

Activity Nature of Counteracting Investigation of Criminal Offenses

Oleksandr Tarkan *

* PhD in Law, Doctoral Student of NSC “Hon. Prof. M. S. Bokarius FSI”, Kharkiv, Ukraine,
ORCID: <https://orcid.org/0009-0006-4083-6103>, e-mail: oleksandrtarkan7@gmail.com

DOI: [10.32353/khrife.2.2025.11](https://doi.org/10.32353/khrife.2.2025.11) UDC 347.965(477)

Received: 24.05.2025 / Reviewed: 26.05.2025 / Accepted for print: 26.06.2025 /
Available online: 30.06.2025



This article purpose is to determine components of activity that consists in counteracting the investigation of criminal offenses. The goal was achieved through the application of a complex of general scientific, special and philosophical research methods, in particular dialectical one, modeling method, system-structural and comparative analysis, etc. It was determined that counteracting investigation is a complex, dynamic and multifaceted phenomenon that is formed in the conditions of a criminal conflict and manifests itself through the purposeful behavior of persons interested in concealing the actual circumstances of a criminal offense. Its active side consists in committing real (sometimes inactive) acts of influence on the course and results of the pre-trial investigation. It was found that the activities of the subjects of counteraction are implemented not chaotically, but within the limits of a certain mechanism, which consists of the stages: preparation for counteraction; active implementation of influence on sources of evidentiary information; concealment of traces of committed actions. It was determined that the mechanism of counteraction to the investigation is variable, depends on the stage of criminal proceedings, chosen tactics and the presence of corrupt, organizational and social ties. It was substantiated that the structural components of forensic characteristic of counteraction are: 1) subjects of counteraction, their motives and objects of influence; 2) typical forms and methods, their impact on sources of evidence; 3) signs of use of specific methods that are man-

This article is translation of the original Ukrainian content, which source is available at the link: <https://khrife-journal.org/index.php/journal> (translated by Andriy Bublikov). The author acknowledges translation as corresponding to the original.

© 2025 The Author(s). Published by National Scientific Center «Hon. Prof. M. S. Bokarius Forensic Science Institute» & Yaroslav Mudryi National Law University.

This is an open access article distributed under Creative Commons Attribution License (CC_BY_4.0.0) allowing unlimited use, distribution and reproduction on any medium, subject to reference to the Author and original sources.

ifested both in objective environment and in the behavior of subjects. The need to study the external manifestations of counteraction (material, digital, ideal traces) as a key source for modeling mechanisms of criminal counteraction and creating effective tactical solutions is proven. It was found that counteracting investigation has a conflicting nature, in which opposing goals of the parties to the criminal proceedings collide. This is not only a conflict between the investigator and the suspect, but also interaction with other participants in the process: prosecutor, witnesses, witnesses, experts, etc. Such interaction creates a tense investigative environment that requires a high level of professional adaptability of the investigator. It has been established that modern opposition to pre-trial investigation is especially threatening in conditions of organized criminal activity. It has a high level of organization, internal structure, financial, technical and personnel support. It is substantiated that the forensic characteristic of opposition to investigation should be integrated as a separate component into the structure of investigation methodology for those criminal offenses that are characterized by active opposition. It should be built on the basis of: 1) analysis of typical methods and mechanisms of opposition; 2) research on the subject-role structure of opposition; 3) study of changes in the investigative complex caused by targeted influence on evidence.

Keywords: *pre-trial investigation; counteracting investigation; investigative activities; overcoming counteracting investigation; components of counteracting investigation.*

Research Problem Formulation

The spread of criminal behavior and complication of its main characteristics create the need for the formation of effective approaches both for the practice of law enforcement and for research. This involves introducing the latest methods of work in the field of security and defense, improving the activities of law enforcement agencies and developing recommendations for forensic support in investigation of criminal offenses.

Activity of investigating criminal offenses is always related to the conflict, because it aims to restore the violated rights of the victim and bring to justice his opponent, the subject who implemented the

criminal intent related to the commission of criminal illegal activities. At the same time, awareness of the possibility of bringing to legal responsibility, applying criminal law measures to a person actualizes in the consciousness of a person the search for alternative ways to prevent the fulfillment of the tasks of criminal proceedings.

Sometimes, while planning a crime, a person decides what actions he or she will take to conceal the signs of his or her criminal activity, but this is not always the case. In some situations, counteraction actions are taken after criminal proceedings have been initiated. Counteraction to criminal procedural activities is defined as a complex and multidimensional phenomenon that covers a wide range of

influences on the pre-trial investigation procedure. According to scholars, this complexity is the reason for variety of scientific approaches to understanding its essence. Despite continued scientific attention to this issue by experts in the field of forensic science, a number of issues have not yet been unambiguously resolved.

In research papers of various scholars, analysis of counteracting investigation is carried out taking into account a variety of aspects: forms of detection, methods of implementation, circumstances of occurrence, factors that determine it, subjective component, time parameters, as well as its qualitative characteristics. The vast majority of authors focus primarily on the classification of manifestations of counteraction according to various criteria and on the description of its individual forms. At the same time, the complex components of the activity nature of counteraction to the investigation have not yet been investigated.

Article Purpose

For determining specifics and directions of knowledge of such a phenomenon as counteraction to investigation, in the context of formation of a separate forensic doctrine on counteracting investigation and its neutralization (overcoming).

Research Methods

In order to achieve this goal, a set of general scientific and special research methods was used, which made it possible to comprehensively reveal essence and structure of this forensic phenomenon. First of all, dialectical method provided a theoretical basis for considering counteraction to the investigation as a dynamic and contro-

versial process developing in interaction with other elements of criminal proceedings. Thanks to this method, it was possible to explore the internal logic of changes occurring within the conflict between the law enforcement system and persons resisting establishment of the truth.

The use of system-structural analysis made possible to identify the main elements of counteraction, determine their functions, relationships and impact on the course and results of the pre-trial investigation. This approach made possible to substantiate the structure of forensic characteristic of counteraction including subjects, methods, motives, objects of influence and effective counteraction traces.

Functional-activity approach made it possible to interpret counteraction to the investigation as a purposeful activity with a certain logic, phasing and purpose. This made possible to characterize active nature of counteraction as a system of real or potential actions (sometimes inaction) aimed at preventing establishment of circumstances of criminal offense. Significant role was played by the modeling method by which imaginary constructions of countermeasures mechanisms, typical situations of its implementation and structures of interaction of subjects resisting the investigation were created. Simulation made possible to simulate changes in the trial complex under influence of counteraction and to predict possible tactical solutions to its overcoming.

At the stage of theoretical understanding, a content analysis of the scientific literature was used, which made it possible to establish differences in terminology, identify the lack of established definitions of the concepts of *counteracting investigation*, *forensic characteristic of counteraction* and to find out current scientific approaches to understanding this phenomenon.

Comparative legal method provided an analysis of various forms of counteraction depending on the type of criminal offense, its procedural status, degree of organization of criminal activity and the presence of a system of relations between its participants. The research uses an empirical approach, in particular, the analysis of materials of criminal proceedings, the results of interrogations, protocols of investigative (search) actions, as well as interviews or questionnaires of practicing investigators and prosecutors. This made possible to fill the research with specific content, identify typical manifestations of counteraction and their impact on the evidence base.

Use of logical analysis and synthesis contributed to the combination of the obtained results into a single system of theoretical provisions. Logical substantiation of the forensic characteristics of counteraction was carried out, its place in the structure of investigation methods was determined. The forms, methods, subjects and signs of counteraction as a holistic phenomenon are generalized. In general, the use of these methods made it possible not only to identify the structure and content of the active side of counteraction to the investigation, but also to formulate oriented conclusions on the need to take it into account while developing methodological recommendations for the investigation of certain types of criminal offenses.

Analysis of Essential Researches and Publications

The problem of countering investigation has been in the focus of attention of Ukrainian scientists and lawyers for a long time. Despite repeated attempts by

the legislator to establish responsibility for certain manifestations of socially dangerous behavior aimed at counteracting investigation, current doctrine of criminal law is not so perfect as to satisfy requests of law enforcement and judicial authorities. This is confirmed by the investigators of the National Police of Ukraine, and even judges of the High Anti-Corruption Court. In other words, counteraction to criminal procedural activity takes place at all levels and this is not due to a specific form of criminal illegal activity or a certain category of cases.

Scientists, for their part, pay attention to the plurality of those forms that are still available in law enforcement practice and remain outside the system of legal means of influence, that is, they are generally not recognized as a proper basis for legal liability. In the second half of the twentieth century, the following scientists made a significant contribution to the research on the problem of countering investigation: V. Bakhin, V. Bernaz, V. Honcharenko, A. Ishchenko, N. Karpov, V. Konovalova, V. Korzh, V. Kuzmichov, V. Lysychenko, F. Sokyran, V. Tertyshnik, M. Shumylo, et al. Their research papers became the basis for a deeper theoretical understanding of the phenomenon of counteraction to investigative actions, outlining its most common manifestations and determining effective ways to their overcoming.

Since the 2000s, scientists have taken measures to study counteraction to the investigation as a phenomenon, laid the foundation for the formation of conceptual approaches to the essential understanding of counteraction, determined typical forms of counteraction, certain specific signs of counteraction caused by a certain type or group of criminal offenses, etc. In this context, it is worth mentioning

the monographs by O. Oleksandrenko ¹, V. Vartsaba ², I. Hrytsiuk ³, K. Gutnik ⁴, R. Mudretskyi ⁵, V. Piddubnyi ⁶, V. Pletenets ⁷, O. Romtsiv ⁸, V. Trepak ⁹, M. Chesakov ¹⁰, R. Shekhavtsov ¹¹, B. Shchur, ¹² et al. Despite thoroughness of best practices of Ukrainian forensic scientists, the question remains as to what the internal content of the activity nature of counteracting investigation.

Main Content Presentation

Currently forensic science is striking in the number of different forensic doctrines. The formation and deepening of the concept of counteraction to pre-trial investigation not only expands the theoretical basis in this area, but opens up new prospects for its practical implementation. This vector of scientific development

- 1 Александренко О. В. Криміналістичні проблеми подолання протидії розслідуванню : автореф. дис. ... канд. юрид. наук. Київ, 2004. 20 с. URL: <https://dspace.nlu.edu.ua/jspui/handle/123456789/13980> (date accessed: 11.05.2025).
- 2 Варцаба В. М. Розслідування злочинів організованих злочинних груп (тактико-психологічні основи) : дис. ... канд. юрид. наук. Харків, 2003. 181 с. URL: <https://uacademic.info/ua/document/0404U000656> (date accessed: 11.05.2025).
- 3 Грицюк І. В. Протидія розслідуванню злочинів у сфері оподаткування : дис. ... канд. юрид. наук. Ірпінь, 2012. 259 с. URL: <https://uacademic.info/ua/document/0412U004215> (date accessed: 11.05.2025).
- 4 Гутнік К. В. Розслідування злочинів в умовах протидії, яка чиниться з використанням соціальної напруги : автореф. дис. ... канд. юрид. наук. Харків, 2010. 20 с.
- 5 Мудрецький Р. В. Подолання протидії судовому розгляду у кримінальних провадженнях : дис. ... канд. юрид. наук. Кривий Ріг, 2019. 263 с. URL: <https://uacademic.info/ua/document/0420U100095> (date accessed: 11.05.2025).
- 6 Піддубний В. В. Подолання протидії розслідуванню злочинів економічної спрямованості : дис. ... канд. юрид. наук. Харків, 2020. 260 с. URL: <https://uacademic.info/ua/document/0420U100568> (date accessed: 11.05.2025).
- 7 Плетенець В. М. Теоретичні та праксеологічні засади подолання протидії досудовому розслідуванню : монографія. Одеса, 2020. 424 с. URL: <https://er.dduvs.edu.ua/handle/123456789/6404> (date accessed: 11.05.2025).
- 8 Ромців О. І. Особливості подолання протидії під час розслідування злочинів у сфері службової діяльності : дис. ... канд. юрид. наук. Львів, 2016. 226 с. URL: <https://uacademic.info/ua/document/0416U003853> (date accessed: 11.05.2025).
- 9 Тrepак В. М. Розкриття та розслідування хабарництва, вчинюваного суддями, та подолання протидії засобами оперативного-розшукової діяльності: автореф. дис. ... канд. юрид. наук. Київ, 2011. 19 с. URL: <https://mydisser.com/en/catalog/view/rozkritttya-ta-rozsliduvannya-habarnictva-vchinyuvanogo-suddyyami-ta-podolannya-protidii-zasobami-ope.html> (date accessed: 11.05.2025).
- 10 Чесакова М. С. Протидія розслідуванню злочинів та шляхи її подолання на стадії досудового розслідування : автореф. дис. ... канд. юрид. наук. Харків, 2019. 23 с. URL: <https://uacademic.info/ua/document/0419U005608> (date accessed: 11.05.2025).
- 11 Шехавцов Р. М. Форми та способи протидії розслідуванню злочинів та засоби їх подолання (за матеріалами кримінальних справ про вимагання, вчинені організованими групами, злочинними організаціями) : дис. ... канд. юрид. наук. Київ, 2003. 238 с. URL: <https://uacademic.info/ua/document/0404U000411> (date accessed: 11.05.2025).
- 12 Шур Б. В. Тактика усунення протидії розслідуванню злочинів, що вчиняються організованими злочинними групами : дис. ... канд. юрид. наук. Харків, 2005. 195 с. URL: <https://uacademic.info/ua/document/0405U000648> (date accessed: 11.05.2025).

necessitates continuous improvement of means and methods of neutralizing counteraction that makes possible to respond effectively to it by applying modern approaches to preventing, detecting and overcoming such actions. In this regard, the formation of the theoretical foundations of forensic support for the process of overcoming counteraction to pre-trial investigation is a key stage in modernization of the methodology of criminal investigation. Implementation of this theory in practice will help to increase the ability of law enforcement agencies to effectively counteract unlawful influence on the course of investigation at all stages that is of fundamental importance for the fight against crime in general¹³.

Theoretical content of any forensic science depends on the specifics of the criminal procedural activity that has become its research object. Developed doctrine should explain certain phenomena, system of their signs, etc. Therefore, the focus of forensic doctrine of counteraction to an investigation should be on the phenomenon of counteraction itself with the system of subjects involved in such activities by all means used to implement its components, correlations between these elements, etc.

A person who has committed a crime or a criminal offense, realizing the inevitability of testimony, makes every effort to avoid criminal liability or punishment, using various means and techniques. The actions of such a person are often supported by their inner circle, and sometimes by corrupt connections, which only increases the scale and complexity of the counteraction. This is the reason for the wide range of forms, means and subjects involved in countering the investigation. Af-

ter the opening of criminal proceedings, prosecution representative tries to identify deliberately concealed facts and circumstances, overcome artificial obstacles and bring the investigation to an objective path. This opposition of interests between the opposing party and the law enforcement officer creates a conflict situation, in which the pre-trial investigation usually takes place. As rightly noted in scientific literature, investigative activities are characterized by constant overcoming of resistance from persons not interested in an effective pre-trial investigation.

Most conflict situations at the stage of pre-trial investigation arise not only in the interaction between the investigator and the defense, but in the relationship between the investigator and other participants in the criminal proceedings (in particular, between the investigator and the prosecutor, the head of the pre-trial investigation body, colleagues, the victim or his representative, witnesses, experts, specialists, interpreters and other persons involved in the conduct of investigative (search) actions). It is important to emphasize that such conflicts are not personal in nature, but are manifestations of a forensic nature, since they directly relate to the performance of the investigator's main function: implementation of the tasks of criminal proceedings.

Modern crime is increasingly characterized by a high level of organization, thoughtfulness and duration of preparation of illegal acts. The resources obtained as a result of criminal activity not only ensure its continuation, but are invested, transformed into development of new forms and mechanisms. Criminals introduce innovative methods of committing crimes, as well as improve the means of

13 Плетенець В. М. Знач. твір. URL: <https://er.dduvs.edu.ua/handle/123456789/6404> (date accessed: 11.05.2025).

counteracting their detection, documentation and investigation. At the same time, the number of persons involved in creating artificial obstacles to law enforcement activities is growing.

If previously the main counteraction subjects were suspects and accused, now witnesses, victims, other participants in criminal proceedings, as well as third parties, often not directly related to the crime or its perpetrators, including government officials, law enforcement officials and the court, who, due to corrupt connections, contribute to evasion of responsibility, cover up criminals, or deliberately slow down the investigation are taking an increasingly active part in this procedure.

Significant complication of the operational and investigative activities of law enforcement officers is explained by the fact that the former spontaneous, fragmented crime was finally transformed into an organized system. Counteraction by such criminal structures has become more technological, purposeful and aggressive. Modern organized criminal groups have highly qualified personnel, access to the latest technical means, a serious material base, weapons, as well as an extensive network of corruption contacts. Taking advantage of these opportunities, they not only skillfully disguise their illegal activities, but actively oppose their exposure at every stage of criminal proceedings.

Moreover, criminal groups, in order to ensure their own safety and stable functioning, implement a set of special measures to counter the investigation. They develop strategies and tactics for counteraction, establish systems of in-

ternal conspiracy, create structures that perform the functions of intelligence and counterintelligence, form financial funds to bribe officials and support persons who are in prison or have just left prison. In addition, criminal organizations actively use international channels to commit crimes, legalize funds or flee abroad in order to avoid criminal prosecution and take other measures.

In scientific literature, analysis of counteracting investigation is carried out taking into account its various aspects: forms of detection, methods of implementation, typical situations, factors of determination, subjective side, chronological aspect, as well as qualitative characteristics. Most researchers focus on classification of forms and manifestations of counteraction, making a division according to different criteria and describing individual elements of this phenomenon.

Currently, the terms *forensic counteraction characteristics* of and *general counteraction characteristics* are actively used in scientific circulation¹⁴. At the same time, these publications do not clearly define the content of the terms themselves that creates a certain theoretical uncertainty.

The analysis of the content of the outlined researches gives grounds to distinguish two main components, which the authors usually consider to be elements of the forensic counteraction characteristics:

- 1) forms and methods of counteraction to the investigation;
- 2) counteracting actors.

These components are basic in all scientific works, regardless of whether they apply the concept of *forensic characteri-*

14 Ромців О. І. Зазнач. твір. URL: <https://uacademic.info/ua/document/0416U003853> (date accessed: 11.05.2025) ; Богданюк Р. І. Подолання протидії виявленню та розслідуванню кримінальних правопорушень у сфері господарської діяльності : дис. ... д-ра філос. в галузі права. Харків, 2025. 237 с. URL: <https://www.uacademic.info/ua/document/0825U001351> (date accessed: 11.05.2025).

zation. Within first component, the main task is to classify forms of counteraction as specific manifestations, as well as to disclose their specifics through the analysis of behavioral acts in which these forms are implemented. The second component focuses on identification of the types of subjects who counteract, the study of the motivational basis of their actions and their impact on the course and results of the pre-trial investigation.

Despite the unconditional scientific value of such developments, it should be recognized that limiting research only to classification of forms, methods and subjects does not provide full information support for investigative activities to identify and overcome counteraction. One of the significant shortcomings of this approach is the lack of analysis of external manifestations of the results of the use of specific countermeasures, i.e., material, digital and ideal traces that reflect the fact of counteraction. Without studying these traces, it is impossible to build full-fledged models of counteraction mechanism, to describe the consequences of its implementation, and therefore to develop effective tactical algorithms of actions for pre-trial investigators.

It is on the basis of such models that it is possible to determine the structure of the investigator's search and cognitive activity, focused on identifying a trace complex, set of reflections that arise as a result of person's actions aimed at committing crime, concealing it, as well as obstructing its investigation. This complex includes not only the actions of stakeholders, but influence of other procedure participants, even those who are not formally interested in the results of investigation. Only through an integrated approach that covers both behavioral mechanisms, trace formation, and search tactics, it is possible to provide high-quality forensic support for the inves-

tigation of certain types of criminal offenses. This approach is recognized in modern scientific doctrine.

Forensic characteristic of counteracting investigation should contain a number of key structural elements that ensure its application, in particular for development of algorithms for investigating certain types of criminal offenses. These elements include:

- 1) typical subjects of counteraction, their motivation and traditional objects of influence;
- 2) forms and methods of counteraction, as well as their impact on the sources of factual information about the circumstances of criminal offense;
- 3) use signs of specific counteraction methods.

It is important not only to provide a list of these elements, but to disclose them in a meaningful way in order to avoid transformation of the forensic characterization into a theoretical abstraction. For this purpose, we propose the following approach:

1. *Characteristics of counteraction subjects.* For each type of counteracting entity, it is necessary to define:
 - their potential to influence the course and outcome of the investigation;
 - conditions under which these persons may be involved in counteraction;
 - motivational basis for their actions;
 - nature of the relationship with the person who committed the criminal offense;
 - if it is a group of persons, then assess the level of connections between them.
2. *Forms and methods of counteraction.* During their research, it is necessary to:

- classify and describe the main forms and methods of counteraction;
 - trace their connection with the type of criminal offense, its characteristic sources of evidentiary information, as well as the peculiarities of collecting evidence;
 - determine the conditions under which a certain method of counteraction is chosen;
 - analyze the factors that affect effectiveness or ineffectiveness of specific methods.
3. *Counteraction signs*. Evaluate the mechanism for applying countermeasures, which should include:
- analysis of both material traces (reflections in the subject environment) and behavioral manifestations of persons trying to hide information significant for criminal proceedings;
 - comparing the actual trace complex with the one that would have been formed without the intervention of countermeasure;
 - detection of changes in the structure and characteristics of traces under the influence of counteraction. Such an analysis makes possible not only to state the fact of the use of counteraction, but identify its mechanisms, consequences and directions for overcoming.

Therefore, forensic characteristic of counteraction to the investigation of a particular type of criminal offense can be considered as an independent element in the structure of the relevant investigation methods, if it is characteristic of investigated group of criminal offenses. At the same time, it partially intersects with the forensic characteristics of the criminal offense itself, primarily in cases of inten-

tional crimes, which are preceded by careful planning (preparation), where counteraction can be an element of the method or mechanism of its commission.

Thereby, we agree with the approach according to which during research on essence (activity component) of counteracting investigation it is necessary to investigate:

- 1) forensic characteristics of the offense;
- 2) forensic characteristics of counteraction to its investigation;
- 3) based on these generalized data, typical investigative situations and recommendations for the organization of the investigation at various stages are formulated. This approach provides categorical clarity, terminological consistency, and contributes to a deeper understanding of both the patterns of criminal activity and its investigation.

It should be noted that criminal prosecution, both real and imaginary, should be considered as a general object of counteraction in its dynamic, complex dimension. This phenomenon varies depending on the stage of prosecution and the nature of the influence of the opposing entity. The direct object of counteraction is a criminal conflict, i.e. the result of a clash between two types of legal relations that are opposite in nature: on the one hand, criminal prosecution, and on the other hand, counteraction to this process. At its core, a criminal conflict reflects the interaction between participants in criminal proceedings, including persons involved by both procedural and non-procedural means, around the protection or opposition to the rights and interests arising from the commission of a criminal offense. In contrast to this dynamic approach that takes into account development and variability

of the object under the influence of external factors, the vast majority of scientific positions are dominated by a static understanding of the object. Only a single aspect of criminal proceedings is considered as the object of counteraction, without taking into account the changing conditions of its functioning, transformation or termination. This approach seems to be limited and does not reflect the real functioning of the criminal process in the context of counteraction¹⁵.

The analysis of the practice of investigating crimes in the presence of counteraction, as well as the relevant theoretical developments has indicated that structure of counteracting investigation is most fully revealed through the elements of its general characteristics, which include:

- subject of counteracting investigation;
- purpose and motives of counteraction;
- object of counteraction;
- time, place and conditions in which the counteraction is carried out;
- method of counteraction implementation and its reflection in the traces;
- consequences of the counteraction.

The purpose of concealment within the method of committing criminal offense is to facilitate its implementation, to obtain additional time for escape or to prevent the fixation of the fact of a crime (detection of its signs) by law enforcement agencies. However, as practice demonstrates, during such actions, offenders often leave additional traces that have even higher evidentiary value than the main ones.

The purpose of concealment within the method of committing crime is the

desire of its subjects to facilitate the implementation of the criminal intention, or, if possible, not to allow the fact of committing a criminal offense to be revealed by other persons, in particular, law enforcement officers. At the same time, as practice shows, criminals simultaneously leave additional traces, which often have even higher evidentiary value.

Duration of counteracting investigation depends on a number of factors: the duration of the pre-trial investigation (the longer the investigation lasts, the more people are involved in the system of criminalized connections and become subjects of counteraction); the volume, significance and evidence reliability; the professional level of the investigators who carry out the investigation in the face of active counteraction, etc.

Locations of counteraction implementation can be conditionally combined into two main groups:

- 1) locations of investigative (search) and other procedural actions;
- 2) locations of sources or carriers of evidentiary information, as well as documents in which it is recorded.

Counteraction as a typical way of implementing a criminal intent consists of three stages:

- 1) preparation for counteraction;
- 2) direct actions aimed at counteraction;
- 3) concealment of counteraction itself.

Each of these stages has its own specific content, which varies depending on the specific investigative situation, for example, the presence of the suspect (accused), preventive measure chosen against him, etc. Within each stage, specific tasks are formed, goals, performers are determined,

15 Патрелюк Д. Об'єкт протидії кримінальному переслідуванню. *National Law Journal: Theory and Practice*. 2017. № 12. С. 141—144. URL: http://www.jurnaluljuridic.in.ua/archive/2017/6/part_2/31.pdf (date accessed: 11.05.2025).

as well as means and methods for implementing actions. Direct counteraction is usually manifested in the targeted impact on the sources of forensically significant information.

Counteraction result can be assessed in two aspects:

- 1) from the standpoint of the interests of the entire criminal group (preservation of its main structure, ensuring the continuity of illegal activities);
- 2) in the context of interests of individual participants (for example, avoidance of punishment). Depending on effectiveness, result can be positive, partially positive or negative for the criminal environment.

Mechanism of counteraction to the investigation is based on a system of deliberate actions (in certain cases, by inaction), their interrelations and is implemented through a number of externally detected actions, which may vary depending on:

- initiatives of a particular counteraction entity;
- chosen methods and their combinations;
- stages of criminal procedural activity.

At the same time, the general structure of the mechanism provides for the participation of a number of persons, both direct participants in the criminal event and third parties involved "from the outside" (for example, witnesses or corrupt connections).

Characteristics of situation when counteracting investigation is implemented should take into account relationship of the person with the individual stages of criminal proceedings. These stages include, but are not limited to:

- 1) priority investigative (search) and procedural actions;

- 2) stage from the moment of opening of criminal proceedings;
- 3) period from the raising of suspicion to opening of the materials of criminal proceedings and familiarization of the parties with the materials of criminal proceedings;
- 4) stage from the beginning of familiarization to the transfer of the indictment to the court;
- 5) period after indictment is sent to the court for trial on the merits.

Conclusions

Counteracting investigation is a complex, dynamic and multifaceted phenomenon that is formed in the context of a criminal conflict and is externally expressed in the purposeful behavior of persons interested in concealing the actual circumstances of a criminal offense. Its active side consists in the commission of active (sometimes inactive) acts of influence on the course and results of the pre-trial investigation.

Activities of the subjects of counteraction are implemented not chaotically, but within a certain mechanism, which consists of the following stages: 1) preparation for counteraction; 2) active implementation of influence on the sources of evidence; 3) concealment of traces of the actions committed. The mechanism of counteracting to investigation is variable, depends on the stage of criminal proceedings, the chosen tactics and the presence of corruption, organizational and social ties of the subject (subjects) of counteraction.

Structural components of forensic characteristics of counteraction are the subjects of counteraction, their motives and objects of influence; typical forms and methods, their influence on the sources of evidence; signs of the use of specific meth-

ods that are manifested both in the subject environment and in the behavior of the subjects.

Modern counteraction to pre-trial investigation is especially threatening in the context of organized criminal activity. It has a high level of organization, internal structure, financial, technical and personnel support. Counteraction becomes an element of the strategy of criminal groups, which systematically plan it at all stages – from concealing the crime to influencing the court. While studying counteracting investigation, it is theoretically appropriate to talk about the forensic characteristic of counteracting investigation that should be integrated as a separate component into the structure of the investigation methodology for those criminal offenses that are characterized by active counteraction. It should be built on the basis of: 1) analysis of typical methods and mechanisms of counteraction; 2) research on subject-role structure of counteraction; 3) study of changes in investigative complex caused by targeted influence on evidence.

Діяльнісна природа протидії розслідуванню кримінальних правопорушень

Олександр Таркан

Мета статті — визначити складові діяльності, що полягає у протидії розслідуванню кримінальних правопорушень. Поставлену мету досягнуто завдяки застосуванню комплексу загальнонаукових, спеціальних і філософських методів дослідження, зокрема діалектичному, моделювання, системно-структурному та порівняльному аналізу тощо. Визначено, що протидія розслідуванню є складним, динамічним і багатоаспектним явищем, яке формується в умовах кримінального конфлікту та виявляється через цілеспрямовану поведінку осіб, зацікавлених у приховуванні фактичних обставин кримінального правопорушення. Її діяльнісна сторона по-

лягає у вчиненні реальних (іноді — бездіяльних) актів впливу на перебіг і результати досудового розслідування. З'ясовано, що таку діяльність суб'єкти протидії реалізують не хаотично, а в межах певного механізму, який містить такі етапи: підготовка до протидії; активна реалізація впливу на джерела доказової інформації; приховування слідів учинених дій. Визначено, що механізм протидії розслідуванню варіативний, залежить від стадії кримінального провадження, обраних тактик та наявності корупційних, організаційних і соціальних зв'язків. Обґрунтовано, що структурними компонентами криміналістичної характеристики протидії є: 1) суб'єкти протидії, їхні мотиви й об'єкти впливу; 2) типові форми та способи, їхній вплив на джерела доказів; 3) ознаки застосування конкретних способів, що виявляються як у предметному середовищі, так і в поведінці суб'єктів. Доведено необхідність вивчення саме зовнішніх виявів протидії (матеріальних, цифрових, ідеальних слідів) як ключового джерела для моделювання механізмів злочинної протидії та створення ефективних тактичних рішень. З'ясовано, що протидія розслідуванню має конфліктну природу, у якій стикаються протилежні цілі сторін кримінального провадження. Це не лише конфлікт між слідчим і підозрюваним, а й взаємодія з іншими учасниками процесу: прокурором, свідками, понятими, експертами та ін. Така взаємодія створює напружене слідче середовище, що потребує високого рівня професійної адаптивності слідчого. Зазначено, що сучасна протидія досудовому розслідуванню особливо загрозлива в умовах організованої злочинної діяльності. Вона має високий рівень організації, внутрішньої структури, фінансової, технічної та кадрової підтримки. Обґрунтовано, що криміналістична характеристика протидії розслідуванню має бути інтегрована як окремий компонент до структури методики розслідування тих кримінальних правопорушень, для яких характерна активна протидія. Її слід будувати на основі: 1) аналізу типових способів і механізмів протидії; 2) дослідження суб'єктно-рольової структури протидії; 3) вивчення змін у слідovому

комплексі, зумовлених цілеспрямованим впливом на докази.

Ключові слова: досудове розслідування; протидія розслідуванню; слідча діяльність; подолання протидії розслідуванню; складові протидії розслідуванню.

Financing

This research did not receive any specific grant from funding institutions in the public, commercial or non-commercial sectors.

Disclaimer

Founders had no role in the research design, data collection and analysis, decision to publish or manuscript preparation.

Participants

The author has contributed solely to intellectual discussion underlying this document, case law research, writing and editing, and assumes responsibility for its content and interpretation.

Declaration of Competing Interest

Author declares no conflict of interest.

References

- Aleksandrenko, O. V. (2004). *Kryminalistychni problemy podolannia protydii rozsliduvanniu* [The criminalistic problems of overcoming of counteraction to investigation] : avtoref. dys. ... kand. yuryd. nauk. Kyiv. URL: <https://dspace.nlu.edu.ua/jspui/handle/123456789/13980> [in Ukrainian].
- Bohdaniuk, R. I. (2025). *Podolannia protydii vyivlenniu ta rozsliduvanniu kryminalnykh pravoporushen u sferi hospodarskoi diialnosti* [Overcoming resistance to detecting and investigating criminal offenses in the economic activity field] : dys. ... d-ra filos. v haluzi prava. Kharkiv. URL: <https://www.uacademic.info/ua/document/0825U001351> [in Ukrainian].
- Chesakova, M. S. (2019). *Protydiia rozsliduvanniu zlochyniv ta shliakhy yii podolannia na stadii dosudovoho rozsliduvannia* [Counteraction to crime investigation and ways of its overcoming at the stage of pre-trial investigation] : avtoref. dys. ... kand. yuryd. nauk. Kharkiv. URL: <https://uacademic.info/ua/document/0419U005608> [in Ukrainian].
- Hrytsiuk, I. V. (2012). *Protydiia rozsliduvanniu zlochyniv u sferi opodatkuвання* [Counteraction to investigate crimes in the area of taxation] : dys. ... kand. yuryd. nauk. Irpin. URL: <https://uacademic.info/ua/document/0412U004215> [in Ukrainian].
- Hutnik, K. V. (2010). *Rozsliduvannia zlochyniv v umovakh protydii, yaka chynytsia z vykorystanniam sotsialnoi napruhy* [Investigation of crimes in the context of counteraction, which is committed with the use of social tension] : avtoref. dys. ... kand. yuryd. nauk. Kharkiv [in Ukrainian].
- Mudretskyi, R. V. (2019). *Podolannia protydii sudovomu rozghliadu u kryminalnykh provadzhenniakh* [Overcoming the Counteraction to Trial in criminal proceedings] : dys. ... kand. yuryd. nauk. Kryvyi Rih. URL: <https://uacademic.info/ua/document/0420U100095> [in Ukrainian].
- Patrel'yuk, D. (2017). *Ob'ekt protydii kryminalnomu peresliduvanniu* [Object of Counteracting to Criminal Prosecution]. *National Law Journal: Theory and Practice*. No. 12. URL: http://www.jurnaluljuridic.in.ua/archive/2017/6/part_2/31.pdf [in Ukrainian].
- Piddubnyi, V. V. (2020). *Podolannia protydii rozsliduvanniu zlochyniv ekonomichnoi spriamovanosti* [Overcoming the Counteraction to the Investigation of Economic Crimes] : dys. ... kand. yuryd. nauk. Kharkiv. URL: <https://uacademic.info/ua/document/0420U100568> [in Ukrainian].
- Pletenets, V. M. (2020). *Teoretychni ta prakseologichni zasady podolannia protydii dosudovomu rozsliduvanniu* [Theoretical and praxeological principles of overcoming opposition to pre-trial investigation] : monohrafiia. Odesa. URL: <https://er.dduvs.edu.ua/handle/123456789/6404> [in Ukrainian].
- Romtsiy, O. I. (2016). *Osoblyvosti podolannia protydii pid chas rozsliduvannia zlochyniv u sferi sluzhbovoi diialnosti* [Special aspects of overcoming counteraction to investigation of crimes in the sphere of official activity] : dys. ... kand. yuryd. nauk. Lviv. URL: <https://uacademic.info/ua/document/0416U003853> [in Ukrainian].

- Shchur, B. V. (2005). *Taktyka usunennia protydii rozsliduvanniu zlochyniv, shcho vchyniautsia orhanizovanyymi zlochynnym hrupamy* [Tactics of countering obstruction of the investigation of crimes committed by organized criminal groups] : dys. ... kand. yuryd. nauk. Kharkiv. URL: <https://uacademic.info/ua/document/0405U000648> [in Ukrainian].
- Shekhavtsov, R. M. (2003). *Formy ta sposoby protydii rozsliduvanniu zlochyniv ta zasoby yikh podolannia (za materialamy kryminalnykh sprav pro vymahannia, vchyneni orhanizovanyymi hrupamy, zlochynnymi orhanizatsiiami)* [The forms and ways of counteraction to investigation and means of their overcoming (on materials of criminal cases of squeeze, accomplished by the organized groups, criminal organizations)] : dys. ... kand. yuryd. nauk. Kyiv. URL: <https://uacademic.info/ua/document/0404U000411> [in Ukrainian].
- Trepak, V. M. (2011). *Rozkryttia ta rozsliduvannia khabarnytstva, vchyniuvanoho sudamy, ta podolannia protydii zasobamy operatyvno-rozshukovoi diialnosti* [Disclosure and investigation of bribery committed by judges and overcoming resistance through operational and investigative activities] : avtoref. dys. ... kand. yuryd. nauk. Kyiv. URL: <https://mydisser.com/en/catalog/view/rozkrit-tya-ta-rozsliduvannya-habarnictva-vchynuvanogo-suddyami-ta-podolannya-protidii-zasobami-ope.html> [in Ukrainian].
- Vartsaba, V. M. (2003). *Rozsliduvannia zlochyniv orhanizovanykh zlochynnykh hrup (taktyko-psykholohichni osnovy)* [Investigation of Crimes Committed by Organized Criminal Groups (Tactical and Psychological Grounds)] : dys. ... kand. yuryd. nauk. Kharkiv. URL: <https://uacademic.info/ua/document/0404U000656> [in Ukrainian].
- Tarkan, O. (2025). Activity nature of counteracting investigation of criminal offenses. *Theory and Practice of Forensic Science and Criminalistics*. Issue 2 (39). Pp. 148–161. DOI: 10.32353/khrife.2.2025.11.