

Scientific support of pre-trial investigation of interference in activities of public authorities

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The purpose of this paper is to determine the state of modern scientific support for problems of criminal liability and pre-trial investigation of criminal offenses related to interference in the activities of representatives of State authorities. The set goal was realized thanks to the complex application of general scientific (analysis, synthesis and generalization), dialectical, comparative-legal, systemic-structural and prognostic methods. The problems of the scientific development of criminal responsibility and investigation of interference in the activities of representatives of state authorities are analyzed. Attention is focused on the issues of bringing a person to criminal responsibility for committing criminal offenses of this category, peculiarities of their criminal characteristics, development of methods for their prevention and scientifically based recommendations for their pre-trial investigation. It was established that the following terminological constructions are typical for the designation of illegal activities related to any interference in the activities of representatives of state authorities: "interference in activities" (less often: "interference in the exercise of powers"); "influence" (or "unlawful influence"); "obstructing activity". Taking into account the approaches established in the legal literature, it is proposed to use the term "interference in activity". It was found that, currently only the specifics of bringing a person to criminal responsibility for committing such offenses have been sufficiently developed and the issues of forensic characteristics and tactical and organizational principles

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of their pre-trial investigation do not meet the appropriate level, especially considering the current issues of law enforcement practice. Prospects for further research within the framework of the raised issues are outlined.

Keywords: criminal proceedings; criminal liability; pre-trial investigation; interference in activities; public authority; law enforcement officer; influence; hindering.

Research Problem Formulation

In order to fulfill the functions assigned to, the State grants its representatives (state employees) certain powers and stipulates the guarantees of their professional activity, at the same time it sets high demands on them. The state applies liability (in particular, criminal one) for illegal actions against its representatives, as well as subjects entrusted with the performance of its functions.

Professional activity guarantees of representatives of State authorities include enhanced protection of their independence, which provides for the ability to perform their functions unhindered, without any external influence and remain independent in making legal decisions within the limits of the powers granted to.

Modern doctrine of criminal law provides for liability for interference in the activities of law enforcement officers, government officials, judicial bodies, defense attorneys, representatives of individuals, etc. At the same time, judicial statistics show that, in practice, there are isolated cases of conviction of those guilty of this type of criminal offense. This makes it possible to assume that the articles of the Criminal Code of Ukraine, in which title of the phrase “interference in activity” is used, do not have wide practical application. The reasons for this are both im-

perfection of the articles of the Criminal Code determining responsibility for such acts, and deficiencies in the work of law enforcement agencies. Undoubtedly, composition of crimes involving responsibility for interference in the activities of certain persons is analyzed in all scientific and practical commentaries of the Criminal Code of Ukraine and textbooks on the Special Part of the Criminal Law of Ukraine. Unfortunately, in scientific literature, this issue, as well as the problem of pre-trial investigation of criminal offenses related to interference in the activities of public authorities has not been comprehensively investigated.

In order to effectively combat criminal offenses related to interference in the activities of representatives of State authorities, it is necessary to develop the theoretical and practical foundations of the forensic methodology of their investigation. First of all, it is necessary to find out the current state of scientific development of the problems of criminal responsibility for the commission of criminal offenses of this group and the problems of their pre-trial investigation.

Article Purpose

Determine the current state of scientific support for the problems of criminal liability and pre-trial investigation of criminal offenses related to the involvement in the activities of representatives of public

authorities that requires: 1) identify criminal offenses belonging to this group (according to the textual analysis of the articles of the current Criminal Code, which criminalized such acts); 2) find out the state of scientific research of mentioned problems; 3) determine the status of scientific development of issues of pre-trial investigation of such criminal offenses; 4) outline the prospects for further scientific research in this direction.

Research Methods

The set goal was realized thanks to the complex application of a rationally chosen methodological apparatus, namely: general scientific (analysis, synthesis and generalization was applied to the textual analysis of the provisions of the current Criminal Code of Ukraine and the project of the new one, as well as scientific works on the issue under consideration), dialectical (contributed to the analysis of the definitions of the concepts of *obstruction*, *interference in activity*, *influence*, on which basis the author's vision of their relationship and the correctness of use was formulated), comparative legal (it became useful for clarifying the specifics of criminalization in the current legislation of actions that hinder the activities of representatives of state authorities and comparing them with the project of the new Criminal Code of Ukraine), system-structural (it made it possible to consider the raised problem in a broad and narrow sense, as well as justify the expediency of considering those in which the legislators used the terminological construction of "interference in activity") and prognostic (it helped to determine the prospects of further scientific intelligence in the context of the research problem) methods.

Analysis of Essential Researches and Publications

The following prominent representatives of criminal law sciences made a significant contribution to the study of the issue of criminal liability for committing criminal offenses: P. Andrushko, M. Bazhanov, O. Bandurka, Yu. Baulin, P. Berzin, V. Hryshchuk, M. Melnyk, S. Lykhova, P. Matyshevskiy, O. Lytvynov, V. Navrotskyi, V. Stashys, V. Tatsii, M. Khavroniuk, P. Fris and many others.

In the special literature, the development of forensic techniques and some aspects of the pre-trial investigation of criminal offenses are disclosed in research papers by H. Avdeeva, L. Arkusha, V. Bakhin, R. Blahuta, V. Vapniarchuk, 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. Piroga, O. Pchelina, V. Pcholkin, O. Sainchina, M. Selivanov, E. Simakova-Yefremian, Z. Sokolovskyi, R. Stepanyuk, V. Stratonov, G. Teteryatnik, V. Tishchenko, T. Fomina, A. Khitry, D. Tsekhan, K. Chaplynskyi, S. Cherniavskyi, Yu. Chornous, V. Shep-itko, V. Shevchuk, M. Shcherbakovskyi, B. Shchura, V. Yusupov, et al.

As for research on various aspects of the pre-trial investigation of criminal offenses related to interference with the activities of representatives of public authorities, they have also been repeatedly covered in the legal literature. Thus, V. Husieva analyzed circumstances to be established during the investigation of interference in the activities of a law enforcement officer (as an independent

structural element of the forensic methodology for investigating a crime)¹.

Recently, scientific research has intensified on issues related to the investigated by us, namely: the pre-trial investigation of interference with the activities of a lawyer (some elements of the mechanism of such criminal activity are similar to those used to interfere with the activities of representatives of public authorities). Various aspects of criminal liability and investigation of interference in the activities of the lawyer were carried out by A. Moroz², T. Tychyna³, I. Fedoronchuk⁴, Ya. Oliynyk⁵, D. Rusanivska⁶. Thus, the main aspects of the problems related to the study are sufficiently developed in the theory of domestic legal science.

Attention of scientists is also drawn to the issues of criminal liability and investigation of interference in the activities of the judiciary: this topic is devoted to research papers by L. Paliukh⁷, I. Medytskyi⁸, M. Udoda⁹ et al.

At the same time, the issue of investigating interference in activities of representatives of state authorities has not yet been subjected to a comprehensive study, so we believe that it requires research intensification.

Main Content Presentation

In the current Criminal Code of Ukraine, construction of *interference in activity* has been used several times, namely:

- 1 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: 20.06.2024).
- 2 Мороз А. О. Кримінально-правове дослідження злочину втручання в діяльність захисника чи представника особи (ст. 397 КК України) : автореф. дис. ... канд. юрид. наук. Київ, 2018. 20 с.
- 3 Тичина Т. Є. Кримінальна відповідальність за втручання в діяльність захисника : дис. ... д-ра філос. у галузі права. Харків, 2021. 257 с. URL: <https://old.karazin.ua/docs/work/dyser-tatsii/tychyna-dysertatsia.pdf> (date accessed: 20.06.2024).
- 4 Федорончук І. В. Кримінологічна характеристика та запобігання втручанням у діяльність захисника чи представника особи : автореф. дис. ... д-ра філос. у галузі права. Одеса, 2024. 289 с.
- 5 Олійник Я. С. Методика розслідування погрози або насильства щодо захисника чи представника особи : дис. ... д-ра філос. у галузі права. Львів, 2021. 239 с.
- 6 Русанівська Д. Д. Розслідування втручання в діяльність захисника чи представника особи : дис. ... д-ра філос. у галузі права. Київ, 2023. 260 с. URL: <https://elar.naiu.kiev.ua/server/api/core/bitstreams/87c654d4-47e0-4e7b-ae7c-8ecfdc784aaf/content> (date accessed: 20.06.2024).
- 7 Палюх Л. М. Кримінальна відповідальність за кримінальні правопорушення проти правосуддя : автореф. дис. ... д-ра юрид. наук. Харків, 2021. 39 с.
- 8 Медицький І. Б. Втручання в діяльність судових органів (ст. 376 КК України): актуальні питання кримінально-правової кваліфікації. Актуальні проблеми вдосконалення чинного законодавства України. 2023. Вип. 62. DOI: 10.15330/apiclu.62.1.144-1.155 (date accessed: 20.06.2024).
- 9 Удод М. В. Особливості розгляду повідомлень про втручання у здійснення правосуддя суддів під час воєнного стану. Проблеми інформаційно-правового забезпечення децентралізації державної влади та цифрової трансформації в Україні : зб. мат-лів наук.-практ. конф. до 30-річ. НАПрН України (Вінниця, 15.06.2023). Вінниця, 2023. Т. 1. С. 68–72. URL: https://ippi.org.ua/sites/default/files/zbirnik_1_3.pdf (date accessed: 20.06.2024).

- 1) in Section V “Criminal offenses against electoral, labor and other personal rights and freedoms of man and citizen in Part 4 of Article 157 that provides for liability for: “unlawful interference of an official in the activities of an election commission, a referendum commission or a member of an election commission, a referendum commission using official position to influence their actions or decisions”;
- 2) Section XV: *Criminal offenses against the authority of public authorities, local self-government bodies, associations of citizens and criminal offenses against journalists*, in particular:
 - Art. 343: *Interference in activities of employee of a law enforcement agency, a forensic expert, an employee of the State executive service, private executor;*
 - Art. 344: *Interference in the activities of a public figure;*
- 3) in Section XVIII: *Criminal offenses against justice*:
 - Art. 376: *Interference in the activities of judicial bodies;*
 - Art. 397: *Interference in the activities of a defender or representative of a person*¹⁰.

Despite the fact that the outlined criminal offenses are aimed at and encroach on heterogeneous social relations, and in fact the object of the composition of these criminal offenses is different, we note that they attract our attention due to the fact that they criminalize actions in the form of interference in activities, before not simple par-

ticipants in social relations, but endowed in society with a certain status that distinguishes them from others. At the same time, almost all of these criminal offenses are related to interference in the activities of representatives of state authorities. An exception, in our opinion, is only a criminal offense provided for in Art. 397 of the Criminal Code, because the provision of this article criminalizes the protection and representation of a person in relation to the provision of legal assistance by¹¹.

It should be noted that all these actions, in accordance with the provisions of the current regulations, are aimed at a lawyer, that is, an individual who performs advocacy on the grounds and in the manner prescribed by the Law of Ukraine: *On the Bar and Legal Practice*¹². At the same time, advocacy in this Law is defined as an independent and professional activity of an advocate related to the implementation of defense, representation, and provision of other types of legal assistance to clients¹³. Thereby, while examining groups of criminal offenses related to interference in the activities of representatives of state authorities, we see no reason to add there also interference in the activities of a defender and a representative of a person, because the latter carry out their activities on their own initiative and on the basis of relevant contracts on the provision of legal aid, therefore, their activity is aimed at meeting the needs of the clients they represent and is not related to the implementation of state functions.

10 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: 12.03.2024).

11 Там само.

12 Про адвокатуру та адвокатську діяльність : Закон України від 05.07.2012 р. № 5076-VI (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/5076-17#Text> (date accessed: 12.03.2024).

13 Там само.

As for the scientific development of issues of bringing to criminal responsibility and counteracting criminal offenses related to interference with the activities of representatives of state authorities, these problems have already become the subject of scientific research. At the same time, it is worth noting that scientists call these criminal delicts differently: “interference in activities”, “obstruction of activities”, “illegal influence”, etc. Therefore, we consider it necessary to refer to developments that consider the appropriateness of using specific terminological constructions to denote illegal activities aimed at representatives of public authorities and related to interfering in their professional activities, pressure or other illegal influence on them.

Particular attention in the legal literature is paid to criminal offenses committed against law enforcement officers, as the most common in the recorded number of such torts against representatives of public authorities. One of the first (2007) problems of criminal liability for interference in the activities of law enforcement officers tried to solve I. Zalyalov¹⁴, emphasizing a certain inconsistency between the title of Article 343 of the Criminal Code and the text of Part 1 of this article¹⁵. The researcher substantiated her approach by the fact that it is possible to influence the law enforcement officer not only by

active actions, but also by inaction, while to engage in activity exclusively by active actions, and also substantiated a number of other provisions of the appropriate level of scientific novelty¹⁶.

A comprehensive approach to solving the problem of criminal liability for interference in the activities of various participants in legal relations was implemented by E. Blazhivskiy: in his dissertation research, he outlined separate issues of prosecution for the commission of crimes provided for in Part 4 of Art. 157 and Art. 343, 344, 376 and 397 of the Criminal Code¹⁷. In our opinion, his significant contribution is the proposal to use the phrase “interference in the exercise of powers” instead of “interference in activity” due to the lack of a definition of the concept of “activity” in criminal legislation. The scientist also noted that in the current Criminal Code, the phrase “interference in activity” is used to denote: illegal encroachments on the normal activity of persons acting on behalf and/or in the interests of the state; only active and intentional behavior of the subject¹⁸.

Criminal offenses investigated by Ye. Blazhivskiy have repeatedly become the subject of study by Ukrainian researchers. Thus, A. Tskhovrebov devoted his thesis to the criminal law nature, essence, content, grounds and conditions of the offensive, as well as the forms of criminal lia-

14 Залялова І. М. Кримінальна відповідальність за втручання в діяльність працівника правоохоронного органу : автореф. дис. ... канд. юрид. наук. Київ, 2007. С. 5.

15 Кримінальний кодекс ... (станом на 10.01.2007 р.). URL: <https://zakon.rada.gov.ua/laws/show/2341-14/ed20070110#Text> (date accessed: 12.03.2024).

16 Залялова І. М. Зазнач. твір.

17 Блажівський Є. М. Кримінальна відповідальність за втручання в діяльність за кримінальним правом України : автореф. дис. ... канд. юрид. наук. Львів, 2010. С. 5. URL: <https://dspace.lvduvs.edu.ua/bitstream/1234567890/85/1/blazivckui.pdf> (date accessed: 20.06.2024) ; Кримінальний кодекс ... (станом на 10.01.2007 р.). URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 12.03.2024).

18 Блажівський Є. М. Зазнач. твір. URL: <https://dspace.lvduvs.edu.ua/bitstream/1234567890/85/1/blazivckui.pdf> (date accessed: 20.06.2024).

bility for interference in the activities of law enforcement officers¹⁹. S. Husarov²⁰, A. Borovyk²¹, Yu. Stepanova²² and other scientists also analyzed the mentioned problems in their research papers.

Obstruction of activity in criminal law was considered in detail by Ye. Pylypenko. In his opinion, crimes of obstruction of activity should be considered in a broad sense (those that directly encroach on the right to carry out legal activity: criminal offenses provided for in Articles 114-1, 157, 170, 171, 174, 206, 279, 340, 341, 343, 344, 350, 351, 351-1, 351-2, 375, 376, 382, 386, 391, 397 of the Criminal Code²³), and in the narrow sense (which objective side is exhausted by actions in the form of obstruction : Articles 114-1, 170, 171, 180, 340 of Criminal Code of Ukraine²⁴)²⁵. E. Pylypenko proposed to understand the obstruction of activity (as a feature that unites the relevant components of crimes)

as actions to create obstacles in the exercise of the right of another person to a certain activity not prohibited by law, i.e., an action or inaction (physical, intellectual) aimed at preventing, termination or complication of such activities. At the same time, the scientist did not pay attention to the norms containing responsibility for actions, which are formulated in the legislation using other terms, as well as articles in the text of which (despite the indication in the title) the term: “*obstruction* is missing (in other words, author actually examines the composition of criminal offenses, provided for in Articles 114-1, 170, 171, 180, 340 of the Criminal Code²⁶, and does not consider interference in the activities of state authorities)²⁷.

S. Yermolaieva-Zadorozhnia grouped crimes related to obstruction of official activities as follows: illegal interference, abuse of influence, threat or violence

- 19 Цховребов А. О. Кримінальна відповідальність за втручання в діяльність працівника правоохоронного органу : дис. ... канд. юрид. наук. Дніпро, 2017. 226 с. URL: <https://dduvs.edu.ua/wp-content/uploads/files/Structure/science/rada/k2/dissertations/5/3.pdf> (date accessed: 20.06.2024)
- 20 Гусаров С. М. Кримінально-правовий захист працівників правоохоронних органів: сучасний стан та перспективи вдосконалення. *Вісник Кримінологічної Асоціації України*. 2015. № 3 (11). С. 34—43. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/55db19f9-f14c-4c27-b032-42b57423be64/content> (date accessed: 20.06.2024).
- 21 Боровик А. В. Мета та мотиви посягань на представників влади. *Вчені записки ТНУ імені В. І. Вернадського. Серія: Юридичні науки*. 2023. Т. 34 (73). № 1. С. 124—130. DOI: 10.32782/TNU-2707-0581/2023.2/20 (date accessed: 20.06.2024).
- 22 Степанова Ю. П. Кримінально-правовий захист військовослужбовців та працівників ДПСУ від протиправних посягань, вчинених у зв'язку з їх службовою діяльністю. *Вісник Асоціації кримінального права України*. 2023. Т. 1. № 19. С. 182—206. DOI: 10.21564/2311-9640.2023.19.281121 (date accessed: 20.06.2024).
- 23 Кримінальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 12.03.2024).
- 24 Там само.
- 25 Пилипенко Є. В. Перешкоджання діяльності у кримінальному праві України : дис. ... канд. юрид. наук. Северодонецьк, 2018. С. 39—40. URL: https://dspace.lvduvs.edu.ua/bitstream/1234567890/3529/1/pilipenko_d.pdf (date accessed: 20.06.2024).
- 26 Кримінальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 12.03.2024).
- 27 Пилипенко Є. В. Знач. твір. URL: https://dspace.lvduvs.edu.ua/bitstream/1234567890/3529/1/pilipenko_d.pdf (date accessed: 20.06.2024).

against a law enforcement officer and his close relatives; resistance to a law enforcement officer; malicious disobedience to the requirements of the administration of the penal institution, understanding the criminological concept of “obstructing official activity” as the illegal creation of any obstacles or restrictions with the aim of hindering the performance of official duties or achieving the adoption of an illegal decision²⁸.

Kyrbiatiev developed the theoretical principles of criminal legal protection of the professional activity of law enforcement officers (on the basis of generalization of various concepts of foreign and Ukrainian scientists, provisions of legislation, analysis of law enforcement practice of Ukraine and other countries)²⁹.

V. Husieva investigated the methodological and organizational and tactical foundations of methodology for investigating crimes against the authority of public authorities in the field of law enforce-

ment (in particular, criminal offenses under Parts 2 and 3 of Article 342; Articles 343, 345, 347–350, 352, 353 of Criminal Code³⁰)³¹.

The most common criminal offenses we investigate are those directed against police officers. O. Bilichak and A. Makarova proposed a forensic classification of criminal offenses committed against police officers: they differentiated criminal offenses with a high level of practical orientation, dividing them into groups, the composition of which is due to the relevant features of the situation of committing a criminal offense³².

Up to date, there are no developments in the theory of criminal law devoted to the topic of criminal liability for interference in the activities of a statesman. Some issues of social conditioning and criminal regulation of such interference were considered by A. Maltsev³³ and V. Kuznetsov³⁴. At the same time, domestic scientists have not yet paid attention to the investigation

28 Ермолаєва-Задорожня С. В. Кримінологічна характеристика перешкоджання службовій діяльності працівників правоохоронних органів та його запобігання : автореф. дис. ... канд. юрид. наук. Харків, 2019. С. 4. URL: http://criminology.nlu.edu.ua/wp-content/uploads/2020/09/ermolaeva-zadorozhnyia_s.v._avtoreferat_2019.pdf (date accessed: 20.06.2024).

29 Кирбят'єв О. О. Кримінально-правова охорона професійної діяльності працівників правоохоронних органів : дис. ... д-ра юрид. наук. Київ, 2021. 446 с. URL: <https://library.megu.edu.ua:9443/jspui/handle/123456789/2453> (date accessed: 20.06.2024).

30 Кримінальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 12.03.2024).

31 Гусєва В. О. Зазнач. твір. DOI: 10.32631/pb.2021.2.12 (date accessed: 20.06.2024).

32 Білічак О. А., Макаров А. І. Криміналістична класифікація злочинів, вчинених щодо працівників поліції у зв'язку із виконанням службових обов'язків як складова методики розслідування. *Держава та регіони. Серія: Право*. 2020. № 2 (68). С. 239–241. DOI: 10.32840/1813-338X-2020.2.40 (дата звернення: 20.06.2024).

33 Мальцева А. В. Соціальна обумовленість встановлення кримінальної відповідальності за втручання у діяльність державного діяча. *Вісник Асоціації кримінального права України*. 2023. Т. 1. № 19. С. 207–225. DOI: 10.21564/2311-9640.2023.19.279276 (date accessed: 20.06.2024).

34 Кузнецов В. В. Удосконалення кримінально-правового регулювання відповідальності за злочини проти державного діяча. *Питання боротьби зі злочинністю*. 2017. Вип. 33. С. 23–31. URL: https://ivpz.kh.ua/wp-content/uploads/2019/02/zbirnik_33.pdf (date accessed: 20.06.2024).

of this type of criminal offenses: perhaps due to the lack of prevalence of such facts in practice.

Special attention in the legal literature is paid to interference in the activities of the judiciary, which is due to the following: *firstly*, international and national standards enshrine the independence of the judiciary from other authorities; *secondly*, such interference is one of the most common criminal offenses against justice and at the same time a rather latent encroachment on the independence of judges and judicial activity that is aggravated from year to year³⁵.

A. Martirosyan, one of the first researchers of theoretical foundations of criminal liability for interference in the activities of persons administering justice defined the specifics of criminal liability not only under Art. 376 of the Criminal Code of Ukraine, but under Art. 377-379 of the Criminal Code of Ukraine, and separately noted that the concepts of *entrustment* and *interference* are correlated as general and partial (genus and species), besides, in case of interference, there are necessarily consequences in the form of preventing the proper administration of justice, and interference does not require such a mandatory feature as the occurrence of consequences³⁶.

Some criminological problems and appropriate mechanisms for preventing interference in the activities of judges and court employees are covered in the works of G. Bershov, E. Blazhivskiy, Ye. Bunin, V. Horodovenko, S. Didyk, R. Karkhut, O. Kvashi, N. Otchak, V. Plukar, M. Shepitko, etc. V. Yakovleva made a significant contribution to the development of criminological characteristics and the development of effective mechanisms to prevent interference in the activities of the judiciary³⁷. D. Teslyuk considered certain issues of counteraction to criminal offenses, in particular regarding the establishment of responsibility for the commission of infringements on the activities of judges³⁸, who studied the experience not only of Ukraine, but also of the EU member states (Austria, Denmark, Estonia, the Netherlands, Germany, Luxembourg, Finland, Sweden)³⁹.

R. Karkhut compared the regulation of criminal liability for interference in the activities of judicial bodies in the legislation of Ukraine and Poland. The researcher noted that the beginning of responsibility for interference in the activities of judicial bodies in Ukraine was established in 1990, adding three articles to the Criminal Code of the Ukrainian SSR: 176-1 *Interference in the resolution of court cases*, 176-2 *Threat against a judge*, 176-3 *Insulting a judge*⁴⁰

35 Яковлева В. С. Втручання у діяльність судових органів в Україні: оцінка сучасного стану. Там само. 2020. Вип. 40. С. 130. DOI: 10.31359/2079-6242-2020-40-126 (date accessed: 20.06.2024).

36 Мартіросян А. Г. Кримінальна відповідальність за втручання в діяльність осіб, які здійснюють правосуддя : автореф. дис. ... канд. юрид. наук. Київ, 2011. С. 6.

37 Яковлева В. С. Кримінологічна характеристика та запобігання втручанням у діяльність судових органів : дис. ... д-ра філос. у галузі права. Харків, 2023. 260 с.

38 Теслюк Д. Ю. Відповідальність за посягання на діяльність суддів за законодавством окремих держав Європейського Союзу. *Актуальні проблеми вдосконалення чинного законодавства України*. 2023. Вип. 63. С. 4.75—4.88. DOI: 10.15330/apiclu.63.4.75-4.88 (date accessed: 20.06.2024).

39 Там само. С. 4.76—4.84.

40 Про внесення змін і доповнень до деяких законодавчих актів Української РСР : Указ Президії ВР УРСР від 04.05.1990 р. № 9166-XI. URL: <https://zakon.rada.gov.ua/laws/show/9166-11/ed19960807#Text> (date accessed: 12.03.2024).

(while in Polish legislation, similar acts were criminalized as early as 1932)⁴¹. The scientist focused on inconsistency of domestic legislator, which consists in the multiplicity of articles that stipulate criminal liability for interference in the activities of certain bodies or persons (Articles 343, 344, 376, 397 of the Criminal Code⁴²), while Polish legislation operates in all articles relating to similar crimes, with the same thesis: “One who, by means of violence or illegal threat, influences <...>”⁴³

Yu. Khrystova noted one of the leading special international principles for ensuring justice: prohibition of undue influence on judges, pressure, threats or interference in the activities of the judiciary during the consideration of cases entrusted to them⁴⁴.

S. Knizhenko investigated the structural elements of the forensic characteristics as mandatory components of the forensic methodology for investigating interference with the activities of the judiciary, in particular: the identity of the offender; the motives that guide the perpetrator; the identity of the victim; the method of unlawful interference; the situation, place and time of the commission of a criminal offense; peculiarities of the traces of the commission of a criminal offense under Article 376 of Criminal Code of Ukraine⁴⁵.

Based on generalization of provisions of criminal legislation and best practices of Ukrainian scientists, we can state some obvious trends. *First*, despite the presence of parallel terminological constructions: *interference in activity* and *obstruction of activity* in the theory of criminal law, only the first of them is analyzed in criminology. *Secondly*, the modern doctrine of criminal law still does not clearly distinguish between interference, illegal influence and obstruction of activity. *Thirdly*, to this day, the theory of criminology still lacks scientifically based recommendations for the investigation of criminal offenses related to interference in the activities of law enforcement officers, statesmen, judicial bodies, as well as election commissions and referendum commissions. It is worth noting that when formulating recommendations for investigating interference in the activities of individual subjects, scientists use a differentiated approach, not considering it appropriate to combine these subjects into one group. We believe that such an approach may have a negative impact on the development of appropriate recommendations for the investigation of criminal offenses of this group, since the draft of the new Criminal Code provides for criminalization of the following acts:

1) unlawful influence on the prosecutor, investigator, detective, inquirer,

41 Кархут Р. В. Кримінальна відповідальність за втручання у діяльність судових органів за законодавством України та Республіки Польща : дис. ... канд. юрид. наук. Київ, 2018. С. 198–199.

42 Кримінальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 12.03.2024).

43 Кархут Р. В. Зазнач. твір.

44 Христова Ю. Міжнародні стандарти забезпечення безпеки правосуддя. *Науковий вісник Дніпропетровського державного університету внутрішніх справ*. 2023. № 2 (123). С. 239. DOI: 10.31733/2078-3566-2023-2-234-24 (date accessed: 20.06.2024).

45 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. 196–199. URL: <https://univd.edu.ua/science-issue/issue/1199> (date accessed: 20.06.2024).

defender, representative of the person, forensic expert and their relatives, due to the professional activities of these subjects, that is, performance of their official powers or professional duties (Article 8.2.3: criminal offense against the promotion of justice);

- 2) unlawful influence on the judge and his loved one in connection with the administration of justice (Article 8.1.5: crimes against the foundations of justice);
- 3) influence on a person who performs his official powers or professional duties in the public interest, in order to interfere with the performance of these powers or duties (except in cases of unlawful influence and interference provided for in other articles of this Code; Article 9.7.8: crimes against the order of public administration. It should be noted that both the term *influence* and the term: *interference* are used in the text of this article);
- 4) unlawful influence on a member of the election commission, referendum commission in order to prevent him from committing an action, making decisions or changing his actions or decisions (Article 4.10.5: crimes against electoral rights and referendum law) ⁴⁶.

Textual analysis of the draft Criminal Code of Ukraine allows us to note that the concept of “interference” is used only twice in it: in Art. 4.10.6 “Submission of false information to the State Voter Register or interference with its work” and in Art. 8.1.6 *Interference in the system of automatic distribution of cases between judges*, that is, in a different context than the one

we are studying. Instead, in the rest of the text, category of “*influence*” is chosen, by which legislators propose to understand the inducement of another person to take (not to take) a certain action ⁴⁷. We believe that this approach was applied with the intention of eliminating the contradiction between the title of Art. 343 and the text of Part 1 of Art. 343 of the current Criminal Code. At the same time, despite the fact that the term: *obstruction* is used, its definition is not further provided by the authors, and is used only in certain articles, in particular in 9.7.8.

Therefore, current criminal legislation provides for responsibility specifically for interference in activity, which takes place, for example, in the form of illegal influence aimed at preventing the performance of individual official powers and professional activity in general by subjects defined by the legislator. Considering the multiplicity of forms of interference in activity, we believe that this concept should continue to be used in parallel with the term: *influence*. Criminal offenses related to interference in an activity can be considered both in a narrow and a broad sense: for example, motivated or with the intention of revenge for such activity (when a person made a legal decision in a case that negatively affected the status of the relevant subject), or to prevent the performance of professional duties (in particular, the adoption of a relevant decision); i.e., resistance to a representative of the authorities, and violence against him, and various threats to him, and encroachment on his property, etc., can be considered criminal offenses related to interference in the activity, if the perpetrators aim

⁴⁶ Проєкт Кримінального кодексу України (станом на 14.10.2023 р.). URL: <https://new-criminalcode.org.ua/upload/media/2023/10/15/kontrolnyj-tekst-proyektu-kk-14-10-2023.pdf> (date accessed: 20.06.2024).

⁴⁷ Там само.

to prevent the performance of the legal activities of the relevant participant in the legal relations, endowed with powerful powers.

By representatives of public authorities, we mean entities that either hold positions in the civil service, or who are involved in the implementation of the functions of the state. We have chosen this approach, since all these entities are united by belonging to the public sector, although they are representatives of different branches of government.

Conclusions

Criminal offenses related to interference in the activities of representatives of public authorities are the subject of study of various sciences of the criminal legal cycle. In the legal literature, close attention is paid to the problems of bringing persons to criminal responsibility for committing such offenses, studying the features of their criminological characteristics, determining methods of preventing them, as well as effective methods of their pre-trial investigation.

On the basis of the textual analysis of current criminal legislation, the generalization of best practices of Ukrainian scientists, we found out that following terminological constructions are typical for the designation of illegal activity associated with any interference in the activities of representatives of state authorities: *interference in the activity* (less often: *interference in exercise of powers*), *influence (illegal influence)*, *obstruction of activity*. Taking into account approaches highlighted in the legal literature, we suggest using the term *interference in activity* because, firstly, it fully corresponds to the modern doctrine of criminal law, and secondly, we tend to understand interference as a complex of actions, among which influence is

one from forms caused by the intention to prevent a person from performing his professional activity.

The group of criminal offenses related to interference can be interpreted both in a broad sense (i.e., including all crimes and criminal misdemeanors aimed at preventing representatives of state authorities from performing their official duties) and in a narrow sense (in particular those for which the legislator directly used terminological construction: *interference in activity*).

The issue of criminal offenses related to interference in the activities of representatives of state authorities is currently sufficiently developed only in terms of criminal liability for their commission. Issues of criminological characteristics, pre-trial investigation and scientifically based tactical and organizational principles of their investigation also do not correspond to the proper level of their theoretical support, especially considering the problems of law enforcement practice. In view of this, we believe that these issues require an urgent solution and should become the subject of future research, in particular complex ones. In addition, the application of such an approach and the selection of the appropriate direction of scientific research are also actualized by the potential reformation of criminal legislation.

**Наукове забезпечення
досудового розслідування
втручань у діяльність органів
державної влади**

Володимир Попов

Мета роботи — визначити стан сучасного наукового забезпечення проблем кримінальної відповідальності й досудового розслідування кримінальних правопорушень, пов'язаних зі втручанням у діяльність представників органів державної влади. Поставлену мету реалізовано

завдяки комплексному застосуванню загальнонаукових (аналізу, синтезу й узагальнення), діалектичного, порівняльно-правового, системно-структурного та прогностичного методів. Проаналізовано проблематику наукової розробленості кримінальної відповідальності й розслідування втручання в діяльність представників органів державної влади. Увагу акцентовано на проблемах притягнення особи до кримінальної відповідальності за вчинення кримінальних правопорушень цієї категорії, особливостях їх кримінологічної характеристики, розробленні методів запобігання їм і науково обґрунтованих рекомендацій щодо їх досудового розслідування. Констатовано, що типовим для позначення протиправної діяльності, пов'язаної із будь-яким утручанням у діяльність представників органів державної влади, є такі термінологічні конструкції: «втручання в діяльність» (рідше — «втручання у здійснення повноважень»); «вплив» (або «незаконний вплив»); «перешкоджання діяльності». Зважаючи на усталені у правничій літературі підходи запропоновано застосовувати саме термін «втручання в діяльність». З'ясовано, що станом на сьогодні достатньо розроблено лише специфіку притягнення особи до кримінальної відповідальності за вчинення таких правопорушень, а питання криміналістичної характеристики й тактико-організаційних засад їх досудового розслідування не відповідають належному рівню, особливо зважаючи на актуальні проблеми правозастосовної практики. Окреслено перспективи подальших досліджень у межах порушеної проблематики.

Ключові слова: кримінальне провадження; кримінальна відповідальність; досудове розслідування; втручання в діяльність; орган державної влади; працівник правоохоронного органу; вплив; перешкоджання.

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