

## Theoretical Foundations of Witness Immunity

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**Abstract.** *This article analyzes issues related to the theoretical foundations of witness immunity. Most importantly, emphasis is placed on the issues of the institution of immunity in criminal proceedings and ensuring the rights and legitimate interests of certain categories of persons. 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.*

The political processes that took place in the last decade of the last century led to the collapse of the Soviet Union and the emergence of independent states in its place. Like many republics liberated from communist oppression, Uzbekistan also had the historical opportunity to establish people's power and create a legal democratic society in its territory. A state governed by the rule of law is a form of state with a high level of legal consciousness and legal culture. An important area of justice activity in a state governed by the rule of law is the protection of human rights and freedoms, ensuring the legitimate interests of the person involved in it. Undoubtedly, such protection should consist of the concept of ensuring equal rights for participants with unequal legal status.

It is known that the organizational basis of criminal procedure relations is formed by its principles. In the system of principles, the principles of legality, adversarial proceedings, equality, and other criminal procedural legal principles occupy an important place. At the same time, the implementation of these principles is directly related to the normal functioning of certain institutions in criminal proceedings. One of such procedural institutions is the institution of immunity. Its main function in criminal proceedings is to serve as additional guarantees for the protection of the rights and legitimate interests of individual participants in criminal proceedings<sup>1</sup>.

The institution of immunity is also a form of implementing the constitutional principle of equality of all citizens before the law, equal rights and freedoms (Article 18 of the Constitution of the Republic of Uzbekistan). After all, the provision of immunity to certain categories of members of society, through the concept of spiritual necessity, reflects the humanistic essence of legal norms.

According to A.T. Allamuratov, in criminal proceedings, certain categories of citizens are granted freedom and protection in accordance with the conditions of performing interstate, state, and public functions<sup>2</sup>.

Based on the foregoing, two aspects of the institution of immunity in criminal proceedings can be considered: 1) a procedural and legal means that provides additional guarantees for the protection of the rights and legitimate interests of certain categories of participants (the release of certain categories of persons involved in criminal proceedings from certain obligations is justified from a moral and

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<sup>1</sup> Корякин И. П. Иммунитет в уголовном судопроизводстве: Автореф. дисс... канд. юрид. наук. Алматы, 2001. –С.4.

<sup>2</sup> Алламуратов А. Т. Иммунитеты в уголовном процессе Республики Узбекистан: Автореф.дисс...канд. юрид. наук. Т., ТДЮИ, 2004. –С.3.

ethical point of view); 2) a set of norms reflecting the humanistic essence of the implementation of this task.

Based on the content of these aspects, it should be said that immunity is, first of all, an additional right granted to certain categories of persons participating in criminal procedural relations to ensure their rights and legitimate interests. Therefore, two elements are very important for ensuring the right to immunity in criminal proceedings. These are:

- a) ensuring the right of certain categories of persons involved in criminal procedural relations to be released from certain obligations under certain circumstances;
- b) limitation of the powers of persons (bodies) conducting criminal proceedings to carry out certain actions or take certain measures in relation to the private life or social activities of certain categories of persons involved in criminal proceedings.

These concepts are the main properties for the implementation of the institution of immunity in criminal proceedings. After all, a certain right can be ensured by means of a certain obligation. This is an indisputable concept.

In criminal proceedings, the institution of immunity has the concept of a holistic system. It includes the sub-institutions that make up the immunity institute. Such sub-institutions in criminal proceedings include the right to use immunity during detention; the right of a witness, victim, to be released from the obligation to testify; the right of diplomatic missions and diplomatic representatives to immunity.

The term "immunity" - from the Latin *immunitas*<sup>3</sup>, which means being free from certain dependencies. The term "immunity" is often used in medical science to denote the ability of the human body to overcome susceptibility to infections. However, in jurisprudence, the term "immunity" refers to the concept of exemption from the obligation to comply with certain legal requirements for certain individuals.

If we pay attention to the meaning of the term "immunity" in the English language (because it is the English term "immunity" that used the institution of immunity in American legislation in the Criminal Procedure Code, adopted during the implementation of judicial and legal reforms in our country), in general, this concept means exemption from certain generally binding requirements and liability<sup>4</sup>.

So, the term immunity etymologically means the concept of being free from certain obligations. However, immunity is primarily a legal concept. Therefore, determining the legal content of immunity is also an important issue. Based on the above analysis, it is possible to identify several legal and legal qualities of the concept of immunity, which are: a) the release of the subject of the law from the performance of certain obligations; b) the absence of liability for non-performance of obligations; c) the presence of a guarantee that procedural mechanisms that force the performance of legal obligations will not be activated; d) in some cases, the presence of the right of the person who has the right to immunity to renounce it.

If we transfer these concepts to the space of criminal procedure law, then in the general sense, procedural immunity is a set of institutional and sub-institutional norms that provide individual persons participating in procedural legal relations with benefits in performing certain actions or the right to completely refuse to perform a certain action on the basis of a specific procedural mechanism.

In the literature, one can find many definitions that provide for the definition of the concept of criminal procedural immunity. In particular, according to A. T. Allamuratov, procedural immunity is a set of multifaceted and interconnected procedural-legal institutions and sub-institutions, the norms of which establish certain restrictions on the general rules of criminal proceedings and grant legal preference to certain categories of persons<sup>5</sup>.

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<sup>3</sup> Большой толковый словарь русского языка /Сост. и гл.ред. С.А. Кузнецов. – СПб.: «Норинт», 2000. –С.389.

<sup>4</sup> "International Legal Dictionary": <http://legal-dictionary.thefreedictionary.coiTi/>

<sup>5</sup> Алламуратов А. Т. Иммунитеты в уголовном процессе Республики Узбекистан: Автореф.дисс...канд. юрид. наук. –С.20.

Also, K. P. Fedyakin writes that criminal procedural immunity should be understood as a form of providing additional guarantees, manifested in the voluntary use of this provision and exemption from the fulfillment of obligations established by general criminal procedural rules in ensuring the rights and interests of certain categories of participants in the process<sup>6</sup>.

According to I. V. Velsh, immunity in criminal proceedings should be understood as legal privilege, legal inviolability, the institution of protecting the rights of participants in criminal proceedings, and the rights of an individual participant in the process<sup>7</sup>.

If we respond to the aforementioned views, A. T. Allamuratov's definition of immunity as establishing restrictions on general rules and granting legal advantages to certain categories of persons, along with K. P. Fedyakin's concept of voluntary use of exemption from obligations, and the combination of elements in I. V. Velsh's definition of "procedural immunity" merely reflect the general features of this concept.

However, the concept of criminal procedural immunity encompasses a comprehensive set of relationships, which can be agreed upon with A. T. Allamuratov. Therefore, it is important to examine procedural immunity structurally and clarify its constituent elements.

Thus, the following structural composition of immunity can be observed in criminal proceedings:

- a) criminal procedural immunity arises, proceeds, and terminates only in procedural legal relations;
- b) the right to immunity is multifaceted and has a special categorical nature (institutions and sub-institutions);
- c) the right of immunity is granted to individual participants in the process due to their socio-legal status and roles in society;
- d) the right to immunity is aimed at protecting its holder from performing certain procedural actions or from the application of procedural coercion against them;
- e) the right to immunity is ensured based on the rights of its holder and the mechanism for fulfilling the obligations of persons conducting criminal proceedings.

These elements, in harmony with each other, constitute the structure of the institution of criminal procedural immunity.

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<sup>6</sup> Федякин К. П. Теоретические и практические проблемы свидетельского иммунитета в уголовном процессе: Автореф. дисс...канд. юрид. наук. Саратов, Саратов.госунверситет, 2007. –С.19.

<sup>7</sup> Вельш И. В. Свидетельский иммунитет в уголовном процессе: Автореф. дисс...канд. юрид. наук. М., 2006. –С.18.