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## Crime provocation: ECtHR standards and their implementation in the criminal procedure of Ukraine

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■ **Abstract.** The issue of crime provocation is one of the key concerns in the field of criminal procedure and law enforcement practice, as it involves questions of human rights protection and the guarantee of a fair trial. The lack of clear criteria for distinguishing provocation from lawful actions by law enforcement agencies poses a risk to the admissibility of evidence obtained through covert investigative (search) actions. This study aimed to explore legal approaches to defining crime provocation, its implications for the admissibility of evidence in criminal proceedings, and the influence of the European Court of Human Rights case law on the practice of Ukrainian courts and national legislation. The study also sought to identify a balance between ensuring public safety and safeguarding the right to a fair trial. To achieve this aim, methods of comparative analysis, systems approach, legal-logical analysis, and interpretation of legal norms were applied, enabling a comprehensive examination of the issue of crime provocation. The research examined approaches to countering crime provocation in various countries, including the Republics of Lithuania and Latvia, Georgia, the Federal Republic of Germany, and the United States of America. The findings of the study demonstrated that crime provocation constitutes a serious violation of the right to a fair trial under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It also contradicts the principle of the rule of law, as it may result in unlawful judicial decisions. Relevant case law of the European Court of Human Rights concerning crime provocation has been examined, alongside the practice of national courts. Characteristics of incitement to commit a crime have been analysed. The study summarised the European Court of Human Rights approaches to distinguishing lawful law enforcement activities from provocation, as well as the case law of the Supreme Court on this issue. It has been established that the case law of the European Court of Human Rights plays a decisive role in shaping standards for assessing the legality of law enforcement conduct. However, its implementation in Ukraine remains insufficient. The practical value of this study lies in the development of recommendations for improving the legal regulation of control over crime commission measures, which will contribute to enhancing the effectiveness of criminal justice and the protection of human rights

■ **Keywords:** provocation; incitement; control over crime commission measures; covert investigative (search) actions; European Court of Human Rights; agent

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## ■ Introduction

In modern society, the protection of human rights is one of the core principles underpinning a democratic state. At the same time, the effective prevention and combating of crime remains a key responsibility of law enforcement agencies. This dilemma becomes particularly acute in the context of the use of covert methods for documenting intentional criminal offences. The detection of crimes related to the illicit trafficking of narcotic substances, bribery and corruption, or offences committed by organised groups is nearly impossible without the use of covert techniques and individuals who cooperate with law enforcement on a confidential basis. These measures are aimed at gathering evidence and ensuring that perpetrators are brought to justice.

Article 23 of the 1999 Criminal Law Convention on Corruption<sup>1</sup> provides state parties with the right to apply special investigative techniques intended to facilitate the collection of evidence in criminal proceedings. The importance of the police's role in detecting and investigating such offences has also been acknowledged by the European Court of Human Rights (hereinafter – ECtHR), particularly in the case of *Ramanauskas v. Lithuania*<sup>2</sup>. In this case, the ECtHR noted that in order to fulfil their duties, police forces are increasingly compelled to use undercover agents, informants, and secret methods, especially in the fight against organised crime and corruption. H. Kret (2021) observes that “covert activity may be justified both by practical necessity and by the impossibility of carrying out certain investigative (search) actions or of using certain means, methods, or participants openly”.

At the same time, the case law of the ECtHR and the provisions of the Criminal Procedure Code of Ukraine<sup>3</sup> (hereinafter – CPC of Ukraine) prohibit provoking an individual to commit a criminal offence. Provocation – understood as the artificial creation of a situation with the aim of inciting a person to commit a crime – constitutes a serious violation of the right to a fair trial under Article 6 of the 1950 European Convention on Human Rights<sup>4</sup> (hereinafter – the Convention) and of the principle of the rule of law. It is therefore crucial for law enforcement agencies to observe the fine line between permissible covert measures and impermissible actions that may infringe upon human rights.

The issue of crime provocation in the context of human rights protection has drawn the attention of

numerous Ukrainian scholars who have analysed ECtHR case law regarding the distinction between lawful law enforcement activities and provocation. For instance, I. Berdnik & S. Tagiev (2024) have examined how the ECtHR and the Supreme Court of Ukraine assess the presence or absence of provocation by law enforcement, as well as the criteria used to identify it. The authors emphasise that the ECtHR's case law has been consistent and well-established since 1998, whereas the decisions of the Supreme Court often appear inconsistent.

Some researchers have examined crime provocation through the lens of various categories of criminal offences and law enforcement practices. E. Gladiy (2021) explored provocation in the context of covert investigative (search) actions (hereinafter – CISA), particularly concerning the documentation of official misconduct, and demonstrated that such actions may conflict with the principle of a fair trial according to ECtHR standards. The issue of provocation about the offering or receipt of undue advantage, from the perspective of European standards, has been addressed by M. Burovskiyi & V. Hutnyk (2020). O. Hura (2023) focused on provocation in cases concerning the unlawful use of humanitarian aid, as defined under Article 201-2 of the Criminal Code of Ukraine<sup>5</sup> (hereinafter – CC of Ukraine). In another study, O. Hura (2022) analysed the case law of the Supreme Court and the ECtHR in relation to provocation in so-called “white-collar crime” cases. The admissibility of evidence obtained as a result of provocation in criminal proceedings involving the illicit sale of narcotic substances was investigated by Ya. Pomaz (2021). All authors emphasise the need for a clear distinction between lawful law enforcement activity and unlawful incitement to commit a crime, which is essential to upholding fair trial standards per ECtHR case law.

D. Abbasova (2021), as well as I. Hrytsiuk & T. Huk (2021), examined crime provocation from an ethical and legal perspective, highlighting its negative impact on public legal consciousness, legal culture, and trust in law enforcement agencies. The issue of crime provocation has also been explored from criminal law, criminal procedure, and international legal perspectives. For example, M. Hribov *et al.* (2021) analysed provocation in bribery cases from the standpoint of both criminal law (Article 370 of the CC of Ukraine<sup>6</sup>) and procedural law (Article 271

<sup>1</sup> Criminal Law Convention on Corruption. (1999, January). Retrieved from [https://zakon.rada.gov.ua/laws/show/994\\_101#Text](https://zakon.rada.gov.ua/laws/show/994_101#Text)

<sup>2</sup> Judgment of the European Court of Human Rights in Case No. 74420/01 “*Ramanauskas v. Lithuania*”. (2008, February). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-84935>.

<sup>3</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

<sup>4</sup> European Convention on Human Rights. (1950, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_004](https://zakon.rada.gov.ua/laws/show/995_004).

<sup>5</sup> Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

<sup>6</sup> *Ibidem*, 2001.

of the CPC of Ukraine<sup>1</sup>), emphasising the illegality of such actions by law enforcement officers.

O. Bakaieva *et al.* (2021) investigated international approaches to involving citizens in crime prevention and control. They reviewed practices used in the USA, the United Kingdom, Germany, and other countries for engaging the public in crime-fighting efforts, and discussed the potential for adapting these models to the Ukrainian context. Y. Khyzhniak *et al.* (2022) also addressed the possibility of involving victims, witnesses, or even minors in the performance of certain tasks as part of covert investigative operations.

At the international level, the issue of crime provocation has been explored by K. Pentney (2021), who analysed the use of agents in undercover operations in EU countries, the United Kingdom, the USA, and Canada to incite participants of civil movements and protests to commit offences. She concluded that such actions by law enforcement authorities may violate an individual's right to a fair trial. F. Görlitz *et al.* (2019) examined the problem of crime provocation (entrapment) in Germany, its legal consequences, and potential regulatory approaches. The authors analysed the balance between effective control over crime commission and the protection of individual rights in the context of covert investigative methods, particularly the use of undercover agents.

Thus, researchers are examining the boundaries of permissible investigative actions, liability for crime provocation, and its regulation under both domestic and international law, drawing on the case law of the ECtHR and the Supreme Court. Some legal scholars highlight the need to clearly distinguish between lawful and unlawful means of achieving socially significant goals, especially in terms of balancing private and public interests. In the legal system

of a democratic state, the use of evidence obtained in breach of legally established procedural requirements is inadmissible (Blikhar *et al.*, 2021).

This article aimed to explore the issue of balancing the state's duty to ensure public safety with the obligation to respect human rights and fundamental freedoms. Particular attention was given to analysing the legal approaches developed in the case law of the ECtHR, as well as the potential for their implementation within Ukrainian legislation. The article examined the limits of lawful interference by law enforcement authorities and proposed ways to improve the regulatory framework in this area in order to achieve a fair balance between state interests and individual rights.

## ■ Materials and Methods

The study analysed Ukrainian legislative acts governing the social relations relevant to the research topic. Chief among these is the CPC of Ukraine<sup>2</sup>, which regulates the conduct of CISA. Additionally, the analysis took into account the provisions of the European Convention on Human Rights<sup>3</sup> and the Law of Ukraine No. 3477-IV "On Execution of Judgments and Application of the Case Law of the European Court of Human Rights"<sup>4</sup>, which enable the application of ECtHR judgments in Ukrainian legal practice. Provisions of the CC of Ukraine<sup>5</sup>, which establish criminal liability for bribery provocation, were also considered. Furthermore, decisions of the ECtHR<sup>6,7,8,9</sup> and the Supreme Court<sup>10,11,12,13,14</sup> were analysed, in which the lawfulness of law enforcement actions was assessed in relation to the balance between state interests and the rights of the individual.

The application of the historical method made it possible to trace the evolution of Ukrainian

<sup>1</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

<sup>2</sup> Ibidem, 2012.

<sup>3</sup> European Convention on Human Rights. (1950, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_004](https://zakon.rada.gov.ua/laws/show/995_004).

<sup>4</sup> Law of Ukraine No. 3477-IV "On Execution of Judgments and Application of the Case Law of the European Court of Human Rights". (2006, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/3477-15#Text>.

<sup>5</sup> Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

<sup>6</sup> Judgment of the European Court of Human Rights in Case No. 74420/01 "Ramanauskas v. Lithuania". (2008, February). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-84935>.

<sup>7</sup> Judgment of the European Court of Human Rights in Case No. 44/1997/828/1034 "Teixeira De Castro v. Portugal". (1998, June). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-58193>.

<sup>8</sup> Judgment of the European Court of Human Rights in Case No. 74355/01 "Milinienė v. Lithuania". (2005, April). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-68970>.

<sup>9</sup> Judgment of the European Court of Human Rights in Case No. 54648/09 "Furcht v. Germany". (2014). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-147329>.

<sup>10</sup> Decision of the Supreme Court of Ukraine in Case No. 487/2403/18. (2020, February). Retrieved from <https://reyestr.court.gov.ua/Review/87517533>.

<sup>11</sup> Decision of the Supreme Court of Ukraine in Case No. 602/253/14-к. (2019, May). Retrieved from <https://reyestr.court.gov.ua/Review/81841867>.

<sup>12</sup> Decision of the Supreme Court of Ukraine in Case No. 265/808/15-к. (2018, December). Retrieved from <https://reyestr.court.gov.ua/Review/78680667>.

<sup>13</sup> Decision of the Supreme Court of Ukraine in Case No. 522/2256/16-к. (2019, February). Retrieved from <https://reyestr.court.gov.ua/Review/79957655>.

<sup>14</sup> Decision of the Supreme Court of Ukraine in Case No. 661/1567/16-к. (2020, September). Retrieved from <https://reyestr.court.gov.ua/Review/91855069>.

legislation and legal norms under the influence of the case law of the ECtHR. The hermeneutic method provided a deeper understanding of the subject matter by enabling the analysis of the content of judicial decisions and the context in which they were adopted. This approach considers not only the text of a decision but also its significance within the Ukrainian legal system, taking into account historical and social factors. The chosen methodology made it possible to identify the nature of the ECtHR's influence on the structure and content of national legislation. Moreover, it contributed to a better understanding of how these decisions are interpreted and applied by Ukrainian courts in practice. The formal-legal method facilitated the identification of the specific features of the legislative regulation of Article 271 of the CPC of Ukraine<sup>1</sup>, as well as the analysis of the relevant decisions of the Supreme Court and the ECtHR concerning the prohibition of incitement to commit a criminal offence by law enforcement authorities. The comparative analysis method was used to contrast Ukrainian legislation with that of other countries and with relevant case law. For the analysis of the legal regulation of entrapment, the approaches of Lithuania, Latvia, Georgia, Germany, and the USA were selected. Lithuania, Latvia, and Georgia – like Ukraine – are post-Soviet states that are either undergoing or have completed a comprehensive transformation of their criminal justice systems in line with ECtHR standards. Germany represents a classical continental legal system, in which the distinction between permissible and impermissible forms of state intervention is enshrined in legislation. The USA, by contrast, exemplifies a common law system where judicial precedent plays a central role in interpreting legal norms. The comparative analysis enabled the identification of similarities and differences in legislative approaches and practices across jurisdictions and allowed for the outline of the most effective mechanisms that could be implemented in Ukraine to enhance its legal system. The examination of foreign experience made it possible to understand how Ukrainian legislation has evolved and been adapted to more effectively

safeguard human rights following internationally recognised standards and the case law of the ECtHR.

## ■ Results

Ukraine is currently in the process of integrating into the broader European legal system. Ukrainian legislation is gradually being aligned with the requirements of the ECtHR, taking into account the Court's case law. This view is supported by A. Poplavska (2024), who argues that, following independence, Ukraine adopted a pro-European stance, including in the development of its legal framework. L. Spytyska (2024) emphasises the importance of ECtHR judgments as a source of law and their role in improving national legal practice, particularly in the area of human rights protection. The need to adapt Ukrainian legislation to ECtHR standards in order to prevent entrapment and to ensure fair trial guarantees is also highlighted by K. Antonov & T. Ivasyshyn (2019).

In 1997, Ukraine ratified the<sup>2</sup> Convention for the Protection of Human Rights and Fundamental Freedoms<sup>3</sup>, and in 2006, Law of Ukraine No. 3477-IV<sup>4</sup> was adopted, which established the state's obligation to comply with the rulings of the ECtHR and to eliminate the causes of violations of the Convention's provisions. Prior to the adoption of the CPC of Ukraine<sup>5</sup> in 2012, the authority to conduct controlled and covert purchases, establish confidential cooperation, and infiltrate criminal groups was limited to operational units under the procedures set out in Law of Ukraine No. 2135XII<sup>6</sup>. This law did not explicitly prohibit operational units from provoking individuals to commit crimes. Meanwhile, the Criminal Code of the Ukrainian SSR 1960<sup>7</sup>, and later the CC of Ukraine 2001<sup>8</sup>, provided for criminal liability for the provocation of bribery, defined as “the deliberate creation by an official of a situation and conditions that induce the offering or acceptance of a bribe for the purpose of subsequently exposing the person who gave or received the bribe”.

In 1998, the ECtHR delivered the judgment in *Teixeira de Castro v. Portugal*<sup>9</sup>, marking the beginning of the Court's position and case law development on incitement (entrapment) to commit a crime.

<sup>1</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

<sup>2</sup> Law of Ukraine No. 475/97-BP “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms, First Protocol and Protocols No. 2, 4, 7 and 11 to the Convention”. (1997, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/475/97-%D0%B2%D1%80#Text>.

<sup>3</sup> European Convention on Human Rights. (1950, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_004](https://zakon.rada.gov.ua/laws/show/995_004).

<sup>4</sup> Law of Ukraine No. 3477-IV “On Execution of Judgments and Application of the Case Law of the European Court of Human Rights”. (2006, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/3477-15#Text>.

<sup>5</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

<sup>6</sup> Law of Ukraine No. 2135-XII “On Operational and Investigative Activities”. (1992, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2135-12#Text>.

<sup>7</sup> Criminal Code of the Ukrainian SSR. (1960, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/2002-05#Text>.

<sup>8</sup> Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

<sup>9</sup> Judgment of the European Court of Human Rights in Case No. 44/1997/828/1034 “Teixeira De Castro v. Portugal”. (1998, June). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-58193>.

Subsequently, several rulings further shaped the ECtHR's practice on entrapment. In 2008, in the case of *Ramanauskas v. Lithuania*<sup>1</sup>, the ECtHR found that entrapment had occurred in relation to the applicant, set out criteria that law enforcement activity must meet to be considered lawful, and definitively established the Court's stance on entrapment.

Possibly influenced by the practice of the ECtHR, the Parliament of the Republic of Lithuania adopted the Criminal Procedure Code<sup>2</sup> in 2002, which explicitly prohibits provoking a person to commit a crime. The Republic of Latvia followed suit in 2005 by adopting the Criminal Procedure Law<sup>3</sup>. Article 225 of the Latvian Law prohibits provocation as well as influencing a person through violence, threats, blackmail, or by exploiting their helpless state.

In 2012, the Verkhovna Rada of Ukraine enacted the CPC of Ukraine<sup>4</sup>, which introduced the institution of CISA. Part three of Article 271 of the Code establishes that "during the preparation and conduct of measures to monitor the commission of a crime, it is prohibited to provoke (incite) a person to commit a crime for the purpose of its subsequent detection, including assisting a person to commit a crime they would not have committed without such influence from law enforcement agencies, or to influence the behaviour of such a person by means of violence, threats or blackmail".

Since 2001, the CC of Ukraine<sup>5</sup> has provided for the liability of officials, including law enforcement officers, for the provocation of bribery (Article 370). However, Ukrainian criminal law does not impose liability for the provocation of other categories of crimes committed by individuals who are not officials. For example, Georgian legislation adopts a different approach. A. Giorgidze (2022) highlights the problem of the absence of a clear prohibition on crime provocation in Georgia's criminal procedural legislation. Nevertheless, Article 145 of the Criminal Code of Georgia<sup>6</sup> establishes general liability for the provocation of any crime, regardless of official status or affiliation with law enforcement agencies.

F. Görlitz *et al.* (2019) propose supplementing the German Criminal Code with a specific provision that would impose liability both on law enforcement officers and private individuals who provoke a crime – that is, those who deliberately create conditions for

committing a crime with the aim of criminally prosecuting the person involved. The authors also support the legislative prohibition of using evidence obtained through crime provocation. Following the ECtHR's 2014 decision in *Furcht v. Germany*<sup>7</sup>, German courts adopted a stricter stance on provocation: they began to discontinue criminal proceedings if unlawful provocation was established. In this case, *Furcht* was convicted by German courts, which determined that although he was incited by the police, he was not provoked – that is, he was already predisposed to commit the crime, and the instigator did not create an entirely new situation but merely encouraged conduct the person might have engaged in anyway. The Federal Constitutional Court of Germany draws a distinction between permissible and impermissible provocation by defining the optimal balance for a constitutional state between an individual's right to a fair trial (Article 6 of the Convention<sup>8</sup>) and the public interest in ensuring the effective investigation and punishment of crimes.

Not only are countries in continental Europe concerned with the issues of provocation during covert operations. The U.S. Department of Justice (n.d.) has provided guidance to prosecutors, which indicates that crime provocation is characterised by the following features: 1) incitement by government agents to commit a crime for the purpose of subsequent prosecution; and 2) the absence of predisposition on the part of the accused to commit the criminal offence. The doctrine of entrapment aims to prevent unlawful actions by government agents that may induce innocent individuals to commit crimes. It seeks to ensure a balance between the need for effective law enforcement and the protection of citizens' rights from excessive state interference.

Some authors, including M.V. Burovskyi & V.V. Hutnyk (2020), O. Hura (2022), and O. Marochkin (2024), argue that Ukrainian legislation lacks a clear definition of the concept of crime provocation, which creates significant difficulties in legal practice. For this reason, it is proposed to develop and enshrine a legal definition of this concept in the Criminal Code and/or the Criminal Procedure Code of Ukraine, as well as to establish a clear distinction between lawful control over crime commission and unlawful provocation.

<sup>1</sup> Judgment of the European Court of Human Rights in Case No. 74420/01 "*Ramanauskas v. Lithuania*". (2008, February). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-84935>.

<sup>2</sup> Criminal Procedure Code of the Republic of Lithuania. (2002, November). Retrieved from <https://www.e-tar.lt/portal/lt/legalAct/TAR.34534D019E66>.

<sup>3</sup> Criminal Procedure Law of the Republic of Latvia. (2005, September). Retrieved from <https://likumi.lv/ta/en/en/id/107820>.

<sup>4</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

<sup>5</sup> Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

<sup>6</sup> Criminal Code of Georgia. (1999, July). Retrieved from <https://matsne.gov.ge/en/document/view/16426?publication=233>.

<sup>7</sup> Judgment of the European Court of Human Rights in Case No. 54648/09 "*Furcht v. Germany*". (2014). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-147329>.

<sup>8</sup> European Convention on Human Rights. (1950, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_004](https://zakon.rada.gov.ua/laws/show/995_004).

For example, the absence of a legislative definition of the term “crime provocation”, as noted by M.V. Burovenskyi & V.V. Hutnyk (2020), creates a risk of ambiguous interpretation and inconsistencies in judicial practice. Authors argue that it is necessary to develop clear criteria to distinguish provocation from permissible methods of operational investigative activity. Within the analysis of case law, particularly in cases related to so-called “white-collar crimes”, O. Hura (2022) concludes that the legal regulation of this institution requires expansion. The author proposes introducing a legal definition of crime provocation, which would eliminate legal uncertainty and adapt the standards of the ECtHR to the national legal system. A similar view is expressed by O. Marochkin (2024), who, analysing the practice of the Supreme Court, notes the absence of an appropriate definition of “crime provocation” in legislation and emphasises the difficulty of distinguishing it from lawful law enforcement activities. A detailed study of the distinction between crime provocation and special investigative experiments was conducted by H. Novytskyi (2020). Author highlights the need to introduce concepts such as “passive investigative experiment” or “special investigative control”, and also proposes the reinstatement of the term “operational experiment”. According to him, the lack of clear legislative definitions of these terms hinders legal certainty and requires formal regulation.

Steps are being taken to distinguish between lawful law enforcement activities and actions that constitute provocation. In particular, the working group responsible for drafting the Criminal Code of Ukraine defines “crime provocation” as the “inducement of a person to commit a crime or offence with the purpose of exposing them to law enforcement authorities”<sup>1</sup>. Within the context of part four of Article 2.7.4 of this draft, crime provocation is understood as an act carried out by law enforcement officers or persons acting on their behalf. This approach aligns with the position of the ECtHR and the practice of the Supreme Court, as it covers not only the actions of law enforcement officers but also those of individuals acting under their direction. This is significant, given that such persons most often interact directly with potential suspects.

O. Dudorov (2020; 2022) focuses on analysing provisions of the draft new Criminal Code of Ukraine

(control text as of 1 August 2024)<sup>2</sup> related to the regulation of crime provocation and its legal consequences. The author distinguishes between two types of provocation: “police provocation”, which involves active actions by officials or their agents aimed at creating conditions (incitement) for committing a crime; and “self-provocation”, which refers to actions by individuals not affiliated with law enforcement, aimed at artificially creating circumstances to persuade another person to commit a crime in order to expose them. Where provocation is carried out by a person not connected to law enforcement, that person is regarded as an instigator and is subject to criminal liability on an equal footing with the individual they provoked.

V. Veretyannikov (2020) points out that a necessary subjective element of provocation is the specific intention to expose the person being provoked. As an additional feature, the researcher identifies the presence of active conduct in situations where there are insufficient grounds to believe that the crime (for example, bribery) would have been committed without the provocative influence. The researcher’s argument regarding the importance of active behaviour by law enforcement in the absence of sufficient suspicion is convincing and aligns with the ECtHR approach, which distinguishes permissible “participation” in a crime from its instigation. This approach helps to more accurately differentiate between lawful and unlawful actions in the context of conducting CISA.

Overall, the ECtHR recognises the permissibility of involving agents, understood as police officers or persons acting under their direction. The importance of involving individuals in confidential cooperation for carrying out covert operations is emphasised by M. Hribov *et al.* (2020). The involvement of agents is acceptable provided it is subject to clear limitations and safeguards. The use of evidence obtained as a result of police incitement cannot be justified by reference to public interest (as established in the case of *Ramanauskas v. Lithuania*<sup>3</sup>).

The court examines the grounds on which law enforcement agencies conduct covert operations. In particular, the court must determine whether there were objective grounds to suspect that the accused was involved in criminal activity or inclined to commit an offence before being approached by a police agent (cases *Bannikova v. Russia*<sup>4</sup> and *Furcht v. Germany*<sup>5</sup>). Relevant conclusions are also reflected in the

<sup>1</sup> Draft Criminal Code of Ukraine. (2024, August). Retrieved from <https://newcriminalcode.org.ua/upload/media/2024/08/02/kontrolnyj-tekst-proyektu-kk-stanom-na-01-08-2024.pdf>.

<sup>2</sup> *Ibidem*, 2024.

<sup>3</sup> Judgment of the European Court of Human Rights in Case No. 74420/01 “*Ramanauskas v. Lithuania*”. (2008, February). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-84935>.

<sup>4</sup> Judgment of the European Court of Human Rights in Case No. 18757/06. “*Bannikova v. Russia*”. (2010). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-101589>.

<sup>5</sup> Judgment of the European Court of Human Rights in Case No. 54648/09 “*Furcht v. Germany*” (2014). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-147329>.

Decision of the Supreme Court of Ukraine in Case No. 266/3474/15-к<sup>1</sup>.

An important issue for the court to establish is whether agents acting on behalf of the state merely “participated” in the criminal activity or actually caused it. In the case of *Miliniene v. Lithuania*<sup>2</sup>, the ECtHR concluded that if a private individual approached the police reporting an attempt to extort

an unlawful benefit, and the relevant authority authorised a covert operation to verify the legitimacy of the claim, the police actions should be regarded as “participation” in the criminal activity. The ECtHR also provides examples (Table 1) of agent behaviour during investigations that may indicate provocation – that is, initiation rather than mere participation – in committing a crime.

**Table 1.** Signs of provocation as formulated in ECtHR judgements

No.	Signs of provocation by an agent	ECtHR judgements
1.	Attempting to initiate contact with a person without objective grounds to consider them involved in criminal activity	Burak Hun v. Turkey <sup>3</sup>
2.	Attempting to establish contact with a person without objective grounds to believe they would have committed the relevant criminal offence without such intervention	Sepil v. Turkey <sup>4</sup>
3.	Repeating an offer despite a prior refusal, insisting and applying pressure	Ramanauskas v. Lithuania <sup>5</sup>
4.	Unclear reasons or personal motives prompted the undercover agent to approach the applicant on their own initiative, without informing their superiors	
5.	Attempting to elicit sympathy from the person by simulating symptoms of drug withdrawal	Vanyan v. Russia <sup>6</sup>
6.	Increasing the price of a drug above the usual market rate	Malininas v. Lithuania <sup>7</sup>
7.	Actions by undercover agents taking place outside the scope of an official operation	Teixeira de Castro v. Portugal <sup>8</sup>

**Source:** ECtHR judgements

Ukrainian courts, in addition to ECtHR practice, have also identified certain signs of provocation, some of which are presented in Table 2. Besides the signs listed in the table, the Supreme Court also pays attention to the initiative in establishing contact

between the applicant and the accused, as well as the applicant’s activity in subsequent interactions. Such behaviour may indicate inducement to commit a crime, which is one of the characteristic features of provocation.

**Table 2.** Signs of provocation as formulated in Supreme Court judgements

No.	Signs of provocation	Supreme Court judgements
1.	A “regular applicant”, a person who repeatedly submitted complaints about crimes under similar circumstances	No. 487/2403/18 of 5 February 2020 <sup>9</sup> ; No. 602/253/14-к of 14 May 2019 <sup>10</sup>
2.	The offence did not cease after the first documented episode but continued under controlled conditions with further offences	No. 265/808/15-к of 12 December 2018 <sup>11</sup>
3.	The applicant submitted a report to law enforcement regarding the demand for an unlawful benefit before such demand actually occurred	No. 522/2256/13-к of 12 February 2019 <sup>12</sup>
4.	Absence of a real situation or the creation of an artificial situation	No. 661/1567/16-к 23 September 2020 <sup>13</sup>

**Source:** Supreme Court judgments

<sup>1</sup> Decision of the Supreme Court of Ukraine in Case No. 266/3474/15-к. (2020, February). Retrieved from <https://reyestr.court.gov.ua/Review/87902035>.

<sup>2</sup> Judgment of the European Court of Human Rights in Case No. 74355/01 “*Miliniene v. Lithuania*”. (2005, April). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-68970>.

<sup>3</sup> Judgment of the European Court of Human Rights in Case No. 17570/04 “*Burak Hun v. Turkey*”. (2009, December). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-96228>.

<sup>4</sup> Judgment of the European Court of Human Rights in Case No. 17711/07 “*Sepil v. Turkey*”. (2014, February). Retrieved from <https://hudoc.echr.coe.int/fre?i=001-128037>.

<sup>5</sup> Judgment of the European Court of Human Rights in Case No. 74420/01 “*Ramanauskas v. Lithuania*”. (2008, February). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-84935>.

<sup>6</sup> Judgment of the European Court of Human Rights in Case No. 53203/99 “*Vanyan v. Russia*”. (2006, March). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-71673>.

<sup>7</sup> Judgment of the European Court of Human Rights in Case No. 10071/04 “*Malininas v. Lithuania*”. (2008, October). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-87223>.

<sup>8</sup> Judgment of the European Court of Human Rights in Case No. 44/1997/828/1034 “*Teixeira De Castro v. Portugal*”. (1998, June). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-58193>.

<sup>9</sup> Decision of the Supreme Court of Ukraine in Case No. 487/2403/18. (2020, February). Retrieved from <https://reyestr.court.gov.ua/Review/87517533>.

<sup>10</sup> Decision of the Supreme Court of Ukraine in Case No. 602/253/14-к. (2019, May). Retrieved from <https://reyestr.court.gov.ua/Review/81841867>.

<sup>11</sup> Decision of the Supreme Court of Ukraine in Case No. 265/808/15-к. (2018, December). Retrieved from <https://reyestr.court.gov.ua/Review/78680667>.

<sup>12</sup> Decision of the Supreme Court of Ukraine in Case No. 522/2256/16-к. (2019, February). Retrieved from <https://reyestr.court.gov.ua/Review/79957655>.

<sup>13</sup> Decision of the Supreme Court of Ukraine in Case No. 661/1567/16-к. (2020, September). Retrieved from <https://reyestr.court.gov.ua/Review/91855069>.

In the case of *Nosko and Nefedov v. Russia*<sup>1</sup>, the court emphasised the need to establish a clear and foreseeable procedure in national legislation for authorising covert operations, which should be sanctioned either by a court or another independent body, along with ensuring proper oversight of their implementation. The study by L. Arkusha & O. Torbas (2021) concludes that it is advisable for controlled operations to be authorised by a court, which should verify the existence of sufficient grounds before commencing special operations, aiming to prevent provocations. At the same time, authorisation of such measures by a prosecutor is viewed as a legally justified mechanism, whereas transferring this function to the court may result in an additional burden on investigative judges without significantly improving the assessment of the grounds for control over crime commission measures. The Decision of the Supreme Court of Ukraine in Case No. 688/3517/16-K<sup>2</sup> notes the limited capacity to verify the absence of crime provocation. The documentation of controlled offences is carried out through CISA, which involves interference with private communications. Authorisation for these measures is granted by an investigative judge of the appellate court after verifying the presence of grounds to believe that a crime has been committed (Article 248 of the CPC of Ukraine<sup>3</sup>).

In the cases of *Akbay and others v. Germany*<sup>4</sup> and *Ramanauskas v. Lithuania*<sup>5</sup>, the ECtHR stated that the prosecution bears the burden of proving the absence of incitement if the defendant's claims are not entirely implausible. In these cases, the defendants did not deny committing the offences but argued that their actions were provoked by law enforcement agencies.

As S. Shulhin (2024) rightly points out, in Ukrainian criminal practice, the defence frequently alleges provocation in most cases involving controlled operations, while simultaneously denying the commission of the offence itself. According to the author, this position alone does not constitute sufficient grounds for an automatic finding of provocation. The defence, in addition to making such a claim, must provide evidence supporting the allegation of provocation. Conversely, the prosecution has the duty to

disprove these claims to a standard that excludes any reasonable doubt.

Significant legal conclusions regarding the issue of crime provocation were articulated by the European Court of Human Rights in the cases of *Berlizev v. Ukraine*<sup>6</sup> and *Yakhymovych v. Ukraine*<sup>7</sup>. These rulings emphasise that a person alleging provocation by law enforcement must acknowledge the fact of having committed the charged act. These principles have also been reflected in national judicial practice, notably in the Supreme Court's ruling in Case No. 454/2576/17<sup>8</sup>, as well as in other similar proceedings. In the aforementioned case, the Supreme Court highlighted that a situation where the defendant simultaneously denies committing the crime and claims provocation by law enforcement is contradictory and does not fall within the definition of a "case of crime provocation".

In light of this practice, I. Hloviuk (2023) drew attention to the necessity for the defence to adopt a particularly cautious approach when choosing a strategy based on claims of crime provocation. This position, by its nature, implies a factual acknowledgement of having committed a criminal offence. Given the established practice, it is likely that the number of cases in which the defence simultaneously claims provocation and denies the commission of the crime will decrease in the future.

A failure to maintain a reasonable balance between private and public interests during investigations conducted by law enforcement agencies may lead to a decline in public trust in their activities. Achieving procedural justice is impossible without a proper examination and resolution of issues related to the control of crime commission, as well as ensuring a balance between private and public interests within criminal procedural legislation and law enforcement practice.

## ■ Discussion

Considering the number of cases before the ECtHR where provocation by law enforcement agencies of states party to the Convention has been established, it can be concluded that this issue is systemic in

<sup>1</sup> Judgment of the European Court of Human Rights in Cases Nos. 5753/09 & 11789/10 "*Nosko and Nefedov v. Russia*". (2015, January). Retrieved from <https://hudoc.echr.coe.int/rus?i=001-147441>.

<sup>2</sup> Decision of the Supreme Court of Ukraine in Case No. 688/3517/16-K. (2022, February). Retrieved from <https://reyestr.court.gov.ua/Review/117340518>.

<sup>3</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

<sup>4</sup> Judgment of the European Court of Human Rights in Case No. 40495/15 "*Akbay and others v. Germany*". (2021, January). Retrieved from <https://hudoc.echr.coe.int/fre?i=001-204996>.

<sup>5</sup> Judgment of the European Court of Human Rights in Case No. 74420/01 "*Ramanauskas v. Lithuania*". (2008, February). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-84935>.

<sup>6</sup> Judgment of the European Court of Human Rights in Case No. 43571/12 "*Berlizev v. Ukraine*". (2021, October). Retrieved from <https://hudoc.echr.coe.int/fre?i=001-210850>.

<sup>7</sup> Judgment of the European Court of Human Rights in Case No. 23476/15 "*Yakhymovych v. Ukraine*". (2022, May). Retrieved from <https://hudoc.echr.coe.int/ukr?i=001-214013>.

<sup>8</sup> Decision of the Supreme Court of Ukraine in Case No. 454/2576/17. (2022, July). Retrieved from <https://reyestr.court.gov.ua/Review/105218405>.

nature. M. Shcherbakovskyi *et al.* (2020) identify crime provocation as one of the most serious problems arising during the investigation of corruption offences. The reasons behind such actions by law enforcement remain inconclusive; however, the influence of statistical control over crime detection rates is likely a contributing factor.

Regarding the situation in Ukraine, D. Abbasova (2021) and M. Hribov *et al.* (2021) point out that a focus on quantitative indicators can lead to breaches of legality by law enforcement agencies. The question of whether to expand the scope of the offence under Article 370 of the CC of Ukraine by introducing liability for provocation of any crime remains contentious. S. Bredun & O. Kryvets (2022), O. Babikov (2024) support this idea, whereas O. Sybal (2020) argues that control over the commission of a crime constitutes a circumstance that excludes the criminality of acts committed by law enforcement officers and those cooperating with them. V. Kartavtsev *et al.* (2020) propose extending criminal liability for crime provocation to all individuals, regardless of their status.

The question of whether to introduce criminal liability for the provocation of any crime, regardless of its type, remains a matter of debate. Firstly, law enforcement agencies cannot fully control the behaviour of individuals engaged in confidential cooperation. There are no guarantees against the risk of so-called “agent excesses” during the conduct of CISA. The individual acting as an informant and the person subject to the investigation are independent parties with different personal characteristics and behavioural patterns. For example, an agent’s communicative activity may create the impression of active incitement to commit a crime. Conversely, the reserved or silent behaviour of a person maintaining secrecy may lead to a mistaken perception that the situation was instigated by the agent. Secondly, under Article 214 of the CPC of Ukraine<sup>1</sup>, authorised bodies are obliged to initiate a pre-trial investigation upon receiving a report of a criminal offence. The existing procedural mechanism does not provide alternative methods for verifying such reports, particularly in cases of extortion of an undue advantage. Under these circumstances, the use of CISA remains the only feasible means to clarify the true intentions of the person concerned. Thirdly, there are objective difficulties in determining the genuine motives of the complainant and the goals they seek to achieve by submitting the report. It cannot be ruled out that the individual against whom a pre-trial investigation is initiated may have been provoked even before official actions by law enforcement began.

Circumstances related to the alleged provocation of a crime may be used by the defence as a basis for the dismissal of criminal proceedings. The court, within its discretion, has the right to consider such arguments when assessing the admissibility of evidence and the legality of law enforcement actions. At the same time, establishing the fact of provocation does not automatically imply the guilt of law enforcement officers in committing the offence under Article 370 of the CC of Ukraine<sup>2</sup>. As of the date of preparing this material, according to information from the Unified State Register of Court Decisions, there have been no convictions under Article 370 of the CC of Ukraine since 1 January 2019. This may indicate the insufficient effectiveness of the mechanism for holding individuals accountable for provoking bribery. In this regard, the question arises of whether it is appropriate to expand the range of subjects who may be held liable for provocation, as well as to broaden the categories of crimes for which such liability is possible. There are well-founded doubts about the effectiveness of such a step, given the difficulty of detecting and proving the fact of provocation. In light of this, exceptional cases may include those where serious consequences result from provocation, such as the death of the victim (Khavroniuk, 2006) or the imposition of imprisonment on the provoked individual.

It should also be noted that the CPC of Ukraine<sup>3</sup> does not provide a specific ground for the dismissal of criminal proceedings in cases where an offence was committed under conditions of provocation. In situations where the act has indeed been committed, both the event and the elements of the crime are considered present; therefore, there are no grounds for applying Subparagraphs 1 or 2 of Part 1, Article 284 of the CPC of Ukraine. In practice, courts sometimes dismiss such cases by referring to Clause 2 of Part 1, Article 284 of the CPC – due to the absence of elements of a criminal offence – or to Clause 3 of the same Part – due to insufficient evidence to prove the accused’s guilt in court.

It would be advisable for the legislation to include effective safeguards to protect individuals who have become victims of provocations by law enforcement agencies. Two possible legislative approaches to address this issue are:

- 1) dismissal of criminal proceedings against the person who was provoked;
- 2) exemption of such a person from criminal liability due to provocation.

Exemption from criminal liability, despite its humanitarian nature, is non-rehabilitative and may negatively affect the legal status of the individual.

<sup>1</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

<sup>2</sup> Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

<sup>3</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

At the same time, it is important to recognise that the person, although provoked, nevertheless consented to commit the offence. As noted by O. Dudorov (2020), the original version of Article 2.5.3 of the Draft Criminal Code of Ukraine (control text as of 15 September 2020<sup>1</sup>) provided for exemption from criminal liability if the offence was committed as a result of provocation by law enforcement officers. This provision was later amended, and the current version of the Draft Criminal Code of Ukraine (control text as of 19 March 2025<sup>2</sup>) stipulates prosecution on general grounds. However, this approach raises concerns in light of the relevant case law of the ECtHR, which requires an appropriate state response when provocation is established. In this context, it seems reasonable to assume that the Draft CC of Ukraine will be revised to align with the standards developed in the case law of the ECtHR, particularly regarding the need to exempt provoked individuals from criminal liability or to recognise the absence of a criminal offence in their actions. In German judicial practice, committing an offence under provocation is sometimes considered a mitigating circumstance. Nevertheless, the existence of provocation typically does not preclude the imposition of punishment for the offence in question (Veretyannikov, 2021; Kamenskyi, 2021).

Article 2.7.4 of the Draft CC of Ukraine (control text as of 1 August 2024<sup>3</sup>) allowed for the possibility of giving a person the opportunity to commit a crime only if their intention to commit the relevant unlawful act had been established beforehand. This provision is absent in the Draft CC of Ukraine (control text as of 19 March 2025<sup>4</sup>). The involvement of law enforcement authorities in preexisting unlawful behaviour is not regarded by the ECtHR as provocation. This approach aligns with the ECtHR's position expressed in the cases of *Sequeira v. Portugal*<sup>5</sup> and *Miliniénė v. Lithuania*<sup>6</sup>.

To clearly distinguish lawful law enforcement activities aimed at uncovering crimes from unlawful provocation, it is advisable to establish the following criteria:

- whether the crime would have been committed without the intervention of state authorities, that is, whether the investigation was passive;

- whether there were objective grounds to believe that the person was involved in criminal activity or predisposed to committing a crime before being provoked by law enforcement;

- whether law enforcement authorities “joined” an already existing criminal activity or initiated it themselves.

The aforementioned criteria should be implemented into Ukrainian legislation to align national regulation with the legal standards of the ECtHR. While the state, through its authorised bodies, fulfils its duty to combat crime, it is simultaneously obliged to guarantee citizens' safety and ensure the protection of their rights during law enforcement activities. Effective investigation of serious intentional crimes is often impossible without conducting a CISA and involving individuals in confidential cooperation.

Achieving lawful and effective law enforcement requires a clear definition of the permissible limits of behaviour for officers of such agencies. On one hand, the law enforcement system must utilise the forms and methods provided for in criminal procedural legislation to combat crime, especially offences characterised by a high degree of concealment. On the other hand, individuals who inadvertently come under the scrutiny of law enforcement must be afforded reliable guarantees for the effective protection of their rights. It is necessary to legislatively distinguish lawful law enforcement activities aimed at detecting and documenting serious and especially serious crimes from the impermissible provocation of individuals to commit offences in order to prosecute them later – a practice that creates only the illusion of effective crime control.

Particular attention should be given to improving procedural safeguards for individuals who have been subjected to provocation. Specifically, it would be appropriate to establish a legislative basis for closing a criminal case where unlawful conduct by law enforcement officers is proven, indicating the presence of provocation. An alternative approach could be the exemption of such individuals from criminal liability under these circumstances.

Expanding the list of persons who may be held criminally liable for provoking a crime, as well as broadening the categories of crimes to which this

<sup>1</sup> Draft Criminal Code of Ukraine. (2020, September). Retrieved from <https://newcriminalcode.org.ua/upload/media/2020/09/16/1-kontrolnyj-proekt-kk-15-09-2020.pdf>.

<sup>2</sup> Draft Criminal Code of Ukraine. (2025, March). Retrieved from <https://newcriminalcode.org.ua/upload/media/2025/03/26/kontrolnyj-projekt-kk-19-03-2025-1.pdf>.

<sup>3</sup> Draft Criminal Code of Ukraine. (2024, August). Retrieved from <https://newcriminalcode.org.ua/upload/media/2024/08/02/kontrolnyj-tekst-projektu-kk-stanom-na-01-08-2024.pdf>.

<sup>4</sup> Draft Criminal Code of Ukraine. (2025, March). Retrieved from <https://newcriminalcode.org.ua/upload/media/2025/03/26/kontrolnyj-projekt-kk-19-03-2025-1.pdf>.

<sup>5</sup> Judgment of the European Court of Human Rights in Case No. 73557/01 “*Sequeira v. Portugal*”. (2003, May). Retrieved from <https://hudoc.echr.coe.int/ukr?i=001-44204>.

<sup>6</sup> Judgment of the European Court of Human Rights in Case No. 74355/01 “*Miliniénė v. Lithuania*”. (2005, April). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-68970>.

applies, does not sufficiently protect the rights of those who have fallen victim to provocation. A more effective approach would be to legislate clear boundaries for lawful conduct during CISA and to enshrine procedural guarantees for either exempting the provoked individual from liability or closing the criminal case if these boundaries are breached by law enforcement.

## ■ Conclusions

The focus of this study was the legal nature of crime provocation, its consequences for the admissibility of evidence in criminal proceedings, and the influence of the ECtHR practice on Ukrainian national legislation and judicial practice. The aim was to define the limits of permissible actions by law enforcement agencies during control over crime commission and to identify indicators of provocation, taking into account international standards.

The study analysed current Ukrainian criminal and criminal procedure legislation, the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, relevant ECtHR and Supreme Court case law, as well as legal approaches in Lithuania, Latvia, Georgia, Germany, and the USA. The analysis showed that crime provocation constitutes a serious violation of the principle of fair trial, and the use of evidence obtained through provocation contradicts the requirements of Article 6 of the Convention. It was found that ECtHR case law clearly distinguishes between the permissible involvement of law enforcement in criminal activity and the impermissible initiation of such activity. The Supreme Court is gradually adapting to these standards.

It was established that Ukrainian legislation contains a gap in the definition of “crime provocation”, and the lack of a clear definition complicates law enforcement practice. The analysis of case law enabled

the formulation of a consolidated list of indicators of provocation, including the initiative of agents, the artificial nature of the situation, and the activity of the complainant, among others. Comparing these with approaches from foreign jurisdictions made it possible to outline potentially effective models of legal regulation, particularly recognising provocation as grounds for the inadmissibility of evidence and the dismissal of proceedings.

In summary, the results of the study indicated that the implementation of ECtHR standards into Ukrainian legislation remains fragmented. All of the above points to the need to formalise criteria that allow for a clear distinction between lawful and unlawful actions by law enforcement during CISA. This, in turn, will help ensure a proper balance between the state’s duties to guarantee security and an individual’s right to a fair trial.

Future research should focus on a more in-depth empirical analysis of Ukrainian courts’ practice regarding the application of the prohibition on crime provocation. In particular, attention should be given to studying the typical circumstances cited by parties in cases alleging provocation, as well as the courts’ approaches to evaluating such claims and the related evidence. Such analysis may contribute to a better understanding of trends in law enforcement and the effectiveness of existing procedural safeguards.

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## Провокація злочину: стандарти ЄСПЛ та їх імплементація в кримінальному процесі України

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■ **Анотація.** Проблематика провокації злочину є однією з ключових у сфері кримінального процесу та правозастосовної практики, оскільки зачіпає питання дотримання прав людини та забезпечення справедливого судового розгляду. Відсутність чітких критеріїв відмежування провокації від правомірної діяльності правоохоронних органів створює загрозу для законності доказів, отриманих під час проведення негласних слідчих (розшукових) дій. Метою дослідження було вивчення правових підходів до визначення провокації злочину, її наслідків для допустимості доказів у кримінальному процесі та впливу практики Європейського суду з прав людини на практику українських судів і національне законодавство, пошук балансу між забезпеченням безпеки громадян та гарантуванням права на справедливий судовий розгляд. Для досягнення мети дослідження використано методи порівняльного аналізу, системного підходу, логіко-правового аналізу й методи тлумачення правових норм, що надало можливість комплексно дослідити питання провокації злочину. Досліджено підходи до боротьби з провокацією злочинів у різних країнах, таких як Литовська й Латвійська Республіки, Грузія, Федеративна Республіка Німеччина та Сполучені Штати Америки. Результати дослідження засвідчили, що провокація злочину є суттєвим порушенням права на справедливий суд відповідно до ст. 6 Конвенції про захист прав людини і основоположних свобод, а також суперечить принципу верховенства права, оскільки може призвести до ухвалення незаконних судових рішень. Досліджено релевантну практику Європейського суду з прав людини щодо провокації злочину, а також практику національних судів. Проаналізовано ознаки підбурювання до вчинення злочину. Узагальнено підходи Європейського суду з прав людини щодо відмежування правомірної діяльності правоохоронних органів від провокації, а також практику Верховного Суду з цього ж питання. Встановлено, що практика Європейського суду з прав людини відіграє визначальну роль у формуванні стандартів оцінки правомірності дій правоохоронців, проте її імплементація в Україні залишається недостатньою. Практична цінність роботи полягає у формуванні рекомендацій з удосконалення правового регулювання контролю за вчиненням злочинів, що сприятиме підвищенню ефективності кримінального судочинства та забезпеченню прав людини

■ **Ключові слова:** провокація; підбурювання; контроль за вчиненням злочину; негласні слідчі (розшукові) дії; Європейський суд з прав людини; агент