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ASSESSING THE SCOPE OF LEGAL IMMUNITY IN MODERN LEGAL SCIENCE: THE NEED FOR QUESTIONING UNDER UKRAINIAN LAW

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Abstract: *Everyone is born equal and expects to be treated similarly before the law in cases involving criminal activity and other obligations. It is problematic to have some people immune to legal consequences because they enjoyed special treatment in the eyes of the legislation meant to protect them. The issue we must bring up is crucial, as there is always the need to conduct a thorough investigation into the commission of crimes to secure justice. However, the tendency is that as far as immunity is on the individual concerned, this would frustrate the prosecution process. In this vein, it was proposed that this study investigate how immunity relates to today's state of the law. We will look at an analytical approach to determine if immunity's status has changed due to the rise of modern legal science. The paper overviews the legal framework adopted in Ukraine concerning immunity given to certain public servants.*

Keywords: *Legal Immunity; Human Rights; Modern Legal Science; International Law*

INTRODUCTION

The choice of the research topic is determined by the fundamental and applied needs of legal science and practice development. In the scientific, theoretical plane, mastering the essence of immunities in legal science is determined by the formation of established ideas on the essence of this phenomenon, the definition of the species diversity of immunities in law, and the understanding of systemic connections with other concepts and categories of legal science. Moreover, in the practical plane of legal understanding, the concept of "immunity" is an important condition, firstly, for the protection of the rights, freedoms, and legitimate interests of persons to whom different types of immunity may be extended; secondly, to achieve justice, to ensure equality of citizens before the law during court proceedings; thirdly, for the further development and modernization of certain legal institutions, for example, the legislative or judicial branches of government, and more.

It is necessary to be aware that within the law, there is a stable systemic connection between such concepts as "immunity" and "independence". At the same time, the relationship between these legal definitions is complex because immunity is a critical condition and an important legal guarantee of ensuring the independence of special subjects, which must be objective and impartial during law enforcement. Secondly, immunity is a complex

interdisciplinary legal institution in which international, constitutional, legal, and criminal-procedural elements are distinguished. Thirdly, the currently existing types of legal immunities are not absolute. The parameters of action in time and the peculiarities of the immunity termination procedure determine their teleological component. Investigating the issue of criminal liability of judges for crimes against justice in the context of the Nuremberg trial, W. Kulesha (2013) noted that:

Regarding the judges, the Tribunal recognized that they could not invoke the principle of judicial immunity because the doctrine according to which judges are not responsible for their activities was built on the principles of independent justice, and the judicial function in the Reich was significantly limited. After all, the judges acted as bodies of the state administration, per the authorities' clear directives, and focused on implementing the government's plan to exterminate Poles and Jews (p. 42).

There is no uniform approach to the regime of judges' responsibility. These approaches vary from the most loyal to judges (in England and Wales), where judges can only be punished by disciplinary action. A higher court review can only change their decisions to the strictest ones (in Moldova and Spain), where criminal liability is provided for making knowingly unlawful decisions (Dzehciarou 2020).

THE PURPOSE AND OBJECTIVES OF THE RESEARCH

The purpose of the study is the scientific elaboration of the immunities in law essence. Achieving the represented goal requires the consistent solution of several research tasks, namely: a) to investigate the origins of the concept of "immunity" in domestic jurisprudence of the second half of the XIX-XX centuries; b) to reveal modern scientific and conceptual approaches to understanding the essence of immunity in modern legal science; c) to highlight and analyze the classification of immunities currently proposed in legal science. Indeed, it remains the rule that it is the law's responsibility to ensure a sufficient investigation is carried out to determine those liable for the act committed, but this is problematic as the presence of immunity always presents a barrier in the enforcement and implementation of the criminal justice system. The fact is that law has provided modern approaches and techniques in affecting the criminal justice system, but what use will these approaches be if there is the constant presence of immunity which makes the criminal justice system process difficult and, to an extent, impracticable? The rule remains and will always stand that for the criminal justice system to be accessible and credible, it is the responsibility of those implementing the law to ensure that anything limiting its implementation and enforcement should be handled in that even immunity will not be an exemption. It remains the rule of law in certain cases, and circumstances for this aspect of immunity should be affected to properly apply the criminal justice system.

METHODOLOGY

Mastering the essence of legal immunities determines the application of general scientific, specific scientific, and special legal approaches and methods of scientific knowledge of legal reality phenomena.

The dialectical method is fundamental among them, demonstrating the role and significance of the studied phenomenon within the domestic legal system. Systemic and anthropological approaches made it possible to understand the inextricable connection between scientific work and achievements of legal scholars of the past eras with modern scientific and conceptual approaches to understanding the essence of immunity in modern legal science. The axiological approach demonstrated the legal and significant social value of legal immunities.

Scientific pluralism contributed to accumulating and generalizing a broad range of legal theory and branch legal sciences knowledge to reveal the essence of legal immunities. Thanks to the institutional approach, guarantees of impartiality and independence of judges have been characterized. The classification and generalization method helped reveal the multifaceted nature of immunities in law.

The uniqueness of the research subject caused the application of special scientific methods of cognition (hermeneutic, logical semantic, and formal logical). Special legal methods (legal technical, normative dogmatic, comparative legal) played a significant role when analyzing legal acts related to regulating one or another type of immunity. The fact that modern legal science is a fundamental concept nowadays in ensuring the proper application of the criminal justice system through its various approaches, techniques, and mode of operation, it becomes frustrating when there is the presence and existence of legal immunity. One thing for sure is in providing a methodology to be used in effecting the results and outcome of a research, and the other is in ensuring the proper application of this methodology that will reveal the needed results expected. The laws are clear when dealing with modern legal science in carrying out the investigative process for the purpose of justice. However, what significance would it have if these contemporary investigative techniques were successfully given that legal immunity thwarts their deployment and renders the criminal justice system unworkable?

RESULTS AND DISCUSSION

The problem of effective provision of the protection of the aggrieved person's rights has always existed. However, as historical events testify, the Second World War radically changed views on guarantees of world peace because humanity understood the true value of human rights and freedoms, which led to a fundamental update of the legal mechanism for their protection. Starting from that time, protecting human rights is not a purely internal competence of states. It has gained international significance, embodied in the idea of creating a new international law and order, the basis of which is the respect for fundamental rights and freedoms (Ablamskyi et al. 2020).

In modern society, the equal legal status of women and men, as well as equal opportunities for the realization of gender equality, have long become commonplace in public

discourse and politics. Ukraine is one of the countries where the equality of men and women is enshrined in the law (Klemparskyi et al. 2022). The protection of the honor and dignity of a person is of exceptional importance for ensuring an appropriate mechanism for exercising the personal, intangible rights of subjects.

Today, the state is the only entity authorized to carry out legislative regulation of social relations and, accordingly, to apply legitimate coercion to ensure human rights and freedoms. In this regard, the function of administering justice, which is aimed at restoring the violated rights, freedoms, and legitimate interests of all subjects of social relations, is assigned exclusively to the competence of the state. This thesis is reflected in the provisions of the Basic Law, according to which Ukraine is a democratic, social, and legal state, and all citizens are equal before the law with no privileges or restrictions based on race, skin color, political, religious and other beliefs, gender, ethnicity, and social origin, property status, place of residence, language or other characteristics. Even though the Constitution of Ukraine establishes the equality of all citizens before the law, the activities of a separate category of persons involved in performing fundamental tasks and functions of the state require additional legal guarantees. For this purpose, the Basic Law of our country and special laws enshrine additional legal guarantees for the activities of such persons. For this purpose, the Basic Law of our country and special laws enshrine additional legal guarantees for the activities of such persons. At the same time, the norms of the Constitution of Ukraine do not exclude the possibility of bringing them to criminal responsibility but only establish a special procedure regarding this issue. Among other things, this also applies to the special procedure for the detention of persons enjoying immunity, which include, in particular, People's Deputies and the President of Ukraine.

As noted by Y. Kuzmicheva (2014, 107), the activity of certain state bodies is aimed at ensuring the functioning of the main state institutions, ensuring the unhindered and effective performance of their functions. We support this position since the functional activity of some categories of persons in the state mechanism occupies a particularly important place because it ensures the implementation of legislative, executive, and judicial functions.

In this context, the statement of M. Pogoretskyi and O. Starenkyi (2017, 80) regarding the fact that to implement fundamental functions by certain state bodies, the legislator provided for a special procedure for carrying out criminal proceedings against certain categories of persons who, due to their procedural status, are endowed with appropriate immunity, which protects them from possible illegal pressure and obstruction of professional activities. Indeed, in general, the legislator's logic on this issue remains clear since it is difficult to assess the negative consequences of illegal influence on a People's Deputy of Ukraine or the President of Ukraine, who, according to Article 102 of the Constitution of Ukraine is a guarantor of state sovereignty, territorial integrity, and observance of human and citizen rights and freedoms.

Modern Legal Science and the Recognition of Immunity

The principle of equality requires the provision of equal opportunities, the creation of real opportunities by the members of society to compete with each other with good chances of success due to equality before the law and the court, equality of human rights and responsibilities, compliance with the principle of non-discrimination (Shtonda 2019, 47). This principle is

fundamental to a person's and a citizen's legal status. It acts as a principle of the rule of law and as a political and legal basis of civil society. It is a special form (regime) of legal balance based on balancing people's interests.

The equality of all people before the law can be considered one of the most important principles of legal statehood. However, it should be noted that in most developed democratic states, primarily to protect constitutional and legal values, inequality of individual citizens before the law is allowed at the legislative level. This is manifested in granting legal immunity as a guarantee of activity to certain persons who perform important state and public functions. It provides a special procedure for bringing these persons to justice. Therefore, immunity is widely used in various spheres of life in society because it primarily concerns legal relations where human rights and freedoms may be limited. Despite the fairly widespread use of the term "immunity", there is no single point of view on its etymology. In the scientific literature, there are many options for defining this concept, referring to different features and considering the scope of its use. This category, including procedural spheres, is most common in constitutional, criminal, and administrative law. The norms of international law are important for characterizing legal immunity (Vasylchenko 2014, 59).

The legal nature of immunity is rather complex and ambiguous. Ukrainian legislation does not make a clear distinction between the concepts of "immunity" and "inviolability", and there is often a situation where the term "inviolability" is used to denote legal immunity (Shelever 2012, 779). Therefore, to operate the specified term properly, it is necessary to clarify the essence of the indicated term.

In one of the legal dictionaries, immunity is understood as the removal from the effect of certain general laws of persons performing special official duties in the state or the inviolability of diplomatic representatives and the premises occupied by them (Kudryavtsev 1956, 383). In the legal encyclopedia, immunity is a general legal term that exempts a certain circle of legal subjects from the effect of general legal norms (Hizhevskyy, Golovchenko, Kovalsky 2002, 191).

Legal immunity is a general legal category that consists of norms regulating the special legal status of individual subjects, establishing a special procedure for bringing them to justice to ensure that these persons perform important functions for the state (Shelever 2012, 782). It is worth agreeing with the proposed statement since the existing legislation currently operates with several concepts that do not have a legislative generalization regarding a clear understanding of inviolability, and diplomatic immunity, which have certain differences in scope.

In the legal sense, the concept of immunity is interpreted as the exemption of a certain circle of legal subjects from the effect of general norms, as the exclusive right not to obey some general laws, which is granted to persons who have a special position in the state, as well as the exemption of individual persons from the fulfillment of certain legal obligations duties and responsibilities established in specific norms of international law, the constitution, and laws. Legal immunity has two sides: on the one hand, it provides for the inadmissibility of reference to the official position of a person when committing an international offense, in particular, a transnational crime; on the other hand, immunity refers to the protection enjoyed by certain officials against the exercise of criminal jurisdiction by a court. The inadmissibility of reference to the official position of a person when committing an international offense is recognized as one of the main principles of international criminal law and criminal justice (Popko 2018).

Since there is no one approach to comprehending immunity in legal science, an examination of the scientific works of scientists in this field should be done to provide a comprehensive study of this concept.

Studying the theoretical and practical issues of parliamentarians' immunity institution functioning, V. Kolyukh (2015) notes that the science of constitutional law divides this legal phenomenon into two types:

1. Indemnity, which means that the deputy does not bear legal responsibility for introducing proposals, bills, and amendments to them; dealing with parliamentary inquiries; speeches from the parliamentary rostrum; voting in one way or another at plenary sessions of the parliament; statements and voting in parliamentary committees and commissions, etc. This happens both during the exercise of the deputy's powers and after the end of their term, without restrictions on the prosecution.
2. Immunity (from the Latin *immunitas*: release, freedom) means the legal inviolability of a deputy, the essence of which is that the deputy cannot be held criminally liable, detained, or arrested without the consent of the parliament. However, no European country has the same level of immunity as the People's Deputies of Ukraine (pp. 53-55).

I. Coldrus (2016, 202) considers immunity as a legal exception, which is intended to create a special legal regime for the subject of law, in the framework of which he/she is provided with additional guarantees when he/she is brought to legal responsibility or fulfills certain duties to implement particularly important international, state and social functions.

L. Tkalya (2010, 5) defines legal immunity as a separate form of legal exemption, within which a person endowed with special characteristics related to the performance of international, state, and public functions is exempted from the performance of certain legal obligations from legal responsibility or other coercive measures, and a special procedure for bringing to legal responsibility is provided.

According to the definition of V. Popko (2018), legal immunity is a general legal category that consists of norms that regulate the special legal status of individual subjects and establishes a special procedure for bringing them to justice to ensure that these persons perform important functions for the state. Legal immunity consists of two elements: irresponsibility and immunity. The core of the definition of "immunity" is inviolability - individual freedom and legal protection of the relevant subjects of law from measures of procedural coercion established by the norms of administrative, criminal, criminal procedural law (detention, search, arrest, etc.) to guarantee unhindered performance by these persons of their functions in society and the state.

Legal immunities can be considered as an independent form of legal exceptions, which are a system of legal exclusions from ordinary (general) or special rules, which creates a special legal regime for a clearly defined circle of natural and legal persons who are granted additional rights (privileges, benefits, legal benefits), or who are released from the performance of legal duties, legal responsibility, or the order of bringing to legal responsibility is characterized by a special nature (Vasylchenko 2014, 59). From this definition, it should be concluded that immunity is a kind of an exception to the general legal status inherent in a specifically defined circle of persons and exempts them from performing certain duties and legal responsibilities. At the same time, such exceptions directly depend on the nature of their activity.

Thus, there are quite a few definitions of the concept of legal immunity in the works of scientists. On the one hand, one group of scientists understand legal immunity as special benefits and privileges, mainly related to the exemption of persons specifically established in the norms of international law, the constitution, and laws, from certain duties and responsibilities to ensure the performance of their respective functions. On the other hand, there is an opinion that legal immunity is a legitimate exclusion in the field of legal responsibility, which is established in special regulations with the aim of the increased legal protection of a strictly defined circle of persons and ensuring the effectiveness of their activities in the performance of significant state and public functions, which includes inviolability and irresponsibility of the official.

Having analyzed the essence of legal immunities, summarizing scientific works on this issue, we can highlight certain characteristic features:

First of all, if privileges are to a greater extent embodied in advantages, so-called positive benefits, then immunities, on the contrary, appear in the form of negative benefits (exemption from the performance of certain duties - payment of taxes, fees, exemption from liability).

Second, immunity strives to secure the performance of official duties and those related to international, state, and public affairs.

Thirdly, the circle of persons to whom the immunity is extended should be clearly defined in the norms of international law, constitutions, and laws.

Having determined the multifaceted approaches to understanding the essence of immunity and its characteristic features, it is worth dwelling on the main features of legal immunity:

- Direct connection with the process of realization of legal responsibility. Immunity, to one degree or another, either completely exempts from responsibility or establishes special guarantees when involving responsibility and performing the relevant duties,
- Subjects covered by immunity. Being an exclusive legal category, immunity confers benefits only through legal means. The circle of subjects to which immunity is extended is strictly established in the norms of international law, constitutions, and laws, and only to the extent and to the amount that it is defined in international or domestic legislative acts,
- assignment of legal immunity. Legal immunity is aimed, first of all, at increased legal protection of a certain circle of persons to ensure effective activities in the performance of particularly important international, state, and socially significant functions,
- the scope of application of legal immunities is much narrower compared to legal benefits and privileges since legal immunity grants additional rights or exempts from obligations only in the sphere of realization of legal responsibility. In turn, the scope of application of such legal means of legal inequality as benefits and privileges is quite wide and covers many spheres of social life.

Taking into account the above, it can be stated that the most characteristic feature that distinguishes legal immunities from other legal exceptions is that, unlike benefits and privileges, it does not aim to obtain any material benefits for its owner but provides additional rights or exempts from obligations only in the sphere of realization of legal responsibility.

Continuing the research, the issue of the classification of immunities in legal science will be considered. Identifying types of immunities have theoretical and applied significance since each

type has its characteristics, which inevitably affect the expansion or narrowing of certain legal guarantees that can be extended to individuals.

Having analyzed the selected types of immunities, it can be seen that they mostly relate to ensuring the safety of certain categories of subjects (people's deputies of Ukraine, judges, diplomats, etc.) from illegal outside influence and also exempt them from the obligation to report information if it follows from their professional duties or may harm them or others.

Meanwhile, the limitation of parliamentary immunity in some states is the establishment of the so-called *In flagrante delicto*, when the parliamentarian is arrested during the commission of a crime and if he or she participated in it directly or indirectly (Pryplova 2015, 34). For example, Article 46 of the Constitution of the Federal Republic of Germany provides for the right to detain a deputy without the appropriate consent of the Bundestag in cases of detention at the scene of a crime or during the day following its commission. A similar norm is enshrined in the provisions of Article 26 of the Constitution of the French Republic (Kitsan 2017, 126). Analogous prescriptions are also contained in the legislation of Bulgaria, Lithuania, Moldova, Japan, and other countries. In our opinion, such legislative regulation of this issue is completely justified and appropriate; therefore, it should be considered when making relevant changes to the Criminal Procedure Code of Ukraine on this issue.

In the USA, the legislative practice of regulating the issue under study applies only to some types of offenses and only during the parliamentarian's stay at the session or on the way to the session and back. In particular, part 1 of section 6 of Article 1 of the Constitution of the United States of 1787 provides that in all cases, except in cases of treason, felony, and disorderly conduct, parliamentarians shall have the privilege of freedom from arrest during their attendance at the session of the respective house and returning from there; any speech or debate in each house of the US Parliament they cannot be asked in any other place (Kolomoiets, Martseliak, Marchuk 2009, 381).

As can be seen, the practice of legislative regulation of parliamentary immunity in foreign countries has a rather versatile character. However, in Ukraine, the inviolability of such persons is unprecedentedly extensive, which greatly complicates the investigation of crimes committed by them.

Thus, touching on the issue of species classification (division) of legal immunities in a domestic legal opinion, we should note that several researchers justify their approaches to this division. Based on the analysis of these approaches, we can note that the classification (division) of immunities by species is carried out in the following directions: depending on the nature of the functions they perform; depending on the scope of their implementation; depending on their character; depending on which objects immunity is provided; depending on the subject; on volume.

CONCLUSION

Having studied the nature of legal immunities, it can be stated that they are considered multifaceted legal phenomena in today's conditions. Fundamental legal science pays considerable attention to the nature of immunities in law. Considering this, immunity in law has the following characteristic features:

- Direct connection with the process of realization of legal responsibility. Immunity, to one degree or another, completely exempts from responsibility or establishes special guarantees when involved in responsibility and performing the relevant duties.
- Circle of persons to whom immunity is extended. Being an exclusive legal category, immunity confers benefits only through legal means. The range of subjects to which immunity is extended is strictly formalized in the law.
- Assignment of legal immunity. First, legal immunity is aimed at increased legal protection of a certain circle of persons.
- The scope of application of legal immunities is much narrower than legal benefits and privileges since legal immunity grants additional rights or exempts from obligations only in realizing legal responsibility. Unlike benefits and privileges, it does not aim to obtain material benefits for its owner.
- They are established for performing the corresponding duties (powers) in the corresponding state position.

The most common in legal science is the classification of immunities in law by subjects with the corresponding immunity. Among the types of such legal immunity, the following should be distinguished: immunity of the state; diplomatic immunity (right of extraterritoriality); legal immunity of a special category of citizens (President of Ukraine, people's deputies, judges, etc.); witness immunity, and more.

Other approaches to the classification of immunities in law are the following: depending on the nature of the functions they implement; depending on the scope of their implementation; depending on their character; depending on which objects immunity is provided; depending on the subject, on volume.

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