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Relevant issues of international experience integration in legislative regulation of criminal intelligence into national legislation

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Abstract. Since the Criminal Procedure Code of Ukraine was introduced, researchers have repeatedly suggested the removal of the institution of operational search activities, arguing that all investigative (search) actions could be conducted within criminal proceedings or by adopting a new law. The study aimed to analyse the theoretical and legislative problems of adapting the European experience of regulating these institutions. To achieve the purpose of the study, the general scientific and special legal research methods were used: comparative legal, systemic and structural, and logical and legal analysis. The study established that the Law of Ukraine "On Operational Investigative Activity", adopted in 1992, as of 2025, does not meet regulatory, institutional and social realities, is constructively obscure and inconsistent with European law. The law is not consistent with the Criminal Procedure Code of Ukraine adopted in 2012. The study critically analysed the researchers' vision of the state and prospects of the development of criminal intelligence. Based on the analysis of international experience (the United States of America, the United Kingdom, the Federal Republic of Germany, the Czech Republic, the Slovak Republic, the Republic of Slovenia, and Hungary), the study identified the main approaches to possible further development of national criminal intelligence legislation. Positive and controversial aspects of each of them are identified. The study provided suggestions and recommendations regarding the Draft Law of Ukraine "On Criminal Intelligence". The results of the study can be used to develop and adopt new legislation in the field of criminal intelligence

Keywords: criminal intelligence activities; measures; draft law; offences; units; operational and investigative activities

Introduction

Building a state governed by the rule of law involves the protection of the rights, freedoms and interests of individuals, and the state's recognition of the social value of civil society institutions, which is directly reflected in structural reforms of law enforcement. One of the areas of change is the radical optimisation of criminal procedural and operational-search legislation, which is directly reflected in the practice

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of their application, in line with the Comprehensive Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defence Sector of Ukraine for 2023-2027[1].

With the adoption of the new Criminal Procedure Code of Ukraine[2] (CPC) in 2012, the criminal procedure has undergone significant, often conceptual changes. For procedural development and effective practical implementation of the CPC provisions, several departmental regulations were adopted to overcome the existing gaps in their enforcement. Thus, the legislator has limited the rights of the units engaged in operational and investigative activities (OIA) by defining Article 8 of the Law of Ukraine "On Operational and Investigative Activities"[3] as such, in which the norms are essentially referential to the norms enshrined in the relevant articles of Chapter 21 of the CPC of Ukraine[4], and the results of OIA are not covered by the court as evidence in criminal proceedings. At the same time, the OIA should function as a separate institution, and its relationship with the CPC and other laws should be regulated by law and comprehendible by all participants in the criminal process. However, it is worth noting that the existing gaps and inconsistencies in the legislation that appeared after the CPC of 2012 came into force resulted in shortcomings in the work of operational units of various law enforcement agencies, as the initiative to conduct operational and investigative activities within the framework of operational and investigative cases was lost, and efforts were mainly directed at fulfilling the investigator's instructions to conduct covert investigative (detective) actions in the framework of criminal proceedings.

Ukraine is possibly the first country to regulate the issue of operational and investigative activities at the level of a legislative act, however, as of 2025, there are inconsistencies between the legislation and social realities and regulatory inconsistencies. Most European countries follow the path of clear separation of criminal procedural activity and criminal intelligence activity. However, the current Law of Ukraine "On Operational and Investigative Activities"[5] does not meet such requirements. Therefore, for law enforcement agencies to be effective in combating criminal offences, there is a need to rethink the foundations of operational and investigative activities and to work on lawmaking in this area.

The topic of criminal intelligence in the activities of law enforcement agencies in Ukraine and internationally has been addressed by many scholars. J. Barlatier (2020) analysed the transformation of approaches to criminal investigations in the context of the growth of cybercrime, emphasising the transition from traditional methods to the use of criminal intelligence. The study identified four stages of the gradual loss of effectiveness of classical investigations due to the massive nature of cybercrime and proposes a holistic approach to criminal intelligence as more adapted to modern challenges. In the context of integrating international experience in the legislative regulation of criminal intelligence, the article emphasised the need to harmonise legal norms for effective data exchange between countries. This will facilitate a rapid response to transnational cyber threats and increase the effectiveness of law enforcement measures.

Subsequently, S.V. Albul (2024), in a thorough analysis of criminal intelligence in the activities of law enforcement agencies of foreign countries, in the activities of the police authorities of the Republic of Lithuania, addressed the intelligence function of the operational and investigative activities of the National Police of Ukraine. D.V. Viedienieiev & O.G. Semeniuk (2024a) conducted a study aimed at identifying the main socio-legal and operational factors that determine the place and functions of the institution (structures) of criminal intelligence of law enforcement agencies and special services in ensuring the national security of Ukraine, in combating organised crime and incorporating current threats to the national security of Ukraine in wartime. In subsequent studies, a scientific reconstruction and generalisation of the evolution of the organisational and functional structure of the criminal intelligence structures of the National Police of Ukraine as a promising means of combating organised crime and a form of operational and investigative activity was conducted (Viedienieiev & Semeniuk, 2024b). D. Usov (2024) investigated the current problems of adapting the international experience to the legislative regulation of criminal intelligence in Ukraine. The study analysed the key aspects of several practices, in the field of legal support and coordination of law enforcement agencies. In the context of the integration of international experience, the study emphasised the need to eliminate regulatory inconsistencies in national legislation. S.M. Kniaziev (2018) analysed the basics of

[1] Complex Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defence Sector of Ukraine for 2023-2027. (2023, May). Retrieved from https://zakon.rada.gov.ua/laws/show/273/2023#n9.
[2] Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17/ed20120413#Text.
[3] Law of Ukraine No. 2135-XII "On Operational and Investigative Activities". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[4] Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17/ed20120413#Text.
[5] Law of Ukraine No. 2135-XII "On Operational and Investigative Activities". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.

intelligence analytics and presented the forms and mechanisms of criminal intelligence elements used in the current conditions of the National Police.

Thus, the study aimed to examine the legal and organisational framework for the functioning of the criminal intelligence institute in law enforcement agencies of European countries and to regulate this issue at the legislative level in Ukraine. For this purpose, several research tasks were conducted:

1) critical analysis of scientific publications on the subject;

2) analysis of trends in the historical development of the institution of criminal intelligence and identification of regulatory inconsistencies related to its regulation;

3) justification of recommendations and proposals for their solution.

Materials and Methods

Certain international legal acts regulating authorised operational units of law enforcement agencies and establishing the procedure for conducting criminal intelligence activities were used. Based on the analysis of these materials, the study proposed to introduce the provisions into national legislation on criminal intelligence activities. To achieve the purpose of the study, both general scientific and special methods were used. Thus, with the help of the comparison method, the author identified the obsolescence and inconsistency of the Law of Ukraine "On Operational and Investigative Activities"[1] with the existing social and legal realities, and the inconsistency with the European practice of legislative consolidation of the criminal intelligence institute. The terminological method was used to study the terms used in international legal acts on criminal intelligence, the development and clarification of the content and scope of the concepts of criminal intelligence activities, the establishment of the relationship and subordination of concepts, their place in the conceptual framework of the theory on which the study is based. The historical and legal approach was used to determine the path of formation of criminal intelligence and the legal acts regulating it in the activities of law enforcement agencies.

The method of systematic analysis of legal acts identified inconsistencies between the provisions of the above-mentioned Law, after the adoption of the CPC of Ukraine[2], the Laws of Ukraine "On the National Police"[3], "On the National Anti-Corruption Bureau of Ukraine"[4], "On the State Bureau of Investigation"[5], "On Intelligence"[6], etc. The modelling method was used to create a model and form the doctrinal basis for the development of the draft Law of Ukraine "On Criminal Intelligence". The formal legal method determined the peculiarities of the legislative formation of criminal intelligence.

Results

The period of Ukraine's modern history has raised the issue of legal regulation of the activities of operational units in combating criminal offences, which was reflected in the adoption by the Verkhovna Rada of Ukraine on 18 February 1992 of Law of Ukraine No. 2135-XII[7]. The ongoing reform of law enforcement agencies in Ukraine and the adaptation of operational and investigative legislation to European Union standards have shown that criminal intelligence has been working effectively and continuously improving in foreign countries for many years in the fight against crime. Its main purpose is to obtain preventive operational information and assist law enforcement agencies in combating criminal offences (Blystiv, 2017). The analysis of the study shows that the term "intelligence" has been used in the activities of law enforcement agencies more actively.

In the early twentieth century, criminal intelligence was used by law enforcement agencies to combat crime. Notably, the term "Intelligence-led policing", which is popular in Europe and can be translated as "intelligence-oriented policing". This term appeared in the UK around 1990 when the Kent Police developed a new approach to combat the growth of property crime amid budget cuts. The idea was to focus on information gathering and criminal intelligence, targeting a small group of criminals responsible for most property crimes. The police responded only to emergency calls, referring others to the appropriate services. This approach improved the use of limited resources. This idea is an improvement on the concept of criminal intelligence, which emphasised proactive surveillance (Mallory, 2007).

Traditional reactive surveillance is based on a system of regular checks, rapid response to citizen

[1] Law of Ukraine No. 2135-XII "On Operational and Investigative Activities". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[2] Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17/ed20120413#Text.
[3] Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from https://zakon.rada.gov.ua/laws/show/580-19#Text.
[4] Law of Ukraine No. 1698-VII "On the National Anti-Corruption Bureau of Ukraine". (2014, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1698-18#Text.
[5] Law of Ukraine No. 794-VIII "On the State Bureau of Investigation". (2015, November). Retrieved from https://zakon.rada.gov.ua/laws/show/794-19#Text.
[6] Law of Ukraine No. 912-IX "On Intelligence". (2020, September). Retrieved from https://zakon.rada.gov.ua/laws/show/912-20#Text.
[7] Law of Ukraine No. 2135-XII "On Operational and Investigative Activities". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.

calls, and the use of police officers for criminal investigations. Intelligence-led policing is therefore based on the idea that the main function of the police is to prevent and detect crime, not to respond to crimes that have already been committed (Mallory, 2007). Until the mid-50s of the twentieth century, intelligence activities were used only to a limited extent. It was only in the 1960s that intelligence units began to appear in the law enforcement agencies of foreign countries. International experience shows that since the 1970s, law enforcement agencies have been actively forming and improving such an institution as "criminal intelligence", which in most leading countries is tasked with preventive activities and providing warning information about illegal (criminal) acts and acts as a source of information for law enforcement agencies. In the late twentieth century and early twenty-first century, criminal intelligence units were established in many countries: Austria, Belgium, Canada, Finland, Greece, Mexico, the Netherlands, Sweden, Turkey, the United States, the United Kingdom, Lithuania, etc. (Blystiv, 2017).

The term criminal intelligence has also been and is used in the activities of law enforcement agencies in Ukraine. Thus, until 2015, there was a criminal intelligence unit within the Main Directorate for Combating Organised Crime of the Ministry of Internal Affairs of Ukraine[1], and in the process of reforming the Ministry of Internal Affairs of Ukraine in 2015 and creating the National Police, a criminal intelligence unit was created within the structure of the criminal police of Ukraine, whose main efforts are designed for the timely detection and termination of the activities of organised groups or criminal organisations (Motsa, 2022). The organisation and tactics of these criminal intelligence units are not regulated at the legislative level, and their activities are regulated only by departmental orders and instructions, which are mostly restricted (Podobnyi, 2016). At the legislative level in Ukraine, criminal intelligence activity as a specific type of activity has not been regulated, and therefore there is no systematic approach and tool for law enforcement agencies to counter criminal offences in the new conditions, in particular, martial law and post-war.

Scholars have different interpretations and approaches to the understanding of criminal intelligence and criminal intelligence activities in law enforcement. The very concept of intelligence, intelligence measure, intelligence activity, and intelligence information is reflected in Law of Ukraine No. 912-IX[2]. D. Usov (2024), correlating the concepts of "competitive intelligence", "economic intelligence", and "intelligence activity" in the economic sphere in the political dimension, notes that intelligence activity is a system of overt and covert, technical, social and analytical measures carried out by the subjects of the intelligence community to obtain information of an economic nature. However, the concept of criminal intelligence is discussed only at the level of scientific debate (Lemieux, 2008; Blystiv, 2017). According to I.P. Katerynchuk (2016), criminal intelligence is "the activity of obtaining, obtaining, analytical processing of information on crime trends, individual crimes and persons involved in them, forecasting options for the development of events and identifying risks".

D.V. Viedienieiev & O.G. Semeniuk (2024a) believe that criminal intelligence is a component of operational-search activities, representing a type of activity carried out by operational units of Ukrainian law enforcement agencies involving the search for, acquisition, recording, evaluation, forecasting and use of information through a system of intelligence, search, information and analytical measures, including the use of operational and operational-technical means, aimed at the timely prevention, detection and neutralisation of real and potential criminal threats to public safety, and the protection of individuals, the state and society from crime. V.A. Boyko (2021) defined criminal intelligence as a type of intelligence activity and a form of covert investigation conducted by specially authorised entities that ensure the penetration of information sources into organised criminal groups, including with the use of operational and operational-technical means, to collect intelligence on their activities and infrastructure.

Thus, criminal intelligence is a system of overt and covert actions conducted by authorised units of law enforcement and intelligence agencies to prevent, detect, stop and solve criminal offences, ensuring national, state, military and public security and law and order by searching for and recording information.

A significant role in the implementation of criminal intelligence is played by its information support. For example, R.I. Blahuta & A.V. Movchan (2020) refer to criminal intelligence as analytical intelligence, as one of the main areas of information and analytical support of the OIA, based on the organic unity of all forms of information and analytical work, which is used primarily in cases where traditional means and methods of the OIA cannot be used, are dangerous or require significant efforts or costs for the implementation. S.M. Kniaziev (2018) refers to criminal intelligence as the fundamentals of intelligence analytics as planning and management, collection, collation, evaluation, analysis, dissemination of data and

[1] Law of Ukraine No. 3341-XI "On the Organisational and Legal Foundations of the Fight Against Organised Crime". (1993, June). Retrieved from https://zakon.rada.gov.ua/laws/show/3341-12#Text.
[2] Law of Ukraine No. 912-IX "On Intelligence". (2020, September). Retrieved from https://zakon.rada.gov.ua/laws/show/912-20#Text.

re-evaluation of data. The effective involvement of an intelligence analytics unit is extremely important for law enforcement agencies in the context of providing a deeper understanding of the criminal environment and identifying methods of countering criminal groups. The tasks of intelligence include not only the desire to "know everything", i.e. to obtain intelligence but also to analyse and study certain scenarios of the situation, propose possible solutions, develop geopolitical projects and actively participate in their implementation, etc. The use of intelligence analytics makes it possible to put forward reasonable hypotheses in the process of predicting potential criminal manifestations with the subsequent implementation of appropriate measures by law enforcement and other state agencies. The use of raw information and its transformation into operational data is a sequential process that includes the stages of planning, targeting, collection, collation, assessment, analysis, dissemination and reassessment.

O.V. Bohinskyi (2017) identified criminal intelligence as a model of organising police activities based on intelligence, which involves the use of a cyclic algorithm for processing intelligence information, and the content of criminal intelligence itself closely overlaps with the analyst's work algorithm, which the analyst adjusts, incorporating the specific circumstances. T.I. Blystiv (2017) scientifically substantiated that in most economically developed countries, the activities of criminal intelligence units are aimed at collecting and analysing operationally relevant information to prevent the commission of criminal offences.

For many years, Austria, Belgium, Sweden, the United States, the United Kingdom, France, China, and Lithuania have been effectively operating and constantly improving criminal intelligence in the law enforcement system. The most common strategies that outline the criminal intelligence process are the British National Intelligence Model (Association of Chief Police Officers, 2005) and the American one (United States Department of Justice, 2003). The American "National Criminal Intelligence Sharing Plan" is an organisation of police activity based on intelligence or a model of police activity. The report of the Working Group on Criminal Justice Research and Development, issued in the United States in 1976, defines the term as follows: criminal intelligence is the systematic collection, evaluation and synthesis of data on persons suspected or known to be criminal (Department of Justice *et al.*, 2009).

A functional European model of criminal intelligence is only possible if law enforcement agencies in Member States strengthen their efforts to fully implement the concept of "intelligence-led policing" (Šebek, 2015). This also implies an organisational rethinking, shifting the focus from investigative/reactive measures to a preventive/information-oriented approach. At the EU level, the European Criminal Intelligence Model should be based on a common legal framework for intelligence management with unique procedures for intelligence collection, assessment, storage, analysis and dissemination, as well as an education and training aspect. In some countries, this model has been implemented to a large extent, while in others it has been implemented poorly. Among the former is Italy, whose experience in the field of criminal intelligence was highlighted by S. Matiz (2022). The study highlighted the difficulties of criminal intelligence activities in the presence of criminal groups with a high level of organisation, in particular the mafia. At the same time, the study noted that despite all the difficulties, Europol's achievements in criminal intelligence have proved that the European law enforcement agency is on the right track to become an effective and fully operational institution in the fight against organised crime.

It is also necessary to study the experience of other Central and Eastern European countries in the field of criminal intelligence, where these principles have not been fully implemented. According to the joint study of P. Nyeste & Ľ. Fidler (2022), in Hungary in 2018, the Law of Hungary "On the Police"[1] was amended to reflect international experience in the field of criminal intelligence. The amendments to Art. 46 (§ 2) of the above-mentioned law provided for the adoption of preventive measures to prevent crime as one of the priorities. According to it, crime prevention is not only the task of criminal intelligence units but a set of measures that also includes the maintenance of civil order and traffic police patrolling activities. To achieve the above goals, it is stipulated that the need for intelligence and covert information gathering at the organisational level, the priorities of such activities, and the implementation of tasks are constantly monitored and adjusted as necessary. It also sets out the criteria for the use of covert information gathering for crime prevention. The final stage of the regulation concerns the use of the most restricted means of information gathering for crime prevention purposes, which require judicial authorisation.

In 2017, the Criminal Procedure Code of Hungary[2] was amended to include the methods and rules of covert information gathering, which mitigated the practical problem of law enforcement agencies arising from the distinction between the regulation of the collection of secret information within criminal proceedings and criminal proceedings. P. Nyeste & Ľ. Fidler (2022) highlights that according to the

[1] Law of Hungary No. XXXIV "On the Police". (2009, November). Retrieved from https://njt.hu/jogszabaly/1994-34-00-00.124#PR.
[2] Criminal Procedure Code of Hungary. (2018, January). Retrieved from https://njt.hu/jogszabaly/2017-100-00-00.

Hungarian Criminal Procedure Law, the possible purposes of collecting classified information are: crime prevention, undercover operations, protection of persons and objects, preparation and implementation of protection programmes, and the use of technical means with court authorisation. Other purposes include international cooperation, the protection of intelligence officers and organisations, and the recruitment and protection of informants.

Hungarian criminal procedure law provides for the possibility of covertly gathering secret information without a court order and without linking it to a specific crime in the following cases: use of an informant; collection and verification of information while concealing the real purpose of the process with the help of an undercover police officer or detective; covert surveillance of a person, apartment, other room, public place or vehicle, collection of information about events and recording of what was discovered by technical means; replacing a person by a police officer to protect their life and physical integrity; obtaining data to establish the fact of communication via an electronic device or information system, to identify the device or system or determine its location; requests for data from service providers with the permission of the prosecutor. Mandatory court authorisation is required for the following measures: secret search; secret surveillance of private premises; confidential access to cargo; wiretapping; and secret monitoring of information systems[1].

In Slovakia, according to the information provided by the authors, the key role in the legal regulation of criminal intelligence is played by section 39a of the Law of Slovakia "On the Police Force"[2]. At the same time, in Slovakia, criminal intelligence is used minimally and has a limited specification compared to the EU and Europol, where it is used to study organised and transnational crime. Thus, in Slovakia, criminal intelligence is exclusively a means of collecting, concentrating and evaluating information about crimes and their perpetrators. This situation, according to P. Nyeste & Ľ. Fidler (2022), this situation requires legislative changes.

The case of Slovenia is also noteworthy, as discussed in D. Potparič (2014). Among the peculiarities of the Slovenian law enforcement system, the author highlighted the existence of separate structural units operating in the field of criminal intelligence, namely 6 regional units and the National Centre for Criminal Intelligence. The author also highlighted numerous shortcomings of criminal intelligence in this country. The study identified the following obstacles to effective criminal intelligence in Slovenia: misunderstanding of information ownership rights, ineffective use of information obtained by police to maintain power or due to lack of trust in its protection, and subjective assessment of data. The study also demonstrated that the Slovenian police have not created favourable conditions for the successful implementation of new methods, including public support for the police; education and training in criminal intelligence; improved analytical capabilities; and the use of a project-based approach to the development and implementation of the new model.

A review of the legislation of European countries has shown that the legislation defines criminal intelligence measures, and the timing and urgency of their implementation, which help the authorised law enforcement and intelligence agencies to effectively counter criminal offences. For example, German laws provide that the Federal Criminal Police Office may obtain information employing technical means without a court or prosecutor's permission regarding: the number of a mobile device and the card number used in it; the location of the mobile device[3]. According to the North Rhine-Westphalia Police Act[4] (§ 16a (note 10) "Collection of data by surveillance"), the police may collect personal data employing planned or actual surveillance that lasts 24 hours or no more than two days without a court order. Longer-term surveillance (more than two days) requires an order from the local court in the area where the police authority is located. The order must be in writing and limited to a maximum of three months. The law provides for criminal intelligence activities in urgent cases[5]. With the permission of the Head of the Federal Criminal Police Directorate, it is possible to listen to telephone conversations or record words that are not spoken in public outside the home; covert surveillance, including the use of technical means designed for surveillance to investigate or locate a person; and entry into a home by a confidential informant or undercover police officer (covert/secret investigator).

[1] Criminal Procedure Code of Hungary. (2018, January). Retrieved from https://njt.hu/jogszabaly/2017-100-00-00.
[2] Law of Slovakia "On the Police Force". (1993, July). Retrieved from https://www.slov-lex.sk/ezbierky/pravne-predpisy/SK/ZZ/1993/171/.
[3] Law of the Federal Republic of Germany "On the Federal Criminal Police Office and Cooperation Between the Federal Government and the States in Criminal Police Matters". (2017, June). Retrieved from https://www.gesetze-im-internet.de/bkag_2018
[4] North Rhine-Westphalia Police Act. (2025, May). Retrieved from https://recht.nrw.de/lmi/owa/br_text_anzeigen?v_id=3120071121100036031.
[5] Law of the Federal Republic of Germany "On the Federal Criminal Police Office and Cooperation Between the Federal Government and the States in Criminal Police Matters". (2017, June). Retrieved from https://www.gesetze-im-internet.de/bkag_2018.

Law of the Czech Republic No. 273/2008[1] provides that in urgent cases, the police and special services may initiate criminal intelligence measures, namely: interception and recording of telecommunications (including wiretapping and monitoring of e-mail); surveillance of persons and property (covert physical and electronic surveillance); use of agents (infiltration of agents into criminal groups); securing evidence (including covert actions to gather evidence); monitoring financial transactions (monitoring bank accounts and transactions); access to premises (covert entry into premises to gather evidence or install surveillance devices) but they must notify the court or prosecutor within 48 hours. This Law specifies the time limits for criminal intelligence measures, in particular: a) interception of telecommunications: initial authorisation is granted by a court for a period of up to 3 months, with the possibility of extension for the same period upon new authorisation; b) surveillance: the duration is determined by the prosecutor or the court depending on the nature of the case (up to 3 months, with the possibility of extension); c) infiltration (use of an agent) – the duration depends on the complexity of the operation and is agreed with the prosecutor or court (usually up to 6 months); d) access to premises – conducted based on a court order valid for 2-4 weeks, depending on the circumstances; e) monitoring of financial transactions is usually permitted for up to 6 months, with the possibility of extension.

The Law of France No. 2015-912[2] defines criminal intelligence measures and the timeframe for their implementation, in particular: interception of communications (conducted within 4 months); physical surveillance (up to 1 month); online search (up to 1 month by court order or with the consent of the prosecutor); infiltration (agent maintenance) is conducted as part of the operation, the timeframe varies depending on the circumstances (usually up to 6 months); control of financial transactions usually up to 3 months. The Law of the United States of America No. HR4952[3] defines the list of criminal intelligence measures and the timeframe for their implementation, including electronic surveillance (interception of telephone conversations, e-mail and other communications) – 30 days; covert entry (to install surveillance devices or collect evidence) – 10-14 days; infiltration of agents (infiltration of agents into criminal organisations); surveillance (may be conducted without a court order in the case of open monitoring; in criminal investigations, surveillance orders are normally valid for 30-60 days.

However, Ukrainian legislation does not contain the concept of operational-search measures, does not define their list, and the time limits for conducting operational-search measures, as well as covert investigative (search) actions, are provided for in the Criminal Procedural Code of Ukraine (Article 249, up to two months)[4], and OIA materials cannot be used as evidence in criminal proceedings. Following the requirements of Article 10 of Law of Ukraine No. 2135-XII[5], materials obtained through pre-investigation proceedings are used as grounds and reasons for initiating pre-trial investigation; to obtain factual data that may be evidence in criminal proceedings; to prevent, detect, stop and investigate criminal offences; reconnaissance and sabotage against Ukraine, search for persons who have committed criminal offences and persons who have disappeared without trace; to ensure the safety of court employees, law enforcement agencies and persons involved in criminal proceedings, their family members and close relatives, as well as employees of Ukrainian intelligence agencies and their close relatives, persons who confidentially cooperate or have cooperated with the intelligence agencies of Ukraine, and members of their families; for mutual information exchange between departments authorised to conduct operational and investigative activities and other law enforcement agencies; for informing state bodies per competence.

Analysis of the activities of leading law enforcement agencies shows that the main priorities of the work of authorised criminal intelligence units are gradually shifting towards a preventive (anticipatory) response to illegal acts. This can be explained by the fact that in the course of carrying out criminal intelligence activities, the authorised criminal intelligence units identify the causes and conditions that contribute to the commission of a criminal offence and take measures to eliminate them, thus preventing persons from committing illegal acts. If a crime has already been committed, measures are taken to prevent it at the stage of preparation or attempted crime to prevent grave consequences. Accordingly, the CPC of Ukraine adopted in 2012

[1] Law of the Czech Republic No. 273/2008 "On the Police of the Czech Republic". (2008, June). Retrieved from https://www.zakonyprolidi.cz/cs/2008-273.
[2] Law of France No. 2015-912 "On Intelligence Activities". (2015, July). Retrieved from https://www.legifrance.gouv.fr/loda/id/JORFTEXT000030931899.
[3] Law of the United States of America No. HR4952 "Electronic Communications Privacy Act". (1986, October). Retrieved from https://www.congress.gov/bill/99th-congress/house-bill/4952.
[4] Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17/ed20120413#Text.
[5] Law of Ukraine No. 2135-XII "On Operational and Investigative Activities". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.

stipulates that the main duty of the units that conduct operational and investigative activities following the requirements of Article 7 of the Law of Ukraine No. 2135-XII "On Operational and Investigative Activities"[1] is "within their powers following the laws that constitute the legal basis for operational and investigative activities, to take the necessary operational and investigative measures to prevent, detect and stop criminal offences promptly and to expose the causes and conditions that facilitate the commission of criminal offences, to conduct preventative operations".

Based on international law and criminal intelligence experience, criminal intelligence activities can be defined as a system of overt and covert measures and means used by authorised employees of law enforcement and intelligence agencies to prevent, detect, stop and solve serious and particularly serious crimes to ensure national, state, military, public safety and law and order by searching for and recording evidence of criminal offences. The following was considered to be among the main tasks of criminal intelligence activities: prevention of criminal offences, their detection, suppression and investigation; obtaining information about events or actions (inaction) that pose a threat to national, state, military, military-technical, scientific-technical, public safety, the security of critical infrastructure and law and order; searching for persons who are hiding from pre-trial investigation bodies or courts, evading criminal punishment, as well as searching for missing persons, identifying unidentified persons and unidentified corpses; and providing criminal intelligence support for criminal proceedings.

Thus, the experience of European countries has demonstrated a division between criminal procedural activities and criminal intelligence activities, which justifies the adoption of a new Law of Ukraine "On Criminal Intelligence" which will regulate issues of operational-search measures and means, criminal intelligence proceedings, criminal analysis, the formalisation and use of the results of criminal intelligence activities, and cooperation with undercover agents, international cooperation, control and supervision of criminal intelligence activities, and which will replace the Law of Ukraine "On Operational-Search Activities" which has been amended more than 50 times since its adoption and does not comply with modern principles of law-making, its provisions are outdated and do not reflect all the changes that have taken place in legislation in the 21st century.

Discussion

In national legislation, criminal intelligence is most often associated with operational and investigative activities and analytical intelligence. To implement the best practices of leading foreign countries into national legislation and improve the relevant international cooperation between law enforcement agencies in combating criminal offences, scientific understanding and legislative regulation of criminal intelligence are required. For example, the European Criminal Intelligence Model (ECIM) is a standardised system for collecting, processing, analysing and using information, the main product of which is an assessment of organised crime threats used for intelligence management in law enforcement agencies. The Law on Criminal Intelligence adopted by the Seimas of the Republic of Lithuania on 2 October 2012 is worth a special mention. On 1 January 2013, this Law came into force, and the Law of the Republic of Lithuania "On Operational Investigative Activities" became invalid. This Law establishes the legal basis and principles of criminal intelligence activities, principles and objectives of criminal intelligence activities, rights and obligations of subjects of criminal intelligence activities, the procedure for conducting criminal intelligence activities, participation of persons in criminal intelligence activities, use of criminal intelligence information, as well as financing, coordination and control of criminal intelligence[2]. The issues of regulatory and legal regulation of criminal intelligence in their scientific works were raised by S.V. Albul & O.Y. Korystin (2015), who developed a concept for the development of criminal intelligence of internal affairs agencies, which defines the main directions and principles of improving management, organisational and staffing structures, legal, personnel, resource, scientific and other support for law enforcement activities of the bodies of the Ministry of Internal Affairs of Ukraine in this area based on the analysis and assessment of the security of the individual, the state and society in the field of combating crime. The study notes that the areas of implementation of this concept are organisational and tactical forms of criminal intelligence, operational search, operational search prevention and operational development. In addition, criminal intelligence of internal affairs agencies should be carried out during pre-trial investigation and execution of sentences.

O.V. Boginskyi (2017), analysing the introduction of the Institute of Criminal Intelligence in the activities of the National Police, stated that there is a pendulum trend in the strategic and tactical aspects

[1] Law of Ukraine No. 2135-XII "On Operational and Investigative Activities". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[2] Law of the Republic of Lithuania Law of the Republic of Lithuania No XI-2234 "On Criminal Intelligence". (2012, October). Retrieved from https://e-seimasx.lrs.lt/portal/legalAct/lt/TAD/e9d29ac0094d11ef8e4be9fad87afa59?jfwid=-j98sgp2pc.

of development. On the one hand, there is a shift towards democratisation, widespread introduction of modern methods of working with the population, more rational use of forces and means, and combating criminal offences; on the other hand, in some aspects, there are attempts to introduce counter-reforms aimed at returning to old methods of work, including the so-called stick indicator system.

Summarising the existing experience of progressive countries, the positive results in combating criminal offences, and the legislative approach to regulating such activities, it is possible to state that the issue of transitivity of operational and investigative activities and criminal intelligence is relevant for national science and practice and requires its legislative consolidation in Ukraine. The study proposed the structure of the draft Law of Ukraine "On Criminal Intelligence", which should define the main terms used therein to facilitate legal understanding and, as a result, further enforcement of the provisions contained therein, tasks, principles, legal basis, grounds for implementation, financial and logistical support of criminal intelligence activities and criminal intelligence secrets. The structure of the Draft Law of Ukraine "On Criminal Intelligence", presented in Table 1, seems appropriate.

Table 1. Proposed structure of the law on criminal intelligence

1	Units that conduct criminal intelligence activities and their powers, training of employees, use of undercover officers, legal and social protection of subjects of criminal intelligence activities
2	Types, subjects, terms and conditions of criminal investigative measures, measures in exceptional urgent cases and under special conditions
3	Peculiarities of consideration by the court of applications for permission to conduct criminal investigative measures
4	Means of criminal intelligence activities, assistance in their use. Information and analytical support, analytical work using analytical tools, and the conclusion of analytical work in cases specified by the Criminal Procedure Code of Ukraine may be recognised as evidence in criminal proceedings. Criminal intelligence proceedings, conditions for conducting criminal intelligence, search and operational proceedings
5	Criminal intelligence support in criminal proceedings. Observance of human rights during temporary restriction of constitutional rights in the course of criminal intelligence activities
6	Procedure for notifying persons of criminal intelligence activities carried out against them
7	The procedure for protecting constitutional rights in court. Acquaintance of the prosecutor, pre-trial investigation body, investigating judge, court with criminal intelligence materials and the procedure for transferring criminal intelligence materials to the pre-trial investigation body, prosecutor
8	Use of materials from criminal intelligence activities. General terms of tacit cooperation are defined
9	Recruitment for covert cooperation Access to information about covert agents
10	Legal and social protection of persons involved in covert cooperation. Principles of international cooperation, international legal assistance in criminal intelligence activities
11	Exchange of information obtained as a result of criminal intelligence activities and participation in international operations
12	Control and supervision of criminal intelligence activities, including state, departmental and non-departmental control
13	Subjects of prosecutorial supervision. The subject of prosecutorial supervision. Competence of prosecutors who supervise the observance of the law in the course of criminal intelligence activities. Information and analytical support of prosecutorial supervision

Source: compiled by the authors

The proposed draft law, in contrast to the current and previous drafts[1,2,3,4,5] differs in that it covers the positive international experience of criminal intelligence legislation, as well as the work of scholars and practitioners of Ukrainian law enforcement agencies on criminal intelligence.

Conclusions

The Law of Ukraine "On Operational-Investigative Activity", adopted in 1992, displays all signs of moral obsolescence and structural wear and tear, and is inconsistent with existing social and legal realities, as well as with the practice of European countries,

[1] Draft Law of Ukraine No. 9187 "On Criminal Intelligence". (2006, March). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=27067.
[2] Draft Law of Ukraine No. 2134 "On Operational and Investigative Activities". (2008, June). Retrieved from https://ips.ligazakon.net/document/JF1NA00B.
[3] Draft Law of Ukraine No. 4778 "On Operational and Investigative Activities". (2016, June). Retrieved from https://ips.ligazakon.net/document/JH3OQ00A.
[4] Draft Law of Ukraine No. 6284 "On Operational and Investigative Activities". (2017, April). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61497.
[5] Draft Law of Ukraine No. 1229 "On Operational and Investigative Activities". (2019, September). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66597.

most of which are moving towards a clear separation of criminal procedural activity and criminal intelligence activity. However, the current Law of Ukraine "On Operational-Investigative Activity" does not fully meet these requirements, and amendments to it are considered inappropriate. For example, the law does not contain explanations of terms and the use of ambiguous definitions, the duties assigned to operational units are inconsistent with the grounds for conducting operational-investigative activities, there is no legislative provision for the support of criminal proceedings, and operational staff are deprived of the opportunity to act independently and only conduct as per the instructions of the investigator. In practice, this has led to investigators, when opening criminal proceedings for a criminal offence, first having to give operational units a formal order to establish the circumstances of the crime and conduct "all necessary investigative (search) actions". The information received in response from operational units usually forms the basis for putting forward theories about the commission of the crime, planning investigative actions, establishing priorities for the investigation, and justifying requests to the prosecutor and investigating judge regarding the need to conduct investigative (search) actions, etc. The absence of specific legal measures authorised by operational units, the uncertainty of the procedure for legalising ORD materials in criminal proceedings, the imperfection of the legislative norms on which information and analytical support are based, and the imperfection of the institution of covert cooperation. The introduction of dozens of amendments and additions, as well as the development of several comprehensive draft laws on operational and investigative activities, is essentially a further development of the current law, rather than alignment with leading foreign countries.

Therefore, the time has come to adopt a new Law of Ukraine "On Criminal Intelligence", which will replace the Law of Ukraine "On Operational and Investigative Activity", and it is inappropriate to amend it.

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■ Conflict of Interest

None.

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Актуальні питання інтеграції міжнародного досвіду законодавчого регулювання кримінальної розвідки в національне законодавство

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■ **Анотація.** З моменту введення в дію Кримінального процесуального кодексу України дослідники неодноразово висловлювали ідею ліквідації інституту оперативно-розшукової діяльності, обґрунтовуючи це можливістю проводити всі слідчі (розшукові) дії в межах кримінального провадження чи прийняття нового закону. Метою роботи був аналіз теоретичних і законодавчих проблем адаптації європейського досвіду регулювання цих інститутів. Для досягнення мети дослідження використано загальнонаукові та спеціальні юридичні методи дослідження: порівняльно-правовий, системно-структурний та логіко-юридичний аналіз. Встановлено, що Закон України «Про оперативно-розшукову діяльність», який було прийнято 1992 року, станом на 2025 рік має всі ознаки невідповідності нормативним, інституційним і суспільним реаліям, конструктивної зношеності й невідповідності нормам європейського права. Закон не узгоджується з прийнятим 2012 року Кримінальним процесуальним кодексом України. У статті критично проаналізовано бачення дослідниками стану й перспектив розвитку кримінальної розвідки. На основі аналізу міжнародного досвіду (Сполучені Штати Америки, Велика Британія, Федеративна Республіка Німеччина, Чеська Республіка, Словацька Республіка, Республіка Словенія, Угорщина) було виокремлено основні підходи до можливих подальших шляхів розвитку національного законодавства про кримінальну розвідку. Визначено позитивні та дискусійні аспекти кожного з них. Надано пропозиції та рекомендації щодо проєкту Закону України «Про кримінальну розвідку». Результати дослідження стануть у нагоді під час розроблення та прийняття нового законодавства в галузі кримінальної розвідки

■ **Ключові слова:** кримінально-розвідувальна діяльність; заходи; законопроєкт; правопорушення; підрозділи; оперативно-розшукова діяльність