks of operative investigation and criminal proceeding. The mentioned interaction is carried

out on the basis of the conspiracy: not only its content but also the fact [22]. At that, the purpose of the covert cooperation is to prevent crimes, to detect and stop them, to establish the whereabouts and the fate of persons declared in search, to ensure the safety of persons participating in criminal proceedings, and to resolve the social and legal conflict that arose in connection with the purpose of the crime to the person, society and the state, on the basis of truth, persons.

The use of the term "confidential cooperation" is permissible in a different meaning: Interaction between the legally authorized officials of law enforcement bodies and persons involved in the fulfillment of the tasks of law enforcement activity, which is carried out with the secret content of the information exchange, but does not provide for the obligatory secret of the fact of such interaction [22].

Directions of application of covert cooperation for the protection of human rights

Modern Ukrainian scientists, mostly, are investigating the negative side of the interrelation of covert cooperation with the promotion of human rights. So, K.V. Antonov said: "Protection of human rights and freedoms, a citizen in the course of confidential cooperation during prejudicial inquiry should be considered from two sides: On the one hand it is necessary to care about the protection of the rights and freedoms of the person, on which are carried out such measures, including with the participation of the confessional; on the other hand, protection is needed by the persons themselves who participate in confidential cooperation with the bodies of pre-trial investigation" [23, p. 369]. The practical implementation of these provisions provides that: First, it is necessary to determine the harm that can be caused by the tacit cooperation of the rights of objects and subjects of the use by law enforcement bodies of secret methods of detection and investigation of crimes; second, to develop means of preventing the occurrence of such harm.

Of course, ensuring the rights of the undercover law enforcement officers and the persons they collect information is an important direction in the implementation of the provisions of the Universal Declaration of Human Rights, the Convention on the Protection of Human Rights and fundamental freedoms, and Art. 3 of the Constitution of Ukraine¹. However, one cannot ignore the positive side of the relationship of covert cooperation with the promotion of human rights in order to protect and protect these rights from criminal encroaching.

Defining the directions and forms of application of covert cooperation for the protection of human rights will be guided by the static and dynamic components of the mechanism set above.

In the static aspect, first of all, it is expedient to consider the institutional component. Law-enforcement

¹Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

bodies, in particular their operational units, are an integral institutional component of the mechanism for ensuring human rights. Their activities play an important role at each stage of ensuring human rights, which were defined by N. Opolska [21].

The research conducted by the authors suggests that the activity of operative subdivisions is based on laws and subordinate normative-legal acts complex of actions of the subjects of operative-search activity, which includes operative-search measures and investigative (search) actions, silent investigative (search) actions, which are carried out with the purpose of prevention, detection, termination and investigation of criminal offenses [24, p. 49]. The operational units of law-enforcement bodies themselves may be placed in a static component of the human rights mechanism, and their activities may be dynamic.

One of the directions (means, instruments) of the mentioned activity is the tacit cooperation. In fact, it itself constitutes a separate activity, which is carried out through a static component of the institute of covert cooperation, based on the aggregate of legal norms regulating social relations in this sphere. Due to the covert cooperation, law enforcement bodies ensure the protection of the human right to life. Thus, timely receipt of information about the preparation of custom murders from the undercover employees, allows to prevent their actions [25]. Using such information, criminal police officers can make operative and search predictions of the murder [26] and prevent its occurrence.

Information obtained by means of uninformed cooperation about persons who plan to seize hostages allows to preserve life, health and personal immunity of potential victims of this crime [27]. Information on the structure and plans of terrorist groups' activities, obtained through covert cooperation, gives an opportunity to turn off terrorist acts, the threat of which does not become less [28-30] every year.

Without undisclosed cooperation, it is impossible to imagine operative and search service of critical infrastructure facilities, in particular, in nuclear power engineering [31], which can be attacked by terrorists. This service provides an opportunity to prevent encroaching on these objects and thus to ensure the protection of human rights to life, health and a safe environment. The human right to a safe environment can be violated not only by criminal encroaching on the objects of critical infrastructure, but also by a number of other criminal offenses, which are provided for in section VIII of the special part of the Criminal Code of Ukraine¹. Criminal liability for crimes of this category is established in the countries of the European Union [32].

Such criminal offenses are mostly found and stopped without the use of investigative and prejudicial inquiry methods. Evidence in proceedings concerning this

category of crimes is also, in most cases, based on the results of open investigations, among which experts' conclusions are of particular importance [33]. On the basis of such conclusions, not only is the fault of a particular subject established, but also the basis for restoration of the violated right is created by determining the extent of the harm caused.

At the same time, the detection, timely termination and investigation of certain environmental crimes is impossible without the use of undisclosed cooperation. First of all, it is about illegal extraction of amber [34]. Today in Ukraine, this type of criminal activity is carried out by organized criminal formations, which have a clear hierarchy, strict discipline and act in compliance with the conjointly. By establishing a covert cooperation with members of such groups, operational units receive information necessary to stop illegal activities and bring the guilty to criminal responsibility.

By using covert cooperation to reveal crimes related to the falsification of drugs [35], the operational units of law enforcement bodies promote the realization of the right to health [36]. By revealing crimes against political, labor and other personal rights and freedoms of a person and a citizen with the help of undercover employees, law enforcement officers promote the realization of these rights, in time stop their violations, protect and defend them. The Institute of Covert Cooperation traditionally provides law-enforcement bodies with information on the circumstances of theft, robbery, sexual crimes on a permanent basis. As a result, the right of ownership, the right of sexual freedom to immunity is protected.

Through covert cooperation, the state bodies and non-governmental organizations that provide public services for the legality of their officials' actions in relations with citizens are constantly monitored. This is how the facts of the crimes committed in the sphere of official activity, including corruption, which not only violate the rights of a particular person, but undermine the principle of the rule of law, weaken political stability and social unity, complicate economic development, and undermine the basic functioning of the state apparatus. In overcoming these phenomena plays a significant role by covert cooperation.

This applies not only to the protection, but also to the protection of the respective rights of citizens. After all, the secret officers not only provide the law-enforcement bodies with information about the facts of criminal corruption, but also are constantly engaged in operational departments and bodies of prejudicial inquiry into tactical operations on the disclosure of bribes.

The covert cooperation in the area of human rights protection has the opposite side, the necessity of studying which is well-demanded By K.V. Antonov [23]. After all, the activity of the undercover employees within the framework of operative search and criminal proceedings

¹Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

is itself connected with the limitation of constitutional rights of the individual. Thus, they can be involved in the control of the crime (and actually to social studies to study the behavior of certain persons), to the silent examination of housing or other possession of the person, visual observation of the person, as well as to the silent investigative (search) actions, which are interference in private communication. Acting outside their authority, the operative employees and investigators may use the undercover employees to provoke (instigate) persons to commit a crime, to interfere in private communication.

In such cases, the covert cooperation, as a component of operational search and criminal procedural activities, should be considered not as an instrument of guaranteeing rights, but as a means provided by law, because of the abuse of officials to be used with violation of the law on human rights harm. And today there are numerous examples of how law enforcement officers abuse the institution of covert cooperation, human rights do not protect, but violate, using agents to provoke crimes.

The resolution of the Supreme Court of Ukraine dated May 12, 2021 in case No. 166/1199/18¹ on the charge of the chief doctor of the regional center of primary medical and sanitary aid in obtaining illegal benefit for giving written permission to a private entrepreneur for carrying out computer diagnostics of the human organism according to the method of Electroacupuncture in the premises of rural midwife's assistant points of the area (p. 1 Art. 368 CC of Ukraine²). As established by the court, in this case there was a provocation of crime. It was implemented by a undercover law enforcement officer who was specially engaged for this purpose. The undercover employee acted actively, persistently, quickly, to leave in the office of the chief doctor in advance marked with special substance money, while ignoring the remarks of the latter about the registration of these money through the accounting as a charitable aid to the medical institution, which is provided by the Statute of the Regional Center for primary health care and does not prohibit. This undercover employee has changed his name several times and was a applicant in a large number of criminal proceedings related to corruption crimes. According to the results of the trial, the said accusation was not found

its confirmation, and the chief doctor was declared innocent in the crime, provided for in p. 1 of Art. 368 CC³, and justified in connection with the absence of criminal offense in its actions.

Such cases are not isolated (as an example, Supreme Court rulings of March 6, 2018 in case No. 727/6661/15-K⁴; November 19, 2019 in case No. 332/2723/15-K⁵; April 8, 2020 in case No. 164/104/18⁶; October 7, 2020 in case No. 628/3400/15⁷; on January 27, 2021 in case No. 369/13151/14-k⁸; on April 21, 2021 in case No. 522/9869/16-k⁹), which can indicate their system. Such cases are often related to violations of the rights of persons who are forced to cooperate without any kind of public cooperation and by blackmail to engage in provocations and other unlawful acts. The violation of the rights of the undercover employees is undoubtedly the inactivity of the persons who have engaged them in cooperation in the event of a threat to their life and health.

Conclusions

The mechanism for ensuring human rights includes a static and dynamic side (foundations). The static part includes: legal preconditions, legal means, general social conditions and institutional and organizational structures (accredited subjects). The dynamic parts includes: the action of accredited subject in the protection, defense and promotion of human rights. These entities include law enforcement bodies (including their operational units), and their actions to ensure human rights include actions that constitute the content of their powers, as provided for in the Criminal Procedural Code of Ukraine, the Law of Ukraine "On Operational and Search Activities".

The actions of operational units to protect the person, society and the state from criminal offenses, to ensure the rights of people within the framework of criminal process and operational search activities are the content of the category "Activity of operational units of law-enforcement bodies".

An important and integral part of this activity is the covert cooperation, which in its static aspect (as an institute) is the system of norms of operative, search and criminal procedural legislation, subordinate normative and legal acts, and in dynamic (co-operative) interaction

¹Resolution of the Supreme Court of Ukraine in case No. 166/1199/18. (2021, May). Retrieved from <http://iplex.com.ua/doc.php?regnum=96978130&red=100003d049233fc945ddb4eb9154b5d42a86e0&d=5>.

²Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

³*Ibidem*, 2001.

⁴Resolution of the Supreme Court of Ukraine in case No. 727/6661/15-K. (2018, March). Retrieved from <https://verdictum.ligazakon.net/document/72670494>.

⁵Resolution of the Supreme Court of Ukraine in case No. 332/2723/15-K. (2019, November). Retrieved from <https://zakononline.com.ua/court-decisions/show/85836389>.

⁶Resolution of the Supreme Court of Ukraine in case No. 164/104/18. (2020, April). Retrieved from <http://iplex.com.ua/doc.php?regnum=88749774&red=10000309d5a5bc3f8f7c20372232e02fc53441&d=5>.

⁷Resolution of the Supreme Court of Ukraine in case No. 628/3400/15. (2020, October). Retrieved from <http://iplex.com.ua/doc.php?regnum=92173713&red=1000032a0e4a5b9dcb7e74c989120363cd42bd&d=5>.

⁸Resolution of the Supreme Court of Ukraine in case No. 369/13151/14-k. (January, 2021). Retrieved from <http://iplex.com.ua/doc.php?regnum=94591885&red=10000329543f9bbb376f7c02cdd421f4dc1817&d=5>.

⁹Resolution of the Supreme Court of Ukraine in case No. 522/9869/16-k. (April, 2021). Retrieved from <http://iplex.com.ua/doc.php?regnum=96465089&red=100003fc9f890797d6c1b88065522dbe4718af&d=5>.

between the accredited officials of law-enforcement bodies and persons, the tasks of operational search and criminal proceedings.

At the stage of human rights protection, the covert cooperation is embodied in measures aimed at prevention of criminal offenses, prevention or elimination of the causes of them. At the stage of human rights protection, covert cooperation is used to restore violated rights, ensure compensation for damages, and bring the guilty to justice. At the stage of realization of human rights, covert cooperation is used for the purpose of hidden

control over proper (without violation of the law on criminal responsibility) fulfillment of the duties of authorized entities to create necessary conditions for transformation of declared social benefits into a state of their possible and actual use by a specific person.

Reforming the legal regulation of covert cooperation should be based on the above provisions, taking into account the necessity of establishing legal levers to prevent violation of the rights of the developed, suspected, accused and the most undercover officers from the part of authorized law enforcement bodies.

References

- [1] Kniaziev, S.M. (2019). General characteristics of the organization of operative-search activity and secret work of the national police of Ukraine. *South Ukrainian Law Journal*, 4, 146-151. doi: 10.32850/sulj.2019.4.3.33.
- [2] Tarasenko, O., Tsutskiridze, M., Shevchishen, A., Yermakov, Yu., & Mirkovets, D. (2021). Establishment of the institution of covert investigation in the criminal justice system of Ukraine. *Cuestiones Políticas*, 39(69), 462-474. doi: 10.46398/cuestpol.3969.29.
- [3] Bilous, R., Vasylynchuk, V., & Taran, O. (2021). Use of methods of criminal analysis during operational proceedings and pre-trial investigation. *Scientific Herald of National Academy of Internal Affairs*, 118(1), 131-137. doi: 10.33270/01211181.131.
- [4] Murphy, B. (2020). Regulating undercover policing: Subjects, rights and governmentality. *Critical Criminology*, 28, 65-84. doi: 10.1007/s10612-020-09504-6.
- [5] Loftus, B. (2019). Normalizing covert surveillance: The subterranean world of policing. *The British Journal of Sociology*, 70(5), 2070-2091. doi: 10.1111/1468-4446.12651.
- [6] Chiang, E. (2021). Language and online identities: The undercover policing of sexual crime Tim Grant and Nicci MacLeod. *International Journal of Speech Language and the Law*, 28(1), 155-160. doi: 10.1558/ijsl.20645.
- [7] Hribov, M., & Kozachenko, O. (2020). The ways of improvement of tacit cooperation's legal regulation. *Scientific Herald of National Academy of Internal Affairs*, 2(115), 8-18. doi: 10.33270/01201152.8.
- [8] Atkinson, C. (2019). Mind the grass! Exploring the assessment of informant coverage in policing and law enforcement. *Journal of Policing, Intelligence and Counter Terrorism*, 14, 1-19. doi: 10.1080/18335330.2019.1572913.
- [9] Henry, P., Rajakaruna, N., Crous, C., & Buckley, J. (2020). Key attributes of an effective human source handler: Implications for handler selection and training. *The Police Journal: Theory, Practice and Principles*, 93(4), 290-309. doi: 10.1177/0032258X19862589.
- [10] Nunan, J., Stanier, I., Milne, R., Shawyer, A., & Walsh, D. (2020). Eliciting human intelligence: Police source handlers' perceptions and experiences of rapport during covert human intelligence sources (CHIS) interactions. *Psychiatry, Psychology and Law*, 27(4), 511-537. doi: 10.1080/13218719.2020.1734978.
- [11] Nunan, J., Stanier, I., Milne, R., Shawyer, A., & Walsh, D. (2020). Source handler telephone interactions with covert human intelligence sources: An exploration of question types and intelligence yield. *Applied Cognitive Psychology*, 34, 1473-1484. doi: 10.1002/acp.3726.
- [12] Nunan, J., Stanier, I., Milne, R., Shawyer, A., & Walsh, D. (2020). Source Handler perceptions of the interviewing processes employed with informants. *Journal of Policing, Intelligence and Counter Terrorism*, 15(3), 244-262. doi: 10.1080/18335330.2020.1820069.
- [13] Nunan, J., Stanier, I., Milne, R., Shawyer, A., Walsh, D., & May, B. (2020). The impact of rapport on intelligence yield: Police source handler telephone interactions with covert human intelligence sources. *Psychiatry, Psychology, and Law*. doi: 10.1080/13218719.2020.1784807.
- [14] Atkinson, C., McBride, M., & Moore, A. (2021). Pitched! Informants and the covert policing of football fans in Scotland. *Policing and Society*, 31(7), 863-877. doi: 10.1080/10439463.2020.1795168.
- [15] Stanier, I., & Nunan, J. (2021). The impact of COVID-19 on UK informant use and management. *Policing and Society*, 31(5), 512-529. doi: 10.1080/10439463.2021.1896515.
- [16] Onishchenko, N.M., & Lutskyi R.P. (2020). Law and person: Modernity and forecasting. *International Journal of Criminology and Sociology*, 9, 1596-1599. doi: 10.6000/1929-4409.2020.09.182.
- [17] Skrypniuk, O.V., Onishchenko, N.M., & Parkhomenko, N.M. (2019). Awareness in law as strategical direction of legal policy. *Journal of Advanced Research in Law and Economics*. 10(5), 1534-1540.
- [18] Grishko, O.N. (2017). Mechanism for protection of human rights in Ukraine. *Legal Regulation of the Economy*, 16, 33-43.
- [19] Stepanenko, K.V. (2016). Mechanism of ensuring of rights of the man and the citizen in the EU. *Scientific Bulletin of Dnipropetrovsk State University of Internal Affairs*, 1, 83-89.

- [20] Kuchynska, O.P. (2013). *Principles of criminal proceedings in the mechanism of ensuring the rights of its participants*. Kyiv: Yurinkom Inter.
- [21] Opolska, N. (2019). The mechanism of ensuring human rights and freedoms in a dynamic dimension. *Entrepreneurship, Economy and Law*, 4, 191-195.
- [22] Hribov, M., & Kozachenko, O. (2019). Correlation of the notions “confidential cooperation” and “tacit cooperation” *Herald of Criminal Justice*, 1, 8-18.
- [23] Antonov, K.V. (2020). Problems of legislative regulation of the use of confidential cooperation during investigation. *Juridical Scientific and Electronic Journal*, 3, 369-371. doi: 10.32782/2524-0374/2020-3/88.
- [24] Hribov, M.L., & Cherniak, A.M. (2018). Crime counteraction by operational units of law enforcement agencies: Definition and content. *Scientific Herald of the National Academy of Internal Affairs*, 4, 37-51.
- [25] Repetskaya, A.L., & Gabeev, S.V. (2020). Murder for hire: Criminological analysis of the current situation in the Russian Federation. *Russian Journal of Criminology*, 14 (4), 541-552. doi: 10.17150/2500-4255.2020.14(4).541-552.
- [26] Khyzhniak, Y., Khankevych, A., Nazarenko, I., Pleskach, O., & Tretiak, O. (2021). Model of operational search prediction of intentional homicide by criminal police. *Amazonia Investiga*, 10(40), 37-44. doi: 10.34069/AI/2021.40.04.4.
- [27] Sainchyn, O., Kuchynska, O., Hryniuk, V., Tsyganyuk, Y., & Hromova, M. (2021). Prevention of taking and killing of hostages: International legal regulation. *Inter EU Law East*, 8(1), 154-170. doi: 10.22598/iele.2021.8.1.8.
- [28] Theron, J. (2021). Networks of threats: Interconnection, interaction, intermediation. *Journal of Strategic Security*, 14(3), 45-69. doi: 10.5038/1944-0472.14.3.1942.
- [29] Westbrook, T., & Schive, T. (2021). Urban security and counterterrorism: An approach to proportionality. *Journal of Strategic Security*, 14(3), 70-85. doi: 10.5038/1944-0472.14.3.192.
- [30] Fox, S.J. (2021). Past attacks, future risks: Where are we 20-years after 9/11? *Journal of Strategic Security*, 14(3), 112-157. doi: 10.5038/1944-0472.14.3.1964.
- [31] Taran, O., & Sandul, O. (2019). Issue of criminal liability for offences against critical infrastructure objects in nuclear industry. *Nuclear and Radiation Safety*, 3(79), 66-70. doi: 10.32918/nrs.2019.3(83).07.
- [32] Movchan, R., Vozniuk, A., Burak, M., Areshonkov, V., & Kamensky, D. (2021). Criminal law counteraction to land pollution in the EU countries: Searching for the optimal model. *Amazonia Investiga*, 10(42), 15-23. doi: 10.34069/AI/2021.42.06.2.
- [33] Pohoretskyi, M.A., Serhieieva, D.B., & Starenkyi, O.S. (2019). Expert's findings in criminal proceedings on environmental crimes. *Scientific Bulletin of the Mining University*, 1, 155-163. doi: 10.29202/nvngu/2019-1/16.
- [34] Kuchynska, O., Nesterovskiy, V., Starenkyi, O., & Tsyhaniuk, Yu. (2020). Illegal and uncontrolled amber's extraction and measures to combat it. *Bulletin of Taras Shevchenko National University of Kyiv. Series: Geology*, 3(90), 62-70. doi: 10.17721/1728-2713.90.09.
- [35] Hutorova, N. (2019). Counterfeiting of medicines – how in Ukraine the severity of the criminal law is combined with the actual impunity of counterfeiters? *Pharmacy*, 4, 8-10.
- [36] Pashkov, V., & Hutorova, N. (2020). Immunoprophylaxis in the mechanism ensuring and protecting the right to health. *Law of Ukraine*, 3, 61-84. doi: 10.33498/louu-2020-03-061.

Список використаних джерел

- [1] Князев С.М. Загальна характеристика організації оперативно-розшукової діяльності та негласної роботи національної поліції України. *Південноукраїнський правничий часопис*. 2019. № 4. С. 146–151. doi: 10.32850/sulj.2019.4.3.33.
- [2] Establishment of the institution of covert investigation in the criminal justice system of Ukraine / O. Tarasenko et al. *Cuestiones Políticas*. 2021. Vol. 39, No. 69. P. 462–474. doi: 10.46398/cuestpol.3969.29.
- [3] Білоус Р., Василичук В., Таран О. Використання методів кримінального аналізу під час оперативного провадження та досудового розслідування. *Науковий вісник Національної академії внутрішніх справ*. 2021. № 118(1). С. 131–137. doi: 10.33270/01211181.131.
- [4] Murphy B. Regulating undercover policing: Subjects, rights and governmentality. *Critical Criminology*. 2020. No. 28, P. 65–84. doi: 10.1007/s10612-020-09504-6.
- [5] Loftus B. Normalizing covert surveillance: The subterranean world of policing. *The British Journal of Sociology*. 2019. Vol. 70, No. 5, P. 2070–2091. doi: 10.1111/1468-4446.12651.
- [6] Chiang E. Language and online identities: The undercover policing of sexual crime Tim Grant and Nicci MacLeod. *International Journal of Speech Language and the Law*. 2020. Vol. 28, No. 1. P. 155–160. doi: 10.1558/ijssl.20645.
- [7] Грібов М.Л., Козаченко О.І. Шляхи вдосконалення правового регулювання негласного співробітництва. *Науковий вісник Національної академії внутрішніх справ*. 2020. № 2(115). С. 8–18. doi: 10.33270/01201152.8.
- [8] Atkinson C. Mind the grass! Exploring the assessment of informant coverage in policing and law enforcement. *Journal of Policing, Intelligence and Counter Terrorism*. 2019. No. 14. P. 1–19. doi: 10.1080/18335330.2019.1572913.

- [9] Henry P., Rajakaruna N., Crous C., Buckley J. Key attributes of an effective human source handler: Implications for handler selection and training. *The Police Journal: Theory, Practice and Principles*. 2020. Vol. 93, No. 4. P. 290–309. doi: 10.1177/0032258X19862589.
- [10] Eliciting human intelligence: Police source handlers' perceptions and experiences of rapport during covert human intelligence sources (CHIS) interactions / J. Nunan et al. *Psychiatry, Psychology and Law*. 2020. Vol. 27, No. 4, P. 511–537. doi: 10.1080/13218719.2020.1734978.
- [11] Source handler telephone interactions with covert human intelligence sources: An exploration of question types and intelligence yield / J. Nunan et al. *Applied Cognitive Psychology*. 2020. No. 34. P. 1473–1484. doi: 10.1002/acp.3726.
- [12] Source Handler perceptions of the interviewing processes employed with informants / J. Nunan et al. *Journal of Policing, Intelligence and Counter Terrorism*. 2020. Vol. 15, No. 3. P. 244–262. doi: 10.1080/18335330.2020.1820069.
- [13] The impact of rapport on intelligence yield: Police source handler telephone interactions with covert human intelligence sources / J. Nunan et al. *Psychiatry, Psychology, and Law*. 2020. doi: 10.1080/13218719.2020.1784807.
- [14] Atkinson C., McBride M., Moore A. Pitched! Informants and the covert policing of football fans in Scotland. *Policing and Society*. 2021. Vol. 31, No. 7. P. 863–877, doi: 10.1080/10439463.2020.1795168.
- [15] Stanier I., Nunan J. The impact of COVID-19 on UK informant use and management. *Policing and Society*. 2021, Vol. 31, No. 5. P. 512–529. doi: 10.1080/10439463.2021.1896515.
- [16] Onishchenko N.M., Lutskyi R.P. Law and person: Modernity and forecasting. *International Journal of Criminology and Sociology*. 2020. No. 9. P. 1596–1599. doi: 10.6000/1929-4409.2020.09.182.
- [17] Skrypniuk O.V., Onishchenko N.M., Parkhomenko N.M. Awareness in law as strategical direction of legal policy. *Journal of Advanced Research in Law and Economics*. 2019. Vol. 10, No. 5. P. 1534–1540.
- [18] Гришко О.М. Механізм забезпечення прав людини в Україні. *Правове регулювання економіки*. 2017. № 16. С. 33–43.
- [19] Степаненко К.В. Механізм забезпечення прав людини та громадянина в Європейському союзі. *Науковий вісник Дніпропетровського державного університету внутрішніх справ*. 2016. № 1. С. 83–89.
- [20] Кучинська О.П. *Принципи кримінального провадження в механізмі забезпечення прав його учасників*: монографія. Київ: Юрінком Інтер, 2013. 284 с.
- [21] Опольська Н. Механізм забезпечення прав та свобод людини у динамічному вимірі. *Підприємництво, господарство і право*. 2019. № 4. С. 191–195.
- [22] Грібов М.Л., Козаченко О.І. Співвідношення понять «конфіденційне співробітництво» та «негласне співробітництво». *Вісник кримінального судочинства*. 2019. № 1. С. 8–18.
- [23] Антонов К.В. Проблеми нормативно-правового регулювання використання конфіденційного співробітництва під час досудового розслідування. *Юридичний науковий електронний журнал*. 2020. № 3. С. 369–371. doi: 10.32782/2524-0374/2020-3/88.
- [24] Грібов М.Л., Черняк А.М. Протидія злочинності оперативними підрозділами правоохоронних органів: поняття та зміст. *Науковий вісник Національної академії внутрішніх справ*. 2018. № 4. С. 37–51.
- [25] Репецкая А.Л., Габеев С.В. Убийство по найму: криминологический анализ современного состояния в РФ. *Всероссийский криминологический журнал*. 2020. Т. 14, № 4. С. 541–552. doi: 10.17150/2500-4255.2020.14(4).541-552.
- [26] Model of operational search prediction of intentional homicide by criminal police / Y. Khyzhniak et al. *Amazonia Investiga*. 2021. Vol. 10, No. 40. P. 37–44. doi: 10.34069/AI/2021.40.04.4.
- [27] Prevention of taking and killing of hostages: International legal regulation / O. Sainchyn et al. *Inter EU Law East*. 2021. Vol. 8, No. 1. P. 154–170. doi: 10.22598/iele.2021.8.1.8.
- [28] Theron J. Networks of threats: Interconnection, interaction, intermediation. *Journal of Strategic Security*. 2021 Vol. 14, No. 3. P. 45–69. doi: 10.5038/1944-0472.14.3.1942.
- [29] Westbrook T., Schive T. Urban security and counterterrorism: An approach to proportionality. *Journal of Strategic Security*. 2021. Vol. 14, No. 3. P. 70–85. doi: 10.5038/1944-0472.14.3.192.
- [30] Fox S.J. Past attacks, future risks: Where are we 20-years after 9/11? *Journal of Strategic Security*. 2021. Vol. 14, No. 3. P. 112–157. doi: 10.5038/1944-0472.14.3.1964.
- [31] Таран О.В., Сандул О.Г. Проблеми кримінальної відповідальності за посягання на об'єкти критичної інфраструктури в ядерній енергетиці. *Ядерна та радіаційна безпека*. 2019. № 3(79). С. 66–70. doi: 10.32918/nrs.2019.3(83).07.
- [32] Criminal law counteraction to land pollution in the EU countries: Searching for the optimal model / R. Movchan et al. *Amazonia Investiga*. 2021. Vol. 10, No. 42. P. 15–23. doi: 10.34069/AI/2021.42.06.2.
- [33] Pohoretskyi M.A., Serhieieva D.B., Starenkyi O.S. Expert's findings in criminal proceedings on environmental crimes. *Scientific Bulletin of the Mining University*. 2019. No. 1. P. 155–163. doi: 10.29202/nvngu/2019-1/16.

- [34] Кучинська О., Нестеровський В., Старенький О., Циганюк Ю. Незаконне видобування бурштину та заходи боротьби з ним. *Вісник Київського національного університету імені Тараса Шевченка. Геологія*. 2020. № 3(90). С. 62–70. doi: 10.17721/1728-2713.90.09.
- [35] Гуророва Н. Фальсифікація лікарських засобів – як в Україні суворість кримінально-правової норми поєднується з фактичною безкарністю фальсифікаторів? *Аптека*. 2019. № 4. С. 8–10.
- [36] Пашков В., Гуророва Н. Імунопрофілактика в механізмі забезпечення та захисту права на здоров'я. *Право України*. 2020. № 3. 61–84. doi: 10.33498/louu-2020-03-061.

Негласне співробітництво в механізмі забезпечення прав людини

Михайло Леонідович Грібов

Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна

Анотація

Актуальність дослідження полягає в тому, що нині використання негласного співробітництва для захисту прав людини від протиправних посягань є неефективним, а іноді навіть таким, що завдає шкоди цим правам. Це зумовлено передусім безсистемністю правового регулювання. Систематизувати правове регулювання негласного співробітництва варто спираючись на ідеологічну основу, яка б забезпечила його спрямування на виконання державою головного обов'язку – забезпечення прав людини. Розроблення відповідної системи правового регулювання має ґрунтуватися на належному теоретичному фундаменті – розумінні ролі й місця негласного співробітництва в механізмі забезпечення прав людини. Створення такого фундаменту і є метою статті. У дослідженні використано загальний діалектичний метод наукового пізнання реальних явищ, їх зв'язків з практичною діяльністю правоохоронних органів, а також загальнонаукові та спеціальні методи юридичної науки. Негласне співробітництво підлягає правовому врегулюванню на всіх стадіях, включених до динамічного виміру механізму забезпечення прав людини, якими є охорона, захист і реалізація. На стадії охорони прав людини негласне співробітництво втілюється в заходах, спрямованих на профілактику кримінальних правопорушень, з'ясування недопущення або усунення причин, що їх зумовлюють. На стадії захисту прав людини негласне співробітництво використовують з метою відновлення порушених прав, забезпечення відшкодування шкоди, притягнення винних до відповідальності. На стадії реалізації прав людини негласне співробітництво використовують у межах здійснення прихованого контролю за належним виконання уповноваженими суб'єктами обов'язків щодо створення необхідних умов для перетворення задекларованих соціальних благ на стан їх можливого та дійсного використання конкретною особою.

Ключові слова:

негласні дії; захист прав; охорона прав; правовий механізм