

## Types of Witness Immunity in Criminal Proceedings and its Features

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**Abstract.** *This article analyzes issues related to the types of witness immunity in criminal proceedings and its specific characteristics. Most importantly, the right to immunity is divided into three types according to the scope of use: complete; limited and mixed. In this article, along with national and foreign legislation, the opinions of scientists are also analyzed.*

**Key words:** *criminal case, criminal procedure, witness, immunity, element, defense, guarantee, foreign experience, rights and freedoms.*

It should be noted that although the term "immunity" is not widely used in the criminal procedure legislation of our country, it is frequently used in scientific research. In the Criminal Procedure Code of the Republic of Uzbekistan, we can see that the term "immunity" is used only in four articles. Based on the analysis of the norms of the Criminal Procedure Code, the right of immunity is divided into three types according to the scope of use: a) total; b) limited and c) mixed.

In all types of immunity, persons entitled to immunity have the right to protection from criminal proceedings against them. According to the Criminal Procedure Code, such a right is granted to foreign citizens and stateless persons who have the right to immunity. Persons with this right are mainly persons with diplomatic authority provided for by international treaties and agreements, as well as employees of representative offices of international organizations (Article 4 of the Criminal Procedure Code).

In a limited type of immunity, the right to immunity is ensured when carrying out certain investigative actions against persons entitled to immunity. The right to limited immunity is provided mainly to persons with diplomatic immunity and their family members. These persons enjoy the right of immunity when conducting a personal search or seizure in relation to them (Article 165 of the Criminal Procedure Code).

The right to limited immunity also belongs to deputies, members of the Senate of the Oliy Majlis of the Republic of Uzbekistan, the Authorized Representative of the Oliy Majlis of the Republic of Uzbekistan for Human Rights (Ombudsman), the Commissioner under the President of the Republic of Uzbekistan for the Protection of the Rights and Legitimate Interests of Business Entities, judges, and prosecutors. In accordance with Article 223 of the Criminal Procedure Code, the above-mentioned persons cannot be detained and brought to the internal affairs body or other law enforcement agency.

Finally, the mixed type of immunity, based on its content, presupposes the rights of persons whose interests are protected both from involvement as a participant in criminal proceedings and from the implementation of certain investigative actions. However, persons belonging to this type of immunity may be granted this right only under certain conditions and for a certain period of time. These conditions are established in Article 596 of the Criminal Procedure Code, according to which the right of immunity belongs to: a witness, victim, expert, civil claimant, civil defendant, their

representatives who are outside the territory of the Republic of Uzbekistan, who are summoned by an official conducting a criminal case to perform procedural actions in the territory of the Republic of Uzbekistan, and may be valid for a continuous period of fifteen days from the moment of completion of these procedural actions.

In the event that the specified persons, while having the opportunity to leave the territory of the Republic of Uzbekistan within the fifteen-day period established by this article, continue to remain in this territory or return to the Republic of Uzbekistan after departure, the scope of the right of immunity shall expire and these persons may be subjected to criminal liability, arrest, or other restrictions of personal freedom in the territory of the Republic of Uzbekistan.

Based on the foregoing, the right to immunity in criminal procedure law essentially consists of two elements. The first manifests itself as the object of certain procedural legal relations regulated by the right of immunity. That is, the procedural order of the emergence, course, and termination of legal relations related to immunity, as well as the volume, direction, and content of the subjective rights and obligations of the participants, are manifested. These concessions can have objective and subjective grounds from the point of view of legal relations. Objective legal grounds determine the general rules related to the emergence of immunity provided by law, the time and limits of its effect, and the conditions. Subjective legal grounds, on the other hand, imply the rights and freedoms of a person to exercise the same rights.

For example, the inadmissibility of prosecuting a foreign citizen with diplomatic immunity, conducting searches at their place of residence and work. Or the immunity of persons provided for in Article 223 of the Criminal Procedure Code, such as protection from being brought to law enforcement agencies, in the absence of the circumstances specified in Article 221 of the Criminal Procedure Code. Consequently, it is precisely the aforementioned persons who are provided with the aforementioned procedural and legal benefits, and they can be objectively applied only under certain procedural conditions.

Procedural legal relations on the right to immunity, from the point of view of volume, as already noted, may provide for the right to complete immunity or the right to limited immunity.

The concepts expressing the direction and content of the right to immunity are mutually compatible concepts, including such elements as the direction of development and completion of relations related to the application of the right granted by law to certain categories of persons, procedural boundaries and procedural opportunities in protecting the rights and legitimate interests of a person with the right to immunity. For example, if we refer again to Article 223 of the Criminal Procedure Code, persons granted immunity are protected from being brought to internal affairs bodies or other law enforcement agencies. However, these persons are liable only in cases stipulated by Article 221 of the Criminal Procedure Code, namely:

- 1) caught red-handed or immediately after committing a crime;
- 2) witnesses to the crime, including victims, directly identify them as the perpetrator of the crime;
- 3) clear signs of a crime were found on them or on their clothing, with them or in their homes;
- 4) if there is information that serves as a basis for suspecting a person of committing a crime, they may be brought to the internal affairs bodies or other law enforcement agencies if they intend to flee or do not have a permanent place of residence or their identity has not been established.

At the same time, procedural immunity can also be classified according to the nature of guaranteeing the benefits provided. In particular, F. A. Agayev, emphasizing the need to classify procedural immunities according to the object of guarantee, proposes the following types of immunity that protect them from criminal jurisdiction, from the performance of judicial-procedural and testimony duties: a) personal inviolability; b) inviolability of office, living room and private residences; c)

inviolability of communications; d) inviolability of property, assets; e) inviolability of official correspondence, archival materials and other relevant documents, etc<sup>1</sup>.

Thus, a legal norm establishing the right to immunity grants individuals the right to immunity under certain procedural circumstances and conditions, but its direction of development can change, or more precisely, be suspended, due to some external influences. This means that the right to immunity has its own dynamic, that is, variable character.

The second element reflecting the essence of the right of immunity is related to the circle of subjects to whom the right of immunity is granted. It should be noted that it is the concept of the subjects of the right to immunity that serves as the main material for understanding its objective nature, the content and direction of norms, the scope of rights and freedoms.

Searching for an answer to the question of who has been granted immunity by criminal procedure legislation requires not only listing the names of the subjects, but also answering the question of why such a right should be granted to them.

So who are the owners of immunity rights? To answer this question, one can limit oneself to the opinion that referring to the articles of the Criminal Procedure Code, in which the term "immunity" is used, is sufficient. Including:

- foreign citizens with the right to immunity: diplomats, employees of diplomatic and consular missions;
- employees of international organizations in which the Republic of Uzbekistan participates on the basis of international treaties and agreements;
- deputies;
- members of the Senate of the Oliy Majlis of the Republic of Uzbekistan;
- Authorized Person of the Oliy Majlis of the Republic of Uzbekistan for Human Rights (Ombudsman);
- Commissioner under the President of the Republic of Uzbekistan for the Protection of the Rights and Legitimate Interests of Business Entities;
- judges;
- prosecutors
- recruitment within the framework of criminal proceedings outside the territory of the Republic of Uzbekistan:

a) victim;

b) witness;

c) expert;

d) civil claimant;

d) civil defendant;

e) representatives of the civil claimant and civil defendant.

Thus, the legally established circle of persons granted the right of immunity in criminal proceedings consists of these persons. If we characterize the social significance of the holders of this right of immunity, or rather, the significance of their social activity, it can take the following form:

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<sup>1</sup> Агаев Ф. А. Иммунитеты в российском уголовном процессе: Автореф. дисс...канд. юрид. наук. М., 1997. –С.26.

- a) persons acting on the basis of international legal norms and international treaties and agreements (diplomats, employees of diplomatic missions and international organizations (persons granted immunity by treaties and agreements);
- b) persons carrying out socio-political activity in society (deputies - persons protecting human rights and the rights of business entities);
- c) persons carrying out, by the nature of their activities, the main criminal procedural activity (judge (counselors) and prosecutor);
- d) persons carrying out criminal procedural activity in the direction of their activity (witness, victim, suspect, accused, defendant);
- d) persons (witness, victim, expert, civil claimant, civil defendant, their representatives) carrying out criminal procedural activities in the field of activity, but who have left the country for various reasons.

Summarizing the issues considered, the term immunity etymologically means freedom from certain obligations. The concept of the right of immunity in criminal proceedings has the above-mentioned directions, structural features, and the range of subjects exercising this right.

However, in criminal proceedings, there is an important sub-institution that constitutes the institution of immunity, which functionally plays a very important role in criminal proceedings. The implied right to immunity is related to the concept of witness immunity.

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