

UDC 342.95:343.102:343.132:343.985.7 343.35  
 DOI <https://doi.org/10.32849/2663-5313/2024.4.09>

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## THE INVESTIGATOR OF THE STATE BUREAU OF INVESTIGATION AS A SUBJECT COUNTERACTING CRIMINAL OFFENCES IN THE SPHERE OF OFFICIAL ACTIVITY

**Abstract. Purpose.** The purpose of the article is to analyse the legal status of an investigator of the State Bureau of Investigation (SBI) as a subject counteracting criminal offences in the sphere of official activity, to identify relevant problems of their functioning, and to formulate practical and regulatory proposals aimed at enhancing the effectiveness of the exercise of their powers within criminal proceedings.

**Results.** The scientific article examines the role of the State Bureau of Investigation as a key actor in the system of counteracting criminal offences in the sphere of official activity. The author emphasizes the importance of adhering to the constitutional principle of comprehensive, complete, and impartial examination of the circumstances of criminal proceedings in accordance with criminal procedural law, which constitutes a decisive criterion for evaluating the effectiveness of investigators and prosecutors during pre-trial investigation. It is argued that in the context of incomplete reform of the law-enforcement system and the existence of multiple procedural inconsistencies, normative improvement of certain aspects of the work of SBI investigators is required. **Conclusions.** In this regard, the paper proposes a number of amendments to the provisions of the Criminal Procedure Code of Ukraine, in particular: granting investigators, upon approval of the prosecutor, the authority to decide on the application of certain preventive measures; expanding the scope of temporary access to things and documents without applying to the investigating judge; updating approaches to the recording of testimonies from victims and witnesses by broadening the grounds for their interrogation in the investigating judge's mode; reforming the procedure for conducting urgent investigative (search) actions, including those involving entry into a person's dwelling; expanding the grounds for conducting covert investigative (search) actions before obtaining the relevant ruling of the investigating judge; and establishing the investigator's right to request information, objects, and documents through an official request. The proposed amendments aim to increase the efficiency of SBI investigators, eliminate barriers to law enforcement practice, and ensure a balance between the public interest and the protection of human rights.

**Key words:** investigator, State Bureau of Investigation, criminal offences in the sphere of official activity, criminal proceedings, pre-trial investigation, powers, investigative (search) actions, covert investigative actions.

### 1. Introduction

One of the most destructive phenomena posing a real threat to national security, the stability of state institutions, and public trust in bodies of public administration is criminal offences in the sphere of official activity. These offences include abuse of power, exceeding official authority, official forgery, and receiving unlawful benefits, frequently committed by officials of public authorities, law-enforcement bodies, and judicial institutions. Effective counteraction to such offences is impossible without the proper functioning of specialised institutions endowed with procedural autonomy, professional staffing potential, and statutorily defined powers.

In this context, the State Bureau of Investigation (SBI) plays an important role as an inde-

pendent law-enforcement body authorised to conduct pre-trial investigations into serious and particularly serious crimes committed by high-ranking officials, judges, prosecutors, and law-enforcement officers. Since its establishment pursuant to the Law of Ukraine "On the State Bureau of Investigation" (2015), the SBI has gradually become one of the key instruments in combating corruption and other manifestations of abuse of power in the public sector.

At the same time, the practice of applying criminal procedural legislation demonstrates the existence of a number of issues related to the exercise of powers by SBI investigators, in particular the limited nature of their procedural rights, the complexity of evidence-gather-

ing mechanisms, duplication of functions with other agencies, and legislative gaps. The relevance of this study is conditioned by the need to improve the legal regulation of the SBI's activities in the context of ensuring effective and fair pre-trial investigation of criminal offences in the sphere of official activity.

The purpose of the article is to analyse the legal status of an SBI investigator as a subject counteracting criminal offences in the sphere of official activity, to identify the existing problems of their functioning, and to develop practical and regulatory proposals aimed at improving the effectiveness of the exercise of their powers within criminal proceedings.

Issues concerning the exercise of procedural powers by investigators, particularly in the context of the SBI's activities, have been addressed in a number of scientific studies, normative acts, and practice-oriented works. In scholarly literature, the delineation of procedural competence between investigators and other participants in pre-trial investigation is analysed in the work of M.S. Tsutskiridze. A comprehensive analysis of systemic shortcomings in the legal regulation of pre-trial investigation is presented in the monograph by V.H. Drozd. The aspects of investigators' authority to conduct interrogations are explored in the studies of I.V. Hlovyuk, L.D. Udalova, and M.Ye. Shumylo. Legislative aspects of conducting certain investigative (search) actions are highlighted by O.S. Starenkyi. Thus, the analysis of scientific sources demonstrates active research into specific aspects of the investigator's activity as a key figure in pre-trial investigation. However, it must be noted that there is no holistic approach to the comprehensive study of the status of an investigator of the State Bureau of Investigation in the context of counteracting criminal offences in the sphere of official activity, which determines the relevance of the chosen academic direction.

## 2. Problems in the Course of Criminal Proceedings

Within the system of the criminal procedural legislation of Ukraine, the key role in fulfilling the tasks of pre-trial investigation belongs to the investigator, including the investigator of the State Bureau of Investigation (SBI), which is a specialised body authorised to detect and investigate criminal offences committed in the sphere of official activity. It is the SBI investigator who carries out the recording, seizure, verification, assessment, and procedural documentation of information about the criminal event, traces, items, documents, as well as the environment and other essential circumstances relevant for establishing the truth in criminal proceedings.

Pursuant to Part 2 of Article 9 of the Criminal Procedure Code of Ukraine, the investigator, along with the prosecutor and the head of the pre-trial investigation body, is obliged to ensure a comprehensive, complete, and impartial examination of all circumstances of the criminal proceedings (Criminal Procedure Code of Ukraine, 2012). This requirement concerns both the circumstances indicating a person's guilt and those that justify them, as well as circumstances mitigating or aggravating the degree of liability. The proper legal assessment of these facts and the adoption of substantiated procedural decisions represent the core of the professional activity of the SBI investigator. This principle is fundamental for ensuring objectivity and legality of the pre-trial investigation, particularly in cases involving public officials, where the investigator may face external influences, attempts at interference, as well as informational or political pressure (Tsutskiridze, 2018). It is the impartiality and procedural autonomy of the SBI investigator that serve as guarantees of effective counteraction to criminal offences in the sphere of official activity.

In the course of criminal proceedings, the SBI investigator encounters a number of substantial issues that complicate the effective exercise of their procedural powers. In particular, the regulatory framework governing certain investigative (search) actions remains problematic. V. H. Drozd draws attention to the fact that current legislation does not provide a clear procedure for conducting such investigative (search) actions as an investigative experiment or obtaining samples for expert examination in residential premises, which creates significant difficulties for ensuring compliance with legality requirements during the collection of evidence (Drozd, 2018).

A separate issue deserving attention concerns the legal regulation of interrogation as a procedural action. According to L. D. Udalova, interrogation should be regarded not only as an investigative action but also as a form of implementing criminal prosecution, combining the function of obtaining evidentiary information with an institution of criminal procedural law, which plays a crucial role in forming the evidentiary base of criminal proceedings (Udalova, 2013).

In their activities, an SBI investigator daily adopts procedural decisions that must be based on sound logic and a legislatively defined procedure. As noted by Yu. A. Komissarchuk, the decision-making process includes several sequential stages. The first stage involves establishing the factual circumstances of the case in accordance with the rules of evidence provided by the criminal procedural law, which ensures

an appropriate basis for decision-making. A particular role in this process is played by the assessment of evidence, as it allows determining its relevance to the proceedings. The second stage consists in correlating the established factual circumstances with the legal grounds provided by law, with the aim of identifying congruence between them. The final stage involves choosing a specific form of action, which presupposes the adoption of the most appropriate decision considering the tasks of the pre-trial investigation. This stage also includes the selection of means and mechanisms for achieving the intended goal, which is a typical element of decision-making in any sphere of social practice (Komissarchuk, Riashko, 2013).

Thus, the SBI investigator not only exercises the powers granted by law but also acts as an active subject of the criminal process, responsible for the objectivity, legality, and effectiveness of counteraction to official misconduct. Their role in this process requires not only high professional competence but also adequate regulatory support for procedural activity.

The exercise of procedural powers by an SBI investigator is manifested in the adoption of procedural decisions and the performance of procedural actions, which are documented in the form of criminal procedural instruments, including resolutions (orders), motions, protocols, and submissions. As rightly noted by I. V. Basysta, the term "decision" is a generic concept that reflects the legal nature of the investigator's act, whereas a resolution or submission constitutes the form of such a decision (Basysta, 2011). Accordingly, a resolution is a procedural act that not only formalises the will of the investigator but also gives rise to specific legal consequences. At the same time, the protocol of an investigative (search) action, unlike a resolution, performs a recording function and reflects the results of a directly conducted procedural action without independently generating legal consequences.

It is incorrect to equate the concept of a "procedural decision" with an "investigator's resolution," since the latter is merely an external form of expressing the adopted decision. If the resolution is lost or damaged, the decision itself—as a result of the investigator's internal volition—does not cease to exist and is subject to restoration in the appropriate form.

Special attention should be paid to such a form of procedural decision as a motion. As noted by N. V. Hlynska, a motion embodies the decision already adopted by the investigator; however, its implementation often requires the prosecutor's approval or an investigative judge's ruling. At the same time, a motion should be considered a type of criminal pro-

cedural decision, as it not only imposes a legal obligation on another participant in the proceedings to consider it on the merits but may also entail potentially adverse consequences for the suspect or other persons (Hlynska, 2014).

Therefore, the activity of the SBI investigator as a subject of counteraction to criminal offences in the sphere of official activity is realised through adopting procedural decisions, which are formally documented and serve as a mechanism for the implementation of legal consequences within criminal proceedings. According to Parts 3 of Article 104 and 5 of Article 110 of the Criminal Procedure Code of Ukraine, the structure of such documents is strictly regulated and contains information about the circumstances of the procedural actions carried out, their content, legal grounds, and justification, which ensures an adequate level of procedural form and compliance with guarantees of the rights of the participants in the proceedings (Criminal Procedure Code of Ukraine, 2012).

### 3. Specific Features of the Exercise of Procedural Powers by an SBI Investigator

One of the pressing issues in the exercise of procedural powers by an SBI investigator in the context of combating criminal offenses in the sphere of official activity is the limited ability to independently apply operational-search measures. In addition, current procedural regulation requires mandatory formalization of the results of investigative (search) actions in the form of a protocol, even when modern technical means of recording are used, which in some cases complicates the promptness and effectiveness of pre-trial investigation.

According to Article 41(3) of the Criminal Procedure Code of Ukraine, the instructions of an investigator or prosecutor regarding the conduct of covert investigative (search) actions (CISA) are mandatory for execution by the relevant operational units. At the same time, Article 41(2) establishes an imperative prohibition on the independent initiation of procedural actions by operational personnel. On one hand, this corresponds to the general principles of organizational subordination and procedural unity of investigation. However, in practice, situations arise in which, within the scope of a given instruction, an operational officer objectively requires the conduct of additional CISAs, for example, in cases of tracing a suspect or documenting corrupt activities of officials. In such cases, current legislation does not allow the operational officer to file a corresponding motion to the investigating judge or prosecutor but instead obliges them to coordinate every initiative with the authority that issued the instruction. This significantly reduces flex-

ibility and efficiency in a dynamic operational environment.

In this regard, it appears reasonable to introduce a provision in the CPC that would grant the authorized operational officer, within the scope of the given instruction, the right to submit proposals to the investigator or prosecutor regarding the necessity of conducting specific CISAs.

Under current criminal procedural law, an SBI investigator has the right to personally conduct CISAs or to entrust their conduct to operational units. However, the procedural powers of an SBI investigator in the sphere of CISAs may and should be considered as a form of manifestation of criminal procedural relations, within which the permissible limits of interaction between the parties to the proceedings are established. Such interaction must take place within clearly defined limits of authority, aligned with the principles of adversarial proceedings, proportionality, and respect for human rights. To improve current procedural regulation, it is proposed to grant investigators the right to entrust the conduct of investigative (search) actions, covert investigative (search) actions, or other procedural actions to the relevant operational units (by supplementing Article 40(2) (3) CPC). Implementation of such a provision would enhance the effectiveness of procedural interaction between the SBI investigator and operational units, ensure prompt response, and strengthen the institutional capacity of pre-trial investigation bodies in countering crimes in the sphere of official activity.

A critical aspect of the procedural activity of an SBI investigator is the exercise of powers regarding obtaining statements from witnesses and victims as sources of evidence. In this context, particular attention should be paid to the legal regulation of a special type of interrogation – interrogation in a court session at the pre-trial stage, provided for in Article 225 CPC. In the scientific community, various viewpoints are expressed regarding the appropriateness of this institution. Some scholars question the necessity of retaining this method of interrogation in the CPC, arguing that the powers of the investigating judge in this case exceed the function of judicial control over the legality of the investigator's and prosecutor's actions. According to them, the form of this interrogation is overly complicated, as it does not exclude the possibility of obtaining the corresponding statements directly by the investigator (Ilieva, 2014).

However, as rightly noted by O.S. Starenkyi, such an approach is unfounded (Starenkyi, 2017), since, as M.E. Shumylo reasonably emphasizes, the norm of Article 225 CPC is

aimed at preventing the risk of loss of evidence in conditions of a real threat to the life or health of a witness or victim or other circumstances that may make their interrogation in court during the trial impossible (Shumylo, 2013). Granting the authority to conduct such an interrogation specifically to the investigating judge is justified in terms of ensuring the adversarial nature of the proceedings, preventing potential abuses by the investigator, and considering procedural guarantees for the defence. As correctly indicated by I.V. Hloviuk, the powers of the investigating judge in this aspect are a measure for securing evidence, allowing consideration of the future impossibility of obtaining such statements again during the trial (Hloviuk, 2013).

The legislator assigns particular importance to such statements within the system of evidence evaluation. According to Article 95(4) CPC, the court may base its conclusions only on statements obtained directly in court or according to the procedure established in Article 225 CPC, which indicates their higher evidentiary value compared to statements obtained in the general procedure (Article 224 CPC). In this regard, it is advisable to improve Article 225(1) CPC by specifying an exhaustive list of exceptional circumstances under which a witness or victim may be interrogated in a court session at the pre-trial stage (existence of danger to life or health, serious illness, long-term business trip, travel abroad, absence of permanent residence, conscription into the Armed Forces of Ukraine, presence in temporarily occupied territory of Ukraine, or other circumstances that may prevent interrogation).

Implementing such clarifications will preserve the balance between the necessity of securing evidence and the protection of the rights of the parties, as well as strengthen procedural discipline in the conduct of interrogations as an investigative (search) action in criminal proceedings, particularly those investigated by SBI investigators and related to criminal offenses in the sphere of official activity.

Within the procedural activity of an SBI investigator, an important component is ensuring the effective collection of evidence, including through the request of objects and documents. Requests, as a distinct form of obtaining evidentiary information, are of a universal nature and may be applied at any stage of criminal proceedings. This is explained by the fact that, unlike investigative (search) actions, requests are made without coercion and do not require judicial control, making them appropriate even at the initial stages of pre-trial investigation or during the trial (Shepitko, 2015). The advantage of this method of obtaining evidence is its

procedural simplicity and flexibility, especially in cases where conducting full investigative actions is unnecessary.

However, in practice, investigators encounter problems associated with the lack of regulation regarding the recognition of requested documents as proper and admissible evidence, particularly when dealing with copies not obtained directly through court procedures. According to Article 99 CPC, the prosecution or defence is obliged to provide the original document, and the absence of a clear regulatory mechanism for requesting originals results in copies often being deemed inadmissible. Furthermore, due to inconsistencies in Article 93(3) CPC, a situation of procedural inequality arises: an investigator has the authority to request documents, whereas the defence or a representative of a legal entity does not, which violates the principle of adversarial proceedings.

To address this gap and ensure uniform law enforcement in requesting objects and documents, it is proposed to improve Article 93(2) CPC. The need for such amendments is determined by the necessity of a regulatory mechanism for requesting information from state authorities, local self-government bodies, enterprises, institutions, organizations, and individuals in a procedural form, which would define the procedure and deadlines for compliance. It is proposed to establish that decisions by the investigator, inquiry officer, or prosecutor regarding the request of documents, objects, information, expert conclusions, or inspection reports should be issued in the form of a reasoned resolution with a mandatory compliance period not exceeding ten days, except where a different period is agreed upon with the initiator of the request. Such an approach will contribute to the unification of procedural regulation, enhance legal certainty for participants in criminal proceedings, and ensure effective collection of evidentiary information in accordance with the principles of adversarial proceedings and admissibility of evidence.

Special attention should be given to the issue of granting investigators the authority to instruct temporary access to objects and documents. As V.I. Farynnik notes, temporary access is a procedural, rather than investigative action, and therefore does not fall within the scope of actions that may be delegated to operational units under Articles 40(1)(3) and 41 CPC (Farynnik, 2017). As a result, documents obtained through such instructions may be considered inadmissible evidence, which directly contradicts legal requirements and casts doubt on the legality of the collected evidence. The existing restriction prohibiting an investigator from delegating temporary access to operational

units does not fully correspond to practical needs. These units, performing tasks of search, collection of factual data, and ensuring the evidence base, are often the first source of information with procedural significance. Therefore, preventing their involvement in temporary access deprives the investigator of an effective tool for implementing pre-trial investigative tasks.

Considering this, it is reasonable to amend Article 41 CPC to expand the powers of the SBI investigator, allowing instructions not only for conducting investigative (search) actions or CISAs but also for temporary access to objects and documents. This will enable: prompt response to dynamic changes in the investigation environment; ensuring admissibility and propriety of evidence; and preserving procedural balance between the parties.

Thus, improving the normative regulation of the investigator's powers regarding requests and temporary access to objects and documents is a necessary condition for increasing the efficiency of the SBI as a subject combatting crimes in the sphere of official activity, which will contribute not only to establishing the truth in criminal proceedings but also to ensuring a proper level of procedural guarantees and strengthening trust in the investigator as a procedurally independent and professionally responsible participant in criminal proceedings.

#### 4. Conclusions

As a result of the conducted research, a number of pressing issues have been identified in the exercise of powers by SBI investigators as subjects of criminal procedural relations in the investigation of criminal offenses in the sphere of official activity. To address these issues, a set of practical and normative-legal changes has been proposed, aimed at enhancing the efficiency of pre-trial investigation. In particular, it appears appropriate to supplement Article 40(2)(3) CPC with a provision granting the investigator the right to entrust the conduct of investigative (search) actions, covert investigative (search) actions, or other procedural measures to the relevant operational units. Article 41 CPC should also provide for the possibility for the investigator to exercise powers regarding temporary access to objects and documents, which would contribute to prompt evidence collection.

Particular attention should also be paid to improving the mechanism of interrogation under Article 225 CPC by expanding the list of grounds that prevent interrogation of a person in court or may significantly affect the completeness and reliability of their testimony. In addition, the SBI investigator should be granted the right, in coordination with the prosecutor,

to apply preventive measures in cases provided by law and to initiate the closure of criminal proceedings in the presence of grounds established by Article 284 CPC. Furthermore, it is advisable to normatively regulate the powers of SBI investigators to request objects, documents, or their copies, as well as information from state authorities, local self-government bodies, enterprises, institutions, organizations, individuals, and auxiliary bodies, establishing a clear deadline for providing a response to such requests—no later than ten days from the date of receipt.

Implementation of the proposed measures will contribute to strengthening the institutional capacity of the SBI, increasing the efficiency of pre-trial investigation of criminal offenses in the sphere of official activity, and ensuring a balance between the interests of justice and the procedural rights of participants in criminal proceedings.

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## СЛІДЧИЙ ДЕРЖАВНОГО БЮРО РОЗСЛІДУВАНЬ ЯК СУБ'ЄКТ ПРОТИДІЇ КРИМІНАЛЬНИМ ПРАВОПОРУШЕННЯМ У СФЕРІ СЛУЖБОВОЇ ДІЯЛЬНОСТІ

**Анотація.** *Метою статті* є аналіз правового статусу слідчого ДБР як суб'єкта протидії злочинам у сфері службової діяльності, виявлення актуальних проблем його функціонування, а також формулювання практичних і нормативних пропозицій щодо підвищення ефективності реалізації його повноважень у межах кримінального провадження. **Результатами.** У науковій статті досліджується роль Державного бюро розслідувань як ключового суб'єкта у системі протидії кримінальним правопорушенням у сфері службової діяльності. Автор акцентує увагу на значенні дотримання конституційного принципу всебічного, повного й неупередженого дослідження обставин кримінального провадження відповідно до кримінального процесуального закону, що є визначальним критерієм ефективності діяльності слідчого та прокурора в умовах досудового розслідування. Обґрунтовується, що в умовах незавершеного реформування правоохоронної системи та наявності низки процесуальних колізій, необхідним є нормативне вдосконалення окремих аспектів діяльності слідчих Державного бюро розслідувань. **Висновки.** У зв'язку з цим у роботі запропоновано ряд змін до положень Кримінального процесуального кодексу України, зокрема: надати слідчим, за погодженням із прокурором, повноваження на прийняття рішень щодо застосування окремих запобіжних заходів; розширити межі здійснення тимчасового доступу до речей і документів без звернення до слідчого судді; оновити підходи до фіксації показань потерпілих та свідків шляхом розширення підстав для їх допиту в режимі слідчого судді; реформувати порядок здійснення невідкладних слідчих (розшукових) дій, у тому числі пов'язаних із проникненням до житла особи; доповнити підстави для проведення негласних слідчих (розшукових) дій до отримання відповідної ухвали слідчого судді; а також закріпити за слідчим Державного бюро розслідувань право витребування інформації, речей і документів шляхом направлення запиту. Запропоновані зміни спрямовані на підвищення ефективності роботи слідчих Державного бюро розслідувань, усунення правозастосовних бар'єрів та забезпечення балансу між публічним інтересом і захистом прав людини.

**Ключові слова:** слідчий, Державне бюро розслідувань, кримінальні правопорушення у сфері службової діяльності, кримінальне провадження, досудове розслідування, повноваження, слідчі (розшукові) дії, негласні слідчі дії.