

Operational Experiment and Related Legal Issues in Latvia: An Overview

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Abstract

Operational Activities Law of the Republic of Latvia states operational activities that are performed in order to prevent or detect criminal offences and to safeguard the independence of the State, its constitutional order and territorial integrity.

This research focuses on “Operational experiment” which is an operational activity defined in Section 15, paragraph three of the Operational Activities Law. It allows Latvian law enforcement authorities to create specific circumstances (situations) in order to determine criminal purposes of persons. Usually, this activity is used to investigate illicit narcotic drug trafficking, corruption cases and other crime investigations where “test-purchase” operations are required.

This article examines the part of the legal regulation for operational experiments that determines what situations are intended to be created when the measure is being implemented. Linguistic analysis and legal interpretation (translation) of the currently effective legal regulation for operational experiments in conjunction with the actual content of operational experiments that are put into practice showed that there are certain deficiencies in the legislation which occur in cases when it is necessary to create infringement situation which is not a crime.

Such situations are created when it is necessary to determine if officials facing an infringement, which is not a crime, in the course of fulfilling their official duties, will act in accordance with duties assigned to their post or will ask the infringer (performer of the operational experiment) for a bribe.

Keywords: operational activities, operational experiment, investigatory experiment, test purchase, undercover operations, entrapment, incitement, provocation, sustainable development.

1. Introduction

In the new technological era, when different encrypted communication solutions are freely available to the public, investigating measures and methods for obtaining information on criminal offences in the form of direct contact are becoming increasingly important in investigating criminal offences. *Europol*, the European Union’s law enforcement agency, has confirmed that the use of technology was an essential feature of organised crime in 2021. Representatives of the criminal environment create and use local, encrypted communication networks for mutual communication, while information on illegal goods offers is disseminated via social portals and instant messaging services, quickly reaching a wide audience of potential buyers (European Union Serious and organised crime threat assessment report – hereinafter referred to as SOCTA – 2021, p. 11, 33). It is a convenient and relatively safe environment for criminal purposes, which also provides a high level of anonymity, therefore part of crime becomes invisible to law enforcement authorities.

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The operational experiment studied in the article is one of the measures within which authorities obtain the necessary information in the form of direct contact. In the course of the measure, communication takes place between the person who is the legended (undercover) performer of the measure and the person who is preparing or committing the criminal offence, during which matters may be discussed which would otherwise be dealt with in an encrypted correspondence. The nature of performance of the measure opens up significant possibilities for obtaining the information necessary to detect criminal offences. During the final phase of the operational experiment, criminal conduct of the person against whom the measure is taken is recorded, but the material obtained during the event should be used as evidence in criminal proceedings.

The need to investigate the legal framework for operational experiments is taking on increasing importance if we look at the crime trends in Europe. It follows from the European Union SOCTA prepared by *Europol*, the European Union's law enforcement agency, that the dynamics of increase in organised crime in Europe is considerable – more than 5000 organised crime groups were investigated in Europe in 2017 (SOCTA 2017, p. 14), which, compared to the number provided in the report of 2013 – about 3600 organised crime groups (SOCTA 2013, p. 33) – was an increase of 39%. The report of 2021 does not mention the number of groups investigated in Europe, but states that out of all the criminal networks in Europe more than one third (38%) were involved in money laundering and nearly 60% were involved in corruption (SOCTA 2021, p. 28). Corruption is a direct threat to the rule of law, which is one of the values of democracy.

An operational experiment is a measure primarily used in the investigation of illicit drug trafficking and corruption cases. As mentioned above, its method makes it possible to obtain information on criminal offences which, in other cases, remain unseen by law enforcement authorities due to the availability to criminals of various encrypted communication solutions. Given the importance of an operational experiment in combating crime under today's conditions, there is a pressing need to study and improve its legal framework to ensure that, in response to the challenges posed by crime, measures are taken by law enforcement authorities in accordance with the principles of law and respect for fundamental human rights. The values of democracy are at the heart of the European Union's sustainability goals, but crime is what threatens these values.

The aim of the research is to identify shortcomings in the legal framework for the studied type of operational experiment that result from the wording of the situations that have to be created within the measure referred to in Section 15(3) of Operational Activities Law, and to make proposals to resolve them. Based on the general scientific research methods – modelling, analysis and deduction methods – modelling of the situations to be created in the operational experiment and study of their content has been conducted and the conclusions of the research have been drawn up. Using the special legal research methods – the grammatical (philological), systemic and teleological methods of interpretation (translation) of regulations of the law – regulations of Operational Activities Law have been interpreted and, in conjunction with the analysis of modelled situations, shortcomings in the regulation have been stated in relation what is going on in the measure actually performed.

1.1. Methodology

The aim of this research is to identify shortcomings in the legal regulation for the studied type of operational experiment that result from the wording in Section 15(3) of the Operational Activities Law and to make proposals to resolve them. The study focuses on the part of the legal regulation for operational experiments that defines the situations intended to be created when performing an operational experiment, i.e. situations eliciting a criminal act or situations eliciting other unlawful acts.

The study applies general scientific research methods – analysis, modelling, and deduction – and special legal research methods – grammatical (philological), systemic, and teleological interpretation (translation) of legal norms.

The linguistic study of the legal regulation for operational experiments was performed by means of analysis and grammatical (philological) interpretation (translation) of the legal norms. The wording of the legal regulation for operational experiments was divided into units of words and word combinations used within it, and their individual linguistic meanings were studied. The meaning of the legal regulation from the linguistic point of view was established by the grammatical (philological) method of interpretation (translation) of the legal norms through studying the semantic structure of the normative regulation (sentence) and taking into account the clarified meanings of the words and word compounds used in the legal regulation.

The Latvian Language Agency¹ (hereinafter – the Agency), one of whose legally defined objectives is to provide advice on Latvian language issues, was involved in the study of the linguistic significance of the legal regulation. (Cabinet Regulation No 938 of 18 December 2012 “Statute of the Latvian Language Agency”, Paragraph 4.7) We used the linguistic opinion prepared by the Agency on the linguistic meaning of the regulation of Section 15(3) of the Operational Activities Law both to draw conclusions and to substantiate them.

The problem of the legal regulation was identified using the method of modelling and systemic interpretation (translation) of legal norms. The process of performing an operational experiment was constructed, using the modelling method in conjunction with the conclusions drawn from the study of the linguistic meaning of the legal regulation. Its illustrated actions allowed to conclude that the legal regulation for operational experiments provides for creation of situations in the conduct of an operational experiment that give rise to offences other than criminal offences. In other words, to create situations to test whether the person against whom the measure is performed will commit an administrative, civil, or disciplinary offence under the influence of the situation created or refuse to do so. However, using the systemic method of interpretation (translation) of legal norms, it was established that Article 2 of the Operational Activities Law, which defines the objectives of operational activities, does not stipulate the investigation of legal offences other than criminal offences within the scope of operational activities.

¹ Cabinet Regulation No 938 of 18 December 2012 “Statute of the Latvian Language Agency”. The Latvian Language Agency is a direct administrative institution subordinate to the Minister of Education and Science (Paragraph 1). The aim of its activities is to promote the strengthening and sustainable development of the status of the Latvian language as the official language of the Republic of Latvia and the official language of the European Union, as well as to provide advice on Latvian language issues (Paragraphs 2, 4.7, and 4.8).

The opinions expressed by researchers of the law of operational activity in scientific literature on the studied aspect of the performance of an operational experiment were also considered within the scope of clarifying the problems of the legal regulation. It should be noted that the legal regulation for operational experiments so far has not been studied in depth in Latvia from the point of view of the situations arising when it is performed, and the range of scientific literature on the field of operational activities in general is narrow. The study examines all (current) available sources of literature.

The teleological method of interpretation (translation) of legal norms was used to establish the meaning of the legal regulation for operational experiments in terms of the aim of its adoption, i.e. its usefulness and the just aim pursued by it. This was done while simulating an example of the performance of an operational experiment where allegedly corrupt behaviour of an official (accepting or demanding a bribe) is investigated. It was established that the legislator (most probably) intended operational experiments to be used in corruption investigations where it is necessary to create situations of breach of law that is not a criminal offence in which one of the choices of action of the official against whom the measure is performed is to commit a criminal offence. However, it has also been established that the wording of the current legal regulation does not correspond to the way in which the measure is performed in the field, when the allegedly corrupt behaviour of public officials is investigated.

The method of deduction was applied throughout the entire work. Based on the findings of the analysis, conclusions were drawn and amendments to the regulatory framework were drafted at the end of the study.

2. Analysis of the legal regulation for the operational experiment: situations arising when the measure is performed

A general description of an operational experiment is provided in the introductory part of Section 15(1) of the Operational Activities Law: “An operational experiment is the action of officials of bodies performing operational activities the purpose of which is to create specific circumstances (situations) [...]” (Operational Activities Law). The description applies to all types of operational experiments defined in Section 15 of the Operational Activities Law, because the creation of specific circumstances (situations) is the essence of the measure. This follows not only from the description of the operational experiment and the wording of the purposes of the measures provided in the law, but also from the meaning of the concept of “experiment”, namely, an experiment is a “targeted, deliberate causing and repeating of the studied phenomenon under natural or artificially created controlled circumstances” (Latvian national terminology centre). An experiment is also explained as a method of cognition (*Ilustrētā svešvārdu vārdnīca* (Illustrated Dictionary of Foreign Words), p. 191), i. e. as a process where knowledge (for example, of a fact, etc.) comes from asking, studying (*Tēzaurus* (Thesaurus)).

The aforementioned definitions of the concept are consistent with the nature (essence) of the performance of an operational experiment that follows from its wording in the Operational Activities Law and that is observed in the field during the implementation of the measure. When an operational experiment is performed, naturally

occurring circumstances (situations) are created artificially or used in order to examine (*study*) issues related to the investigation (*phenomena to be studied*).

The purpose of and the situations created in the operational experiment studied in the article are defined in Section 15(3) of Operational Activities Law: An operational experiment the purpose of which is to record *how persons act in a situation eliciting a criminal or other illegal act*, shall be performed on the basis of the decision of the official of the body performing operational activities approved by the prosecutor". It follows from the quoted regulation that an operational experiment aims to create two types of situations – a situation eliciting a criminal act and a situation eliciting other illegal act. To discover the meaning of the regulation, it is necessary to study the meanings of the two parts of the wording: the meaning of the first phrase “eliciting act” and the meaning of the second phrase “other illegal”.

The Agency’s linguistic opinion states that the phrase ‘*in a situation leading to action*’ implies that something happens in a situation that leads to a [criminal or other illegal] act, i.e. it refers to a situation that is the cause of criminal or other illegal act (Latvian Language Agency statement “On providing a linguistic opinion” No 4.4/505 of July 21, 2022, p. 9) The phrase “eliciting act” includes the description of situations created in an operational experiment, namely, situations should elicit an act – a criminal or other illegal act.

As it follows from the general explanation of an operational experiment, which is included in Section 15(1) of Operational Activities Law, circumstances (situations) of a measure occur as a result of actions of an official of an institution. This means that situations eliciting a criminal or other illegal act are caused by officials and are directed against the person against whom the measure is performed. The conclusion is also confirmed by the Agency, i.e. its linguistic opinion states that the object (goal) of the situation created by an operational experiment is the situation eliciting a criminal or other illegal act by a person (the participant in the situation). (Latvian Language Agency statement “On providing a linguistic opinion” No 4.4/505 of July 21, 2022, p. 8)

It follows that, when an operational experiment is performed, a set of circumstances (situation) eliciting criminal or other illegal act is created in the perception of the person against whom the measure is performed, under the influence of which he/she has to decide whether to act illegally or to refuse to do so.

A simple example of creating a situation eliciting a criminal act: the performer of the measure meets the person against whom the measure is performed and, in a conversation, asks him/her to sell drugs to him/her. The request creates a situation eliciting an illegal act, and an action is expected from the person (“how persons [...] act”) – the act of selling drugs, for which criminal liability is provided in the Criminal Law, or refusal to satisfy such a request.

When examining the part of the wording of the regulation “[...] criminal or other illegal act [...]” the question arises, what the purpose of the legislator was when providing for creating a situation eliciting other illegal act in the regulation. The explanatory dictionary of legal terms explains “illegal act” as an act, which is contrary to the law. There are a total of four types of illegal acts – a criminal, civil, administrative and disciplinary breach of law (Juridiskī terminoloģiskā, skaidrojošā vārdnīca (Legal terminological, explanatory dictionary), p. 180).

It follows from the semantic structure of the sentence that the legal regulation provides for the creation of circumstance eliciting administrative, civil legal and disciplinary breaches of law within an operational experiment, to which the persons, against whom the measure is performed, should respond – to perform such breaches of law or to refuse to act in this way. The choice of the person to act illegally would form the content of one of the three mentioned breaches of law, however, it will not be an illegal act. This, in turn, leads to the conclusion that the current regulation provides for the use of an operational experiment not only to investigate criminal offences, but also to investigate other breaches of law – to investigate administrative, civil legal and disciplinary breaches of law. However, when we interpret a regulation using the method of systemic interpretation of legal regulations, it can be concluded that the tasks of an operational activity defined in Section 2 of the Operational Activities Law do not provide for investigation of breaches of law which are not criminal offences. Practical experience also leads to the conclusion that an operational experiment is not used for these purposes.

The opinions expressed in scientific literature by researchers of the operational activities laws about this aspect of performance of an operational experiment are considered when looking for answers. In the book “Comments to the Operational Activities Law” (Operatīvās darbības likuma komentāri), Professor A.Kavalieris wrote that within the meaning of Section 15(3) of the law a situation is considered a “situation eliciting a criminal or other illegal act” only when one of potential courses of person’s action presents constituent elements of a criminal offence defined in the Criminal Law or is prohibited by another regulatory enactment. A.Kavalieris mentions the following as examples of such situations: “for example, a bribe is offered to an official or a known drug dealer is asked to sell a drug” (Operatīvās darbības likuma komentāri (Comments to the Operational Activities Law), p. 37). The professor is evasive in the part relating to “prohibited by another regulatory enactments”, because no examples follow.

In the book, “Introduction to Criminal Investigation” (Ievads kriminālmeklēšanā), when commenting on Section 15 of the Operational Activities Law in general, A.Kavalieris notes that the purpose of an operational experiment provided in clause 3 of this Section is to ascertain how the person will act in a situation eliciting a criminal or other illegal act. However, in the part of the chapter of this book, where this type of operational experiment is commented more in detail, A.Kavalieris explains it as a measure creating a situation eliciting a criminal act. No situation eliciting other illegal act is commented or mentioned. A.Kavalieris explains that the purpose of the measure is to record how the person will act in a situation eliciting a criminal act, but to perform it “the criminal police should have previously obtained information about this person giving it sufficient basis for suspecting him/her in the preparation or commitment of a crime [...], respectively – there is a basis for estimating *that this person could act in a criminal way if he/she gets in the situation created in the course of the experiment*” (Ievads kriminālmeklēšanā (Introduction to the Criminal Investigation), p. 41). It follows from this explanation and the overall comment on the measure that the person’s estimated action always is a criminal act. No other type of action corresponding to the breach of law is estimated in actions of the person, against whom the measure is performed, at least these sources provides no comments in this regard.

Furthermore, in the book “Legal and Practical Problems of Operational Activity” (Operatīvās darbības tiesiskās un praktiskās problēmas) Associate Professor A.Lieljuksis

stated that “in the measure provided for in [Section 15](3) [of the Operational Activities Law] it is necessary to ascertain the action of the person in a situation eliciting a criminal or other illegal act – how the person against whom the measure is directed acts”. In continuation of his explanation of the regulation, A.Lieljuksis indicates that “an illegal act means a set of actions, which is the basis of the circumstances created by the bodies performing operational activities (author’s note: the designation used in this paper is officials of institutions) and is directed against the person [...], and also criminal liability is provided for such an action (*Operatīvās darbības tiesiskās un praktiskās problēmas* (Legal and Practical Problems of Operational Activity), p. 130).

It has been concluded in this article and also A.Lieljuksis indicates that a created situation eliciting a criminal or other illegal act is directed against the person against whom the measure is performed to ascertain how he/she will act in this situation. However, in continuation of the comment to the quoted regulation A.Lieljuksis states that the person’s action [apparently – estimated] is the one subject to criminal liability. It can be observed that the comment contains a contradiction, because in the comment one of *sets of actions* of bodies (institutions) performing operational activities is the one eliciting “other illegal” act, but the estimated response of the person is an illegal act. In other words, in the situation elicited by the institution the person would have to commit an administrative, civil legal or disciplinary breach of law (because the situation eliciting such a breach is created), but the performer of the measure “still” estimates that the person’s action will be the one subject to criminal liability.

Researching the scientific literature, it was found that researchers of the operational activity law do not provide comments (including examples) on the following part of the legal regulation for operational experiments “[...] in a situation eliciting other illegal act”. Moreover, there are contradictions in their views, which, in the author’s opinion, point to a shortcoming in the wording of the legal regulation.

3. The Model of Operational Experiment Performance in Corruption Investigations: the Problem of the Legal Regulation

When interpreting the regulation using the teleological method of interpretation of legal regulations, as well as guided by cases in practice, a conclusion can be made that the legislator has chosen such wording to make it possible to test within an operational experiment the action of officials in a situation of a breach of law, which is not a criminal offence, when one of choices of official’s action contains constituent elements of a criminal offence. For example, to make it possible to conduct an operational experiment against the police officials, about whom the institution has justified information that after detection of administrative breaches breachers request or accept bribes given to them, thus allowing breachers to avoid administrative liability. In the described situation one of courses of action of the police official, when stating an administrative breach, is requesting or accepting a bribe, which is subject to criminal liability under Section 320 of the Criminal Law (Criminal Law, 1998, Section 320). So, one of official’s course of action contains constituent elements of a criminal offence. In continuation of this article, the model of an operational experiment performed in this way – investigation of cases of corruption by

creating a situation of a breach of law, which is not a criminal offence, – will be studied in detail.

To test the potential action of an official, within an operational experiment it is necessary to create a situation of a completed breach of law, which is not a criminal offence, i. e. the performer of the operational experiment should commit one of the breaches of law provided for by the law, binding regulations of local governments or internal regulations of institutions, and it should be committed in such a way that the official, against whom the measure is performed, learns about it (this is done, when the official sees it or someone should report the breach). Under the influence of the breach the official would contact the performer of the measure, which would create the necessary situation to test further, potentially criminal action of the official. However, as it was previously concluded, the semantic structure of the wording of Section 15(3) of the Operational Activities Law is such that from the linguistic point of view a “situation eliciting other illegal act” should be created with regard to the person, against whom the measure is performed. In the case in the example, this would have to be done with regard to the official.

It follows from the modelled situation that in fact an operational experiment performed in this way manifests differently from the linguistic meaning of the regulation. In reality, the administrative breach is committed by the performer of the measure – a completed (committed) breach of law, which is not a criminal offence, which is identified by an official, creates the situation necessary for the operational experiment, in which it is possible to test (record) the official’s response and further, potentially criminal action.

In the context of the modelled situation, we should return to the wording of the situations to be created in an operational experiment, more precisely – to the linguistic function of the delimiting disjunctive conjunction “or”. Both situations to be created – a “[.] situation eliciting a criminal or other illegal act [..]” – are delimited by the “or” conjunction the clause of the section, which, in the Latvian language, fulfils the function of a disjunctive conjunction. Disjunctive conjunctions are those coordinating conjunctions, which connect equal parts of a sentence or coordinated parts of a sentence, indicating that only one of the named objects or phenomena is permitted or they exist alternately (Latviešu valodas gramatikas 2. izdevums (Latvian Language Grammar Edition 2, p. 659). It can be concluded that the manifestation of both situations within one measure simultaneously is not intended; this is prevented by the linguistic function of the conjunction.

The linguistic function of the conjunction is the reason, why the situation in the modelled example with a police official cannot be included in the scope of the regulation. Namely, the use of this conjunction assigns the meaning to the wording that only one of the objects or phenomena named in the sentence (within the meaning of the section being interpreted – the situation to be created) is permitted or they exist alternately. It follows from this that even if we assume that the situation to be created, the “situation eliciting other illegal act”, is intended to make it possible to test within an operational experiment a criminal offence of an official, a breach of law, which is not a criminal offence, in a situation – without taking into account the message of the phrase “situation eliciting an act”, which is an indication that the situation eliciting another breach of law would have to be created with regard to the person, against whom the measure is performed – from

the linguistic point of view the “or” conjunction excludes this scenario anyway. The function of the “or” conjunction prevents the fulfilment of the two situations to be created – situation of another breach of law, which is not a criminal offence, which leads to a situation eliciting a criminal act within one measure.

It follows from the study of the regulation that there is a shortcoming in the wording “situation eliciting other criminal act” in Section 15(3) of the Operational Activities Law. The wording of the regulation does not match the events within the measure in the cases, when a potential illegal act of officials should be tested at the time, when they resolve processing of the breach of law, which is not a criminal offence, which is in their competence. To draft correct amendments to the regulation being studied, taking into account the aspect of committing a breach of law, which is not a criminal offence, while performing an operational experiment, the content and the progress of the operational experiment described in the example should be studied deeper. The purpose of the measure and both sets of created circumstances should be viewed in conjunction with the meanings of the concepts of “circumstances” and “situation”.

The actual purpose of the model of the operational experiment described in the example is to state (record) whether an official will request or accept a bribe from a breacher promising to release him/her from liability for the commitment of a specific breach of law. Two phases can be seen in the course of an operational experiment performed in this way. The first phase includes the commitment of a breach of law, which is not a criminal offence, which is necessary to be able to get to the second phase – communication of the official with the performer of the measure, where criminal intentions of the official may be revealed. The activities performed in the first phase are necessary to create the necessary circumstances for the creation of the studied phenomenon (condition) and the achievement of the purpose of the measure. In the performance of the measure both phases are closely interrelated and subordinated to each other (schematic of the operational experiment – figure below).

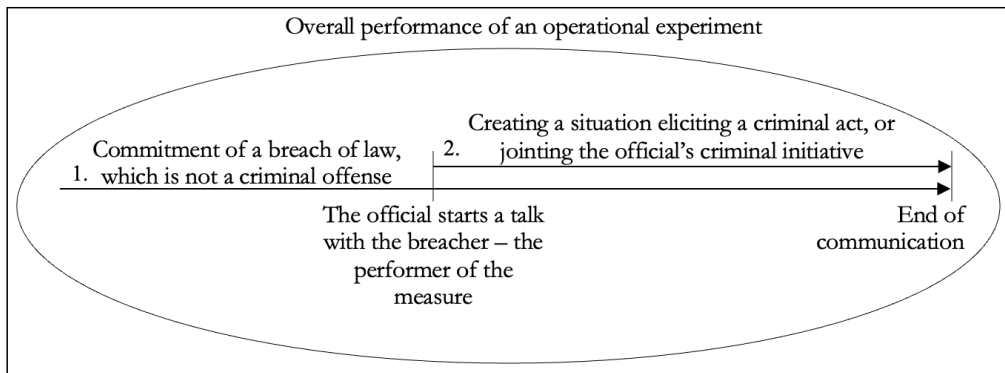


Figure 1. Schematic of the operational experiment

Oval figure: shows the overall performance of an operational experiment; sequence (phases); the flow of sets of created circumstances, planned (expected) events in them (and other circumstances not specified).

Curve No. 1: shows the breach of law, which is not a criminal offence, committed in the first phase of the measure, and shows its meaning and impact on the other phase of the measure (overlapping with it).

Curve No. 2: shows the second phase of the measure, where the action of the official after the beginning of communication with the breacher – the performer of the measure – is tested (recorded) providing for two possible courses of development of the situation, which reveals the criminal intentions of the official.

The figure shows that the breach of law, which is not a criminal offence, committed within the measure, is the basis for the entire progress of the measure. This creates the necessary set of circumstances for the talk with the official, where it is possible to test whether the official has criminal intentions. Only both phases together create preconditions for the achievement of the purpose of the measure. A criminal action of an official can be revealed in two scenarios: first, a bribe can be offered by the performer of the measure thus creating the situation that has to be created as defined in Section 15(3) of the Operational Activities Law – the situation eliciting a criminal act, second, the official himself/herself may request a bribe from the performer of the measure (criminal self-initiative of the official; criminal request). One of the scenarios include the creation of two situations within one measure.

It should be noted that the commitment of a breach of law, which is not a criminal offense, does not in itself urge (provoke) the official to commit a criminal act, because, for example, administrative breaches committed by people are a daily phenomenon in society, moreover, for example, it is an integral component of daily work of the police officers, whose daily service duties are related to ensuring public order. In other words, the events, which are part of job duties, cannot be interpreted as those putting officials in an unusual (provocative) situation, which forces them to decide to act in a lawful way or in an illegal way. On the contrary, their action in case of detection of indications of a breach of law is defined in the laws, internal regulations and their job descriptions, and they are known to the official. For example, the duty and the right of police officials to act after detecting of an administrative breach are defined in Sections 10 and 12 of the Law on Police (Law on Police, 1991), while action after detecting such a breach is defined in internal rules of the police. Proper courses of action of a police official after detecting an administrative breach are: to interrupt the breach, to explain the nature of the breach to the person, to indicate to the person which regulation has been violated, to explain the breacher his/her rights, to inform about the decision adopted, and to draw up respective documentation to call the breacher to administrative liability. It similarly applies to other breaches of law – civil legal and disciplinary breaches of law. Namely, action of officials can be predicted, because it arises from laws, regulations and job descriptions of officials. At the same time, it should be noted that there are various administrative, civil and disciplinary breaches of law, and it is therefore self-evident that all of them cannot be included within the frames of the outlined analysis, because they may differ considerably based on their manifestation, while in essence there are parallels in them.

4. Analysis of the Concepts Used in the General Description of an Operational Experiment: “Circumstances”, “Situation”

Section 15(1) of Operational Activities Law, which provides a general description of an operational experiment, provides that “*circumstances (situation)*” should be created within a measure. In order to state whether the drafted amendments with regard to the modelled case, addressing the problem of performing an operational experiment in corruption investigations, should use the word “circumstances” or “situation”, it is necessary to study the meanings of these words.

In the aforementioned regulation, these two words follow one another in a sentence and are separated by brackets. In Latvian grammar, brackets are a double highlighting punctuation mark, the function is which is to delimit some inserted additions or explanations from the rest of the text (Latviešu interpunkcija (Latvian punctuation), p. 387). It can be concluded that the word “situation” in this wording should be understood as a supplement to, explanation of the word “circumstances”. In other words, the word “circumstances” plays the key role in the message of the regulation, but the word “situation” supplements the meaning of the word “circumstances”, thus clarifying, supplementing the scope of action of the regulated operational experiment.

Meanings of the concepts “circumstances” and “situation” differ. The Agency’s linguistic opinion states that they are not absolute synonyms that are freely interchangeable in any context; their meanings are not identical. (Latvian Language Agency statement “On providing a linguistic opinion” No 4.4/505 of July 21, 2022, p. 11).

In an explanatory dictionary, the concept of “circumstance” is explained as a “phenomenon, which *exists alongside with another* or is related to it”, but its plural form “circumstances” is explained as a “set of phenomena, conditions that affect (how) the course, determine (how) the existence (etc.) (Tēzauris (Thesaurus)). Meanwhile, the concept of “situation” is explained as a “set of circumstances, which (usually) *directly influence*, affect something” (Tēzauris (Thesaurus)). The word “to influence” used in the explanation means “to attempt to achieve by own action, attitude, beliefs that (*someone*) *changes his/ her action, attitude, beliefs* (about a person), but the word “to affect” means to be the one that *transforms* (what) (Tēzauris (Thesaurus)).

It follows from the explanations of the meanings of the concepts of “circumstances” and “situation” that the content of both concepts in fact represents sets of circumstances. The plural form of the concept “circumstances” is an evidence in itself that several circumstances exist at the same time, and the phrase “set of circumstances” included in the explanation of the concept “situation” evidences that several circumstances should exist for actual compliance the meaning of the concept, which – as explained by the concept “set” – are “connected, united (as a) group” (Tēzauris (Thesaurus)). However, it can be seen that within the meaning of the concept “situation” this set of circumstances is inherent of a property differentiating it from the meaning of the concept “circumstances” – it (usually) has *direct influence*, they are directed against someone directly.

In the context of the research, influence can be directed against a person (affecting his/her *action, attitude, beliefs*), event, course of events and other phenomena, which can be stated in the investigation of criminal offences and in the performance of the measure. The meaning of the concept of “circumstances” is more neutral – the set of phenomena

influences the surrounding events (author's notes: as everything that interacts), but, as it follows from the explanation of the concept, this influence does not have a targeted effect.

In its linguistic opinion, the Agency stated that the situation consists of several elements, of which the circumstances are one. A situation is a set of circumstances which includes the specific circumstances and actors (including the person against whom the measure is performed), the attitudes between them, and other dimensions. The person against whom the measure is performed is one of the participants in the situation. The main difference between circumstances and a situation is that circumstances can exist by themselves, while a situation needs participants. For a situation to take place, the participant is mandatory. (Latvian Language Agency statement "On providing a linguistic opinion" No 4.4/505 of June 21, 2022, p. 13)

If we return to the modelled example of the operational experiment and evaluate the commitment of the breach of law committed in the first phase from the point of view of meanings of concepts "circumstances" and "situation", it can *prima facie* be concluded that what is happening in the first phase of the measure corresponds to the meaning of "situation". This is because the set of circumstances created in the operational experiment – administrative, civil or disciplinary breach of law – influences the official directly (affects him/her), because the breach elicits a response in the official. A response is unavoidable, because the official is obliged to respond to breaches – if he/she states a breach, he/she gets involved by acting in accordance with the procedure defined in the laws and internal regulations. It can also be established that in performing an operational experiment there are situational participants – the person performing the measure and the person against whom the measure is performed.

If we abstract the example, i. e. separating from the case the fact that the content of the breach is stated by an official, it can be concluded that a breach committed in the same way will not elicit the same response in other members of society as it elicits in officials. Individuals in society, when they see administrative violations (or civil and disciplinary violations) attempt to separate them from themselves and get passively involved or do not get involved in their interruption / resolution. This is explained both by human unwillingness to get involved, because such a communication has a conflicting nature, and by the fact that people often cannot notice such breaches of law at all (they do not have knowledge or technical means to notice, record them) or they do not have proper authorisations, for example, to request a person to present documents, the content (or no content) of which and the actual events may reveal the content (and similar reasons) of the breach. The official's response is mainly related to his/her job duties, therefore it can be claimed that the commitment of a breach of law has direct influence on the official.

Taking into account the stated properties of the created circumstances and that there are situation participants in the events taking place, it can be concluded that what is happening in the first phase of the operational experiment – commitment of another breach of law, which is not a criminal offence – corresponds to the meaning of the concept "situation". The amendments to the regulation, when formulating the aspect of the operational experiment fulfilled in this way, should use the concept "situation".

5. Conclusion and Implications

When drafting amendments to Section 15(3) of the Operational Activities Law, the structure of the subordinate clause “[.] how persons act in a situation eliciting a criminal or other illegal act”, more accurately, the use of the “or” conjunction, has fallen under the spotlight. As it was stated before, there is a shortcoming in the wording of the section following the “or” conjunction – the situation causing a breach of law, which is not a criminal offence, should be created with regard to the official, but in fact the breach of law is committed by the performer of the measure himself/herself. Preserving the wording of the situation to be created in the measure “a situation causing a criminal offence” and the use of the “or” conjunction, amendments to the regulation, based on the conclusions made above, would have to be expressed as follows: “[.] to record how persons [.] act in a situation eliciting a criminal act or in otherwise illegal situation [.]”. However, such wording creates another problem – as stated above, the linguistic function of the “or” conjunction prevents the fulfilment of both situations (the situation of a breach of law that is not a criminal offence and the situation of a criminal offence) to be created within one measure. If such a regulation exists, the wording of the regulation, in terms of linguistic meaning, prohibits creating a situation eliciting a criminal offence in the second stage of the measure. To rectify this shortcoming, a supplementary explanation is necessary after the part of the proposed wording “or in otherwise illegal situation”. For example: “[.] to record how persons [.] act in a situation eliciting a criminal act or in otherwise illegal situation *creating a situation eliciting a criminal act* [.]”. It can be seen that this complicates the structure of the sentence and makes it more difficult to perceive.

This urges to express the studied regulation in such a way that the subordinate clause of the regulation to be amended does not include the “or” conjunction, but the wording itself should be shaped in such a way for it to include the possibilities of creating both a criminal offence and another breach of law. In addition to that, the amendments to the regulation should be created in such a way that it does not contain the phrase “eliciting act”, because its use already creates the above-mentioned problem: it follows from the wording that a situation eliciting “another breach of law” should be created with regard to the official – the official should decide to commit “another breach of law” or refuse such an act. However, this is not the purpose of an operational experiment.

As it was determined previously, the meaning of the concept “illegal act” includes all four types of potential breaches of law, therefore, if we generalise the message of the regulation, the word “illegal” should be used in amendments to the regulation. The Agency also stated in its linguistic opinion that, taking into account the meaning of the words used in the text of Article 15(3) of the Operational Activities Law and the use of the conjunction “or” in the phrase “criminal or other illegal act”, the regulation refers to an act which is illegal in any case (i.e. a criminal act is also illegal). (Latvian Language Agency statement “On providing a linguistic opinion” No 4.4/505 of July 21, 2022, p. 5) In the regulation, there is no need to emphasise a criminal offence as one of the illegal acts, which should be created within the measure.

The fact that an operational experiment is not intended to be used to detect administrative, civil or disciplinary breaches of law can easily be stated, as stated previously in this article, by interpreting the regulation using the systemic method of interpretation

of legal regulations, as well as guided by the lessons learned from scientific literature. At the same time, it should be noted that, if the “eliciting act” part of the regulation is excluded, the regulation does not prevent from creating a situation eliciting a criminal act within the measure, because the meaning of “situation” includes such an act.

Taking into account the considerations and the conclusions provided in this article, Section 15(3) of the Operational Activities Law should be amended as follows: “*An operational experiment the purpose of which is to record how persons act in an illegal situation shall be performed on the basis of the decision of the official of the body performing operational activities approved by the prosecutor*”.

The proposed regulation does not prohibit the creation of several types of situations of offences within the same operational experiment, nor does it require that performing the measure creates a *situation that elicits the conduct* of the person against whom the measure is performed. The current regulation stipulates eliciting a criminal or otherwise illegal act, whereas the wording chosen in the amendments stipulates a test of the person’s alleged criminal conduct as such. The proposal solves the problem identified in the study.

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