

Peculiarities of circumstances to be established during investigation of criminal offenses related to interference with activities of representatives of public authorities

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The purpose of this study is to determine the peculiarities of the subject matter of proof in criminal offenses related to interference with activities of public authorities. For achieving this goal, the author uses general scientific methods (analysis, synthesis, abstraction, generalization), special and philosophical methods (dialectical, comparative legal, systemic and structural, and prognostic ones). Author analyzes issues of subject matter of proof in criminal offenses related to interference with activities of representatives of public authorities. Author determines composition of criminal offenses of the group under study, analyzes the approaches of scholars to interpretation of the list of circumstances to be clarified that makes possible to group them into three groups 1) circumstances revealing the mechanism of a criminal offense; 2) circumstances related to subjective characteristics of the person who committed offense; 3) other circumstances (amount of procedural costs; circumstances which are the basis for closing criminal proceedings; causes and conditions which contributed to the criminal offense commission, forms of counteraction to the investigation, etc.). The author outlines prospects for further researches within the issue scope under research.

Keywords: criminal proceedings; criminal offense; proof; proof topic; interrogation; public authority; circumstances to be established.

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Research Problem Formulation

Formation of an effective system of forensic support for investigation of criminal offenses related to activities of representatives of public authorities requires an in-depth analysis of scientific best practices, study of judicial and investigative practice in cases of this category. This approach is necessary for development of theoretical principles that will contribute to development of effective practical recommendations for the investigation of these offenses and the definition of optimal approaches to their application in criminal procedural activities.

Bringing person to criminal liability is based exclusively on evidence assessment, therefore scientists pay significant attention to the issues of proving in criminal proceedings. Evidence theory is a component of criminal procedure science that studies the process of forming, verifying and evaluating evidence during pre-trial investigation and trial of the case. As S. Stakhivskiy rightly notes, the goal of criminal procedural proof is to establish the objective truth, which is achieved by fully and reliably clarifying all facts and circumstances that are important for correct resolution of the case. The set of such facts and circumstances determines the topic of proof in criminal proceedings¹.

In forensics science, the concept of “circumstances to be established (explained)” is used to denote qualitative guidelines vectors of investigation that are decisive for ensuring the procedure of

proving. The place of these circumstances in the structure of methods for investigating individual criminal offenses, their content, essence and structure still do not have a unified interpretation. This is especially true of circumstances that need to be clarified during the investigation of criminal offenses related to interference in the activities of representatives of state authorities.

Agreeing with the opinion that circumstances to be clarified are a traditional component of certain forensic investigation methods, as they give the investigation purposefulness, determine the formulation of tactical tasks and contribute to its completeness and comprehensiveness in research on the course of the event that occurred², we believe that understanding these categories in the context of criminal offenses related to interference in activities of representatives of state authorities is a relevant task of modern scientific investigations.

Article Purpose

Determine the peculiarities of circumstances to be established during investigation of criminal offenses related to interfering with activities of representatives of public authorities.

Research Methods

General scientific (analysis, synthesis, abstraction, generalization), special and philosophical methods (dialectical, com-

1 Стахівський С. М. Теорія і практика кримінально-процесуального доказування : монографія. Київ, 2005. 272 с. URL: https://library.nlu.edu.ua/POLN_TEXT/UP/STAXIVSKIY_2005.pdf (date accessed: 13.02.2025).

2 Журавель В. А. Обставини, що підлягають з'ясуванню, у структурі криміналістичної методики. *Теорія та практика судової експертизи і криміналістики*. 2010. Вип. 10. С. 12—20. URL: http://www.irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&Image_file_name=PDF/Tpsek_2010_10_6.pdf (date accessed: 13.02.2025).

parative law, systemic-structural, prognostic ones) were comprehensively applied.

Analysis of Essential Researches and Publications

Forensic methods and certain aspects of the pre-trial investigation of criminal offenses are thoroughly covered in research papers by: H. Avdeeva, L. Arkusha, V. Bakhin, R. Blahuta, V. Vapnyarchuk, A. Volobuyev, I. Hloviuk, V. Husieva, M. Danshina, V. Drozd, O. Dufeniuk, V. Zhuravlya, O. Kaplina, N. Klymenko, A. Kovalenko, V. Kovalenko, I. Kohutych, O. Kolesnichenko, V. Kolmakov, V. Konovalova, V. Kuzmichov, V. Lukashevych,

Ye. Lukyanchikova, B. Lukyanchikova, O. Motlyakha, V. Nora, O. Oderia, I. Pyroha, O. Pchelina, V. Pchelina, O. Sainchina, E. Simakova-Yefremian, R. Stepanyuk, V. Stratonov, H. Teteryatnyk, V. Tishchenko, T. Fomina, A. Khytry, D. Tsekhan, K. Chaplynskyi, S. Cherniavskyi, Yu. Chornous, V. Shepitko, V. Shevchuk, M. Shcherbakovskiy, B. Shchura, V. Yusupov, et al.

The circumstances to be clarified during investigation are the subject of researches by: A. Antoshchak³, V. Zhuravel⁴, S. Knizhenko⁵, V. Kolesnikov⁶, O. Pchelina⁷ and V. Pchelin⁸, Z. Toporetska⁹, O. Fedosova¹⁰, et al.

Ukrainian scholars pay attention to development of certain aspects of foren-

- 3 Антощак А. Р. Обставини, що підлягають встановленню під час розслідування привласнення, розтрата або заволодіння майном, шляхом зловживання службовою особою своїм службовим становищем. *Науковий вісник Ужгородського національного університету. Серія: Право*. 2016. Т. 2. Вип. 38. С. 95—98. URI: <https://dspace.uzhnu.edu.ua/jspui/handle/lib/12317> (date accessed: 13.02.2025).
- 4 Журавель В. А. Зазнач. твір. URL: http://www.irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&Image_file_name=PDF/Tpsek_2010_10_6.pdf (date accessed: 13.02.2025).
- 5 Книженко С. О. Криміналістична характеристика злочинів, що вчиняються шляхом незаконного втручання в діяльність судових органів або протиправного впливу на учасників судочинства. *Право і суспільство*. 2016. № 2. С. 196—200. URL: http://pravoisus-pilstvo.org.ua/archive/2016/2_2016/part_1/36.pdf (date accessed: 13.02.2025).
- 6 Колесніков В. В. Обставини, які підлягають доказуванню в кримінальному провадженні при розслідуванні злочинів, пов'язаних із пожежами. *Теорія та практика судової експертизи і криміналістики*. 2016. Вип. 16. С. 84—90. DOI: 10.32353/khrife.2016.10 (date accessed: 13.02.2025).
- 7 Пчеліна О. В. Обставини, що підлягають з'ясуванню під час розслідування кримінальних правопорушень, і їхнє місце у структурі окремої криміналістичної методики. *Прикарпатський юридичний вісник*. 2020. Вип. 2 (31). С. 187—190. DOI: 10.32837/pyuv.v0i2(31).590 (date accessed: 13.02.2025).
- 8 Пчеліна О. В., Пчелін В. Б. Обставини, що підлягають з'ясуванню під час розслідування колабораційної діяльності. *Вісник Кримінологічної асоціації України*. 2024. № 3 (33). С. 370—381. DOI: 10.32631/vca.2024.3.34 (date accessed: 13.02.2025).
- 9 Топорецька З. М. Особливості початку кримінального провадження та обставини, які підлягають встановленню при розслідуванні службової недбалості. *Вісник кримінального судочинства*. 2018. № 1. С. 115—122. URL: <https://vkslaw.com.ua/index.php/journal/article/view/249> (date accessed: 13.02.2025).
- 10 Федосова О. В. Обставини, які підлягають встановленню у ході розслідування корисливо-насиленницьких злочинів, що вчиняються неповнолітніми. *Науковий вісник Дніпропетровського державного університету внутрішніх справ*. 2014. № 1. С. 305—313. URL: http://nbuv.gov.ua/UJRN/Nvdduvs_2014_1_42 (date accessed: 13.02.2025).

sic support for investigation of criminal offenses related to interference with activities of representatives of public authorities, in particular, circumstances to be clarified. For example, V. Husieva analyzed in detail the circumstances to be established during the investigation of interference with the activities of a law enforcement officer, noting that they are a separate independent structural element of the forensic methods for investigating criminal offenses¹¹. Related issues, in particular, circumstances to be established during the investigation of interference with the activities of a defense counsel or a representative of a person, are studied by D. Rusanivska¹², and forensic expert activities by A. Posashkov¹³. At the same time, no systematic research on circumstances to be established during investigation of interference with the activities of representatives of public authorities has been conducted that indicates the urgency of addressing this issue.

Main Content Presentation

The correlation between the categories *proof topic* and *circumstances to be clarified* in scientific literature is still a matter of debate. Thus, O. Pchelina notes that the subject of proof covers all the circumstances to be clarified and determines

the tasks of the investigation. At the same time, forensic characterization outlines the circumstances that could actually exist and the possible options for committing crime¹⁴. In our opinion, it is the mechanism of committing a criminal offense that reflects the events that took place and are related to the preparation, commission or concealment of a criminal offense. With regard to topic proof and the fact that it determines the tasks of the investigation, we should indeed agree with the scientist, since there is a certain correlation between these categories, since clarification of the subject matter of proof is the prosecution duty (except in certain circumstances), as the legislator has stated in the relevant legal provisions and therefore each of its substantive components should correspond to certain tactical task.

Circumstances to be established play important role in the construction of forensic recommendations for the investigation of certain types of criminal offenses. This is due to their functions that consist in defining and formulating a set of pre-trial investigation tasks and determining the means of their implementation. Pre-trial investigation tasks are classified according to various criteria. According to the scope of the issues to be solved, they are divided into basic (general, core) and local (intermediate) ones and according to the

- 11 Гусева В. О. Обставини, що підлягають з'ясуванню під час розслідування втручання в діяльність працівника правоохоронного органу. *Право і безпека*. 2021. № 2 (81). С. 97–103. DOI: 10.32631/pb.2021.2.12 (date accessed: 13.02.2025).
- 12 Русанівська Д. Д. Розслідування втручання в діяльність захисника чи представника особи : дис. ... д-ра філос. Київ, 2023. 260 с. URL: <https://elar.navs.edu.ua/server/api/core/bitstreams/87c654d4-47e0-4e7b-ae7c-8ecfdc784aaf/content> (date accessed: 13.02.2025).
- 13 Посашков О. О. Методика розслідування втручань в діяльність судового експерта : дис. ... канд. юрид. наук. Харків, 2020. 200 с. URL: <https://uacademic.info/ua/document/0420U101202> (date accessed: 13.02.2025).
- 14 Пчеліна О. В. Особливості предмета доказування у кримінальних справах про економічні злочини та їх вплив на методику розслідування : автореф. дис. ... канд. юрид. наук. Харків, 2010. 19 с. URL: <http://dspace.univd.edu.ua/xmlui/handle/123456789/2689> (date accessed: 13.02.2025).

scope of implementation, they are divided into strategic and tactical ones. Basic tasks are of a strategic nature, since they are the result of circumstances to be proven are aimed at achieving the goal of the investigation, are more stable and less dependent on situational factors. In contrast, local tasks are of a tactical nature and are clearly defined by situational conditions¹⁵. Guided by such principles, V. Zhuravel suggests making the basis of such circumstances of proof topic of, criminal-legal and forensic characteristics of a certain type of criminal offense¹⁶. We agree with V. Husieva, who notes that correct definition of the content of circumstances ensures planning and purposefulness of actions of the pre-trial investigation bodies, the prosecutor's office and the court, and also contributes to advancement of investigative versions and the development of tactical operations¹⁷. In addition, as V. Tishchenko notes, the circumstances to be clarified determine the final tasks of the investigation, influence the direction of investigative versions, the formulation of intermediate tasks at different stages of the investigation, and are taken into account in various investigative situations¹⁸.

Thus, the circumstances to be investigated play important role in forensic investigation methods, as they determine the program of actions of authorized enti-

ties aimed at collecting reliable, sufficient, admissible and appropriate evidence. As E. Lukyanchikov notes, the prosecution accumulates information and selects it from the standpoint of relevance, admissibility and significance for the case¹⁹.

Another debatable issue that arises while determining the circumstances to be clarified during the evidence is their place in the structure of forensic investigation methods. O. Pchelina suggests integrating these circumstances into the structure of the methods without isolating them in a specific section or subsection. She believes that it is advisable to consider them in connection with typical forensic situations, tactical tasks, versions and planning. This approach involves clarifying circumstances at the stages of collecting and verifying information about the crime, as well as at initial and subsequent stages of the pre-trial investigation. This position is logical, since it is consistent with the concept of a local topic of evidence and takes into account peculiarities of criminal proceedings in certain categories of crimes.

As for systematization of circumstances that are subject to clarification, for example, V. Tishchenko, while developing a methods for investigating mercenary and violent crimes, proposed to distinguish the following groups of circumstances:

- 15 Журавель В. А. Знач. твір. URL: http://www.irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&image_file_name=PDF/Tpsek_2010_10_6.pdf (date accessed: 13.02.2025).
- 16 Там само.
- 17 Гусева В. О. Методика розслідування злочинів проти авторитету органів державної влади у сфері правоохоронної діяльності : монографія. Харків, 2020. 452 с. URL: <https://files.znu.edu.ua/files/Bibliobooks/Inshi71/0052079.pdf> (date accessed: 13.02.2025).
- 18 Тищенко В. В. Корыстно-насильственные преступления: криминалистический анализ : монография. Одесса, 2002. 360 с. URL: <https://coolib.cc/b/425251-valeriy-vladimirovich-tishchenko-koryistno-nasilstvennyie-prestupleniya-kriminalisticheskiy-analiz/read> (date accessed: 13.02.2025).
- 19 Лук'янчиков Є. Д. Методологічні засади інформаційного забезпечення розслідування злочинів : монографія. Київ, 2005. 360 с.

- 1) circumstances related to the crime event, in particular the fact of existence of a criminal event, method of its commission, tools and means, time, place and other conditions for the crime commission;
- 2) circumstances relating to the crime object, namely the criminal offense topic, victim identity and civil plaintiff;
- 3) circumstances related to the persons who committed the crime, in particular personal data, information of criminal law significance, as well as information about the group of persons who committed the crime or engaged in mercenary and violent activities;
- 4) circumstances confirming the guilt of accused, criminal intent and mercenary motive;
- 5) circumstances characterizing consequences of the crime (degree of implementation of criminal intent; the fact of the seizure of property; nature and severity of the bodily injuries inflicted on the victim, or the fact of his death; amount of damage caused, as well as the share of stolen property at the time of the crime being solved)²⁰.

Thus, the author based the model on the circumstances that are primarily related to the composition of the criminal offense, as well as those that are the topic of proof. We share this approach. Thereby while analyzing the studied group of crim-

inal offenses, we will be guided by this approach, focusing on each corpus delicti.

There are other approaches to grouping the studied circumstances. For example, O. Oderii distinguishes three main groups of circumstances:

- 1) directly related to the crime event;
- 2) characterizing offender identity;
- 3) additional ones, that can be relevant for criminal proceedings²¹.

We are impressed by the approach of O. Pchelina and V. Pchelin, who propose to combine the circumstances into three groups:

- 1) characterizing the event of criminal offense;
- 2) characterizing offender identity;
- 3) affecting the adoption of procedural decisions.

According to the position of scientists, these circumstances are clarified by: 1) recording the results of procedural, investigative (search) and covert investigative (search) actions; 2) identifying, collecting and investigating the traces of a criminal offense; 3) maintaining forensic records; 4) attracting special knowledge and conducting examinations²².

Agreeing with this approach, we note that determination of the circumstances to be clarified should be carried out taking into account the type of criminal offense (its composition), circumstances to be proved and investigative situation at a certain stage of the proceedings. This approach will contribute to more effective planning of investigative (search) actions

20 Тищенко В. В. Концептуальні основи розслідування корисливо-насильницьких злочинів : автореф. дис. ... д-ра юрид. наук. Харків, 2003. 53 с. URL: https://dspace.nlu.edu.ua/bitstream/123456789/13974/1/Tischenko_2003.pdf (date accessed: 13.02.2025).

21 Одерій О. В. Проблеми теорії та практики розслідування злочинів проти довкілля : дис. ... д-ра юрид. наук. Харків, 2015. 499 с. URL: <https://uacademic.info/ua/document/0515U000869> (date accessed: 13.02.2025).

22 Пчеліна О. В., Пчелін В. Б. Зазнач. твір. DOI: 10.32631/vca.2024.3.34 (date accessed: 13.02.2025).

and implementation of the tasks of criminal proceedings.

Interference in activities of judicial bodies has a number of specific signs. Its direct object is social relations in the activity field of judges and other persons involved in the administration of justice on any legal basis. The suffered from of such a criminal offense are judges, jurors, candidates for judges and other persons participating in legal proceedings. The topic of social relations is the legal rights and obligations of professional judges, jurors, candidates for judges, as well as the rights of other participants in the trial (both voluntary and forcibly involved) provided for by law. Essence of interference covers any forms of active socially dangerous action aimed at implementing illegal methods of influence, in particular, obstructing activities of judges, examining magistrate during consideration of criminal, administrative, civil, economic and constitutional cases, as well as making decisions during pre-trial investigation and conducting operational and investigative activities. Therefore, a criminal offense provided for in Part 1 of Article 376 of the Criminal Code of Ukraine can be committed exclusively with direct intent ²³.

Intellectual signs of intent aimed at interfering in the activities of judicial bodies: 1) awareness by perpetrator of the fact of illegal influence on a judge or juror; 2) understanding of the status of person being influenced; 3) awareness of nature of such influence by the judge or juror; 4) use of official position to exert influence (under Part 2 of Article 376 of the Criminal Code) ²⁴. The volitional component of

intent consists in the perpetrator's desire to influence a judge or juror through requests; threats; instructions; criticism in the media (not related to the legal assessment of the judge's activities); other illegal methods of influence.

If intervention prevented the prevention of a crime or the detention of the offender (Part 2 of Article 376 of the Criminal Code) ²⁵, the fault can be of a mixed nature (intent regarding intervention and negligence regarding consequences) or be intentional in general.

Mandatory composition element of criminal offense under Article 376 of the Criminal Code is availability of a purpose to influence a judge or juror. The subject of the offense can be any physical convicted person who has reached the age of 16 years. Such an age is justified, since at this age a person is able to realize social danger of influencing the judicial system.

Interference with activities of a law enforcement officer has a number of specific signs. The main direct object of this criminal offense is authority of a law enforcement officer that is embodied in social relations that regulate his powers and role in maintaining law and order. These social relations are based on the recognition of the right of a law enforcement officer: 1) exercise control and supervision over compliance with the Constitution of Ukraine, laws and other regulatory legal acts; 2) ensure law and order and protect the rights of citizens; 3) apply state coercive measures to offenders within the limits of their powers. The victims of this criminal offense are law enforcement officers. This status is determined on the basis

23 Кримінальний кодекс України від 05.04.2001 р. № 2341-III (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 13.02.2025).

24 Там само.

25 Там само.

of the Law of Ukraine: *On State Protection of Court and Law-Enforcement Bodies Staff*²⁶ that covers representatives of the prosecutor's office, the National Police, SSU, SBI, State Border Guard, penal institutions, etc. Most often, victims are employees of the National Police, prosecutor's offices, and penal institutions.

Any unlawful interference or encroachment on activities of a law enforcement officer undermines his authority and poses a threat to effective performance of state functions in the field of law enforcement.

Interference in activities of law enforcement officer can only occur through active actions. The methods of such interference include: blackmail, deception, breach of trust, bribery, illegal demands, picketing of law enforcement agency premises, failure to provide a law enforcement officer with technical or material means necessary for performance of official duties, etc. These actions are always aimed at obstructing performance of official duties or achieving the adoption of an illegal decision. Criminal offense is considered completed regardless of whether an illegal decision was made.

Forms of interference include coercion, blackmail, threats, denial of legitimate benefits, or other unlawful methods of influence. It is necessary to determine whether these actions were one-time or systematic ones, as well as the duration of their commission.

The subject of this criminal offense is any natural person of sound mind who has reached the age of 16. If the crime is committed by an official, subject may only be

a person who has reached the age of majority.

This criminal offense belongs to those that have a formal composition and can be committed only with direct intent. The intellectual component of intent is the awareness of the social danger of interference in activities of law enforcement officer and the volitional component is the desire to commit such an act.

In order to bring to criminal responsibility, it is necessary to be aware of all the signs that form the objective side of the crime. Under Part 2 of Article 343 of the Criminal Code, the offender has to understand that his act creates the conditions for the commission of a criminal offense by another person or prevents the offender from being detained²⁷.

The criminal offense provided for in Part 2 of Article 343 of the Criminal Code has a material composition and is characterized by a double or mixed form of guilt if the consequence of the act is failure to prevent a criminal offense. The mental attitude towards the consequences in the form of non-avoidance of the detention of a criminal can be both intentional and careless.

Motives that prompt a person to interfere with the activities of a law enforcement officer can be diverse and do not affect qualification of a criminal offense. Instead, they may be taken into account when imposing a sentence. Mandatory specific of subjective side of this criminal offense is a specific goal for preventing the law enforcement officer from performing his official duties or to achieve the adoption of illegal decisions.

26 Про державний захист працівників суду і правоохоронних органів : Закон України від 23.12.1993 р. № 3781-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 13.02.2023).

27 Кримінальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 13.02.2025).

The list of persons who can be victims of interference in the activities of a statesman: the President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine, people's deputies of Ukraine, the Prime Minister of Ukraine, members of the Cabinet of Ministers of Ukraine, judges of the Constitutional Court of Ukraine, members of the High Council of Justice, representatives of NABU, SBI, ESBU, Prosecutor General, Chairman of Accounting Chamber and other high-ranking officials²⁸. It is important that these persons can be injured only during the direct performance of their official duties. At the same time, the term *statesman* does not have a clear normative definition that can generate discussions among scientists and practitioners, as well as create ambiguity in law enforcement.

The main direct object of the criminal offense provided for in Article 344 of the Criminal Code is legal relations that ensure the legal procedure for the activities of statesmen as a prerequisite for the proper performance of their official duties, in particular administrative and economic, control and audit or registration functions²⁹. Additional object may be the authority of public administration bodies and legal entities of public law on whose behalf statesmen act.

Illegal influence on a public figure can be considered as a way of committing a criminal offense, but it is not a mandatory feature of the objective side of crim-

inal offense. Such forms of influence are more technical and forensic than criminal and legal significance that is taken into account during pre-trial investigation.

Plenum of the Supreme Court of Ukraine in the resolution: *On the application by the courts of legislation providing for responsibility for encroachment on the life, health, dignity and property of judges and law enforcement officers* stipulates that interference can be carried out through persuasion, blackmail, threats to refuse to provide legitimate benefits or through other forms of influence³⁰. In forensic literature, these forms are supplemented with illegal requirements, physical or mental influence, threats and other methods of obstructing activities of law enforcement officers.

Illegal interference in activities of a statesman has specific features that distinguish it from similar actions against law enforcement officers. The main difference is the use of exclusively intellectual forms of influence on the consciousness and will of a statesman. Such forms include: persuasion, blackmail, threats to refuse to provide legal benefits, dissemination of false information, provision of forged documents that can change or terminate performance of official duties.

If intellectual influence is combined with physical violence, death threats or damage to property, person's actions should be qualified by a set of criminal offenses. This approach provides an ade-

28 Попов В. Ю. Особа потерпілого від втручання у діяльність представників органів державної влади: іманентні ознаки елементу криміналістичної характеристики. *Вісник Кримінологічної асоціації України*. 2024. № 2 (32). С. 334—343. DOI: 10.32631/vca.2024.2.24 (date accessed: 13.02.2025).

29 Кримінальний кодекс ... URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 13.02.2025).

30 Про застосування судами законодавства, що передбачає відповідальність за посягання на життя, здоров'я, гідність та власність суддів і працівників правоохоронних органів : постанова Пленуму ВС України від 26.06.1992 р. № 8 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/v0008700-92#Text> (date accessed: 13.02.2025).

quate assessment of the public danger of the act.

The subject of a criminal offense may be a natural person of sound mind (citizen of Ukraine, foreigner or a stateless person) who has reached the age of 16. If the criminal offense is committed by an official using his official position (Part 2 of Article 344 of the Criminal Code), the subject may be a person who has reached the age of 18 years³¹.

The main object of criminal offense provided for in Article 344 of the Criminal Code is legal relations that ensure the legal procedure for the activities of statesmen necessary for performance of their official duties. An additional object can be authority of public administration bodies or legal entities of public law.

Regarding criminal offenses under Part 4 of Article 157 of the Criminal Code, the main object is electoral and reference rights of citizens. Victims can be voters, candidates, members of election commissions, official observers, proxies of candidates and other participants in the election process. Obstruction of the exercise of voting rights can be groundless refusal to register a candidate, coercion to vote for a certain candidate, interference with campaigning activities, obstruction of broadcasting of campaign programs or illegal seizure of campaign materials. This act is aimed at creating artificial obstacles for citizens to exercise their voting rights and can be committed in the form of both action and inaction³².

Such actions can include unlawful interference in the activities of proxies of candidates, representatives of political parties or blocs participating in electoral

or reference processes, as well as in the activities of election commissions at all levels, if they are aimed at obstructing the exercise of voting rights.

Work obstruction of election commissions or referendum commissions can be manifested in sabotage of meetings, illegal interference in the registration of candidates, creation of artificial obstacles to decision-making within competence of the commission. If such actions are not intended to restrict the electoral rights of citizens, they can be classified as other crimes, in particular, encroachment on the activities of State bodies or public order.

If the obstruction is accompanied by violence or threats, it is regarded as a more serious crime (Part 2 of Article 157 of the Criminal Code)³³. Violent actions may include physical violence, threats, damage or destruction of property, as well as psychological pressure.

The means of committing this criminal offense are bribery, deception and coercion. Bribery consists of offering material benefits (money, services, privileges, or other property benefits) with the aim of influencing exercise of an electoral or referential right. Deception is misleading the victim by spreading false information, falsifying documents, or concealing important facts. Coercion is expressed in illegal demands to change one's behavior in electoral procedure under the threat of dismissal, expulsion, restriction of rights, or other sanctions. The criminal offense has a formal component, in other words, it is considered completed from the moment the obstacles are created, regardless of actual impact on the electoral procedure.

31 Кримінальний кодекс ... URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 13.02.2025).

32 Там само.

33 Там само.

The subjective side of a criminal offense is characterized by direct intent. The subject can be any natural person of sound mind. Qualified types of offenses involve the use of violence or threats that significantly increases the social danger of the act.

Thus, the analysis of components of criminal offenses related to interference in the activities of representatives of state authorities allows us to state that this group should include the following mandatory components: 1) identity of the victim and his/her qualitative characteristic, such as belonging to a state authority; 2) subject of the crime is an individual who should have reached the age of 16, and in exceptional cases, when it comes to interference through abuse of official position, 18 years; 3) method of interference, which can be any; 4) special purpose of the interference; 5) availability of material consequences of the criminal offense provided for in Article 343 of the Criminal Code ³⁴.

The circumstances to be determined during investigation of criminal offenses related to interfering with the activities of representatives of public authorities include those specified in Article 91 of Criminal Procedure Code of Ukraine ³⁵.

Synergistic approach to taking into account composition of the criminal offense and the circumstances to be proved is reflected in the work of V. Husieva that reveals the circumstances under research on the example of interference in activities of law enforcement officer.

Circumstances to be clarified, according to the scientist, are:

- 1) identity of the victim (personal data, professional status, occupation);
- 2) official or public activities of the victim (confirmation of his/her performance of functions to ensure law and order or public safety);
- 3) obstruction event (time, place, situation and other circumstances under which occurred intervention);
- 4) means, tools and means of intervention (methods used in the preparation, implementation or concealment of a crime);
- 5) personality of the offender (personal data, professional and psychological characteristics, criminal record, relationship with the victim, financial status);
- 6) accomplices (persons who participated in the crime commission and their roles);
- 7) form of guilt, purpose and motive of the criminal offense (desire to interfere with legitimate activities of the victim);
- 8) damage (type, nature and amount of damage caused: physical, moral or material one);
- 9) circumstances mitigating or aggravating guilt;
- 10) grounds for exemption from criminal liability or closure of criminal proceedings;
- 11) reasons and conditions that contributed to the commission of a criminal offense ³⁶.

Confirmation of a person's affiliation with a law enforcement agency is made by obtaining a copy of the order of appoint-

34 Кримінальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 13.02.2025).

35 Кримінальний процесуальний кодекс України від 13.04.2012 р. № 4651-VI (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 13.02.2025).

36 Гусева В. О. Обставини, що підлягають з'ясуванню DOI: [10.32631/pb.2021.2.12](https://doi.org/10.32631/pb.2021.2.12) (date accessed: 13.02.2025).

ment, service certificate or other documents confirming the professional status of the victim. For example, for members of the security forces, such signs are official identity card, special badge, a uniform and police symbols. An important stage of the investigation is to find out the content of the victim's official duties, since it is obstruction of their performance that is the objective aspect of the criminal offense. Duties are set out in regulations and job descriptions (functional responsibilities).

It is especially important during investigation to determine and certify the status of the victim, the fact that he was performing official duties at the time of interference and the purpose of the criminal offense, which should be to obstruct performance of official duties or coerce him into making illegal decisions³⁷.

While determining the method of intervention, it is important to find out whether it had a complete structure, which contains the stages of preparation, direct commission and concealment, or was truncated. This approach makes possible to identify additional circumstances that can confirm the commission preparation for the criminal offense. For example, establishment of the fact of searching for accomplices can indicate preparation for the criminal offense commission and documentary evidence of these actions may be evidence of a previous conspiracy of a group of persons.

The mandatory stage of investigation is to establish the circumstances under which the act was committed (in particular, the time, place, situation, traces of

a criminal offense, as well as the tools and means of its commission). Intervention can be carried out both orally and in writing, with or without the use of technical means. Analysis of investigative and judicial practice indicates that most often intervention is carried out by expressing verbal demands or using physical force without special tools.

Special role during the investigation is played by the identification of offender on the following grounds:

- socio-demographic data;
- physiological and psychological state;
- existence of criminal convictions or administrative offenses;
- employment location;
- financial condition (availability of real estate, vehicles, cash assets).

Particular attention should be paid to finding out the form of guilt, motives and purpose of the criminal offense. Interference in activities of a law enforcement officer may be committed only with direct intent, and its purpose is to interfere with the performance of official duties or coercion to make an illegal decision. If intervention is carried out to prevent a criminal offense or to detain the offender, the actions are qualified under Part 2 of Art. 343 of the Criminal Code³⁸.

Circumstances mitigating or aggravating guilt, grounds for exemption from criminal liability, as well as circumstances for which criminal liability is stipulated are also subject to proof. One of aggravating circumstances is the commission of a criminal offense in a state of alcohol or

37 Карпова Н. Проблемні питання визначення потерпілого від втручання в діяльність захисника чи представника особи. *Национальный юридический журнал : теория и практика*. 2017. Т. 25. № 3. С. 109–114. URL: <http://www.jurnaluljuridic.in.ua/archive/2017/3/24.pdf> (date accessed: 13.02.2025).

38 Кримінальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 13.02.2025).

drug intoxication (paragraph 13 of Part 1 of Article 67 of the Criminal Code)³⁹. However, the analysis of investigative and judicial practice shows that only 33% of proceedings consider this fact as an aggravating circumstance. This is due to the insufficient work of investigators and inquirers to confirm such facts in the procedural order.

If a criminal offense is committed by a group of persons, it is necessary to determine the role of each accomplice. Particular attention should be paid to finding out the type and amount of damage caused, if any. Forensic examinations are the most effective way of such determination, but the amount of damage can be confirmed by other evidence.

An important element of the investigation is to find out the causes and conditions that contributed to the commission of a criminal offense. For example, during illegal extraction of amber in the Rivne region, interventions in the activities of police officers are often recorded by blocking roads, preventing video recording or sabotaging procedural actions. In such cases, it is advisable to organize the protection of open areas by law enforcement agencies and public formations. A similar list of circumstances is subject to clarification during the investigation of interference in the activities of a statesman (Article 344 of Criminal Code)⁴⁰.

As for the investigation of interference in activities of the judiciary, the method of interfering is also important. Most often, it consists in the expression of vague threats, other in content than they are due to Part 1 of Art. 377 of the Criminal Code (80% of verdicts we studied), in intrusive request (10% of the same verdicts).

Conclusions

A thorough definition of the composition of criminal offenses of the group under research and an analysis of scholars' approaches to the interpretation of the list of circumstances to be clarified, makes possible to group them into three groups:

- 1) circumstances that reveal the mechanism of the criminal offense (regarding the method and situation of commission; related to the person of the victim and the person of the offender that characterize criminal offense consequences);
- 2) circumstances related to the subjective characteristics of the person who committed a socially dangerous act (form of guilt, intent, purpose; onerous or mitigating guilt; which are grounds for exemption from criminal liability or punishment that exclude criminal liability; presence of accomplices);
- 3) other circumstances (amount of procedural costs; circumstances that are the basis for the closure of criminal proceedings; reasons and conditions that contributed to the commission of a criminal offense, forms of counteraction to the investigation, etc.).

We see prospects for further research in determining the tactical tasks of the investigation, taking into account the peculiarities of investigative situations, formation of which is typical during the investigation of criminal offenses related to involvement of representatives of State authorities in the activities, as well as procedural mechanisms for certifying the outlined circumstances.

39 Кримінальний кодекс ... URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 13.02.2025).

40 Там само.

**Особливості обставин,
що підлягають установленню
під час розслідування
кримінальних правопорушень,
пов'язаних із утручанням
у діяльність представників
органів державної влади**

Володимир Попов

Мета роботи — визначити особливості предмета доказування у кримінальних правопорушеннях, пов'язаних із утручанням у діяльність представників органів державної влади. Для її досягнення застосовано загальнонаукові (аналіз, синтез, абстрагування, узагальнення) спеціальні й філософські методи (діалектичний, порівняльно-правовий, системно-структурний, прогностичний). Проаналізовано проблематику предмета доказування у кримінальних правопорушеннях, пов'язаних із утручанням у діяльність представників органів державної влади. Визначено склад кримінальних правопорушень досліджуваної групи, проаналізовано підходи вчених до тлумачення переліку обставин, які підлягають з'ясуванню, що дає змогу об'єднати їх у три групи: 1) обставини, що розкривають механізм кримінального правопорушення; 2) обставини, пов'язані із суб'єктивними характеристиками особи, яка вчинила правопорушення; 3) інші обставини (розмір процесуальних витрат; обставини, що є підставою для закриття кримінального провадження; причини й умови, які сприяли вчиненню кримінального правопорушення, форми протидії розслідуванню тощо). Окреслено перспективи подальших досліджень у межах досліджуваної проблематики.

Ключові слова: кримінальне провадження; кримінальне правопорушення; доказування; предмет доказування; утручання в діяльність; орган державної вла-

ди; обставини, що підлягають установленню.

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References

- Antoshchak, A. R. (2016). Obstavyny, shcho pidliahaiut vstanovlenniu pid chas rosliduvannia pryvlasnennia, roztraty abo zavolodinnia mainom, shliakhom zlovzhyvannia sluzhbovoiu osoboiou svoim sluzhbovym stanovyshchem. [Circumstances that be established during the investigation of misappropriation, embezzlement or taking possession of the property, through abuse of office position]. *Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seria: Pravo*. T. 2. Vyp. 38. URI: <https://dspace.uzhnu.edu.ua/jspui/handle/lib/12317> [in Ukrainian].
- Fedosova, O. V. (2014). Obstavyny, yaki pidliahaiut vstanovlenniu u khodi rozsliduvannia koryslyvo-nasylnytskykh zlochyniv, shcho vchyniautsia nepovnolitnimy [Circumstances to be set up during the investigation of selfishviolent crimes committed by minors]. *Naukovyi visnyk Dnipropetrovskoho derzhavnogo universytetu vnutrishnikh sprav*. № 1. URL: <http://nbuv>.

- gov.ua/UJRN/Nvdduvs_2014_1_42 [in Ukrainian].
- Husieva, V. O. (2020). *Metodyka rozsliduvannia zlochniv proty avtorytetu orhaniv derzhavnoi vlady u sferi pravookhoronnoi diialnosti* [Methods of investigation of crimes against the authority of public authorities in the field of law enforcement] : monohrafiia. Kharkiv. URL: <https://files.znu.edu.ua/files/Bibliobooks/Inshi71/0052079.pdf> [in Ukrainian].
- Husieva, V. O. (2021). Obstavyny, shcho pidlihaiut z'iasuvanniu pid chas rozsliduvannia vtruchannia v diialnist pratsivnyka pravookhoronnoho orhanu [Circumstances to be clarified during the investigation of interference into law enforcement officer's activity]. *Pravo i bezpeka*. № 2 (81). DOI: [10.32631/pb.2021.2.12](https://doi.org/10.32631/pb.2021.2.12) [in Ukrainian].
- Karpova, N. (2017). Problemni pytannia vyznachennia poterpiloho vid vtruchannia v diialnist zakhysnyka chy predstavnyka osoby [Problematic issues of identifying a victim of interference with the activities of a defender or representative of a person]. *Jurnalul juridic național: teorie și practică*. T. 25. № 3. URL: <http://www.jurnaluljuridic.in.ua/archive/2017/3/24.pdf> [in Ukrainian].
- Knyzhenko, S. O. (2016). Kryminalistychna kharakterystyka zlochniv, shcho vchyniaiutsia shliakhom nezakonnogo vtruchannia v diialnist sudovykh orhaniv abo protypravnoho vplyvu na uchasykyv sudochynstva [Criminalistic characteristics of crimes committed by unlawful interference in the activities of the judiciary or unlawful influence on participants in the proceedings]. *Pravo i suspilstvo*. № 2. URL: http://pravoisuspilstvo.org.ua/archive/2016/2_2016/part_1/36.pdf [in Ukrainian].
- Kolesnikov, V. V. (2016). Circumstances Subjected to Proof in Criminal Proceedings in the Investigation of Crimes Connected with Fires. *Theory and Practice of Forensic Science and Criminalistics*. Is. 16. DOI: [10.32353/khrife.2016.10](https://doi.org/10.32353/khrife.2016.10).
- Oderiy, O. V. (2015). *Problemy teorii ta praktyky rozsliduvannia zlochniv proty dovkillia* [Problems in Theory and Practice in the Field of Investigating Crimes against Environment] : dys. ... d-r yuryd. nauk. Kharkiv. URL: <https://uacademic.info/ua/document/0515U000869> [in Ukrainian].
- Pchelina, O. V., Pchelin, V. B. (2024). Obstavyny, shcho pidlihaiut z'iasuvanniu pid chas rozsliduvannia kolaboratsiinoi diialnosti [Circumstances to be investigated during the investigation of collaborative activities]. *Visnyk Kryminolohichnoi asotsiatsii Ukrainy*. № 3 (33). DOI: [10.32631/vca.2024.3.34](https://doi.org/10.32631/vca.2024.3.34) [in Ukrainian].
- Pchelina, O. V. (2010). *Osoblyvosti predmeta dokazuvannia u kryminalnykh spravakh pro ekonomichni zlochyny ta yikh vplyv na metodyku rozsliduvannia* [The particularities of the object of the proving in criminal cases of economic crimes and their influence on methods of investigation] : avtoref. dys. ... kand. yuryd. nauk. Kharkiv. URL: <http://dspace.univd.edu.ua/xmlui/handle/123456789/2689> [in Ukrainian].
- Pchelina, O. V. (2020). Obstavyny, shcho pidlihaiut z'iasuvanniu pid chas rozsliduvannia kryminalnykh pravoporushen, i yikhnie mistse u strukturi okremoi kryminalistychnoi metodyky [Circumstances to be clarified during the investigation of criminal offenses and their place in the structure of a separate forensic methodology]. *Prykarpatskyi yurydychnyi visnyk*. Vyp. 2 (31). DOI: [10.32837/pyuv.v0i2\(31\).590](https://doi.org/10.32837/pyuv.v0i2(31).590) [in Ukrainian].
- Popov, V. (2024). Osoba poterpiloho vid vtruchannia u diialnist predstavnykiv orhaniv derzhavnoi vlady: imanentni oznaky elementu kryminalistychnoi kharakterystyky [The victim of interference in the activities of representatives state authorities: immanent signs element criminalistic characteristics]. *Visnyk Kryminolohichnoi asotsiatsii Ukrainy*. № 2 (32). DOI: [10.32631/vca.2024.2.24](https://doi.org/10.32631/vca.2024.2.24) [in Ukrainian].

- Posashkov, O. O. (2020). *Metodyka rozsliduvania vtruchan v diialnist sudovoho eksperta* [The methodology of investigating interference in the activities of a forensic expert] : dys. ... kand. yuryd. nauk. Kharkiv. URL: <https://uacademic.info/ua/document/0420U101202> [in Ukrainian].
- Rusanivska, D. D. (2023). *Rozsliduvannia vtruchannia v diialnist zakhysnyka chy predstavnyka osoby* [Investigation of interference in the activities of a defense attorney or a person's representative] : dys. ... d-ra filos. Kyiv. URL: <https://elar.naiu.kiev.ua/server/api/core/bitstreams/87c654d447e0-4e7b-ae7cecfd-c784aaf/content> [in Ukrainian].
- Stakhivskiy, S. M. (2005). *Teoriia i praktyka kryminalno-protsesualnoho dokazuvannia* : monohrafiia [Theory and practice of criminal procedural proof]. Kyiv. URL: https://library.nlu.edu.ua/POLN_TEXT/UP/STAXIVSKIY_2005.pdf [in Ukrainian].
- Tishchenko, V. (2003). *Kontseptualni osnovy rozsliduvannia koryslyvo-nasylnytskykh zlochyniv* [The Concept Basis for the Investigation of Mercenary Violent Crimes] : avtoref. dys. ... d-ra yuryd. nauk. Kharkiv. URL: https://dspace.nlu.edu.ua/bitstream/123456789/13974/1/Tishchenko_2003.pdf [in Ukrainian].
- Tishhenko, V. V. (2002). *Korystno-nasilstvennye prestupleniya: kriminalisticheskij analiz* [Profitable and violent crimes: forensic analysis] : monografiya. Odessa. URL: <https://coollib.cc/b/425251-valeriy-vladimirovich-tishchenko-koryistno-nasilstvennyie-prestupleniya-kriminalisticheskij-analiz/read> [in Russian].
- Toporetska, Z. (2018). Osoblyvosti pochatku kryminalnoho provadzhennia ta obstavyny, yaki pidliahaiut vstanovlenniu pry rozsliduvanni sluzhbovoi nedbalosti [Features of the beginning of criminal proceedings and circumstances that are established in the investigation of official negligence]. *Visnyk kryminalnoho sudochynstva*. № 1. URL: <https://vkslaw.com.ua/index.php/journal/article/view/249> [in Ukrainian].
- Zhuravel, V. A. (2010). Obstavyny, shcho pidliahaiut z'iasuvanniu, u strukturi kryminalistychnoi metodyky [Circumstances to be clarified in the structure of forensic methods]. *Teoriia ta praktyka sudovoi ekspertyzy i kryminalistyky*. Vyp. 10. URL: http://www.irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?C-21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&Image_file_name=PDF/Tpsek_2010_10_6.pdf [in Ukrainian].

Popov, V. (2025). Peculiarities of circumstances to be established during investigation of criminal offenses related to interference with activities of representatives of public authorities. *Theory and Practice of Forensic Science and Criminalistics*. Issue 1 (38). Pp. 50–65. DOI: 10.32353/khrife.1.2025.04.