

# opción

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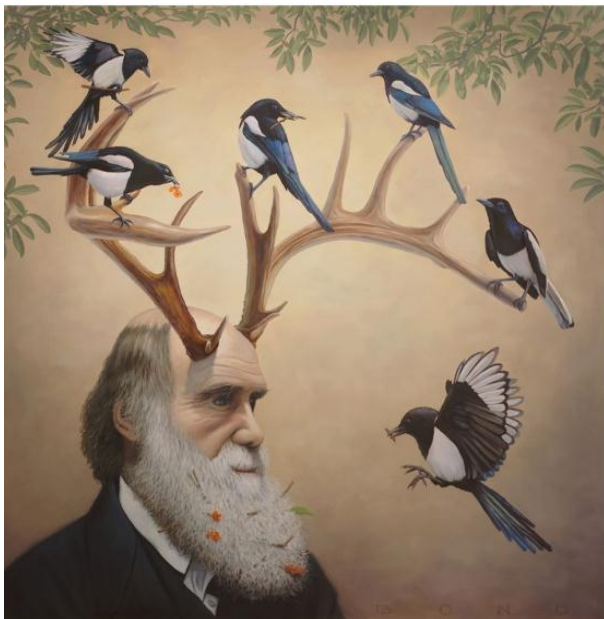
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# Algorithms to counter the pre-trial investigation of criminal offenses

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## Abstract

The purpose of this study is to determine the nature and main elements of the algorithm to counter a pre-trial investigation of criminal offenses. The leading methods of research of this problem were sociological methods of collecting information and methods of static observation and analysis. As a result, the determination of the dependence of resistance to the investigation is related to the ratio of factors of the volitional and motivational attitude of the person involved. In conclusion, the actual state of the measures aimed at preventing opposition to the investigation of criminal offenses.

**Keywords:** Criminal, Offense, Crime, Algorithm, Stability.

## Algoritmos para contrarrestar la investigación preventiva de delitos penales

### Resumen

El propósito de este estudio es determinar la naturaleza y los elementos principales del algoritmo para contrarrestar una investigación previa al juicio de delitos penales. Los principales métodos de investigación de este problema fueron los métodos sociológicos de recopilación de información y los métodos de observación y análisis estático. Como resultado, la determinación de la dependencia de la resistencia a la investigación está relacionada con la relación de factores de la actitud volitiva y motivadora de la persona involucrada. En conclusión, el estado real de las medidas destinadas a prevenir la oposición a la investigación de delitos penales.

**Palabras clave:** Penal, Ofensa, Crimen, Algoritmo, Estabilidad.

## **1. INTRODUCTION**

The relevance of the study is due to the presence of the offender or an innocent person eternal and the simplest impulse, which is the unwillingness to be brought to criminal responsibility, as well as to bear any restrictions established by law. The specified circumstances are the permanent reason for pushing the interested participants of the process to counteract the pre-trial investigation in criminal cases. In addition, it requires a detailed study of both the opposition itself and the content of the actions taken in the process, with a view to the subsequent development of a mechanism for overcoming them. It should be noted that since the methods and means of countering a pre-trial investigation are constantly being improved, algorithms and methods to neutralize illegal actions should automatically progress.

Despite the fact that many issues related to the existence of counteraction to the pre-trial investigation, were considered by conducting scientific research from various theoretical positions, including from the point of view of criminal procedural law and forensic science (AZAROVA, 2006; SHMONIN, 2011; SHMATOV & KOZYREV, 2015). However, none of the domestic specialists considered this problem at a comprehensive, interdisciplinary level. In this regard, the relevance of research in this area is not in doubt (KOROUTCHEV, 2018).

## **2. MATERIALS AND METHODS**

The methodological basis of the study is general and special methods of cognition, such as historical, comparative legal, logical-legal,

sociological, statistical, activity and others, as well as such techniques as abstraction, simplification, schematization, idealization, reconstruction and design. A special place in the study was taken by sociological methods of collecting information and methods of static observation and analysis (MACHADO, SOUZA & CATAPAN, 2019; SAEIDI, TAYEBI, KHOSRAVI, RAZI, SELLAMI, ABDERRAHMAN & ZOUHAL, 2019).

The legal basis for the study was the Constitution of the Republic of Kazakhstan, the laws of the Republic of Kazakhstan, laws and regulations, laws of foreign countries. The study of the legal framework was based on the general scientific dialectical method of cognition, involving the study of legal concepts in their development and interdependence. In the framework of the use of the dialectical method, patterns were discovered of the emergence of algorithms for counteracting the pre-trial investigation of criminal offenses.

As a result of the use of the above methods of scientific knowledge and the conducted research, the obtained results are generalized and the goals related to the identification of structural patterns, causal and other mechanisms to counter pre-trial investigation of criminal offenses are achieved.

### **3. RESULTS**

Let us begin with a description of a part of the work devoted to the mechanics of counteraction or, in other words, its algorithms. At the same time, the formulation of the mechanics of counteraction, as it seems to us,

is more successful here because it assumes the deep essence of the phenomenon. In turn, the concept of algorithm involves only a combination of specific actions in different probabilities.

This mechanical part itself assumes the consideration of an extensive block of classification descriptions of the opposition itself. Despite the fact that in legal science there are a large number of approaches to the classification of forms and types of opposition to investigation (ISCHENKO, 2007; SEMENOV, 2015), but this does not prevent a more in-depth study of this issue.

*3.1. On the ratio of the objectives of the action and the opposition (the objectives of the investigation of crimes and the objectives of countering the investigation)*

Proceeding from the general idea of the relationship between the goals of investigating crimes and the goals of countering the investigation of crimes, all types of counteraction, algorithms can be divided into types of countermeasures of a general type and types of counteractions of a local type.

Types of countermeasures of a general type can be absolute and situational. In this case, the first act and exist in all situations, and the second can be effective in relation to situations of investigation of specific delicts (murder, theft, drugs, etc.). All of them can be divided into the following logical conclusions arising from such opposition:

At the same time, all ways of reaching such conclusions listed above are absolute (with the exception of those listed below as situational) and can be detailed as follows.

**Impact:**

Escape as opposition, indicating the actual impossibility of the investigation:

- The migration of the person involved in the country is not a hypothetically outstanding criminal. Note that, it would seem, in this case, absentee prosecution is possible. However, such a mechanism, according to the current criminal procedural legislation of the Republic of Kazakhstan, is very complicated and impossible without the participation of the defense counsel on the part of the defendant. Moreover, the person involved in this situation needs to find or present the facts of finding him abroad, which is almost unbelievable with the conditions themselves, originally designated (TUKIEV, 2007).

For situations in which the opposition of the type under discussion is expressed by the participation of certain persons in the criminal process, an example is observed when, through the efforts of the person involved, a situation of violation of procedural deadlines is created. When the interrogation of one or another participant in the pre-trial investigation exceeds the statutory period, which is easy to falsify by amending the interrogation protocol.

### *3.2. According to the degree of stability*

The next species to be described in the context of the classification structure of the types of opposition to an investigation is opposition, classified on the basis of the sustainability attribute. By stability in this case, we mean the degree of ability to withstand pressure from the investigating authorities aimed at eliminating, overcoming counteraction. In essence, this is nothing but a reaction to influence. It should be noted that this form of opposition is inherent, as a rule, to organized criminal groups and communities and is described in detail in the legal literature (ABRAMENKOVA, 2004; DYABLOVA, TISHUTINA, 2010).

The first targeted worsen the position of the person involved (for example, confiscation of the property before a court sentence, the seizure of property, arrest) and consists in the occurrence of specific consequences at the stage of pre-trial proceedings in the case. The latter exert their influence on the very prospect of the onset of consequences, expressed in describing the deplorable state of the person involved in the proceedings (SULERI & CAVAGNARO, 2016).

### *3.3. By the nature of the expression*

The next method of gradation of opposition at the level of algorithms is to consider his attempt to divide by opposition by the nature of the expression. This can be further divided into opposition to the procedural, forensic and organizational nature. It should be noted that in part we have already described certain types of opposition in relation to a

brief description of the previous types. At the same time, this does not make such a description independent and implies its exact fixation in this part of the work.

That is, if, in the event of opposition to the procedural type, such information is supposedly allowed to be examined by the person conducting the investigation, but cannot acquire evidentiary value, in the second case, the emergence of such information is not supposed at all. As for the opposition of the organizational type, then it generally includes the part of knowledge that belongs to the criminalistics section Organization of the investigation of crimes (KORYAKIN, 2010). In relation to the described type of counteraction, this can be expressed in a large, simply enormous number of algorithms of actions, ranging from intentionally damaging a shovel during exhumation and ending with the destruction of the computer of the investigator. In such a context, even the killing of the person conducting the investigation is no more than opposition to the organizational type, i.e. violating the organization of the investigation of a crime, since it does not directly affect the information received, or its evidentiary assessment, as well as the very possibility of receiving it by another person.

Hypothetically, it can be divided into opposition, aimed at:

- Destruction or damage of the knower;
- The destruction or damage to the means of knowledge;
- Destruction or damage to the information received.



However, it should be repeated again - it is impossible to predict the full list of types of such opposition, just because cognition itself is phenomenal, and the forms of its organization are not fixed by any rules.

#### *3.4. By degree of organization*

The classification type of counteraction to the investigation of crimes, designated by us as counteraction, determined by the degree of organization can be considered the most difficult type of classification of counteraction in terms of its algorithmization. Such a conclusion is determined both by the branched structure of the subspecies arising from the present approach, and by the character itself, the very uneasy nature of their relationship to each other.

Note that all this classification richness increases significantly in the probability ratio among them, which makes a complete classification description of this subspecies almost impossible. For example, an additional introduction to the simple organizational type of counteraction of the three methods of counteraction increases the number of all common elements by four times, for new variants of their combination with each other appear.

The simultaneous introduction of three more countermeasures into such an option increases the number of elements in a geometrical progression to 32 elements. Seeing no point in describing all probabilities here, in our classification, we only point out the basic fact of their existence. The value of this classification idea lies in the fact that based on

its conditions; it is possible to conditionally calculate all possible situations of opposition in the course of the investigation of crimes. At the same time, the accuracy of the calculations, in this case, is determined by the accuracy of the available information on the possible counteraction and largely depends on the determination of the objectives of the counteraction, which indicates these probabilities themselves.

### *3.5. According to the environment of counteraction*

The separation of types of counteraction according to the nature of its flow is based on the categories already known by us and therefore known. In fact, all these categories are based around the question of the process in which the procedure takes place and is expressed opposition to the investigation of crimes.

Such an expression has, from our point of view, two incarnations, and, accordingly, is associated with two types: opposition to investigation in a common environment and opposition to investigation in a local environment. Under the general environment, we understand the environment of pre-trial proceedings, the specific environment; we understand the environment of the procedural action itself, in which there is opposition to the investigation. In turn, this local environment has further gradation. For example, it can be divided into the investigation environment and the procedural environment.

At the same time, if the investigation were accompanied by sufficient analytical work to determine the likely objectives of the

reaction, the motivation for the reaction, then we most likely would not have found the signs of the reaction because of the fact that the latter had been overcome during the interrogation itself. Such a situation is all the more likely that the person conducting the investigation often enters into the interrogation protocol only those data that are relevant to the case, and in the case of overcoming the counteraction, such data are usually not recorded in the protocol. A very similar situation seems to be observed in the practice of studying this issue in the space of Russia (ANTONOV & KUVALDIN, 1996); (LAVROV, 1997) and Kazakhstan.

As a consequence, the conclusion from the technical study of such empiricism may be the conclusion that interrogation is the most frequent source of opposition. However, this is not so also because, as we have already indicated, it is born at the level of causality, and not manifestation. Secondly, its manifestation can only be part of an emotional conflict that is not related to the local or general goals of the investigation, and therefore is not related to opposition.

### *3.6. By the nature of the mechanism of opposition*

The classification of the algorithms for counteracting the investigation of crimes, conducted by us, would be insignificant if we did not investigate such a subtype of it as the gradation of types of counteraction depending on the nature of the countermeasure mechanism. Perhaps, with such a statement we have most accurately indicated the value of the described classification approach. This categorical nature is connected with the fact that our attempt to structure countermeasures is

absolutely simple and also completely fully describes the essence of countermeasure mechanics, without confusing the reader with any confusion of classification elements of different types, as is done by almost all authors who have studied the problem of counteraction earlier. The most striking classifications of the opposition investigation, in which such a mixture reaches the homeic level, are the classifications carried out by (KUSTOV, 2013; LUBIN and ZHURAVLEV, 1994).

One of the possible ways of overcoming the considered opposition, we see the use of the institution of procedural agreement introduced into the Kazakh and Russian criminal proceedings and not yet used in the pre-trial investigation (AKHPANOV, AZAROV & BALTYNTAEV, 2015; PRYTKOVA, KIM, VEDERNIKOV & KURCHEEV, 2014).

#### **4. DISCUSSION**

In general, based on the results of this part of the work, it should be concluded that the determination of the dependence of resistance to the investigation is related to the ratio of factors of volitional and motivational attitude of the person involved, as well as the quality of the impact on the person opposing justice, pre-trial investigation. The cumulative combination of these factors determines the quality of such stability, its duration.

Types of countermeasures of a general type can be absolute and situational. In this case, the first act and are in all situations, and the second can be effective in relation to the situations of investigation of

specific delicts (murder, theft, rape, etc.). At the same time, all of them can be divided into the following logical conclusions arising from such opposition. At the same time, all ways of reaching such conclusions listed above are absolute (with the exception of those listed below as situational) and can be detailed as follows:

Influences:

- The impact on the subject of the investigation, supervision of the investigation;
- Influence on the victim (for private, private and public matters (is a situational form of influence);
- The impact on the suspect, the accused, who can testify in favor of the person involved;
- Influence on a third party with the purpose of giving them confessions of committing a crime in combination with sufficient legend of this version (it is a situational form of influence).

Dramatization and imitation:

- Dramatization, excluding the involvement of a person in the commission of a crime, or the fact of the commission of a crime;
- Dramatization of an accident (is a situational form of influence);

- Dramatization, indicating the crime was committed by another person.

Dramatization and imitation, indicating the uselessness of the subject of bringing to criminal responsibility:

- Dramatization of death of the person involved;
- Imitation of mental insanity of the person involved.

## **6. CONCLUSION**

In conclusion, we would like to indicate the most general and significant conclusions and results of our work.

For legal science in general, it is a conclusion about the nature of countering an investigation in pre-trial proceedings, as well as its place and role in the overall system of concealing criminal activity.

For the science of the criminal process:

- A conclusion on the actual state of the measures aimed at preventing opposition to the investigation of criminal offenses;
- Conclusions about the target nature and imperfection of the legislative regulation of such investigative actions as: interrogation,

examination, obtaining samples for comparative research, as well as the need to improve the regulation of most secret investigative actions;

- The conclusion about the need to make changes regarding the content of these investigative actions in the Criminal Procedure Code of the Republic of Kazakhstan, allowing to eliminate these imperfections.

For forensic science:

- The genesis and generation of the concept of countering the investigation of crimes, as well as determining the moment of its beginning and end;

- Determination of the essence of obstruction to the investigation as a whole and its individual components at the level of structuring.

## REFERENCES

- ABRAMENKOVA, V. 2004. "Countering organized crime is one of the main problems of law enforcement agencies". **Sibirskiy yuridicheskiy vestnik**. N° 3. Pp. 77-80. Russia.
- AKHPANOV, A., AZAROV, V., & BALTGYNTAEV, A. 2015. "Procedural agreements in criminal proceedings: the legislative experience of the Republic of Kazakhstan". **Kriminologicheskiy zhurnal Baykal'skogo gosudarstvennogo universiteta ekonomiki i prava**. Vol. 17, N° 11: 10197-10209. Russia.
- ANTONOV, V., & KUVALDIN, V. 1996. **Counteraction of organized criminal structures to internal affairs bodies and measures to neutralize them**. Moscow. Russia.
- AZAROVA, E. 2006. **Problems of combating organized opposition to the detection and investigation of crimes**. Volgograd. Russia.

- DYABLOVA, Y., & TISHUTINA, I. 2010. "Countering Investigation of Organized Criminal Activity: Issues of Criminal Responsibility". **Vektor nauki Tol'yattinskogo gosudarstvennogo universiteta. Seriya: Yuridicheskiye nauki.** N° 3. Pp. 66-68. Russia.
- ISCHENKO, V. 2007. **Counteraction to preliminary investigation in places of deprivation of liberty and the main directions of its neutralization.** Moscow: Rossiyskaya tamozhennaya akademiya. Russia.
- KOROUTCHEV, R.K. 2018. "School Performance of the Moroccan Students in the Spanish Educational System: The Municipality of Collado Villalba (Madrid Region)". **European Journal of Educational Research.** Vol. 7, N° 4: 739-744. USA.
- KORYAKIN, I. 2010. **The theory of risk in forensics.** Karaganda: KYUIMVD RK named B. Beisenov. Kazakhstan.
- KUSTOV, A. 2013. "Counteraction to investigation: concept, content and ways to overcome". **Biblioteka kriminalista. Nauchnyy zhurnal.** Vol. 6, N° 11: 306-318. Russia.
- LAVROV, V. 1997. **Organized opposition to the detection and investigation of crimes.** Organized opposition to the detection and investigation of crimes and measures to neutralize it. Moscow. pp. 93-99. Russia.
- MACHADO, A.D.B., SOUZA, M.J., & CATAPAN, A.H. 2019. "Systematic Review: Intersection between Communication and Knowledge". **Journal of Information Systems Engineering & Management.** Vol. 4, N° 1. UK.
- PRYTKOVA, E., KIM, D., VEDERNIKOV, N., & KURCHEEV, V. 2014. "Threat to the security of a suspect (accused) who has entered into a pre-trial agreement on cooperation as a type of resistance to a preliminary investigation". **Izvestiya Altayskogo gosudarstvennogo universiteta.** Vol. 2-2, N° 82: 144-147. Russia.
- SAEIDI, A., TAYEBI, S.M., KHOSRAVI, A., RAZI, O., SELLAMI, M., ABDERRAHMAN, A.B., & ZOUHAL, H. 2019. "Obesity, Fat Mass, Osteopontin and Exercise Training". **International Journal of Applied Exercise Physiology.** Vol. 8, N° 1: 177-179. Iran.
- SEMENOV, V. (2015). "Countering Investigation: Species, Features and Subjects". **Rossiyskiy yuridicheskiy zhurnal.** Vol. 4, N° 103: 57-60. Russia.



- SHMATOV, V., & KOZYREV, V. 2015. "On the issue of organizational and tactical forms of combating countering the detection and investigation of crimes". **Fundamental'nyye i prikladnyye issledovaniya v sovremennom mire**. N° 9-4. Pp. 100-106. Russia.
- SHMONIN, A. 2011. "Forensic doctrine on countering the investigation of crimes: current state and ways of development". **Proceedings of the Academy of Management of the Ministry of Internal Affairs of Russia**. Vol. 3, N° 19: 10-14. Russia.
- SULERI, J., & CAVAGNARO, E. 2016. "Promoting Pro-Environmental Printing Behavior: The Role of ICT Barriers and Sustainable Values". **Dutch Journal of Finance and Management**. Vol. 1, N° 1: 38. Germany.
- TUKIEV, A. 2007. **Extramural criminal proceedings**. Karaganda. Kazakhstan.
- ZHURAVLEV, S., & LUBIN, A. 1994. **Opposition to investigation**. Nizhny Novgorod. Russia.



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