

Determination of Counteraction to Investigation and Abuse of Procedural Rights

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This article purpose is to determine prerequisites and regularities of the emergence and development of such phenomena as resistance to investigation and abuse of rights in law enforcement activities, as well as their signs. Implementation of the set goal is ensured through the use of a complex of general scientific, special and philosophical research methods (in particular, modeling, dialectical, system-structural and comparative analysis). It is summarized that resistance to investigation is a complex, dynamic and multifaceted phenomenon that is formed in the conditions of a criminal conflict and manifests itself in the purposeful behavior of persons interested in concealing the actual circumstances of a criminal offense. Its activity side consists in committing both active and passive actions that affect the course and results of pre-trial investigation. It was found that counteraction is not chaotic in nature, it is carried out within the limits of a certain mechanism, including three stages: 1) preparation, 2) active implementation of influence on sources of evidentiary information and 3) concealment of traces of committed actions. At the same time, counteraction mechanism is variable and depends on the stage of criminal proceedings, chosen tactical methods and the presence of corrupt,

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organizational and social connections. It is substantiated that the structural components of the forensic characteristic of counteraction to investigation are: 1) subjects of counteraction, their motives and objects of influence; 2) typical forms and methods of counteraction and their influence on sources of evidentiary information; 3) signs of application of specific methods, reflected in the objective environment and behavior of subjects. It is proved that it is appropriate to study the external manifestations of counteraction (material, digital and ideal traces), since they are the main source for modeling the mechanisms of criminal counteraction and developing effective tactical solutions. It is found that counteraction to investigation has a conflict nature manifested in the clash of opposing goals of the participants in criminal proceedings. This is not only a conflict between the investigator and the suspect, but interaction with the prosecutor, witnesses, witnesses, experts and other participants in the process. Such an environment creates a tense investigative situation that requires a high level of professional adaptability from the investigator. Counteraction is especially dangerous in the context of organized criminal activity characterized by availability of an internal structure, financial resources, technical support and personnel support. It is proved that the forensic characteristic of counteraction to the investigation should be integrated as a separate component into the structure of investigation methodology for those types of criminal offenses for which active counteraction is characteristic. This approach should be based on: 1) analyzing typical methods and mechanisms of counteraction; 2) studying the subject-role structure of counteraction; 3) studying changes in the trace complex caused by targeted influence on evidence.

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

Research Problem Formulation

Modern development of criminal procedural law of Ukraine and law enforcement takes place in the context of the actualization of the issue of ensuring a balance between implementation by the participants of proceedings of the rights granted to them and the prevention of the use of these rights in a way that impedes achievement of the tasks of criminal proceedings. One of the most controversial manifestations of such a disproportion is the opposition to investigation

and abuse of procedural rights, which appear as complex multiple phenomena that cause a violation of the principles of the rule of law, competitiveness, reasonableness of the terms of proceedings, etc.

Particular difficulty is delimitation of the legitimate exercise of procedural rights from abuse, the determination of the limits of the permissible use of tactics by the defense or prosecution, etc. In this context, determination is a key methodological tool that makes possible to find out the factors that generate these phe-

nomena, contribute to their existence, scaling and evolution: from gaps and contradictions of legislation to psychological and organizational factors of behavior of participants in criminal proceedings.

Thus, scientific issue is the need to find out the patterns of occurrence and development of counteraction to the investigation and abuse of procedural rights, to identify their objective and subjective prerequisites and signs.

Article Purpose

For determining prerequisites and patterns of occurrence and development of such phenomena as counteraction to investigation and abuse of rights in law enforcement activities, as well as their signs.

Research Methods

In order to achieve this goal, a set of general scientific, special and philosophical methods was used, which provided a comprehensive disclosure of the essence, signs and determinants of counteraction to investigation and abuse of procedural rights.

Dialectical method created a theoretical basis for considering these phenomena as dynamic and contradictory processes developing in interaction with the rest of the elements of criminal justice. Thanks to this approach, internal logic of their evolution is traced within the conflict between the interests of the state and the desire of participants in proceedings to avoid criminal liability.

System-structural analysis helped to identify the main elements of counteraction and abuse, determine their functional role, correlations and impact on the results of criminal proceedings. This made possible to substantiate the structure of

forensic characterization of the phenomena under research that covers subjects, motives, methods, objects of influence and effective consequences.

Functional-activity approach contributed to the interpretation of counteraction and abuse as a conscious activity that has its own logic, purpose and phasing. This helped to characterize active nature of phenomena aimed at preventing the fulfillment of the tasks of criminal proceedings as a system of actions or inaction.

A significant role in the research was played by the modeling method, reproduced imaginary constructions of mechanisms for counteraction and abuse, typical situations of their implementation and scenarios of interaction of participants in the process. This made possible to model changes in the evidence base and the tactical consequences of impact of these phenomena, as well as to predict possible directions for their overcoming.

At the stage of theoretical understanding, the content analysis of scientific literature was actively used that helped to identify the lack of unity among specialists in defining the concepts of *counteraction to investigation* and *abuse of procedural rights*, to highlight differences in the approaches of scientists, as well as to outline current directions of scientific discussion.

Comparative legal method contributed to the analysis of various forms of detection of counteraction phenomena in various groups of criminal offenses, clarification of dependence of these forms on the procedural status of participants, level of organization of criminal activity and peculiarities of regulatory regulation.

The research relied on an empirical method that in this case consisted in analyzing contents of criminal proceedings, court decisions, protocols of investigative actions, as well as the results of surveys

and questionnaires of practicing investigators, prosecutors and lawyers. This made possible to single out the most common forms of counteraction and abuse and to fill theoretical conclusions with specific content.

Combination of methods of logical analysis and synthesis contributed to integration of the obtained results into a single system of scientific provisions, due to which the forensic characterization of counteraction to investigation and abuse of procedural rights is logically substantiated, their place in the structure of investigation methodology is determined, as well as the forms, methods, signs and subjects of these phenomena as an integral object of research are generalized.

In general, the use of these methods made possible not only to reveal essence and content of the phenomena under research, but to formulate practically oriented recommendations for improving criminal procedural legislation and increasing efficiency of the activities of pre-trial investigation bodies and the court.

Analysis of Essential Researches and Publications

In the scientific literature, the phenomena of counteraction to investigation and abuse of rights are considered mainly in fragments: either counteraction to the pre-trial investigation is separately ana-

lyzed, or the attention is focused on the procedural abuses of the parties.

Scientists emphasize that in the practice of law enforcement today there are many forms of counteraction that are not covered by the current system of legal means of influence (restraining orders) and therefore actually remain outside the regulatory field and are not grounds for bringing to legal responsibility.

In the second half of the twentieth century, a significant contribution to the study of this problem was made by 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. It was their developments that created the basis for a deeper knowledge of the phenomenon of countering investigation of crimes, made it possible to systematize its most common manifestations and develop benchmarks for finding effective mechanisms to overcome.

Since the early 2000s, scientific community has begun to actively study the issue of countering investigations as a holistic phenomenon: conceptual approaches to revealing its essence have been formed, characteristic forms of manifestation have been outlined, and a number of specific features have been identified, determined by the peculiarities of individual types or groups of criminal offenses. The following authors have made a significant contribution to the study of these topics: O. Aleksandrenko ¹, V. Vartsaba ², I. Hrytsiuk ³,

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- 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: 10.08.2025).
 - 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: 10.08.2025).
 - 3 Грицюк І. В. Протидія розслідуванню злочинів у сфері оподаткування : дис. ... канд. юрид. наук. Ірпінь, 2012. 259 с. URL: <https://uacademic.info/ua/document/0412U0004215> (date accessed: 10.08.2025).

K. Hutnik⁴, R. Mudretskyi⁵, V. Piddubnyi⁶, V. Pletenets⁷, O. Romtsiv⁸, V. Trepak⁹, M. Chesakova¹⁰, R. Shekhavtsov¹¹, B. Shchur¹² and others. At the same time, despite the significance of the results obtained, there is still no comprehensive approach that would make it possible to identify the determinants of these phenomena, determine their interrelationship and impact on the effectiveness of criminal proceedings. It is precisely the combination of the issues of counteracting investigations and dishonest procedural activity of the parties within a single study that can reveal

the internal logic of their emergence and existence, as well as help to develop adequate means to their overcoming.

Main Content Presentation

In current context of combating crime, particular attention should be paid to countering attempts by interested parties to influence the course of pre-trial investigations and court proceedings. Neutralizing such attempts guarantees compliance with the principles of justice and legality. This requires a comprehensive rethinking

- 4 Гутнік К. В. Розслідування злочинів в умовах протидії, яка чиниться з використанням соціальної напруженості : автореф. дис. ... канд. юрид. наук. Харків, 2010. 20 с. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/98663966-1f6e-42ae-89a9-4e7a4f3f8c-cc/content> (date accessed: 10.08.2025).
- 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: 10.08.2025).
- 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: 10.08.2025).
- 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: 10.08.2025).
- 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://lpnu.ua/sites/default/files/2020/dissertation/1817/disromtsivoi.pdf> (date accessed: 10.08.2025).
- 9 Трепак В. М. Розкриття та розслідування хабарництва, вчинюваного суддями, та подолання протидії засобами оперативно-розшукової діяльності : автореф. дис. ... канд. юрид. наук. Київ, 2011. 19 с.
- 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: 10.08.2025).
- 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: 10.08.2025) ; Лисиченко В. К., Шехавцов Р. М. Проблеми теорії та практики подолання протидії розслідуванню окремих різновидів злочинів, вчинених організованими групами, злочинними організаціями : монографія. Вид. 2-ге, перероб. та допов. Луганськ, 2012. 342 с. URL: https://dspace.lvduvs.edu.ua/bitstream/1234567890/246/1/Shekhavtsov_monograf.pdf (date accessed: 10.08.2025).
- 12 Щур 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: 10.08.2025).

of established methods, their generalization, and critical evaluation. Such a methodological approach opens up opportunities for the formation of new areas of scientific research and the creation of effective practical recommendations aimed at improving the effectiveness of law enforcement agencies. In this process, legal science performs its fundamental function, it develops mechanisms for the protection and restoration of human and civil rights, which directly corresponds to the requirements of Constitution of Ukraine and international legal standards.

Counteraction to investigation in modern criminal procedure is considered as a complex, dynamic and multifaceted phenomenon that arises in the context of a criminal conflict and consists in the purposeful behavior of persons interested in concealing the actual circumstances of a criminal offense. Counteraction to investigation is understood as the conscious activity of participants in criminal proceedings or unauthorized persons aimed at creating artificial obstacles to clarifying the truth in the case, neutralizing or distorting evidentiary information and, ultimately, avoiding criminal liability. Counteraction is embodied both in active actions and in inaction complicating the work of law enforcement agencies and reduces the effectiveness of criminal prosecution.

Essence of counteraction is to oppose different interests: on the one hand, a state that seeks to fully implement the tasks of criminal proceedings and on the other hand, persons who are trying to avoid exposure, prosecution or punishment. Counteraction is implemented in preventing the collection, verification and evaluation of evidence; in influencing witnesses,

experts or other participants in the procedure; in falsifying information and creating a false trace picture.

Mechanism of counteraction usually contains a triune sequence: 1) preparation for counteraction, 2) active implementation of influence on the sources of evidence and 3) concealment of traces of the actions committed. Such activities are sometimes carried out alone, but counteraction by organized criminal groups that have significant resources, in particular financial, as well as technical capabilities and corruption ties, is especially dangerous.

Counteraction to investigation of crimes naturally arises from the desire of offenders to avoid criminal liability, to influence the course of the pre-trial investigation and to make it impossible to fulfill the tasks of criminal proceedings. As mentioned above, this phenomenon is interpreted as a conscious and purposeful activity of participants in criminal procedure or unauthorized persons aimed at creating artificial obstacles to the collection, verification and evaluation of evidence, as well as at neutralizing or distorting information of evidentiary value.

Forms of counteraction can be both active (falsification of evidence, pressure on witnesses or experts, bribery, creation of conspiracy structures) and passive (delay in investigative actions, refusal to cooperate, non-fulfillment of procedural obligations); can be both episodic and systemic (most often characteristic of the activities of organized criminal groups with significant financial, technical and corruption resources).

Analysis of scientific sources¹³ and judicial practice makes it possible to iden-

13 Александренко О. В. Знач. твір. URL: <https://dspace.nlu.edu.ua/jspui/handle/123456789/13980> (date accessed: 10.08.2025) ; Ромців О. І. Знач. твір. URL: <https://lpnu.ua/sites/default/files/2020/dissertation/1817/disromtsivoi.pdf> (date accessed: 10.08.2025) ;

tify a number of main determinants of counteraction to the investigation determining its prevalence and complexity of overcoming.

The main determinants of counteraction to investigation

1. *Individual-motivational ones*, related to the personal desire of the suspect or accused to avoid criminal liability, to preserve their own freedom, reputation or material resources; motive is fear of punishment or social stigmatization.
2. *Socio-psychological ones*: support from the immediate environment, solidarity of the criminal environment, distrust of law enforcement agencies and the court that encourages resort to illegal practices; conflicting nature of the criminal process also provokes the parties to search for “weaknesses” in the procedure to hinder the clarification of the truth.
3. *Organizational and institutional ones*: corruption ties in law enforcement and judicial bodies, weak mechanisms of procedural control, insufficient effectiveness of the activities of the prosecutor’s office or the bar in the field of combating abuse create a favorable environment for countering investigation.
4. *Criminogenic ones*. Organized nature of crime is of particular danger. Criminal groups create their own “intelligence” and “counterintelligence” structures, form financial funds for bribing officials, and use international channels to avoid re-

sponsibility, which gives the counteraction systematicity and sophistication.

5. *Procedural and legal ones*: Gaps and contradictions in the criminal procedural legislation are a significant source of counteraction. The lack of clear legal boundaries between the right to defend and the right to oppose an investigation, the vagueness of terms (e.g. “procrastination”), and the excessive length of the investigation create space for manipulation.
6. *Technological ones*. Development of digital technologies opens up new opportunities for concealing or falsifying evidence, manipulating electronic information, using cryptocurrencies, anonymous means of communication and specialized programs in countering investigation.

Consequently, counteraction to investigation is not a random phenomenon, but a natural element of the criminal process that has a multifaceted nature. Its emergence and development are due to a combination of individual, social, institutional, criminogenic, legal and technological factors. Awareness of the determinants of counteraction makes it possible to form a holistic picture of the mechanism of this phenomenon and develop effective tactical algorithms to overcome it, which is a necessary condition for improving methodology for investigating criminal offenses and strengthening the justice system as a whole.

Thus, determinants of resistance to the investigation are multi-level and in-

terrelated. At the individual level, they are determined by the desire of the suspect or accused to avoid criminal liability, preserve property or social resources. At the social level, resistance is reinforced by the support of the immediate environment, corrupt connections in law enforcement and judicial bodies. Organized nature of crime gives resistance a systematic nature, which is embodied in the creation of special structures of internal conspiracy, mechanisms of “intelligence” and “counterintelligence”, formation of financial funds for bribery and the use of international channels to evade criminal liability. Procedural factors play a significant role, since the delay in the pre-trial investigation, existence of procedural conflicts between the investigator, prosecutor, witnesses and experts create a favorable environment for active resistance. Technological development promotes the use of new means of hiding information, digital manipulations and other innovative techniques.

Consequently, counteraction to the investigation is not a chaotic or random phenomenon, but a natural element of criminal activity that requires a comprehensive forensic study. Its characteristics should include the definition of the subject composition, motives and objects of influence, forms and methods of implementation, signs of their application and consequences. Taking these elements into account will make it possible to build effective models of the counteraction mechanism and develop effective tactical algorithms for its overcoming that is a necessary condition for improving the methodology for investigating criminal offenses.

Outlining essence of abuse of procedural rights in criminal proceedings, it is advisable to note that it is a conscious and purposeful use by the participants of

the process of the rights granted to them by law in a way that contradicts the purpose of these rights. Formally based on the norms of criminal procedural legislation, such servicing actually acquires an illegal character, since it is aimed at creating artificial obstacles to implementation of the tasks of criminal proceedings, delaying its terms, distorting the evidence base or imitating legitimate behavior. Thus, abuse of procedural rights distorts the content of the very idea of ensuring the right to defense, turning legal opportunities into an instrument of counteraction to investigation or court.

The study of scientific sources makes it possible to identify a number of leading determinants of abuse of procedural rights. First of all, they are of legal nature: the imperfection of legislation, availability of gaps and contradictions in the norms, the lack of clearly defined boundaries between the permissible and illegal application of procedural rights. Organizational and institutional factors also play a significant role (in particular, the low level of procedural discipline of individual participants in the proceedings, formal nature of judicial control, the insufficient effectiveness of the activities of the Bar and the Prosecutor's Office in the field of combating abuse).

Socio-psychological factors include desire of participants in the procedure, primarily the defense, to avoid criminal liability in any way, the use of abuse as a tactical tool to counter the prosecution, as well as widespread distrust of the objectivity and impartiality of pre-trial investigation bodies and the court. An important determinant is the criminogenic situation, characterized by a high level of organization of criminal groups, their desire to systematically use procedural abuses as an element of the strategy of avoidance

of responsibility, as well as corruption ties in law enforcement and judicial bodies, which actually legitimize or conceal such practices¹⁴.

Within the framework of this research, we propose to refer to the classification of abuse of procedural rights and powers that takes into account the peculiarities of modern judicial practice, national and international experience, as well as the results of empirical analysis.

Classification of abuse of procedural rights and powers

According to *abuse subject*, they are divided into committed:

- 1) by defense, namely: numerous similar complaints, repeated disqualifications, regular change of defenders, delaying familiarization with the content (q.v. decision of the High Anti-Corruption Court dated November 20, 2024 in case No. 991/9167/24¹⁵);
- 2) by prosecution: failure to provide timely access to the investigation materials;
- 3) other participants in the procedure (victim, civil plaintiff, witnesses);

- 4) by court: systemic postponement of consideration of the case, excessive formalism.

For abuse *purpose*, they are related to the following:

- 1) delaying consideration of the case;
- 2) manipulation of evidence or procedural mechanisms (*see* the decision of the Criminal Cassation Court (hereinafter referred to as the CCC) of the Supreme Court dated on 11.05.2021 in case No. 554/726/17¹⁶);
- 3) discrediting or biasing composition of the court or the investigating body;
- 4) repeated appeal of the issues already resolved (*see* the decision of the CCC of the Supreme Court dated on 14.12.2023 in case No. 296/3509/23¹⁷).

Abuse consequences negatively affect the following:

- 1) terms of consideration of the case (for example, an abuse is the filing of a petition to change the seventh defender)¹⁸;
- 2) compliance with the principle of equality of arms;

14 Удалова Л. Д., Хабло О. Ю. Зловживання у сфері кримінального процесу : монографія. Київ, 2010. 176 с. URL: <https://elar.navs.edu.ua/server/api/core/bitstreams/5274299e-57fe-4eaf-a820-a2b1ff8e900c/content> (date accessed: 10.08.2025) ; Луспеник Д. Д. Зловживання процесуальними правами: законодавча регламентація, способи виявлення та шляхи протидії. *Часопис цивільного і кримінального судочинства*. 2015. № 6 (27). С. 150—156. URL: http://nbuv.gov.ua/UJRN/Chcks_2015_6_12 (date accessed: 10.08.2025).

15 Ухвала ВАКС від 20.11.2024 р. Справа № 991/9167/24. Провадж. № 1-кп/991/103/24 / ЄДРСР : вебсайт. URL: <https://reyestr.court.gov.ua/Review/123224642> (date accessed: 10.08.2025).

16 Постанова ККС Верховн. Суду від 11.05.2021 р. Справа № 554/726/17. Провадж. № 51-5038км20 / Там само. URL: <https://reyestr.court.gov.ua/Review/96978260> (date accessed: 10.08.2025).

17 Те саме від 14.12.2023 р. Справа № 296/3509/23. Провадж. № 51-3497ск23 / Там само. URL: <https://reyestr.court.gov.ua/Review/115654586> (date accessed: 10.08.2025).

18 Ухвала Льв. апеляц. суду від 03.12.2021 р. Справа № 305/188/17. Провадж. № 11-кп/811/540/21 / Там само. URL: <https://reyestr.court.gov.ua/Review/101708382> (date accessed: 10.08.2025).

- 3) tangible and intangible expenses of the participants (for experts, etc.);
- 4) observance of the right to a fair trial (abuse of the right to appeal in order to bypass the principle of legal certainty);
- 5) reputation of participants or the court (discrediting honor and dignity, insulting statements, public pressure, media campaigns).

The following abuses are determined by *subject matter*:

- 1) that are detrimental to entire proceedings;
- 2) institutional ones, aimed at separate mechanisms.

By *nature of actions*, abuse is divided into:

- 1) Active ones: submission of numerous petitions, complaints, applications;
- 2) passive ones: inaction, failure to appear, intentional failure to eliminate the shortcomings of appeals.

According to *normative consolidation*, abuse affects:

- 1) rights or powers expressly provided for by the norm (for example, right to challenge);
- 2) rights, which exercise is not expressly enshrined, but not prohibited (for example, a long interval between court hearings).

According to *impact degree*, abuses are as follows:

- 1) that actually impede the proceedings;
- 2) which only partially affect the consideration;

- 3) have no significant impact, but entail a risk of destabilization of the procedure.

According to the *stages of criminal proceedings*, abuses include:

- 1) stage of entering information into the Unified Register of Pre-Trial Investigations;
- 2) pre-trial investigation time;
- 3) stage of court proceedings¹⁹.

The proposed classification makes it possible to systematize various manifestations of abuse of rights and powers according to the main criteria: subject, purpose, consequences, subject matter, nature of actions, regulatory basis, degree of influence and stage of the process. This approach not only illustrates the multidimensionality of this phenomenon, but creates the basis for the development of effective mechanisms to prevent abuse in criminal proceedings, respond to them and their legal settlement.

Based on analysis (in particular, forms of abuse), it is possible to identify the determinants of abuse of procedural rights in criminal proceedings, which determine its prevalence and difficulties in counteracting this phenomenon.

Determinants of abuse of procedural rights in criminal proceedings

1. Regulatory ones

- 1.1. Gaps in criminal procedural legislation (missing in Criminal Procedural Code of Ukraine²⁰ general basis for prohibiting abuse of rights, al-

19 Вознюк О. Л. Зловживання процесуальними правами у кримінальному провадженні : дис. ... д-ра філос. в галузі права. Київ, 2025. 240 с. URL: <https://elar.navs.edu.ua/server/api/core/bitstreams/def0bfc2-5814-4c68-8077-6249c1134010/content> (date accessed: 10.08.2025).

20 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: 12.08.2025).

though it is enshrined in other areas of the procedure).

- 1.2. Unclearness of certain legal constructions (for example, the term “procrastination” in Art. 290 of Criminal Procedural Code of Ukraine²¹) that creates conditions for manipulation.
- 1.3. Formal legality of actions (law does not always provide for legal consequences of unfair behavior of the parties).

2. Subjective-behavioral ones

- 2.1. Intentional nature of actions: abuse is always the result of a conscious choice of the party in order to create obstacles.
- 2.2. Discretion of the subject: availability of wide discretion in the application of the granted rights makes it possible to apply them for other purposes.
- 2.3. Tactical and strategic motivation is the desire of a party to gain an advantage in the procedure by delaying the proceedings, creating artificial obstacles or putting pressure on the other party.

3. Institutional and organizational ones

- 3.1. Insufficient effectiveness of judicial control (courts do not always use procedural safeguards to balance the rights of the parties).
- 3.2. Corruption risks: possibility of using abuses as a tool for manipulating the results of proceedings.
- 3.3. Lack of disciplinary consequences for lawyers or other participants who systematically resort to abuse.

4. Socio-psychological ones

- 4.1. Behavioral deviations (for example, barratry (from Latin, *querulus*: one who complains), which manifests

itself in the pathological need to go to court and participate in the procedure).

- 4.2. Low level of legal culture of participants in the procedure: use of procedural rights as an instrument of pressure or manipulation instead of implementing their purpose.
- 4.3. Conflict of the criminal procedure is opposition of the defense and the prosecution, which stimulates the search for tactical “weaknesses” in the procedure.

5. Practical and applied ones

- 5.1. Availability of a wide range of procedural opportunities (right to familiarize oneself with the materials, to replace a defender, repeated challenges, petitions, etc.) that can be used as countermeasures.
- 5.2. Imperfection of prevention mechanisms: lack of clear procedures for recognizing actions as abuses and immediate response to.
- 5.3. International influence is the practice of the European Court of Human Rights (hereinafter referred to as the *ECHR*), according to which a balance should be struck between the right to protection and the inadmissibility of procedural sabotage, but that at the same time complicates law enforcement.

Thus, determinants of abuse of rights combine regulatory gaps, deliberate tactical actions of the parties, organizational weaknesses of judicial control, socio-psychological factors and practical opportunities for manipulation. Their interaction forms the prerequisites for the spread of procedural sabotage and the delay of criminal proceedings.

21 Кримінальний процесуальний кодекс ... URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 12.08.2025).

For summarizing the above: essence of abuse of procedural rights in criminal proceedings is the deliberate and unfair use by participants of the procedure of the rights granted to them by law in a way that contradicts the intended purpose of these rights and causes artificial obstacles to the effective and fair consideration of the case. Such abuse is often embodied in delaying the procedure, complicating the access of other participants to the exercise of their rights, overloading the court or misleading the prosecution and the court. In the scientific literature, this phenomenon is sometimes defined by the term “procedural sabotage”, which emphasizes its destructive, rather than human rights character.

At the same time, the problem raised is multidimensional: on the one hand, the lack of a clear normative consolidation of the prohibition of abuse of procedural rights in the Criminal Procedural Code of Ukraine creates opportunities for the widespread application of such practices; on the other hand, the practice of the ECHR and the positions of the CCC of the Supreme Court actually extrapolate the general legal principle of the prohibition of abuse of law in the field of criminal proceedings ²².

The determinants of abuse of procedural rights can be conditionally grouped into several groups:

- 1) *Legal ones*: imperfection of legislation, the presence of gaps and contradictions in the Criminal Procedural Code of Ukraine, lack of a clear definition of the concept of: *abuse of procedural rights* and the corresponding legal consequences;
- 2) *organizational and institutional ones*: formal nature of judicial control,

insufficient effectiveness of the response of the prosecutor and the court to cases of procedural sabotage, low level of procedural discipline;

- 3) *socio-psychological ones*: the desire of the defense to avoid criminal liability in any way, the use of tactical maneuvers to delay the procedure, distrust of objectivity of the investigative and judicial bodies;
- 4) *criminogenic ones*: active participation of organized criminal groups that use procedural mechanisms to protect their members from liability; corruption ties that actually legitimize abuse.

Thereby the abuse of procedural rights in criminal proceedings is a special form of illegal behavior, which, while remaining within formal limits of the law, undermines the principles of fair trial and contradicts the principle of the rule of law. Identification of its determinants indicates that counteraction to any manifestations of abuse is possible only through a comprehensive approach: improving criminal procedural legislation, increasing the level of judicial control and developing a sustainable practice of responding to procedural sabotage, taking into account the ECHR standards.

Thus, abuse of procedural rights in criminal proceedings should be considered as a complex multi-pronged phenomenon, the essence of which is to use legal opportunities for illegal purposes, and the determinants cover both intra-system shortcomings of criminal procedural legislation and the organization of proceedings, as well as broader socio-psychological and criminogenic factors that form the conditions for the spread of such negative practices.

22 Розумовський О. Зловживання процесуальними правами за чинним кримінальним процесуальним законодавством України. Підприємництво, господарство і право. 2021. № 4. С. 250. DOI: [10.32849/2663-5313/2021.4.38](https://doi.org/10.32849/2663-5313/2021.4.38) (date accessed: 10.08.2025).

Conclusions

The performed research suggests that counteraction to the investigation and abuse of procedural rights are interrelated by multiple phenomena that significantly affect the effectiveness of criminal proceedings. Their common feature is the use of procedural opportunities not to achieve a legitimate goal, but to create artificial obstacles in finding out the truth, which undermines the principles of the rule of law, competitiveness and reasonableness of the terms of consideration of the case.

It has been determined that these phenomena are complex in nature and are caused by the following determinants:

- *regulatory and legal ones*: gaps and contradictions in the legislation, lack of a clear prohibition of abuse of procedural rights;
- *organizational and institutional ones*: low level of procedural discipline, formal nature of judicial control, corruption risks;
- *Socio-psychological ones*: the desire to avoid criminal liability in any way, the use of tactical maneuvers to delay the process, distrust of objectivity of the investigative and judicial bodies;
- *criminogenic ones*: the participation of organized criminal groups, their resources and connections that systematize and strengthen counteraction;
- *Technological ones*: digital tools for concealing or distorting evidence, manipulating data and communications.

Important scientific result is finding that counteraction to the investigation and abuse of procedural rights are not chaotic or random phenomena. They have their own internal logic, formed under influ-

ence of a complex of determinants and implemented in various forms from episodic actions to the systemic activities of organized criminal structures.

Consideration of identified factors is essential for improving methodology for investigating criminal offenses, developing algorithms for neutralizing counteraction to investigation and procedural abuses, as well as for the formation of effective legal mechanisms for preventing these phenomena. Solving the problem raised requires a comprehensive approach, which should be based on improving the criminal procedural legislation, increasing the effectiveness of judicial control, as well as developing sustainable judicial practice that will ensure a balance between the right to protection and inadmissibility of application of procedural rights as an instrument of counteraction to justice.

Детермінація протидії розслідуванню та зловживання процесуальними правами

Влада Гусєва, Олександр Таркан

Мета статті — визначити передумови й закономірності виникнення та розвитку таких явищ, як протидія розслідуванню і зловживання правами у правозастосовній діяльності, а також їхні ознаки. Реалізацію поставленої мети забезпечено завдяки застосуванню комплексу загальнонаукових, спеціальних і філософських методів дослідження (зокрема, моделювання, діалектичного, системно-структурного й порівняльного аналізу). Узагальнено, що протидія розслідуванню є складним, динамічним і багатоаспектним явищем, яке формується в умовах кримінального конфлікту та виявляється у цілеспрямованій поведінці

осіб, зацікавлених у приховуванні фактичних обставин кримінального правопорушення. Її діяльнісний бік полягає у вчиненні як активних, так і пасивних дій, що впливають на перебіг та результати досудового розслідування. З'ясовано, що протидія не має хаотичного характеру, її здійснюють у межах певного механізму, який містить три етапи: 1) підготовка, 2) активна реалізація впливу на джерела доказової інформації та 3) приховування слідів учинених дій. Водночас механізм протидії є варіативним і залежить від стадії кримінального провадження, обраних тактичних прийомів та наявності корупційних, організаційних і соціальних зв'язків. Обґрунтовано, що структурними компонентами криміналістичної характеристики протидії розслідуванню є: 1) суб'єкти протидії, їхні мотиви й об'єкти впливу; 2) типові форми та способи протидії і їхній вплив на джерела доказової інформації; 3) ознаки застосування конкретних способів, відображені у предметному середовищі й поведінці суб'єктів. Доведено доцільність вивчення саме зовнішніх виявів протидії (матеріальних, цифрових та ідеальних слідів), оскільки вони є головним джерелом для моделювання механізмів злочинної протидії і вироблення ефективних тактичних рішень. З'ясовано, що протидія розслідуванню має конфліктну природу, яка виявляється у зіткненні протилежних цілей учасників кримінального провадження. Це не лише конфлікт між слідчим і підозрюваним, а й взаємодія з прокурором, свідками, понятими, експертами та іншими учасниками процесу. Таке середовище формує напружену слідчу ситуацію, яка потребує від слідчого високого рівня професійної адаптивності. Особливо небезпечною є протидія в умовах організованої злочинної діяльності, яка характеризується наявністю внутрішньої структури, фінансових ресурсів, технічного забезпечення

та кадрової підтримки. Доведено, що криміналістична характеристика протидії розслідуванню має бути інтегрована як окремий компонент у структуру методики розслідування тих видів кримінальних правопорушень, для яких є характерною активна протидія. Такий підхід має ґрунтуватися на: 1) аналізованні типових способів і механізмів протидії; 2) дослідженні суб'єктно-рольової структури протидії; 3) вивченні змін у слідовому комплексі, зумовлених цілеспрямованим впливом на докази.

Ключові слова: досудове розслідування; протидія розслідуванню; слідча діяльність; подолання протидії розслідуванню; зловживання правами; детермінанти.

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Declaration of Competing Interest

Authors declare no competing interests

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