

UDC 343.98

DOI <https://doi.org/10.32849/2663-5313/2023.9.17>**Serhii Kryvun,***Graduate student**of the Scientific Research Institute of Public Law**2a Heorhiy Kirpy Street, Kyiv, Ukraine, 03055**sergrejder@ukr.net***ORCID ID:** 0009-0004-8376-6884

TEMPORARY ACCESS TO OBJECTS AND DOCUMENTS IN CRIMINAL PROCEEDINGS UNDER ARTICLE 210 OF THE CRIMINAL CODE OF UKRAINE: A CRIMINALISTIC PERSPECTIVE

Abstract. Purpose. The aim of this scientific article is to highlight the criminalistic aspects of temporary access to objects and documents during the investigation of the misappropriation or misuse of budgetary funds. **Results.** This study examines the criminalistic approach to conducting temporary access to objects and documents in criminal proceedings related to the misapplication of public budget resources. Given the complexity of financial schemes and the potential for data falsification, the acquisition of reliable evidence is a key objective of the investigation. One of the most critical mechanisms in this process is temporary access to items and documents, which enables the collection of physical evidence, the establishment of violations, and the confirmation or refutation of the commission of a criminal offense. The article analyzes scholarly opinions and current legislation regarding the procedural aspects and execution of temporary access measures, emphasizing their importance in building a comprehensive body of evidence in cases involving breaches of budgetary legislation. It identifies documents that may serve as material evidence in criminal proceedings and stresses the necessity of accessing electronic information systems, computer systems or their components, and mobile devices. Special attention is given to the involvement of expert specialists in cases involving large volumes of documentation, particularly over extended periods. Examples from law enforcement practice are provided. **Conclusions.** The article concludes that temporary access to documents remains a vital tool in the fight against financial offenses. It allows for the timely acquisition of crucial financial documentation, which is essential for forming an evidentiary base. Without proper access to such documents, confirming or refuting instances of unlawful use of public funds would be impossible, thereby significantly complicating the investigation. Effective implementation of this legal measure contributes to greater transparency in investigations and ensures an adequate level of justice. Further research into this issue may enhance the legal mechanisms for document acquisition and improve the efficiency of criminal prosecution in the area of budgetary offenses.

Key words: temporary access to objects and documents, pre-trial investigation, measures to ensure criminal proceedings, budgetary criminal offenses, misuse of funds, public finances, expert specialist, samples for forensic examination.

1. Introduction

The effective investigation of criminal offenses related to the misappropriation or misuse of public funds largely depends on the timely access to relevant documents. Given the complexity of financial schemes and the potential for data falsification, obtaining a reliable body of evidence is a key objective of the investigation. One of the most important tools in this process is temporary access to objects and documents, which enables the collection of physical evidence, the establishment of facts regarding violations, and the confirmation or refutation of the occurrence of a criminal offense.

Temporary access to objects and documents plays a crucial role in investigating criminal offenses involving the misuse of budgetary funds. This procedural measure allows investigators of the National Police of Ukraine to obtain vital financial and accounting documentation that may contain information about the flow of public funds, potential violations, and abuses. Through the analysis of such documentation, investigators can establish facts of misappropriation, identify individuals involved in unlawful financial activities, and confirm or deny the elements of a criminal offense.

The foundation of this scientific article lies in the existing research dedicated to procedural

actions and methodologies for investigating economic crimes, including the academic contributions of K.V. Antonov, V.P. Bakhin, V.I. Vasylchuk, A.F. Volobuiev, I.V. Hora, V.V. Darahan, O.O. Dudorov, O.H. Kalman, N.I. Klymenko, Ye.D. Lukianchikov, H.A. Matusovskyi, O.V. Pchelina, M.V. Salteviskyi, R.L. Stepaniuk, V.V. Tishchenko, K.O. Chaplynskyi, S.S. Cherniavskyi, Yu.M. Chornohus, V.Yu. Shepityko, M.H. Shcherbakovskyi, P.V. Tsymbal, among others. However, the conducted research in this area requires revision to meet the needs of today's legal and economic realities.

The aim of this article is to present the criminalistic aspects of temporary access to objects and documents in the investigation of the misuse of budgetary funds.

2. Temporary Access to Documents as an Urgent Measure to Secure Criminal Proceedings

Temporary access to documents is governed by the provisions of the Criminal Procedure Code of Ukraine (particularly Articles 159–166) and serves as an effective means of collecting evidence in criminal proceedings concerning violations of budgetary discipline. Its application involves a petition submitted by an investigator, prosecutor, or defense party to a court, justifying the need for obtaining documents and the possibility of their seizure. At the same time, such access must meet the criteria of proportionality and legality to avoid infringing upon the rights of individuals and institutions in possession of the relevant materials.

In the context of investigating budget-related criminal offenses, researchers define temporary access to documents as an urgent measure for securing criminal proceedings, typically carried out at the initial stage of investigations into violations of budgetary legislation (*Pohoretskyi, Vakulik, Serhieieva, 2014*).

This mechanism is especially important in criminal proceedings qualified under Article 210 of the Criminal Code of Ukraine, which addresses the misuse of budgetary funds. In such cases, financial documents, bank statements, contracts, and payment orders can play a decisive role in proving or disproving a person's guilt. These documents help establish the transfer of funds, assess the compliance of financial operations with adopted decisions, and identify possible violations, including the absence of actual work performed or evidence of falsification. For instance, the analysis of banking transactions may reveal the transfer of funds to shell accounts, which can be key evidence in such proceedings (*Marynych, 2023*). Financial reports may indicate unlawful expenditure write-offs, contracts and payment orders can prove the legitimacy of expenses,

and work completion reports can demonstrate the reality of the services rendered or work performed. Special attention should be paid to agreements and contracts concerning the allocation of subventions, as well as decisions by local self-government bodies regarding their distribution, since these mechanisms are often used for abuses (*Bespalko, 2023*).

Based on the informational relevance of documents to the investigation of budget-related crimes, scholars categorize them into several groups:

1. Normative legal acts defining the rules for the formation, distribution, and use of budgetary funds (not subject to seizure, but studied by investigators and used during investigative actions);
2. Planning documents determining the grounds, scope, distribution, and purpose of budgetary allocations;
3. Documents defining the official position and competence of the public official who is a subject of the crime;
4. Documents establishing the legal status and funding sources of the enterprise, institution, or organization where the offense occurred;
5. Accounting and financial reporting documents;
6. Documents confirming the conclusion of specific contracts and serving as grounds for payment;
7. Treasury (banking) documents;
8. Documents related to treasury bill settlements;
9. Draft notes and unofficial correspondence of public officials relevant to criminal proceedings (e.g., workbooks, notebooks, etc.);
10. Normative or administrative acts that unlawfully alter the budget's revenues and expenditures, issued by or approved under the authority of an official;
11. Documents related to the adoption and registration of such normative or administrative acts;
12. Other documents that may serve as sources of evidentiary information in specific cases of investigating budgetary violations (*Pohoretskyi, Vakulik, Serhieieva, 2014*).

In this category of criminal proceedings, there is a need for temporary access not only to economic documents verifying certain financial transactions, but also to information held by telecommunications operators and providers within their transmission networks (*Yaroshenko, 2022*).

Temporary access to electronic information systems, computer systems or their components, and mobile communication terminals is conducted through copying data from these systems without their physical seizure (*Criminal Procedure Code of Ukraine, 2012*).

S. S. Cherniavskiy notes that in such cases, the investigator (or prosecutor) may obtain information regarding:

1. Communication records, subscriber data, and details of telecommunications services, including the services used, their duration, content, and transmission routes;
2. Identifying features of terminal telecommunications equipment (subscriber number, SIM card, IMEI, MAC, IP address, etc.);
3. Historical location of identified telecommunications equipment (based on azimuth) within specific base station coverage areas at specific times;
4. Names and other identifying information of telecommunications service subscribers;
5. Transmission routes of information (regardless of the network type);
6. Outgoing connections (numbers dialed, even if no connection was established);
7. Incoming connections (numbers of incoming calls, even if no connection was established);
8. Start, end, and duration of completed connections without disclosing the content of the communication;
9. Actual destination and intermediate subscriber number in cases of call forwarding (*Cherniavskiy, 2013*).

The procedure for obtaining temporary access must comply with the principles of legality and proportionality. Since this measure restricts the rights of document owners, it can only be carried out based on a court decision. The effectiveness of this mechanism depends on the quality of the motions submitted by investigative bodies, as the court assesses their justification before issuing a decision.

To obtain temporary access to such documents, an investigator or prosecutor must prepare a well-reasoned petition to the court. This petition must clearly specify the documents being requested, their significance to the criminal proceedings, and the grounds suggesting potential violations. If document falsification is suspected, access to the originals will allow for verification of signatures, seals, and dates. The court, upon reviewing such a petition, evaluates its appropriateness and, if satisfied, compels the relevant institution or individual to provide access to the requested documentation.

3. Specifics of Implementing the Provisions of the Criminal Procedure Code of Ukraine

In practice, the implementation of the provisions of the Criminal Procedure Code (CPC) of Ukraine presents a number of challenges. This issue is also the subject of ongoing academic debate. Criminal offenses committed by officials typically occur over a certain period of time, meaning they are of a continuing

nature. An investigator cannot initially determine the precise time frame for which accounting documents need to be seized. Therefore, it is often necessary to seize accounting records within their legally mandated retention period (usually three years), while the specific period of the offense may only be established after a forensic economic examination. Subsequently, part of the documentation will be recognized as physical evidence, while the rest will be returned to the holder due to its lack of evidentiary value.

However, if all the documents are not seized at once, officials involved in the offense—who often remain employed at the enterprise during the pre-trial investigation—may destroy or alter them, thus compromising the investigation. At the same time, the investigator is effectively unable to prove to the court that there is a real threat of such documents being altered or destroyed, because without first seizing the accounting records, it is often impossible even to identify all officials who may be involved in the crime (*Shendryk, 2022*).

One proposed solution to this issue is to involve a specialist during the execution of temporary access to items and documents. However, scholars note that during this procedure, the institution or organization is only required to provide the documents explicitly listed in the court ruling. The specialist can assess only those documents and advise the investigator accordingly. This is in contrast to a search, where the investigator may broaden the scope of the search and insist on seizing other relevant documents (*Bidniak, Bidniak, Chaplynskyi, 2021*).

Moreover, researchers highlight that if the person in possession of the documents refuses to comply with the court's order, the investigator is forced to interrupt the process and submit a new motion to the investigating judge to obtain a search warrant. This causes delays, and during the time required to obtain a new ruling, the evidence may be destroyed. Therefore, it would be reasonable to amend the CPC to include a provision that allows an immediate search to be conducted if the person in possession of the documents refuses to comply with the court's decision on temporary access (*Ptushkin, 2018*).

Conversely, some researchers argue that temporary access to documents is a key mechanism to prevent their destruction or concealment. This is especially relevant in cases involving public funds, where information may be intentionally altered or destroyed to cover up evidence of wrongdoing. Therefore, obtaining documents quickly ensures their preservation in their original state and supports the objectivity of the pre-trial investigation (*Kushnir, 2014*).

However, this viewpoint is not universally accepted. A survey we conducted among investigators of the National Police of Ukraine revealed that in practice, nearly all investigators encountered situations in which physical evidence was destroyed after the issuance of a court ruling on temporary access, for various reasons.

It is well established that temporary access to items and documents is a vital procedural tool for obtaining samples for forensic examinations. Judicial practice illustrates numerous cases in which this mechanism allowed investigative bodies to gather the necessary evidence to confirm or refute illegal activities.

For example, in 2018, an investigator from the Murovanokurylovetsky Division of the Mohyliv-Podilskyi District Police Department in Vinnytsia Oblast submitted a motion for temporary access to additional documents in a criminal proceeding concerning the misappropriation of educational subvention funds. During the investigation, a court-appointed expert requested additional documentation necessary for conducting a forensic economic examination. To verify whether the funds were misused, and to facilitate the examination, the investigator requested access to documents including the Comprehensive Education Development Program of Murovanokurylovetsky District for 2012–2017, the Program and Plan for Use of Educational Subvention Funds from the State Budget for 2015–2017, budget requests, estimates, monthly expenditure plans, budget allocation limit notices, income and expenditure reports for the general fund, and memorial orders with supporting primary documentation. These documents were needed to trace fund movements, assess the justification of expenses, and confirm the legality of their use. The court granted the motion, enabling the investigator to obtain key evidence (*Court decision No. 139/41/18, 2018*).

Such judicial and investigative cases demonstrate that temporary access to documents enables investigators to quickly obtain documentary evidence, conduct the necessary expert examinations, and minimize the risk of destruction or falsification of financial records. Effective use of this mechanism contributes to establishing the truth in criminal proceedings and bringing perpetrators to justice.

However, there is an unfortunate practice in which courts initially grant investigators access only to copies of documents, without considering the need—outlined in scientific and methodological recommendations—for original documents in handwriting or signature analyses. As a result, investigators are often forced to reapply to the court for access to the originals, effectively repeating the procedure and wasting valuable time (*Shendryk, 2022*).

4. Conclusions

In conclusion, temporary access to documents remains a vital tool in combating financial offenses. It enables the timely acquisition of necessary financial documentation, which is critically important for building an evidentiary foundation. Without proper access to documents, it would be impossible to confirm or refute instances of unlawful use of state resources, significantly complicating the investigation process. The effective use of this mechanism contributes to enhancing the transparency of investigations and ensures an appropriate level of justice. At the same time, further research into this issue may help improve the legal mechanisms for obtaining documents and increase the effectiveness of criminal prosecution in the field of budget-related offenses.

References:

- Bespalko, I.L. (2023). Osoblyvosti zastosuvannya tymchasovoho dostupu do rechei i dokumentiv u protsesi kryminalnoho protsesualnoho dokazuvannya [Peculiarities of the application of temporary access to things and documents in the process of criminal procedural evidence]. *Naukovyi visnyk Uzhhorodskoho Natsionalnoho Universytetu*. № 1. pp. 217–222 (in Ukrainian).
- Bidniak, V.A., Bidniak, H.S., Chaplynskyi, K.O. (2021). Teoretychni, pravovi ta prakseolohichni zasady vykorystannya spetsialnykh znan pid chas rozsliduvannya zlochyniv, poviazanykh iz derzhavnym finansuvanniam v haluzi okhorony zdorovia : monohrafiia [Theoretical, legal and praxeological principles of using special knowledge when investigating crimes related to state financing in the field of health care: monograph]. Odesa : Helvetyka (in Ukrainian).
- Cherniavskyi, S.S. (2013). Vykorystannya informatsii, yaka znakhodytsia v operatoriv ta provaideryiv telekomunikatsii, yikh transportnykh telekomunikatsiinykh merezhakh, pid chas rozsliduvannya zlochyniv [Use of information contained in telecommunications operators and providers, their transport telecommunications networks, during the investigation of crimes]. Kyiv : Nats. akad. vnutr. sprav (in Ukrainian).
- Kryminalnyi protsesualnyi kodeks Ukrainy vid 13.04.2012 № 4651-VI [Criminal Procedure Code of Ukraine of 13.04.2012 No. 4651-VI]. *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (in Ukrainian).
- Kushnir, N.P. (2014). Tymchasovyi dostup do rechei i dokumentiv: dyskusiini pytannia pravovoho rehuliuвання [Temporary access to things and documents: controversial issues of legal regulation]. *Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu*. № 3. pp. 79–82 (in Ukrainian).
- Marynych, Yu.V. (2023). Instytut tymchasovoho dostupu do rechei ta dokumentiv u systemi zakhodiv zabezpechennia kryminalnoho provadzhennia [Insti-

tute of temporary access to things and documents in the system of measures to ensure criminal proceedings]. *Candidate's thesis*. Nats. akad. vnutr. sprav. Kyiv (in Ukrainian).

Pohoretskyi, M.A., Vakulik, O.O., Serhieieva, D.B. (2014). *Rozsliduvannia ekonomichnykh zlochiniv : navchalnyi posibnyk* [Investigation of economic crimes: a textbook]. Kyiv : VD «Dakor» (in Ukrainian).

Ptushkin, D.A. (2018). *Rozsliduvannia shakhristva, vchynenoho shchodo ob'ektiv nerukhomoho maina hromadian* [Investigation of fraud committed against real estate of citizens]. *Candidate's thesis*. Dnipropetrovskiy derzhavnyi universytet vnutrishnikh sprav, Dnipro (in Ukrainian).

Shendryk, Yu.V. (2022). Okremi aspekty zastosuvannia tymchasovoho dostupu do rechei i dokumentiv u kryminalnykh provadzhenniakh za faktamy pryvlasnennia, roztraty maina abo zavolodinnia nym shliakhom zlovzhyvannia sluzhbovym stanovyshchem [Certain aspects of the application of temporary access to things and documents in criminal pro-

ceedings on the facts of embezzlement, embezzlement of property or taking possession of it by abuse of official position]. *Naukovyi visnyk Dnipropetrovskoho derzhavnoho universytetu vnutrishnikh sprav*. № 1. pp. 354–361 (in Ukrainian).

Sudove rishennia № 139/41/18 [Court decision No. 139/41/18]. (2018). *court.gov.ua*. Retrieved from <https://reyestr.court.gov.ua/Review/71561379> (in Ukrainian).

Yaroshenko, R.V. (2022). Do pytannia provedennia tymchasovoho dostupu do rechei i dokumentiv za faktamy pryvlasnennia, roztraty maina abo zavolodinnia nym shliakhom zlovzhyvannia sluzhbovym stanovyshchem, uchynenoho orhanizovanoiu hrupoiu [On the issue of temporary access to things and documents in the case of misappropriation, embezzlement of property or seizure thereof by abuse of official position committed by an organized group]. *Problemy pytannia yurydychnoi nauky v konteksti reformuvannia pravovoi systemy Ukrainy*. № 2. pp. 121–123 (in Ukrainian).

Сергій Кривун

здобувач Науково-дослідного

інституту публічного права

Георгія Кірпи 2 а, м. Київ, Україна, 03055

ORCID ID: 0009-0004-8376-6884

sergrejder@ukr.net

ТИМЧАСОВИЙ ДОСТУП ДО РЕЧЕЙ ТА ДОКУМЕНТІВ У КРИМІНАЛЬНИХ ПРОВАДЖЕННЯХ ЗА СТ. 210 КК УКРАЇНИ: КРИМІНАЛІСТИЧНИЙ АСПЕКТ

Abstract. Purpose. Метою наукової статті є висвітлення криміналістичного аспекту тимчасового доступу до речей та документів під час розслідування нецільового використання бюджетних коштів.

Results. У науковій статті досліджено криміналістичний аспект проведення тимчасового доступу до речей та документів у кримінальних провадженнях за фактами нецільового використання бюджетних коштів. Враховуючи складність фінансових схем та можливість фальсифікації даних, отримання достовірної доказової бази є ключовим завданням слідства. Одним із найважливіших механізмів у цьому процесі є тимчасовий доступ до речей і документів, який дозволяє отримати речові докази та встановити факти порушень та підтвердити чи спростувати наявність кримінального правопорушення. Проаналізовано думки вчених та чинне законодавство щодо особливостей процесуального оформлення та проведення тимчасового доступу до речей та документів, окреслено значення цього заходу забезпечення кримінального провадження для формування системи доказів за фактами, пов'язаних із порушенням бюджетного законодавства. Зазначено документи, що можуть бути речовими доказами у кримінальному провадженні, а також акцентовано на необхідності тимчасового доступу до електронних інформаційних систем, комп'ютерних систем або їх частин, мобільних терміналів. Наголошено на особливостях залучення спеціалістів у випадках вилучення великої кількості документації, особливо за певний період часу. Наведено приклади з правозастосовної практики. **Conclusions.** Зроблено висновки, що тимчасовий доступ до документів залишається важливим інструментом у боротьбі з фінансовими правопорушеннями. Він дозволяє оперативнотримати необхідну фінансову документацію, що є критично важливою для формування доказової бази. Без належного доступу до документів було б неможливо підтвердити або спростувати факти неправомірного використання державних ресурсів, що значно ускладнило б розслідування. Його ефективне застосування сприяє підвищенню прозорості розслідувань та забезпечує належний рівень правосуддя. Водночас, подальше дослідження цього питання може допомогти вдосконалити правові механізми отримання документів та підвищити ефективність кримінального переслідування у сфері бюджетних правопорушень.

Ключові слова: тимчасовий доступ до речей та документів, досудове розслідування, засоби забезпечення кримінального провадження, бюджетні кримінальні правопорушення, нецільове використання, бюджетні кошти, спеціаліст, зразки для експертизи.