Pakistan Journal of Criminology
Vol. 15, No. 03, July-September 2023 (355-372)

Witness Privileges as the Foundation of their Immunity in Criminal Proceedings

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Abstract

The purpose of the paper is to investigate the essence of different types of witness immunity in criminal proceedings, to identify and analyse specific privileges that underlie these forms of witness immunity, and to justify the necessity of altering scientific perceptions of this institution within criminal procedural law and making changes to the current criminal procedural legislation to improve its normative regulation. The primary approach to addressing this issue involved categorising types of witness immunity and the associated privileges, presenting critical viewpoints concerning their interpretation, and proposing improvements to their regulatory framework. The paper proposes methods for enhancing and aligning criminal procedural legislation in the studied domain with European legal standards, examines foreign practices of witness protection and provision of privileges during criminal proceedings, and identifies general principles of criminal procedure that are upheld through the functioning of witness immunity mechanisms.

Keywords: evidence, testimony, witness immunity, private interests, public interests.

Introduction

The development of the doctrine in the domestic criminal procedure necessitates a re-evaluation of traditional scholarly perspectives on numerous criminal procedural institutions and, specifically, the essence of witness immunity. Notably, for a significant period, scholarly literature focused on questions concerning witness immunity, mainly concerning the identification and examination of its various forms and the characteristics of their regulatory framework (Pylypenko, 2018). However, according to this paper, this approach unjustly neglected the fundamental basis for distinguishing between different forms

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of witness immunity, namely their privileges. This oversight resulted in inadequacy, a certain one-sidedness in research efforts, and a stagnation of scholarly achievements. With the reform of Ukrainian criminal procedural legislation and the conviction of some researchers in the necessity of applying an activity-based methodological approach to studies, the domestic scholarly literature started to unveil novel conceptions of the essence of various legal phenomena (Vapniarchuk, 2017; Vapniarchuk et al., 2018; 2019).

This state of affairs underscores the need to apply this methodological approach to the study of the institution of witness immunity, allowing for the categorisation of "witness privileges as the foundation of their immunity" and enabling a doctrinal examination. This in turn facilitates a more comprehensive and profound understanding of the essence of this legal phenomenon, the development of suggestions for improving the normative regulation of witness immunity, and its proper implementation within criminal proceedings. Furthermore, a clear understanding of the category of immunities is impossible without a distinct definition of the concept of privileges, establishing their role in criminal proceedings and their general correlation. The term "privileges" is absent from criminal procedural law; however, it deserves recognition as it can aptly characterise certain legal institutions that, currently, are labelled as immunities, yet lack clear legal definitions (Gmyrko et al., 2019).

The absence of a distinct understanding of the categories of privileges and immunities has resulted in a multitude of diverse interpretations and classifications, creating considerable confusion in theory. Different authors describe legal exceptions to the general procedure in different ways in relation to a number of categories of persons defined by law. A prevailing approach in scholarly literature suggests that distinguishing between immunities and privileges is unnecessary since, in their view, each procedural immunity and privilege does not exist in isolation but rather encompasses a set of rules that embody aspects of both immunity and privilege. One primary argument supporting this perspective is that in the majority of international agreements concerning, for example, diplomatic immunity, a clear distinction between these concepts is not made, and they are denoted as "privileges and exemptions" (Volkotrub, 2003). It is difficult to agree with such a standpoint. Mixing such fundamental concepts in international agreements, which often have declarative character and primarily concern exemptions granted to diplomatic and consular representatives, might be acceptable. Nonetheless, applying this "universal" but essentially ill-conceived construct to domestic legislation, expanding it to cover fundamentally different legal phenomena that also fall under the concepts of immunity or privilege, seems impractical.

In scholarly literature, a viewpoint exists that criminal procedure does not and should not provide room for privileges; all legal privileges are grouped under the concept of immunity, resulting in numerous subtypes and variations of immunities (Denysenko, 2016; 2019; Navrotska, 2019). Admittedly, the main source of contradictions in works dedicated to this issue is the absence of a unified idea or specific criterion under which all existing legal exceptions in the current criminal procedural code could be categorised. The categories of privileges and immunities require an unambiguous interpretation and a clear distinction. Privileges represent a fundamentally distinct concept with its own semantic and substantial connotations, necessitating thorough scientific examination and definition of its essence.

The purpose of this paper is to investigate different types of immunity and privileges for witnesses in criminal proceedings, and to identify and analyse specific privileges that form the basis of these types of immunity.

Materials and Methods

This research on the criminal procedural institution of witness immunity employs an activity-based methodological approach, the essence of which involves shifting the investigator's focus from the object itself (endowed with certain characteristics – a prevalent approach when using a naturalistic methodology) to the tools and methods of individual reasoning. The concept of the object is shaped and defined not solely by the material nature but also by the means and methods of human thinking. By employing the activity-based methodological approach, the primary emphasis in this paper is placed on identifying and analysing various privileges of witnesses that serve as the basis for different types of witness immunity. Furthermore, the research offers original proposals for understanding these privileges and the necessity for enhancing their regulatory framework.

To obtain objective and credible results, a range of general and specialised research methods are employed in this study, including:

- historical-legal method –for analysing the development of concepts regarding the essence of witness immunity and privileges as its basis;
- semantic analysis – for clarifying the meanings of the terms "privileges" and "immunity";
- comparative legal – for illustrating the essence of different types of privileges and immunities of witnesses in criminal proceedings in various countries and in the practice of the European Court of Human Rights;
- formal-legal – for proposing suggestions to continue research on the essence of witness immunity and privileges as its basis in criminal

proceedings, and for improving the current legislation to enhance the legal regulation of specific types of witness immunity;

- systems analysis – for synthesising accumulated theoretical knowledge and results of judicial practice in the context of the studied subject;
- legal forecasting – for providing recommendations to enhance the scientific understanding and legislative regulation of the concepts of privileges and immunities of witnesses in criminal proceedings.

The basis of the study consisted of publications by Ukrainian and foreign researchers from the past and present, dedicated to exploring the essence of witness immunity in criminal proceedings, and provisions of Ukrainian legislative acts that establish rules for its regulation.

Results and Discussion

The concept and types of witness immunity

The investigation of the institution of immunities in criminal proceedings is a highly relevant and important area both in the past and today. It has been the subject of numerous studies (Ganenko, 2020; Obozna, 2016; 2017; Polyak, 2020). It should be noted that there are quite a lot of types of immunity in criminal proceedings. One of them is witness immunity, which essentially allows a witness, under certain legally defined circumstances, not to give testimony and not to be held liable for it. Witness immunity is a legal concept aimed at protecting witnesses from potential negative consequences that may arise from their testimony in legal proceedings. It provides certain privileges and guarantees to encourage witnesses to provide truthful and accurate information, without fearing retaliation or self-incrimination. Witness immunity may take different forms and its regulation may differ in various legal systems (Strashok, 2022; Tsyganyuk, 2018). Overall, witness immunity serves as a balance between individual interests and rights and the societal interest in investigating and adjudicating criminal offences. It takes into consideration the significance of an individual's position in society (including their profession and family relationships) (Kharitonova, 2019). This balance ensures the equilibrium of private and public interests in criminal proceedings, and the achievement of its goals and the effective execution of its tasks (Ahmadov & Vartyletska, 2022).

To understand the essence of witness immunity, it is necessary to determine its varieties. In scholarly literature, based on the criteria of the possibility of refusal, witness immunity is divided into mandatory (non-alternative) and non-mandatory (alternative). Mandatory immunity entails a situation where legislatively specified individuals cannot be questioned as witnesses even if they express a desire to testify. The circle of such individuals is quite broad and is specified in Article 65(2) of the

Criminal Procedure Code of Ukraine (2012) (CPC of Ukraine): medical workers, journalists, defence attorneys, representatives, lawyers, clergy. An essential condition for the impossibility of questioning such individuals is that the law defines the information about which these persons cannot be interrogated (for example, lawyers – about attorney-client privilege, notaries – about notarial secrecy). It is worth noting that according to Article 65(3) of the CPC of Ukraine (2012), certain individuals endowed with this type of immunity can be released by the client from the obligation to maintain entrusted information to a specified extent.

Optional immunity consists in whether a person has a choice to give evidence or not. This type of immunity is granted to:

- witnesses regarding information about themselves or close relatives;
- persons with diplomatic immunity;
- persons who have privileges and immunities according to the General Agreement on Privileges and Immunities of the Council of Europe (1949) (judges, their spouses, and minor children).

The institution of witness immunity has a long history that goes back to ancient legal systems. For instance, in Ancient Greece, the "privilege against self-incrimination" emerged, which protected witnesses and accused individuals from being compelled to testify against themselves. Later, Roman law recognised the right to refuse testimony if it could lead to self-incrimination. In the course of the development of common law systems, witness immunity has developed further. n medieval England, witnesses were granted privileges, such as the right to refuse to answer questions that could incriminate themselves or their close relatives. This has affected the legal systems of many countries, including the European Union (Council of Europe, 1996).

Over time, witness immunity has become an integral part of a fair and effective trial. Its purpose is to enable witnesses to provide accurate and truthful testimony without fear of revenge or punishment. One notable historical event in the field of witness protection can be traced back to medieval England with the advent of the "clergy benefit" (Wells, 2022; Otgaar et al., 2022). The clergy benefit was a privilege initially granted to clergy members, who were exempt from the jurisdiction of secular courts and could only be tried in ecclesiastical courts. With the development of legal systems, witness immunity has gone beyond the religious context. Throughout the development of common law, witness immunity continued to be recognised as an important legal guarantee for protecting individuals' rights. Its protection was extended to witnesses to encourage their participation and ensure fair justice (Hryshchuk & Paliukh, 2022; Schot, 2022).

As of today, the institution of immunities has been incorporated into the criminal procedural legislation of most countries with diverse legal systems. It is

also enshrined in numerous international treaties, including the Universal Declaration of Human Rights (1948) and the European Convention on Human Rights (ECHR) (1950). These international instruments emphasise the necessity of exempting individuals from providing testimony in certain cases to consider their social status outside of criminal proceedings.

Privileges as the basis of witness immunity

The categories of "privileges" and "immunities" require clear distinction and unambiguous interpretation. As mentioned earlier, "privileges" is a fundamentally different concept that has its own meaningful significance and requires its procedural establishment. Under this concept, there is a certain advantage granted to an individual or a group of people (Collins Ukrainian Dictionary, 2023). There are several reasons for this. The main reason is that privileges necessitate considering the will of an active or potential participant in criminal proceedings within the framework of a specific criminal procedural situation. Another feature of privileges (and the fundamental difference between the considered concepts) is that their existence and recognition means introducing an element of dispositivity into the predominantly imperative criminal procedural relations. While immunities primarily aim to ensure proper administration of justice, privileges primarily protect the rights of specific individuals designated by the law (Kubarieva & Pertsev, 2022;).

Privileges encompass all legislatively provided legal constructs in which an individual autonomously decides whether they will submit to the general order or exercise the granted option to refuse such subordination and opt for a different, specially provided procedure. Thus, under current legislation, privileges include not only the possibility of being exempt from testifying but also the ability to choose the way a case is heard by a jury court, the special procedure for rendering a court decision in the event of a reconciliation agreement or admission of guilt, and various other legal situations.

Consequently, "immunities" and "privileges" are diverse concepts, and a differentiation between them can be established on certain grounds. Inevitably confronting the basic trend of development in the Ukrainian legal system, which aims to protect the rights and lawful interests of participants in criminal proceedings, there is a tendency to enhance the effectiveness of criminal prosecution and safeguard the interests of justice. Immunities, in this sense, primarily serve to protect the interests of society and justice overall; they function as tools in developing and strengthening the latter trend. On the other hand, privileges inherently protect the interests of a specific individual, constituting "a special right for a particular individual." Therefore, privileges should be defined as

a principle of special right, a guarantee in lieu of or alongside the ordinary, general right, or as additional benefits and advantages. In contrast, immunities can be defined as the special right to be exempted from general jurisdiction, not applying certain coercive norms prescribed by legislation to specific individuals.

Privileges serve as the basis for various types of immunities (including witness immunity), forming the grounds for their identification, semantic and substantive content, and essence. It is reasonable to consider some of these privileges. One of them is the privilege against self-incrimination, which is regulated by Article 18 of the CPC of Ukraine (2012). Its essence lies in the fact that no person can be compelled to testify against themselves; they have the right to remain silent and refuse to give evidence and answers to questions. In general, the privilege involves the right of an individual, regardless of their procedural status in criminal proceedings, to refuse to testify if such testimony could negatively affect them; and subsequently, such an individual will not be held liable for refusing to testify.

Overall, the right not to testify against oneself applies to various stages of criminal proceedings and various procedural actions, including interrogation, provision of explanations, submission of documents, material evidence. In Ukraine, such a right is granted to a person at the legislative level. However, there is a slightly different procedure for granting such a right in the criminal procedural law of England and the United States. The privilege against self-incrimination is granted by a court decision based on evidence and arguments presented in favour of the individual seeking to exercise this privilege (Drozdov & Basysta, 2023). The arguments must demonstrate that the person's testimony could reasonably lead to suspicion or accusation of them committing a certain criminal offence (Ashworth, 2000). Thus, the burden of proving the possibility of self-incrimination is placed on the person themselves (Vapniarchuk et al., 2019). It is suggested that such a procedure for addressing the issue of proving this fact should be applied in domestic criminal proceedings and possibly enshrined in criminal procedural legislation.

The importance of the privilege against self-incrimination and the witness immunity based on it is also affirmed by the fact that at the international level, it is protected and guaranteed within the context of Articles 6 and 8 of the European Convention on Human Rights (ECHR) (1950). For instance, in cases like "Balytskyi vs. Ukraine (application No. 12793/03)" (European Court of Human Rights, 2012) and "Shabelnyk vs. Ukraine (application No. 16404/03)" (European Court of Human Rights, 2009), it is stated that the guarantees provided by the state regarding the freedom from self-incrimination fall under internationally recognised standards of interpreting the concept of a "fair trial." Such standards are intended to protect a person prosecuted under National Criminal Law from pressure that may be exerted

by the relevant investigating authorities. The right not to testify and remain silent also protects a person from the misuse of material evidence, documents against them, obtained against the will of the person or with the use of pressure. A decision made by a national court based on unlawfully obtained evidence cannot be considered fair and lawful.

It is worth noting that this right, within the context of ECHR practice, should not be perceived as all-encompassing or having an absolute nature. It is designed to ensure proper respect for an individual's decision not to testify against themselves and to refrain from answering questions, primarily to safeguard individuals from pressure and coercion by state authorities (Vozniuk, 2022). In addition, several important aspects regarding this privilege were provided by ECHR in the case of "Saunders v. United Kingdom" (European Court of Human Rights, 2001), where it was indicated that even societal interest cannot justify the practice of obtaining statements under duress during pre-trial investigations. Several conclusions made by ECHR in the case of "Wanner v. Germany" (European Court of Human Rights, 2018) are particularly relevant and applicable to domestic legal practice, considering that ECHR practice must be taken into account in criminal proceedings (Article 8 of the CPC of Ukraine, 2012):

persons who participated in a criminal offense and have already undergone trial and conviction can be questioned as witnesses;

- they should be questioned with a warning about the responsibility established by criminal law for refusal to testify and for providing deliberately false testimony;
- the burden of proving the risk of self-incrimination in such cases lies with the witness (meaning they should provide some reasonable arguments to confirm the existence of this risk);
- granting of the privilege of freedom from self-incrimination and, accordingly, immunity from testifying as a witness is determined by the court (or by the investigator, interrogator, or prosecutor during pre-trial investigation);
- such persons are not subject to re-prosecution for which they have already been convicted (European Court of Human Rights, 2018).

The analysis of Article 18 of the CPC of Ukraine (2012) also allows for identifying the presence of the privilege of family relationships, which is based on the idea that individuals are not obliged to give testimony or explanations about their family members or close relatives. This privilege is closely related to the principle of non-interference in private and family life, as defined in Article 15 of the CPC of Ukraine (2012). When studying this type of privilege, several questions

arise that deserve attention. One of these questions is the scope of individuals who have the right to invoke this privilege. Criminal procedural legislation includes as such individuals the spouse, brothers and sisters, grandparents, great-grandparents, grandchildren, guardians, caretakers, individuals living together and sharing a common household (Article 3, Part 1, Clause 1 of the CPC of Ukraine, 2012). These family relationships constitute a privilege that provides a legitimate basis for refusing to testify against relatives. The corresponding privilege also establishes a certain guarantee that protects persons who have refused to testify against their relatives from criminal liability.

Analysing the scope of close relatives defined in Article 3, Part 1, Clause 1 of the CPC of Ukraine (2012), it is evident that it does not include representatives of collateral relationships (except for full siblings). This approach is imperfect. However, in Ukraine, strong family relationships are traditionally present among other relatives of collateral relationships (such as half-sisters and half-brothers, aunts, uncles, nephews, nieces). That is why it is possible to support the opinion expressed in the scientific literature regarding the introduction of changes to the above-mentioned rule of the Criminal Procedure Code on expanding the list of close relatives at their expense (Criminal Procedure Code of Ukraine, 2012). This will contribute to the further preservation of close family relations between them (Ganenko, 2020).

It is of interest to investigate the question of the validity period of kinship privileges. For example, in the United Kingdom, the corresponding privilege ceases to apply after an official divorce or the death of one of the spouses. In other words, divorced individuals, widows, and widowers do not have the right to enjoy this immunity (Hope et al., 2022). Indeed, legally, family relationships between such individuals are terminated, but the possibility of normal mutual relations, the presence of shared children might still exist. In addition, moral feelings between them, respect, sympathy, and belief in decency towards each other, quite often do not disappear in case of dissolution of marriage or death. Hypothetically, giving such testimonies might negatively impact both the person providing them and other relatives (such as shared children, parents), affecting their relationships and future communication. It is important to clarify the question of the extent of information that can fall under protection. In the United States, there are certain criteria: the information is related to marital relationships, it must be confidential, and the exchange of information takes place during marriage and is based on trust. Nevertheless, this privilege does not extend to criminal offenses committed by one spouse against the other or against shared children (Mawby, 2022). According to the authors of this paper, such criteria are quite reasonable and can be used in domestic criminal proceedings.

Another important privilege that exists in criminal proceedings concerns legal secrecy between a lawyer, notary, and their clients. This privilege is detailed in Article 65 of the CPC of Ukraine (2012), stating that these individuals cannot be questioned as witnesses regarding information that is covered by attorney-client or notary-client confidentiality. This privilege is not absolute. After all, attorneys and notaries can be questioned regarding matters related to combating and preventing corruption, terrorism financing. Moreover, the client themselves can consent to the disclosure of certain information by the attorney or disclose it independently. A similar privilege is also present for medical practitioners who have become aware of information during the course of their professional duties. This information is known as medical confidentiality. The confidentiality of such information is breached if it is disclosed in the presence of other individuals who gain access to it but are not performing the duties of medical practitioners.

The communication of information constituting the content of medical confidentiality to the person to whom it relates (i.e., the patient or anyone who received other medical services), and to their close relatives, does not mean the loss of its confidentiality. However, when such information is communicated in the presence of other individuals who are not medical practitioners or in a manner that leads to its acquisition by individuals who do not have the right to it, its confidentiality is lost. Just like the privilege of attorney-client confidentiality, the medical privilege is not absolute either, as individuals receiving medical care can provide consent for its disclosure. Furthermore, the patient themselves can disclose the information, after which it loses its confidentiality. Another area in which privilege takes place as the basis of witness immunity is the religious rite. According to Article 35 of the Constitution of Ukraine (Verkhovna Rada of Ukraine, 1996), everyone has the right to freedom of thought and religion (Golovko et al., 2023). Confession is one of the sacraments associated with religion. Confession involves the disclosure of one's sins to God in the presence of a priest. The secrecy of confession pertains to the supernatural realm. As Thomas Aquinas writes on this matter, a priest can even declare under oath (including in court) "that he does not possess information known to him as God" (The secret of confession, 2018).

The secret of confession concerns both the information communicated by the confessor to the priest and the information about the fact of its conduct. An individual to whom the privilege regarding the confidentiality of believers' confessions applies is only the priest who received them. In accordance with the norms of canonical (church) law, the confession is inviolable. It is not subject to disclosure even in cases where:

- the penitent releases the priest from the obligation to keep it (or even asks the priest to reveal it). Therefore, it can be inferred that the provision of

Part 3 of Article 65 of the CPC of Ukraine (2012), which allows for the possibility of releasing entrusted information, is not applicable and cannot be applied, as the priest cannot violate church canons. In connection with this, it is believed that changes need to be made to the specified norm by excluding the reference to Clause 5 of Part 2 of Article 65 of the CPC of Ukraine (2012);

- the priest receives permission or an order from ecclesiastical authorities to provide information that was shared with them during confession (although this is unlikely due to the reasoning expressed in the previous point);
- the priest renounces their position or is deprived of it.

In connection with the aforementioned opinion regarding the inviolability of the secrecy of confession, two theoretically and practically significant questions arise:

1. How should a priest act if, as a citizen of Ukraine, they desire an appropriate state response to a committed criminal offense or the individual who committed it when they obtained this information during confession?
2. Is the privilege regarding the secrecy of confession only the basis for witness immunity, or in other words, does it extend to other participants in criminal proceedings (e.g., complainants)?

Regarding the first question, based on the considerations mentioned earlier, it is believed that the only viable option that will not violate the norms of either criminal procedural or canonical law is for the priest to take all possible measures to persuade the penitent of the necessity to inform the relevant law enforcement authorities about the criminal offence and thus repent not only before God but also before society. With respect to the second question, the proposed approach in this publication, which involves specifying and characterising not only types of witness immunity but also what constitutes the basis for it – a specific privilege – allows expressing the view that the necessity of ensuring a particular privilege for individuals applies not only to questioning but also to other procedural actions and involves not only witnesses but also other subjects of criminal proceedings (including complainants). It is also worth noting the privilege that applies to journalists (although, it is thought that at present this category requires expansion to include other individuals in the information sphere, such as bloggers, who may not necessarily be professional journalists). According to criminal procedural legislation, journalists cannot be questioned about information that has a professional nature and was provided under the condition of non-disclosure of the

confidentiality of authorship and the source of information. Such information is any, if it concerns:

- author or source of confidential information;
- the confidential information itself shared with the journalist, under the condition of its non-publication (when it is already published, it loses its confidential nature, and the journalist can be questioned).

It should be noted that one of the features of the legal regulation of this privilege is that its bearers are not only journalists but also the individuals who provide them with confidential information. Confirmation of this assertion is that the current criminal procedural law does not provide for the disclosure of information provided to a journalist, even in cases where the person who entrusted them with this information releases them from the obligation to keep it. This is considered illogical legislative decision. The authors of this paper assert that it is appropriate to add journalists to the list of individuals who can be released from the duty to maintain professional secrecy by the person who entrusted them with this information (Part 3 of Article 65 of the CPC of Ukraine (2012)), and to specify in this provision references to Clauses 1-4 and 6 of Part 2 of Article 65 of the CPC of Ukraine (2012)).

Privileges and immunities of a witness: Legislative regulation abroad, scientific and law enforcement issues

It is also interesting to investigate how the institution of witness immunity (its individual varieties) is regulated in other countries. For instance, in Germany, the secrecy of confession is protected. Clergymen cannot be forced to disclose information they learned during confession (Lang, 2022). Medical professionals in Germany are required to maintain confidentiality with respect to their patients. They are prohibited from disclosing any information obtained during the course of their professional duties, except under circumstances such as patient consent or legal obligations. Lawyers are also required to keep professional secrets, regardless of whether they relate to criminal or civil cases (Lang, 2022). While there is no general immunity for family relations in the country, there are certain limitations on the duty to give testimony, for instance, spouses are exempted from testifying against each other in certain situations (Sundari & Wisnubroto, 2022).

In France, unlike in Germany, there is no special legislative provision regarding the privileges or immunity of clergy. Members of the clergy are generally required to provide testimony if they are called as witnesses, and there is no recognised privilege regarding information obtained during confession. Like Germany, medical professionals in France are required to keep medical secrets. Lawyers are also protected from being obligated to disclose any information

obtained from their clients, regardless of the nature of the legal matter (Hegheș & Buneci, 2022).

In Anglo-Saxon legal systems, such as in the US and the UK, the privilege against self-incrimination is ensured through certain safeguards: the detained or suspected person is informed of the right to remain silent; informed that anything said can be used against them; and informed of the right to defence and representation (Hegheș & Buneci, 2022; Yusupova, 2022). The inadmissibility of using evidence (testimony, physical evidence, documents) obtained in violation of the order of their collection is also clearly regulated; evidence obtained with the use of coercion or pressure on a participant in criminal proceedings is inadmissible. These provisions adhere to international standards of fair trial, the rule of law, and the priority of human rights and lawful freedoms (Gmyrko et al., 2019; Hribov, 2022; Priakhin et al., 2022).

In normative regulation of the institute of witness immunity and its implementation, an important issue arises: finding a balance between protecting the rights of accused individuals and ensuring the fairness of criminal proceedings. Granting immunity to witnesses can hinder the collection of vital evidence in criminal proceedings, particularly if these witnesses possess crucial information that could lead to the identification and conviction of criminals (Vapniarchuk, 2017; Vapniarchuk et al., 2018). Therefore, the question arises as to how to ensure a fair balance between the rights of witnesses and social justice, meaning a balance between private and public interests.

Primarily, the existence of a clear and understandable legal framework is necessary to fully establish and guarantee the rights and obligations of witnesses, the scope of witness immunity, and potential limitations. It is also important to provide effective guarantees of respect for the rights of witnesses to protect individuals from intimidation, threats, violence, revenge. In addition, it is possible to draw from the experiences of certain countries regarding the procedure for determining the existence of a particular witness privilege and granting immunity based on it. This includes implementing a system to assess the necessity and justification for granting witness immunity, similar to the systems in the US and the UK, to avoid abuse of procedural rights by individuals. After all, it is necessary to consider the interest and potential influence of society on the consideration of a particular criminal proceeding, although the protection of individual rights is extremely important, it is also crucial to balance them with the need for truth, accountability, and punishment of those responsible. Therefore, it is necessary to expand the authority of judicial bodies to examine each case individually to determine the necessity of granting and implementing specific privileges and immunities. By integrating these principles into the domestic legal system, a fair

balance between the rights of witnesses and the pursuit of social justice can be achieved, ensuring the protection of individuals and maintaining the integrity and effectiveness of the criminal process.

Conclusions

Based on the foregoing, it can be concluded that the existence of witness privileges (and the derived institute of immunities) in criminal procedure indicates that certain social relationships (such as family relationships, matters related to the secrecy of confession), the rights and interests of individuals (including those who become involved in criminal proceedings as witnesses and who, through their testimony, could incriminate themselves or close relatives in criminal activity) are recognised by the state as superior to the interests of justice in obtaining crucial evidentiary information for criminal proceedings.

The privilege against self-incrimination guarantees the right of individuals to remain silent, refuse to answer questions, and not give testimony against themselves if it could worsen their situation or endanger them. This provision also guarantees protection from pressure, coercion, threats, and violence. The privilege of family relationships involves exempting relatives or individuals who live together and share a household from giving testimony against individuals with whom they share a family relationship. During the examination of this privilege, issues regarding the scope of information that is not subject to disclosure and the duration of the privilege and the witness immunity derived from it were analysed. The reasoned opinion that this privilege does not expire upon the conclusion of marital relations and remains valid even in the event of the death of a close relative was expressed. Furthermore, the opinion was voiced about the necessity of expanding the circle of close relatives to include relatives from collateral lines of kinship.

The provision of the law, according to which under certain conditions (with the consent of the client or patient), attorney-client privilege, notarial privilege, medical confidentiality, and the like can be disclosed, and the information that constitutes these privileges can be the subject of witness examination, is entirely reasonable and deserving of support. However, confession privilege should not be included in such categories – it should not be disclosed even with the confessor's consent. In this regard, authorial opinions were expressed regarding possible actions that clergy members might take to convey information obtained during confession that is relevant to criminal investigations to the relevant authorities. As for the disclosure of information provided to journalists, the opposite opinion was presented, suggesting the need to amend criminal procedural legislation to allow for the exemption of journalists from preserving information provided to them, thus

enabling them to testify about the authorship (source) of the confidential information.

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