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Some peculiarities of implementation of departmental control over the intelligence activities

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Abstract

The article presents a special study of the features of the implementation of departmental control over intelligence activities (IA) via a set of complementary research methods such as the theoretical and comparative method. As a result, the principle of democratic centralism is the combination of centralized leadership with the development of the creative initiative of local authorities. In conclusion, principle of timeliness, principle of adequacy, principle of completeness, principle of differentiation of responsibility, principle of democratic centralism, principle of planning should be applied in IA for the purpose of reaching the most working way of this sphere.

Keywords: departmental control, intelligence activities, peculiarities.

Algunas particularidades de la implementación del control departamental sobre las actividades de inteligencia

Resumen

El artículo presenta un estudio especial de las características de la implementación del control departamental sobre las actividades de inteligencia (IA) a través de un conjunto de métodos de investigación complementarios, como el método teórico y el método comparativo. Como resultado, el principio del centralismo democrático es la combinación del liderazgo centralizado con el desarrollo de la iniciativa creativa de las autoridades locales. En conclusión, el principio de puntualidad, el principio de adecuación, el principio de integridad, el principio de diferenciación de responsabilidad, el principio de centralismo democrático, el principio de planificación deben aplicarse en IA con el fin de alcanzar el modo más práctico de esta esfera.

Palabras clave: control departamental, actividades de inteligencia, peculiaridades.

1. INTRODUCTION

The value of intelligence activities (IA) for the detection, disclosure, investigation and prevention of crimes, as well as for the purposes of civil proceedings is quite valuable. Its destiny is not only the fight against crime (Lapin, 2018). All over the world, attention has always been paid to the development of adequate responses to criminal manifestations, the search for effective means and methods for the prevention, suppression and detection of crimes, the search for suspects and accused persons. At all times and in all forms of state and

political organization, a specific place in criminal policy is occupied by a specific form of the fight against crime, the intelligence (detective) activity. Against the background of progressive transformations in almost all spheres of life, unfortunately, negative phenomena caused by a steady increase in crime are also evident. It significantly changes its criminal quality in the direction of increasing public danger, organization and corruption, armament, transnationality, the use of the latest achievements of science and technology, which quite realistically threatens the life, rights and freedoms of citizens, their property, impedes the normal development of many state institutions (Markushin, 2015).

Over the past years, interest in the problems of using in proving the results of intelligence activities in the theory part, legislator and practice of criminal procedure and intelligence activities not only did not weaken, but, on the contrary, only increased. The range of opinions in the theory, regulatory inconsistencies make it difficult to use the results of intelligence activities in the practice of evidence in criminal cases, and sometimes even exclude the possibility that affects the criminalized action and the criminal procedure in the most negative way. The need to expand the possibilities of using the results of the IA in proving criminal cases is an objective. It is largely due to the fact that ensuring the successful disclosure, investigation, consideration and resolution of criminal cases of grave and especially grave crimes only with criminal procedural means and methods in the present conditions is often simply impossible.

The effectiveness of the detection and investigation of crimes depends on the timely receipt of information about persons suspected of committing crimes; hiding accused; the victims; witnesses; about crime instruments, vehicles; property, valuables obtained by criminal means; about the traces of committing crimes; other objects and objects whose whereabouts are unknown. In essence, in such situations, law enforcement agencies are called upon to solve the above-mentioned tasks, using primarily traditional forensic methods and means. New types of crimes, a variety of objects and methods of criminal encroachment, and opposition to investigations at all stages of the criminal process created significant obstacles for law enforcement agencies on the way to protecting the rights and interests of society and the state. The situation is aggravated by a general decline in the effectiveness of law enforcement in the area of disclosure and investigation. Intelligence operations (IO) are one of the main elements of the IA, the core of this activity, although it does not exhaust all of its content (Firsov, 2016).

IA can be considered as a kind of analogue of investigative activity. This is confirmed by the similar nature of the events, for example: survey (IO) - interrogation (investigative action), inspection of premises, buildings, structures, terrain and vehicles - search and seizure, identification of the person - identification, research of objects and documents - expertise, etc. At the same time, it should be noted that IA differs from the investigative activity: it can be carried out behind the scenes, before a criminal case is initiated; during the events, compliance with the formalities required for investigative actions is not

required; IA, as its name implies, is operational in nature (Goryaninova, Ovchinskiy & Sinilova, 2014). The results of IO in many cases can be used as a ground for initiating a criminal case and conducting investigative actions. As practice shows, the most complex crimes (committed by organized criminal groups, related to corruption, etc.) cannot be solved by means of investigative actions only. IA tasks defined areas of activity in which it is carried out.

IA spheres of the implementation can be divided as follows:

Table 1. IA spheres of the implementation.

Fighting crime	The identification, prevention, suppression and detection of crimes, as well as the identification of persons preparing, committing or committed them; the search for persons hiding from the bodies of inquiry, investigation and court, evading criminal punishment; missing person search.
Securing Republic of Kazakhstan	Obtaining information about events or actions (inaction) that threaten the state, military, economic or environmental security of Kazakhstan.
Accident Detection	Search for missing people in situations not related to crime.

IA is based on the principles of legality; respect for and observance of the rights and freedoms of human and citizen;

conspiracy; combinations of open and secret methods and means. All actions of the bodies implementing the IA should be based on the law: only what is allowed is allowed (but not what is not prohibited is allowed). Given the fact that the IA is a kind of intelligence activity, conspiracy (stealth, disguise) in the implementation of the IA is one of the factors that make it possible to succeed (Bazhanov, 2016). For the purposes of conspiracy, the Law about the IA grants the bodies carrying out the IA the right to use documents that encrypt the identity of officials, departmental affiliation of enterprises, institutions, organizations, departments, premises and vehicles of the bodies carrying out IA, as well as the identity of citizens assisting them in confidential basis(Larionova et al,2018).

The combination of public and private methods and means. One of the differences between IA and other types of law enforcement activity is the possibility of its implementation tacitly (that is, secret from third parties). The choice of the methods and means by the body conducting the IA depends on the objectively existing situation and is determined independently by the indicated body (Bazhanov, 2016). In accordance with the Law On intelligence activities section number 24, heads of the bodies that carry out an intelligence activity ensure control over observance of legality, organization, tactics, methods and means, as well as measures to ensure conspiracy and confidentiality of this activity. Higher departmental bodies provide control over the intelligence activities of their subordinate bodies.

The Law of the Republic of Kazakhstan on the Internal Affairs Bodies (hereinafter the IAB) provides for their general structure, which is the basis of the departmental control over the IA. According to the Law about IAB section number 7, a unified system of internal affairs bodies is formed by the police, the penitentiary system, military investigative agencies, the National Guard of the Republic of Kazakhstan, and civil protection agencies. The police are formed by criminal police, administrative police, and units of investigation, inquiry and other units (Law of the Republic of Kazakhstan on the Internal Affairs Bodies of the Republic of Kazakhstan of April 23, 2014. Accordingly, the relationship between the various links of a single IAB system is of an administrative and legal nature. In administrative and legal relations, the party that is obligatory - the government body or its representative - has the authority of a legally authoritative nature. The decision made by this party is legally binding regardless of the consent or disagreement of the second party (Alekseev & Sinilov, 1972).

At the same time, the intelligence activity, organizationally included in the system of internal affairs bodies, if viewed from the standpoint of legal regulation, is in a certain unity with other elements of this system (criminal procedure, administrative activity, etc.). In other words, intelligence activity is a type of executive, administrative, management activity, that is, its industry, which is carried out mainly by an unofficial way (Alekseev & Sinilov, 1972; Shaimuhanov, 2003). Accordingly, to Galiev and Saporin point of view, control is a necessary and important stage in the implementation of the

management cycle of such complex activities as the IA. Control activities are aimed mainly at improving the management system, improving the efficiency of the IA. The main function of control is the diagnostic function, which consists in identifying and studying the true state of affairs in a controlled area, with the subsequent elimination of the deficiencies discovered (Galiev & Saporin, 1998). This function as the main point was indicated by more than 70% of the number of the surveyed heads of the operational apparatus of the internal affairs bodies. In general, control is protective, that is, its main task is to prevent any kind of deviations from the rules (Ospanov, 2003).

2. LITERATURE REVIEW

The problems associated with the emergence and development of intelligence law as an independent branch of domestic law have attracted and continue to attract the attention of many scholars, representing both the theory of intelligence activities and the criminal procedure doctrine. A considerable contribution to the substantiation of the specifics of the intelligence legal relations, conclusions on the emergence of intelligence law, as well as on the basic elements for the formation of the intelligence branch of law, such as goals, objectives, functions, principles, forces, means, methods of IA, periods of development intelligence theory introduced by scientists Azarov & Kuznetsov (2016)., and others.

However, until now, science has not developed a unity of views on the subject and method of legal regulation of the branch of operational search law, the types and criteria for distinguishing legal relations arising in the field of IA, as well as the specificity of goals, objectives, functions of IA and their importance for the formation of intelligence law. With all this, among the scientific works, specifically covering the formation of an independent branch of law, based on the norms of the current intelligence legislation, with the disclosure of the specifics of the subject and the method of its legal regulation, we can distinguish only a few studies, these are works by Shumilova (1994), Chuvileva (1999), and others. But even in these works, all aspects are not disclosed, for example, the specifics of the method of legal regulation of social relations in the field of IA, the types of legal relations arising from the implementation of OIA and the effect of legal norms that generate them on the development of operational search law as an independent industry. This predetermined the need for a more in-depth theoretical and legal study of the problems of forming an independent branch of intelligence law (Azarov. & Kuznetsov, 2016).

3. METHODOLOGY

Departmental control over the IA is quit important. This is primarily due to the fact that this type of activity is carried out predominantly by unofficial means, which limits the possibility of control over operational units by citizens and public organizations. For

the same reason, to a certain extent, control is difficult on the part of representative bodies and prosecutors (Dubonosov, 2002). In this regard, departmental control includes an assessment of the legality, validity and effectiveness of the IA and allows eliminating the adoption of an unlawful decision and restoring the violated rights and legitimate interests of individuals and legal entities, as well as taking an independent decision on the implementation of IA functions (Dubonosov, 2002). At the same time, departmental control is a form of control action that is carried out within the IA body, directly by its managers and officials in accordance with the norms of intelligence legislation and departmental regulations (Baskov, 1997). For example, the generally accepted practice of the activities of the operational apparatus of the internal affairs bodies is the daily summing up of the work of their employees, conducted by the head of department or deputy head of the department of internal affairs for operational work. This comprehensive organizational event combines measures to assess the legality of the ongoing intelligence operations (IO) and carries out management influence in accordance with existing orders.

The importance of this approach is confirmed by the results of a survey of employees of operational devices, who believe that a productively conducted morning leafjet and evening analysis constitute a good half of the successful detection of crimes. The relevance of this issue in connection with the introduction of legislative innovations, especially in certain categories of cases, such as those related to drug crime (Fetkulov et al., 2017). With this in mind, it should be agreed that the goals of departmental control are:

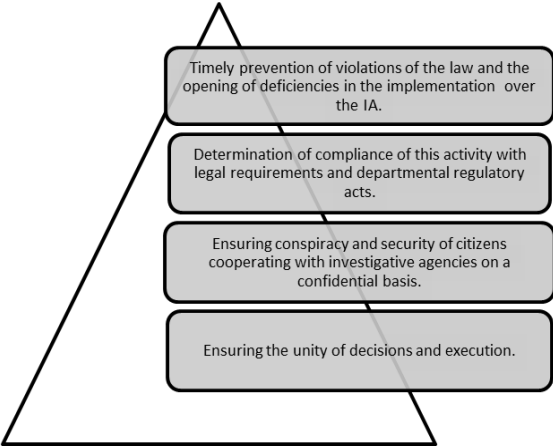


Figure 1. The goals of departmental control

The function of the IA is to obtain information about a crime that is relevant during the proceedings of a criminal case or the material that verifies a crime report. This function of the IA can be described as external to other elements of the legal system. At the same time, the IA has an internal function, which is the protection of operational-search information and its sources of origin. The functions of the emerging operative-search law include: regulation of the procedure for obtaining information about a crime that is relevant in the production of a criminal case or a material verifying a crime message; regulation of the protection of operational search information and its sources of origin (Azarov, & Kuznetsov, 2016). Dedicated goals and functions of the IA allow reviewing and optimizing the list of specific tasks of the IA. These include:

- 1) Detection of signs of a crime being prepared, committing or committed, and identification of the persons preparing them, committing or committed them;

- 2) Suppression of crimes being prepared or committed;

- 3) The discovery of persons intending to commit crimes and taking measures to them that stimulate the refusal to commit a crime, as well as establishing the causes and conditions conducive to the commission of crimes, and taking measures to eliminate them;

- 4) Assisting the bodies of inquiry and investigation in establishing the circumstances to be proven in a criminal case;

- 5) The implementation of the search for persons hiding from the bodies of inquiry, investigation and court, evading the execution of criminal punishment;

- 6) Ensuring the safety of persons subject to state protection and protection;

- 7) Taking measures to protect information about the secret forces, means and methods of the OSA.

Departmental control over the IA is carried out depending on the level of the controlled system according to the scheme:

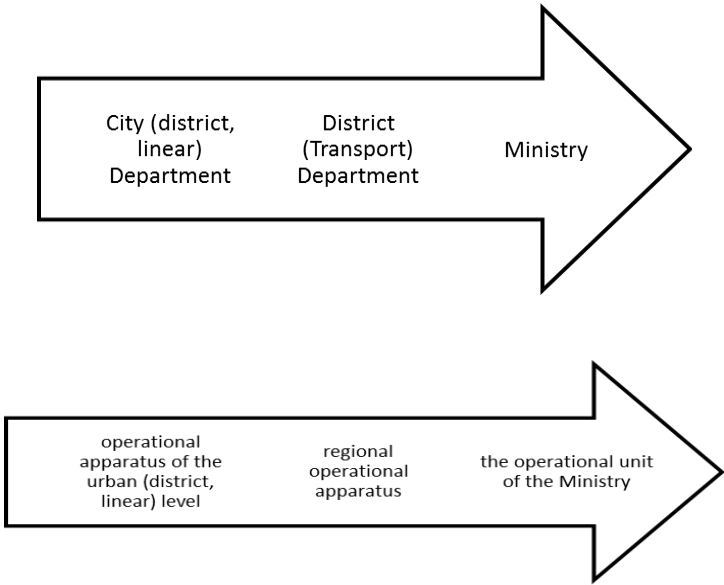


Figure 2. Scheme of the Departmental control over the IA by the levels

The experience of law enforcement in the most developed countries of the world also shows that the fight against crime, for example, in the United States, is a matter not only for federal authorities, but also for state authorities, as well as for individual cities (Vozgrin, 1993). Similarly, in Britain, the fight against crime is carried out both at the national level and at the regional level - in Northern Ireland, Wales and Scotland. In Germany, there is federal police and police of the federal lands, and the police of each land is headed by the Ministry of the Interior and subdivided into district police departments, which, in turn, consist of several directorates covering a territory of at

least 300 thousand people in urban areas and territory with a radius of 30 kilometers in the countryside. A similar organization of the fight against crime is used in such states as Spain, Denmark, Austria, Belgium, and others (Gubanov, 1999).

At the same time, each police chief of the appropriate level exercises control over lower level activities, which can be as centralized as in the UK and moderately centralized in the United States. Heads of operational units and separate (temporary) structures in the form of operational groups, etc. exercise day-to-day control in such areas as the organization of the activities of subordinate formations, the tactics of conducting various IA, the implementation of other legal actions that are adequate to the administrative and legal powers of employees of the bodies carrying out the IA. The subjects of departmental control over certain aspects of the IA are the services of the bodies carrying out the IA that perform headquarters functions if they have the appropriate access to the information of the intelligence character, constituting official or state secrets (Smirnov, 2002). Thus, the heads of the bodies carrying out intelligence activities are officials authorized to organize and monitor the implementation of this activity. Their powers are determined by relevant laws and departmental regulations (primarily the order of appointment and the competence established for the position) (Riwman, 2003). Chiefs exercise control in the following forms:

- They personally consider the intelligence information obtained through various channels and give specific instructions on it;

- Establish deadlines for the execution of works and check the timeliness and completeness of the implementation of the planned activities;
- Attract for carrying out and checking events the capabilities of the other services and divisions;
- Carry out analysis of those or other operational-tactical situations that took place in the work of the body, with a substantive analysis of the positive and negative aspects;
- Personally participate in the conduct of individual intelligence activities, directly watching the actions of subordinates, if necessary, correcting them.

At the level of the republic and regions, the leaders of the corresponding rank organize planned and unscheduled, comprehensive or targeted inspections of the intelligence activities of a specific body carrying out IA or operational unit (Galiev & Saparin, 1998). In the intelligence practice, there is also such an organizational form of departmental control as hearing the course of solving a particular crime. Directly in the case, the operational structure of IA may work or a separate investigative-operational group consisting of employees of several bodies, and of different levels - the Ministry of Internal Affairs, Department of Internal Affairs, which is controlled by the respective top chief, can be created. In this sense, the norms of the intelligence Law impose on the chief's personal responsibility for the observance

of the law in the organization and conduct of intelligence measures. Such responsibility should be viewed as a consequence of failure to perform or improper performance of the functions assigned to it and, moreover, as a specific legal duty (guaranteeing personally the solution of intelligence activity tasks to them, achieving a positive result, voluntary discharge of their duties) (Abdrakhmanov, 2005).

At the same time, chiefs are personally liable for observing the rule of law when organizing and conducting not only individual IA, but also the organization of IA as a whole. The personal responsibility of chief's means that they are not entitled to transfer their authority to exercise departmental control to subordinate officials who are not heads of bodies carrying out the IA (Smirnov, 2002). Depending on the time of implementation, departmental control can be divided into preliminary, current and subsequent. In the process of preliminary control, the chief ascertains the state of affairs in the operational unit, checks operational and service documents submitted for approval, the validity of the establishment of operational accounting files, the legality and expediency of decisions made by operational staff at the planning and preparation stage of IA, forecasting their results, etc. control is of particular importance in the prevention of various violations of the law (Dubonosov, 2002).

Ongoing control is a direct part of the management of operational units and employees. He is exercised by the chief in the process of executing the decisions taken and most often is ensured by their personal participation in the IA. At this stage, they study

operational-service documents drawn up during specific IA, the timeliness and validity of their execution, and control the legality, timing and completeness of the activities. In addition, it verifies the effectiveness of measures, ensuring conspiracy, the legitimacy of the use of technical means, as well as ensures the selection of the most effective tactical methods that ensure successful detection of a crime (Dubonosov, 2002). Follow-up control is most common in the activities of operational units and is carried out after the implementation of decisions taken. Most often, follow-up control includes checking the performance of the quality of IA, their effectiveness and evaluation of the production of operational testing. This verifies the reasonableness of the termination of cases of operational accounting or their extension, the expenditure of funds allocated to the IA, the reports of the executors are heard, the validity of the final decisions and the use of the materials obtained are determined, complaints and complaints of citizens about violation of the law are considered IA (Dubonosov, 2002).

4. RESULTS AND DISCUSSION

The main reasons for the functional specificity of the legal regulation of intelligence relations that are insufficiently reflected in the law is that it is fragmentary and not completely consistent, in the absence of a uniform methodological basis, an IO institute has been constructed, which is the main criterion for determining (expressing) the functional specificity of the emerging industry. At the same time,

an analysis of existing trends in lawmaking suggests that if fundamental changes do not occur in the legal regulation of the IO, then the search law will have serious difficulties in asserting itself to the rank of an independent industry. At the same time, it is possible to predict the artificial expansion of the scope of the use of IO, due to the lack of similar methods of obtaining information in other branches of law that are enshrined at the legislative level.

The solution of the problem is seen in improving the legal regulation of the institute of the IO, forming the optimal list, taking into account the modern needs and achievements of theory and practice, including foreign ones, the accentuation of legal schemes of using the results of the IO in the criminal process. It is also advisable to determine the normative forms and specificity of coercion used in the implementation of an IO, writing in detail in the intelligence law its types, grounds, conditions, rules of application, rights and obligations of the parties, parameters of control and supervision over the legality of its use by IA agencies. Administrative and disciplinary directives of the head of the body carrying out the IA may interfere in the sphere of personal human rights, and by executing individual instructions received in the service, the executor - a specific operational officer - may cause harm to the interests protected by criminal law. Therefore, the preparation and conduct of IA are carried out with the permission and under the control of the head of the body carrying out operational investigative activities, only if there are grounds for that. When establishing the facts of violation of human and citizen's rights, disregard of the rules of conspiracy, as well as other violations, the

head is obliged to take appropriate effective measures (within the framework of an official check) to restore them and compensate for the harm caused, as well as to bring the perpetrator to justice. In case of violation of the law, he is also obliged to inform the prosecutor about it (Abdrakhmanov, 2005).

Obviously, all this complex organizational activity should strictly be based on the principles regulated by section number 3 of the Law of the Republic of Kazakhstan about the IA, namely: legality, respect for rights and freedoms, respect for the dignity of the person, equality of citizens before the law, on the basis of conspiracy, professional ethics.

These principles, divided into general (first four) and special (remaining three), are studied in sufficient detail in scientific terms by domestic Galiev & Saparin (1998) and foreign Rushailo (2002) specialists. They can be attributed to the basic principles of departmental control of the IA. At the same time, the study of intelligence practice shows that these basic principles cannot cover all aspects of departmental control, especially in the case of the expansion of the operational load in connection with the introduction of secret investigative actions used in the investigation of various types of offenses (Tusupbekov & Shaimuhanov, 2018). In this regard, a number of additional principles are proposed, in accordance with which the organizational basis of departmental control over the IA should be built. First of all, this is the principle of timeliness. Control measures carried out by a higher body-subject of the IA should be carried out

taking into account the regular analysis of the state of work of lower ones. As soon as there are signs in the activities of the latter, indicating the presence of problematic issues, departmental control measures are immediately included to eliminate them. These can be oral and written instructions, soliciting cases for examination, holding hearings on the facts of committing crimes, etc.

At the same time, the study of materials on the activities of the operational apparatus of several regions of Kazakhstan shows that only 60% of cases monitor the status of subordinate units, on the basis of which a plan is developed to carry out audits or hearings. The next principle is adequacy, the essence of which lies in the fact that the managerial influence on the part of the higher authorities-subjects of the IA should depend on the real state of the intelligence work in this or that department, that is, the weak subordinate bodies are controlled more intensively. The analysis shows that such a differentiated approach is found only in 10% of the higher-level operational devices with respect to the lower ones. In the overwhelming majority of cases, there is no substantiated gradation of controlled subdivisions; when organizing departmental control, there is an identical approach to all. Very important is the principle of completeness of departmental control of the IA. This means that in the course of management activities, the entire arsenal of organizational measures (comprehensive inspections, practical assistance, control checks, etc.) should be used to eliminate the shortcomings and maintain the operational apparatus in proper condition.

The principle of differentiation of responsibility is an integral part of the departmental control over the IA. It consists in a clear distribution of the functional responsibilities of the employees of the supervising and controlling body, which makes it possible to develop objective criteria for evaluating their activities. The implementation of this principle of departmental control is fraught with the greatest difficulties, since the optimal distribution of functional responsibilities is one of the urgent organizational problems of the activities of operational devices that require independent scientific research. Thus, it can be concluded that the departmental control of the IA is inherent not only in the basic principles laid down in the Law about the IA, but also additional ones that can be regulated at the sub-legal, departmental level. Russian specialists also note other optional principles inherent in departmental control.

Thus, the principle of democratic centralism is the combination of centralized leadership with the development of the creative initiative of local authorities. Management of operational devices is carried out on the basis of this principle. All links of the operational apparatuses, both in territorial and functional terms, are in administrative and service subordination. Higher operational IA units provide guidance to the downstream. The creative initiative of lower-level operational apparatuses is embodied in the implementation of orders, instructions, plans of higher-level internal affairs agencies and their operational apparatuses, taking into account the operational situation on the ground, as well as in solving specific tasks (Dubonosov, 2002).

The principle of planning also finds expression in all areas of the IA. Scientifically based planning makes it possible to focus the attention of operational workers primarily on the solution of the main tasks of the fight against crime, to determine the ways of the most efficient use of available forces and means to achieve the desired results. Planning ensures uniformity in the distribution of the functional responsibilities of employees and creates a reliable basis for interaction and coordination of the actions of the operational apparatus among themselves, various government agencies and public organizations participating in measures to combat crime. Well-organized planning is an important element of the organization of the activities of operational devices provides a comprehensive use of forces and means, creates the conditions for the organizational work of the staff at all levels, as well as the timely and accurate implementation of orders and instructions from higher-level managers (Dubonosov, 2002).

5. CONCLUSION

In conclusion, it should be noted that proposed additional principles (principle of timeliness, principle of adequacy, principle of completeness, principle of differentiation of responsibility, principle of democratic centralism, principle of planning) should be applied in IA for the purpose of reaching the most working way of this sphere. It should be noted that organized planning is an important element of the organization of the activities of operational devices, ensures the

integrated use of forces and means, creates conditions for the organizational work of the staff at all levels, as well as the timely and accurate implementation of orders and instructions from higher-level managers. Thus, summarizing the issues of the essence and legal basis of departmental control over the IA, we can draw the following conclusions:

1. Departmental controls is a complex organizational structure of the most optimal management of the activities of the higher and lower operational apparatus.
2. One of the most important tasks of departmental control is the preliminary control over the legality of the conduct of the IO, carried out by the head of the operational apparatus and the body of the IA.
3. The principles of departmental control over the IA (both basic and additional) need independent scientific research.

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