UDC 343.1
DOI https://doi.org/10.32849/2663-5313/2022.10.11

***Hryhorii Denysenko,***
*PhD in Law, Postdoctoral Student, National Academy of Internal Affairs, 1, Solomianska square, Kyiv, Ukraine, postal code 03035, szrukraine@ukr.net*
***ORCID:*** *orcid.org/0000-0003-4132-8195*

***Mykola Pohoretskyi,***
*PhD in Law, Researcher, Scientific Institute of Public Law, 2a, Heorhii Kirpa street, Kyiv, Ukraine, postal code 03055, pognikolay@gmail.com*
***ORCID:*** *orcid.org/0000-0003-2888-0911*

Denysenko, Hryhorii, Pohoretskyi, Mykola (2022). Ensuring witness immunity as a guarantee of professional secrets in criminal proceedings. *Entrepreneurship, Economy and Law, 10*, 70–82, doi: https://doi.org/10.32849/2663-5313/2022.10.11

# ENSURING WITNESS IMMUNITY AS A GUARANTEE OF PROFESSIONAL SECRETS IN CRIMINAL PROCEEDINGS

**Abstract.** ***Purpose.*** The purpose of the article is to study witness immunity as a guarantee of professional secrets in criminal proceedings. ***Methods.*** In order to achieve the research purpose, the authors use the system of general scientific and specific methods of scientific knowledge used in legal science. The general dialectical method of scientific cognition of real-life phenomena and processes enables to consider witness immunity in criminal proceedings as a guarantee of professional secrets consisting of interrelated elements. The method of system analysis is used to analyse the legal provisions governing witness immunity in criminal procedure in Ukraine, and the systemic and structural method is used to determine how witness immunity extend to individuals, who are endowed with a secret protected by law and may be exempt from the obligation to keep professional secrets. ***Results.*** The article is focused on the legal analysis of witness immunity as a guarantee of professional secrets in criminal proceedings. The general comparative legal characteristics of witness immunity in criminal proceedings being studied enables to clarify the concept, essence and tasks of witness immunity as a guarantee of professional secrets in criminal proceedings. The ratio of witness immunity, in terms of the right not to testify against close relatives and family members, as well as the list of persons who cannot be questioned as witnesses, and the principle of equality before the law and the court implies that witness immunity is defined as one of the additional guarantees of professional secrets which a witness may use in criminal proceedings. ***Conclusions.*** Witness immunity as a guarantee of professional secrecy in criminal proceedings is exercised in criminal proceedings only in respect of a person who has acquired the procedural status of a witness, is necessarily regulated in the criminal procedure legislation, is based on the protection of moral values and is a paired legal category of correlation of rights and obligations within its implementation. The essence of witness immunity as a guarantee of professional secrecy in criminal proceedings should be understood as a system of witness rights that allow a witness to be exempted from testifying in criminal proceedings. The purpose of witness immunity as a guarantee of professional secrecy in criminal proceedings is to respect the rights and freedoms of a witness, to establish guarantees for the protection of his/her rights to inviolability, to strengthen the moral foundations of justice in criminal proceedings, and to establish the basis for procedural savings from perjury. Witness immunity as a guarantee of professional secrecy in criminal proceedings is a special legal technique created specifically for achieving the socially beneficial goals of legal implementation of the procedural status of a witness in criminal proceedings and guarantees of secrecy in criminal proceedings, which establishes a procedure, status, conditions that do not correspond to reality with the purpose of arising or preventing of certain consequences of law application.

**Key words:** witness immunity in criminal proceedings, guarantee of secrecy, criminal procedure, professional secrecy, professional secret protected by law, interrogation.

## 1. Introduction

Article 3 of the Constitution of Ukraine proclaims an individual, his life and health, honour and dignity, inviolability and security shall be recognised in Ukraine as the highest social value, as well as defines human rights and freedoms, and guarantees that determine the essence and course of activ-


© H. Denysenko, M. Pohoretskyi, 2022

ities of the State (Constitution of Ukraine, 1996).

This, in turn, shapes the development course for mechanisms for the protection and defence of human rights; moreover Ukraine as a legal state shall guarantee and protect the rights, freedoms and legitimate interests of a person and citizen, which is reflected in sectoral legislation.

The legal system of Ukraine assigns a specific role to the legislation that determines the procedure of criminal proceedings and is related to the protection of the rights, freedoms and legitimate interests of all participants in criminal proceedings by applying due procedure to each participant in criminal proceedings.

One of the participants in criminal proceedings – a witness – is of particular interest in the context of the issue under study.

With the adoption of the Criminal Procedure Code of Ukraine (CPC of Ukraine), the range of witness rights was significantly expanded. These provisions regulate the conditions for the effective involvement of witnesses in criminal proceedings and provide witnesses with discretion in exercising their rights.

One of such manifestations of the discretion in criminal proceedings is witness immunity, which forms the institution of exemption of certain participants in criminal proceedings from the need to testify (Criminal Procedure Code of Ukraine, 2012).

Given that "immunity" in Latin means "exemption from something", it is worth noting that in criminal law this term is interpreted as "the exclusive right to keep secrets despite the provisions of the law", while the official enshrining of its definition in legal regulations is one of the features of a state's democracy.

The analysis and study of witness immunity in criminal proceedings has been under focus in studies by a number of proceduralists and scholars, such as R.V. Barannik, M.Yu. Veselov, M.Y. Vilhushynskyi, S.H. Volkotrub, V.O. Hryniuk, Yu.M. Hroshevyi, O.V. Kaplina, A.F. Koni, V.V. Korol, I.P. Koriakin, E.F. Kutsova, O.P. Kuchynska, T.A. Loskutova, Ye.D. Lukianchykov, S.V. Lukoshkina, V.M. Lushpiienko, V.T. Maliarenko, M.M. Mykheienko, V.V. Moldovan, V.T. Nor, M.A. Pohoretskyi, L.D. Udalova, Yu.V. Tsyhaniuk, M.M. Sheifer, O.H. Shylo, M.Ye. Shumylo, O.H. Yanovska, and others.

However, the topic of witness immunity as a guarantee of secrecy in criminal proceedings is poorly regarded in national criminal procedure science. Available studies only fragmentarily touch upon the problematic issues of witness immunity and do not fully disclose the concept of witness immunity in criminal proceedings as a means of establishing and ensuring guarantees of legislative and reasonable interference with secrets.

This is due to the fact that with the adoption of the CPC of Ukraine in 2012 and the judicial reform, new rules were introduced into the criminal procedure legislation, which necessitates a rethinking of seemingly established legal concepts and categories. That is why the study of witness immunity as a guarantee of secrecy in criminal proceedings is of particular interest.

The purpose of the article is to study witness immunity as a guarantee of professional secrets in criminal proceedings.

In order to achieve the research purpose, the authors use the system of general scientific and special methods of scientific knowledge used in legal science. The general dialectical method of scientific cognition of real-life phenomena and processes enables to consider witness immunity in criminal proceedings as a guarantee of professional secrets consisting of interrelated elements. The method of system analysis is used to analyse the legal provisions governing witness immunity in criminal procedure in Ukraine, and the systemic and structural method is used to determine how witness immunity extend to individuals, who are endowed with a secret protected by law and may be exempt from the obligation to keep professional secrets.

**2. Legal framework regulating interrogation of certain categories of persons**

The study of witness immunity as a guarantee of professional secrets in criminal proceedings is impossible without clarifying the essence and purpose of witness immunity, for implementation thereof separate grounds and procedure are established (Denysenko, 2018).

We agree with S.Yu. Nikitin that the value of immunities is determined by their purposes. The purpose of procedural immunities as guarantees of secrecy in criminal proceedings is to ensure enhanced protection and create favourable conditions for the exercise of functions by the actors of immunity. The purpose of immunity is its defining feature, that is, the reason for its existence and legislating (Nikitin, 2005).

It should be noted that the implementation of criminal procedure law can be effective and efficient only if the implementers correctly understand not only the content of the provisions, but also their concepts, features, functional purpose in the system of law, and are familiar with the specifics of different types of procedural rules.

In the CPC of Ukraine, Article 65, Part 2, persons who cannot be interrogated as witnesses because they are privy to a secret protected by law are listed, however, only a certain category of persons may be exempted from the obligation

to keep professional secrets (Criminal Procedure Code of Ukraine, 2012).

It is worthwhile to mention that the CPC of Ukraine, Article 65, Part 2, paragraphs 1-5, define the guarantees of such types of secrets:

1) attorney-client privilege
2) notarial secrecy;
3) medical privacy;
4) secrecy of confession.

In order to determine the type, absolute or relative, of the secret protected by law, it is necessary to consider the legal as well as the ethical aspects [236, p. 56]. This approach to the application of witness immunity as a guarantee of professional secrecy in criminal proceedings is determined by the legislator, namely, by granting the right to a person, who has entrusted information that later became an attorney-client privilege, notarial secrecy, medical privacy or secrecy of confession confidential, to release the holders of such a secret from the obligation to keep it indefinitely.

The regulated prohibition on interrogation of certain categories of persons as witnesses in a criminal case is due to the specific nature of the information they possess, the way it is obtained and the way it is kept secret and cannot depend on the will of the person who possesses it (Vetryla, 2016).

The categories of persons who are entitled to legally protected secrets and may be released from the obligation to keep professional secrets are defined in the CPC of Ukraine, Article 65, part 2, clauses 1-5, as follows:

1) the defence counsel, representative of the victim, of the civil plaintiff, of the civil defendant, of the legal entity in respect of whom the proceedings are conducted, legal representative of the victim, of the civil plaintiff in criminal proceedings – on the circumstances that they became aware of in connection with the performance of the functions of a representative or defence counsel;

2) attorneys – on information that constitutes attorney-client privilege;

3) notaries – on information that constitutes notarial secrecy;

4) healthcare professionals and other persons who, in connection with the performance of their professional or official duties, have become aware of an illness, medical examination, examination and its results, intimate and family life of a person – of information constituting medical privacy;

5) clergymen – on information they received during the confession of believers.

As for the first category, these are the defence counsel, representative of the victim, of the civil plaintiff, of the civil defendant, of the legal entity in respect of whom the proceedings are being conducted, and legal representative of the victim, of the civil plaintiffs in criminal proceedings have the right to preserve information about the circumstances that they became aware of in connection with the performance of the functions of a representative or defence counsel.

The grounds for the use of immunity by the persons mentioned in this category in accordance with the CPC of Ukraine, Article 65, part 2, clauses 1-5, are procedural status and information known to them in connection with their professional or factual status.

It should be noted that the defence counsel, representative of the victim, of the civil plaintiff, of the civil defendant are mostly represented by lawyers. Therefore, in the course of exercising their powers within the framework of criminal proceedings, they combine the fact that they cannot be questioned as witnesses about the circumstances they became aware of in connection with the performance of the functions of a representative or defence counsel, as well as information that constitutes attorney-client privilege. Since most scientific studies still investigate witness immunity using the category of a "defence counsel-attorney", we consider it appropriate to study the immunity of a defence counsel as a witness together with the study of the immunity of an attorney.

S.N. Burtsev argues that in criminal proceedings it is impossible to combine the opposite and mutually exclusive functions of testimony and defence to guarantee professional secrecy (Burtsev, 2016, p. 56).

That is, defence counsel immunity is not only about protecting people who perform certain tasks, as people who have "trust in the public functions of a lawyer" and for this reason, entrusting them with knowledge of facts that they would not want to share with any other people (Kruk, 2017, p. 26).

In general, the nature of the legal profession belongs to the group of so-called public trust professions (Kruk, 2017, p. 41).

For example, N.V. Osodoeva argues that any admission of interrogation of a lawyer as a witness about circumstances that he or she learned in connection with the defence undermines the very meaning of defence in criminal proceedings (Osodoeva, 2018, p. 111).

The basis of defence counsel's immunity is the fundamental principle of the general process – the equality of the parties, and that this leads to the application of the rule on the separation of procedural functions of the prosecution and the defence. If the defence counsel is obliged to testify against his/her client, there can be no question of a procedural defence against criminal prosecution (Afanaseva, 2007, p. 12).

Therefore, the defence counsel cannot be interrogated not only about the circumstances of the criminal case in which he/she participates, but also about any other circumstances that became known to him or her in connection with the application for or provision of legal support.

Such prohibitions preserve the relationship of trust between the defence counsel and the client, the lawyer and the person who provided them. The client should be absolutely sure that the attorney does not disclose or use the confidential secrets and other information communicated to his or her detriment (Sheifer, 2005, p. 97).

After all, a defence lawyer, invited by the defendant's choice or appointed by him or her, has the right to talk to him or her in private to clarify all the circumstances he or she considers necessary, and if it were permitted to question the defence counsel as a witness, the defence counsel would be obliged to report what he knows about the case, including what the accused has told him/her.

The very possibility of such interrogation of the defence counsel would cause the accused to distrust him, make the latter behave cautiously when talking to the defence counsel, and thus could prevent the full and correct clarification of facts that could be relevant to the defence of the accused. This would undermine the credibility of the defence, limit and violate the defendant's right to defence.

The law specifies that the prohibition to interrogate a defence counsel as a witness applies not only to cases where certain facts became known to the defence counsel in connection with the performance of his or her duties in the case, in particular, when the defence counsel obtained certain information through a conversation with the accused. Therefore, when the defence counsel becomes aware of a relevant fact before he or she is invited or appointed to defend the accused, he or she may be interrogated as a witness on a general basis, and another person will act as defence counsel (Ryvlina, 1971, p. 107).

The rule prohibiting the interrogation of an attorney, defence counsel of a suspect or accused person as a witness is based on a number of reasons: first, one cannot be a defence counsel and a witness at the same time; second, if it turns out that the defence counsel knows something essential in the case, regardless of his/her function as a defence counsel in this case, he/she should be removed from the defence and interrogated as a witness; third, the defence counsel cannot be interrogated as a witness regarding those circumstances, which he/she became aware of in the course of performing his/her functions (e.g. from a conversation with the accused), even if he/she was dismissed from the defence; fourth, if the defence counsel could be questioned as a witness regarding something he/she he or she had learned from the accused, his or her relatives and other persons who had sought legal support, the credibility of the defence counsel would be seriously undermined; fifth, the accused and his or her relatives who use the assistance of a defence lawyer should be guaranteed the opportunity to freely tell him or her whatever they consider necessary without fear that what they say will not be used to the detriment of the accused; and, sixth, the defence counsel is involved in the case in order to defend the accused, not to incriminate him (the law gives the investigating authorities and the court sufficient powers for this) (Lushpiienko, 2018, p. 45).

It seems that the regulatory mechanism for choosing who cannot be interrogated as a witness, defence counsel, representative of the victim, of the civil plaintiff, of the civil defendant – an attorney is clear and "classic", but several theoretical and practical problems exist.

For example, the provisions of the CPC of Ukraine are subject to detailing in terms of clarifying the list of persons who cannot be interrogated as witnesses about information constituting attorney-client privilege. Thus, part 1 of Article 22 of the Law of Ukraine "On the Bar and Practice of Law" defines attorney-client privilege as any information that has become known to the attorney, to the attorney's assistant, trainee attorney, a person employed by the attorney, about the client, as well as the issues on which the client (a person who was denied the conclusion of the agreement for provision of legal assistance on the grounds provided for by this Law) applied to the attorney, law firm or law office, the content of the attorney's advice, consultations, explanations, documents drawn up by the attorney, information stored on electronic media and other documents and information received by the attorney in the course of the practice of law (Pohoretskyi, 2015, pp. 11-12).

The Rules of Professional Conduct, Article 10, paragraph 5, stipulates that an attorney shall ensure the understanding and observance of the principle of confidentiality by his or her assistants, trainees and other persons employed by the attorney (law firm, law office) (Rules of Professional Conduct, 2017).

Thus, we believe that it is necessary to amend the CPC of Ukraine, Article 65, part 2, clause 2, in a new wording: "2) attorneys, legal assistants, trainees and other persons employed by the attorney (law firm, law office) – on information constituting attorney-client privilege". This was also supported by 60% of respondents.

In addition, the comparison of the texts of the CPC of Ukraine, Article 65, part 2, paragraph 2, and the Law of Ukraine "On the Bar and Practice of Law", Article 22, part 1, reveals a discrepancy in the subject matter of immunity. For example, the CPC of Ukraine, Article 65, part 2, paragraph 2, stipulates that the subject matter is information constituting attorney-client privilege, and the Law of Ukraine "On the Bar and Practice of Law", Article 22, part 1, states that attorney-client privilege is any information, ... and matters, of which the client ... applied to the attorney ..., the content of the attorney's advice, consultations, explanations, documents drawn up by the attorney, information stored on electronic media, and other documents and information received by the attorney in the course of his or her practice of law.

The Rules of Professional Conduct, Article 10, slightly expands the list of what is included in the concept of "attorney-client privilege". It is determined that the principle of confidentiality is not limited in time.

Attorney-client privilege is the fact that a person has applied for legal assistance; any information that has become known to the attorney, law firm, law office, law firm's association, attorney's assistant, trainee or other persons employed by the attorney (law firm, law office), in connection with the provision of professional legal assistance or a person's application for legal assistance; the content of any communication, correspondence and other communications (including the use of communication means) of the attorney, attorney's assistant, trainee with a client or a person who has applied for professional legal assistance; the content of advice, consultations, explanations, documents, data, materials, things, information prepared or collected, received by the attorney, attorney's assistant, trainee or provided by him or her to the client within the framework of professional legal assistance or other types of practice of law (Rules of Professional Conduct, 2017).

Therefore, allowing for the provisions of the Law of Ukraine "On Information," Article 1, Part 1, para. 3, that information is any information and/or data that can be stored on material carriers or displayed electronically (Law of Ukraine On Information, 1992), we believe that when determining the subject of interrogation covered by immunity, it is necessary to use the concept of attorney-client privilege, which is detailed in the Rules of Professional Conduct, Article 10, paragraph 2.

In support of this perspective, it should be noted that violation of the Rules of Professional Conduct is a ground for placing disciplinary liability on an attorney.

Allowing for the CPC of Ukraine, Article 65, Part 3, lawyers-advocate, representatives of victims and civil plaintiffs, defendants in relation to the said confidential information may be released from the obligation to keep professional secrecy by the person who entrusted them with this information to the extent determined by him/her. Such release shall be made in writing and signed by the person who entrusted the said information.

Hence, the right of an attorney to testify in cases where he or she and his or her client are interested in such testimony should be considered.

However, the Law of Ukraine "On the Bar and Practice of Law" establishes cases when a lawyer shall disclose attorney-client privilege, despite the imperative requirement of the CPC of Ukraine, Article 65, Part 2, paragraph 2.

Thus, the Law of Ukraine "On the Bar and Practice of Law," Article 22, part 6, establishes that the submission by an attorney in the prescribed manner and in cases provided for by the Law of Ukraine "On prevention and counteraction to legalisation (laundering) of proceeds from crime, financing of terrorism and financing of proliferation of weapons of mass destruction," reported to the central executive body that implements public policy on prevention and counteraction to legalisation (laundering) of proceeds from crime, financing of terrorism and financing of proliferation of weapons of mass destruction, is not a violation of attorney-client privilege.

The said provision contradicts Article 65, Part 2, paragraph 2, and Article 3 of the CPC of Ukraine, as well as creates a situation where it is necessary to implement Article 9(3) of the CPC of Ukraine, therefore we consider it appropriate to amend, with due regard to the above, the second sentence of part 3 of Article 65 of the CPC of Ukraine adding paragraph 2 as follows: "Submission by the persons referred to in clauses 1-3 of part two of the present article in the prescribed manner and in cases provided for by the Law of Ukraine "On Prevention and counteraction to legalisation (laundering) of proceeds from crime, financing of terrorism and financing of proliferation of weapons of mass destruction", information to the central executive body that implements public policy on prevention and counteraction to legalisation (laundering) of proceeds from crime, financing of terrorism and financing of proliferation of weapons of mass destruction is not a violation of the duty to keep professional secrecy."

There is also an opinion that the defence counsel, despite the prohibition of his interrogation, has the right to testify in the interests of his client, for example, on the fact of falsifica-

tion of case materials by the investigator, at his/her request.

Moreover, we believe that this can relate to cases of ensuring client safety, provoking a crime, etc.

This opinion is confirmed by court practice. For example, from the text of the ruling of the investigating judge of the Kyiv-Sviatoshynskyi District Court of Kyiv Region, it follows: "Attorney A.V. Hrubskyi, acting on behalf of Person_2, filed a motion with the investigating judge of the Kyiv-Sviatoshynskyi District Court of Kyiv Region, arguing that on November 06, 2018 at 16 hrs. 26 minutes, he received a message on Facebook from citizen Person_3, in which the latter insisted on a personal meeting with Person_2 in order to provide important information, that concerned Person_2 personally. Person_2 refused to meet in the city and suggested that Person_3 come to the office at 143a Saksahanskyi Street, Kyiv, where the citizen Person_2 is engaged in public and political activities, namely, he acts as the Head of the Kyiv regional party organisation "Valentyn Nalivaichenko's Movement "Spravedlyvist". At 17 hrs. 09 minutes, Person_2's mobile phone number was called by Person_3 from the number (Number_1).

From a telephone conversation with Person_3, Person_2 learned that an SBU operative had informed him that a statement had been filed on behalf of Person_3, reporting that Person_2 had threatened Person_3 and other citizens with weapons. In a telephone conversation, Person_3 assured Person_2 that he had not made such a statement. After a face-to-face meeting in the presence of a police officer, Person_3 and Person_2 decided to file a criminal complaint.

Because Person_3 believes that his life and health as a public figure are in danger, and Person_2 is the owner of a firearm, in order to avoid possible provocations and slander by an unknown person, who had falsified the statement, they arrived at the Kyiv-Sviatoshynskyi Police Department of the Main Department of the National Police in Kyiv region to initiate interrogation as witnesses in criminal proceedings No. 12018110200006415 of November 06, 2018 on the grounds of an offence under Article 358 of the Criminal Code of Ukraine... This situation prompts the applicant to think about the development of a provocative scenario, carefully worked out by a specialist.

Analysing the circumstances of the crime committed by the unknown, having read the content of the protocols of interrogation of witnesses and the victim, the attorney believes that at the moment there is an unimaginable threat to the lives of citizens Person_2 and Person_3 (Pohoretskyi, 2015). Thus, the attorney reported the information provided to him by his client, but the decision does not contain any information about the permission to disclose such data by the attorney.

Another category of persons, notaries, cannot be interrogated as witnesses about information that constitutes notarial secrecy (the CPC of Ukraine, Article 65, part 2, clause 3). Notaries, like any other persons, are not immune from possible procedural involvement as participants in criminal procedural legal relations. Given the provision that a witness is warned of liability for refusing to testify and for giving deliberately false testimony in order to clarify the subject matter of notarial secrecy, this concept should be studied comprehensively.

According to Article 8 of the Law of Ukraine "On Notaries" (hereinafter – the Law), notarial secrecy is a set of information obtained in the course of a notarial act or an application to a notary by a person concerned, including information about the person, his or her property, personal property and non-property rights and obligations, etc. (Law of Ukraine On Notary, 1993).

The perspective that notarial secrecy is a type of professional secrecy dominates in science.

For example, O.O. Kulinich argues that in case of a private notary, the above information will constitute a professional secret, and in case of the activities of a notary public, automatically such information will have the status of an official secret (Kulinich, 2008, p. 75). In any of these legal regimes, such information should be provided with criminal procedural safeguards.

It is noteworthy that in the CPC of Ukraine, the legislator uses the concept of "information constituting notarial secrecy". This definition does not fully cover the concept of notarial secrecy, which includes not only information about notarial acts, but also, according to Article 8 of the Law, "a set of information, obtained in the course of a notarial act or an application to a notary by a person concerned, including information about the person, his or her property, personal property and non-property rights and obligations," and therefore the CPC of Ukraine needs an updated definition of notarial secrecy.

According to Article 5 of the Law, a notary shall keep confidential the information received in connection with notarial acts. Article 8 of the Law states that a notary may not testify as a witness regarding information that constitutes notarial secrecy, unless required by persons on whose behalf or in respect of whom notarial acts were performed. This is due to the fact that

the notary is only the holder of information constituting notarial secrecy, the authorised owner is the person who applied to the notary to perform the relevant notarial acts (Kostin, 2014, p. 30). First of all, it is in the interests of the latter that the state has introduced a legal regime for the protection, defence and disclosure of notarial secrets. Therefore, a notary may not "voluntarily" disclose the latter on his or her own initiative.

If a notary acts as a witness in criminal proceedings regarding the circumstances of the case, he or she has the immunity provided for in the CPC of Ukraine, Article 65, part 2, clause 3. By type, such immunity refers to special witness immunity (Kohut, 2018). However, in the scientific literature, it is also referred to as alternative immunity. Alternative witness immunity is when a person has the right to refuse to testify as a witness regarding the conduct of his/her professional activities. In this case, the ability to testify depends not so much on the will of the witness as on the will of the client who has asked him or her to testify. The practice of granting notary witnesses with alternative immunity is found in Bulgaria (Article 135 of the Civil Procedure Code), Hungary (paragraph 170 of the Civil Procedure Code), Germany (Article 383 of the Civil Procedure Code), Poland (Article 261 of the Civil Procedure Code) (Serheichuk, 2010).

It is essential to mark that the provisions of Article 8-1 of the Law stipulate that any interference with the activities of a notary, in particular with the aim of preventing him/her from performing his/her duties (the protection of notarial secrecy is a duty, not a right, of a notary – H.D.) or inducing him/her to commit illegal acts, including demanding from him/her, him/her assistant, other workers who are employed by the notary, information constituting notarial secrecy shall be prohibited and shall entail liability in accordance with the law.

It should be noted that the prohibition on interrogating a notary as a witness, as well as an attorney, defence counsel... is not absolute. It is worth noting that in case of interrogation of a notary as a witness in connection with the certification of a multilateral transaction, the provisions of the CPC of Ukraine, Article 65, part 3, apply to each party. That is, if at least one of the parties to the legal act (even for objective reasons, such as residence abroad, death, etc.) has not released the notary in writing from the obligation to keep notarial secrecy, indicating the scope of information that the notary is entitled to disclose and has not personally signed the document, the notary cannot testify as a witness. Undoubtedly, every notary who is interrogated as a witness would like to make sure that the person who released him or her from the obligation to maintain notarial secrecy made such a release in the presence of the notary and leave a copy of the relevant "release". This would be correct and logical based on the provisions of the CPC of Ukraine, Article 65, part 3, but in practice this provision is interpreted ambiguously. Therefore, today it often happens that the investigator, having "explained" under the signature in accordance with Article 65 of the CPC, does not show the notary the document that released him or her from the obligation to keep notarial secrecy. Accordingly, we suggest that in this case, the notary should dictate the following phrase to the investigator: "I cannot testify due to the investigator's failure to comply with the provisions of the CPC of Ukraine, Article 65, part 3," or to write it down in accordance with the CPC of Ukraine, Article 66, part 1, paragraph 7. However, the best option would be to amend the CPC and explicitly provide for the obligation to leave a copy of such "consent" with a notary.

In practice, there are situations when the investigator shows the notary a paper containing a statement addressed to the investigator in which the person releases the notary from the obligation to keep notarial secrecy, indicating the scope of this secrecy, and the person's signature. Such a statement may raise doubts for the notary, as it is unclear whether it is made voluntarily, whether it is signed by the person who released the notary from the obligation to keep notarial secrecy, etc. Undoubtedly, the best option during the interrogation of a notary is to exercise the right to use the legal assistance of a lawyer in accordance with the CPC of Ukraine, Article 66, part 1, paragraph 2.

In the criminal procedure law science, it is proposed that a notary should be released from the obligation to keep notarial secrecy if he or she is notified of suspicion. We support this perspective with the remark that they should be released if they are brought to criminal liability at all. For example, the CPC should provide for a mechanism to protect this data from further dissemination. A similar provision is contained in Part 2 of Article 16 of the Fundamentals of the Russian Federation's Notary Law, according to which a court may release a notary from the obligation to keep secrets if a criminal case is commenced against him or her in connection with a notarial act.

There is an opinion that notaries should be deprived of witness immunity altogether (Yarmak, 2014, p. 135). We believe this is inappropriate, as this would negate the essence of notarial secrecy as envisaged by the legislator. We are convinced that a notary cannot be questioned

about the fact of performing a notarial act, but it is another matter when a notary acts as a witness regarding circumstances that do not contain notarial secrecy.

The shortcoming of the CPC of Ukraine, Article 65, part 2, clause 3, is that it does not mention persons who are entitled by law to perform notarial acts and who are also obliged to keep notarial secrecy in accordance with the Law (consular offices, local government officials, diplomatic missions, etc.). We believe that this provision should be supplemented by stipulating that they also cannot be interrogated as witnesses about information that constitutes notarial secrecy by virtue of Article 8 of the Law. In addition, 75% of respondents supported the idea of granting witness immunity to a notary assistant. Therefore, we believe that the CPC of Ukraine, Article 65, part 2, clause 3, should be reworded as follows: "3) notaries, notary assistants, as well as other persons entitled to perform notarial acts – on information constituting notarial secrecy".

However, not all countries provide witnesses with notary immunity under the secrecy of a notarial act. For example, Article 9 of the Law of the Republic of Belarus "On Notaries and Notarial Activities" expressly enables the competent state authorities to obtain information on notarial acts performed. Notaries are also absent from the list of persons who cannot be interrogated as witnesses in the CPC of Belarus, Article 60, part 2.

The next category of persons is healthcare professionals and other persons who, in connection with the performance of their professional or official duties, have become aware of an illness, medical tests, examination and its results, intimate and family life of a person – information constituting medical privacy.

Medical privacy is based on the Hippocratic Oath and Ukrainian Doctor's Oath. The Hippocratic Oath states, in particular: "Whatever I learn about in the course of my professional activities or outside of them, whatever I see or hear about the actions of human life that should never be disclosed, I will keep silent, considering it a secret." In the Doctor's Oath, approved by the Presidential Decree of 15 June 1992, everyone who takes it swears to "keep medical secrets and not to use them to the detriment of a person".

According to N.Z. Rohatynska, the persons who cannot be interrogated as witnesses about information constituting medical secrecy include: medical and pharmaceutical workers, as well as employees of healthcare institutions and bodies; persons who have become aware of such information in connection with their studies; employees of the police, correctional and labour institutions, correctional and labour, educational and labour institutions; employees of pre-school educational institutions, secondary rehabilitation schools and vocational schools for social rehabilitation, training and rehabilitation centres; persons conducting pre-trial investigations; prosecutors, judges and others. Intentional disclosure of medical secrets by a person who became aware of it in connection with the performance of professional or official duties, if such an act has caused serious consequences, entails criminal liability under Article 145 of the Criminal Code of Ukraine (Rohatynska, 2016, p. 87).

L.D. Udalova believes that it is advisable to clarify the content of the provision (paragraph 4) of part 2 of Article 65 (CPC of Ukraine – H.D.), as the medical privacy is not absolute. Article 40 of the Fundamentals of Legislation of Ukraine on Healthcare stipulates that healthcare professionals and other persons who, in the course of their professional or official duties, become aware of an illness, medical examination, inspection and their results, or an intimate aspect of a citizen's life, have no right to disclose this information, except in cases provided for by law. Thus, in cases clearly defined by law, these persons may disclose the information. Therefore, the CPC of Ukraine, Article 65, part clause 42, should be supplemented with the words "except for cases provided for by legislative acts" after the word "persons" (Udalova, 2013, p. 286).

Moreover, Article 39-1 of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Healthcare" stipulates that a patient has the right to privacy about his or her health status, the fact of seeking medical care, diagnosis, as well as information obtained during his or her medical examination. It is prohibited to demand and provide information about the patient's diagnosis and treatment methods at the place of work or study (Law of Ukraine Fundamentals of the legislation of Ukraine on health care, 1992). In addition, I.Ya. Foynitsky said: "The duty of medical privacy exists only until the threshold of the courtroom" (Foinytskyi, 1910, p. 245).

**3. Particularities of the status of certain categories of persons in criminal proceedings**

Another category of persons who cannot be interrogated as witnesses, as they are entitled to legally protected secrets, are clergymen, about information received by them during the confession of believers.

The secret of a confession to a clergyman is one of the types of professional secrets – confidential information entrusted to representatives of certain professions by citizens in order to exercise (protect) their rights and legitimate interests (including the right to freedom

of worldview and religion), which, according to Part 1 of Article 35 of the Constitution of Ukraine, includes the freedom to profess any religion or not to profess any, to freely perform religious cults and rituals, and to conduct religious activities).

In this case, unlike a confession to a psychologist, doctor, or notary, which may not be valid, and if it does, it is solely at the discretion of the confessor, religious confession inevitable, since confession itself is already a procedure of full confession of sins. The sacrament of repentance requires that everyone who repents must first make an examination of conscience. In order to make an examination of conscience, one must first recall all one's sins. In addition, it should be borne in mind that the believer "in order to fulfil the conditions of a good confession" must confess all sins to the priest. Thus, it can be argued that the content of a confession is information entrusted by a citizen to a priest, which is of the most personal (intimate, secret) nature among other types of entrusted information constituting professional secrets.

Symbolising the believer's reconciliation with God, confession takes the form of repentance for one's sins before a priest who forgives sins. Unlike Protestantism, which uses public repentance, Orthodoxy and Catholicism consider confession to be a sacrament. According to Part 5 of Article 3 of the Law of the Ukrainian SSR "On Freedom of Conscience and Religious Organisations" of 23 April 1991, no one has the right to demand from the clergy information obtained during the confession of believers.

As for the keeper of the secret of confession protected by law, O. Prystinskyi notes that both the fact of belonging to a hierarchical level and the fact of belonging to a religious organisation shall be confirmed by relevant official documents. Such documents, in particular, may include the journals of the Holy Synod and a decree (for bishops), as well as a certificate of ordination to the presbyterate and a decree (for priests). The above definition also implies that a clergyman must officially belong to a particular religious organisation (parish, monastery, etc.) whose statute is registered in accordance with the procedure established by law (Prystinskyi, 2011, p. 23).

However, this does not mean that the protection of secrets of confession exempts a clergyman from questioning about information obtained in other ways. Furthermore, it should be considered that not every clergyman is allowed to receive confessions. These persons can only be those who have been ordained and have the right to confess according to church law (bishops, priests, etc.).

At the same time, in the literature review reveals controversial opinions on certain aspects of the impossibility of interrogating priests as witnesses about the information they received during the confession of believers. First, some authors believe that the secret of confession can be disclosed by a priest without releasing the person who entrusted him with such information from the obligation to keep it.

For example, I. Potaichuk notes that if he (a person – H.D.), on the contrary, develops sinful ideas in oneself, and moreover, seeks support in one's ideas from a priest, the latter is obliged to contact law enforcement agencies, because this is not a violation of confession, since it is not a confession in principle. As for the case when a person confesses to a crime that has already been committed, the situation is more complicated. He shall bear both the social punishment imposed on him by a verdict on behalf of the state and the spiritual punishment – the imposition of epithema, the inducement of a person to alleviate his guilt by confessing to law enforcement agencies. It is important that he takes the initiative himself (Potaichuk, Kompaniiets, 2013, p. 11).

On the contrary, I.B. Korol argues that confession is absolutely immune. For example, the author notes that the legal protection of confession by the State does not go beyond the regime of separation of church and state, based on the following considerations. On the one hand, the state in no way violates or interferes with the rite of confession, as it only sanctions the secret already proclaimed by the church. On the other hand, the disclosure of confession can cause significant harm to citizens, as it ultimately violates their constitutional rights to privacy, family life and freedom of thought (Articles 32, 34 of the Constitution of Ukraine). In other words, the disclosure of confession goes beyond the internal activities of the church and therefore requires criminal law protection. Accordingly, the protection of the secret of confession should be guaranteed in the field of criminal justice (Korol, 2008, pp. 197-198).

D.O. Shynharov is an opponent of the disclosure of confession under any circumstances. The author notes that the obligation of a clergyman to keep confession secret is a close intertwining of religious norms, moral norms and legal provisions. To sum up, the secrecy of confession is absolute and, therefore, it is impossible to establish procedural procedures for obtaining permission for its disclosure by the person who confided in it in the event of the death of such a person (Shynharov, 2017, p. 61).

The third approach to disclosing the secret of confession is as follows: A.Ye. Lednev, denying

in general the disclosure of the secret of confession, does not exclude such a possibility and notes that the priest should be held liable for violating the secret of confession under canon law, and the state does not care about this. After all, in the author's opinion, since the church is separated from the state, the issues of confidentiality and immunity of the priest as a witness should be excluded from the provisions of state law and be canonical norms (Lednev, 2006, pp. 105-106).

Another controversial issue is the freedom to profess any religion or none. For example, V. Borodchuk notes that confession is practised in the Orthodox, Greek Catholic and Roman Catholic churches, while there are many other religious denominations in Ukraine. Thus, intentionally or unintentionally, the authors of the draft law protect only some of the existing denominations with this provision and de facto put them in a more privileged position. Although the author refers to the draft Criminal Code of Ukraine, we believe that, developing the idea regarding the secrets of any religion and the freedom of a person to profess any religion, it should be noted that such freedom and secrets are not limited by the protection in the context of the CPC of Ukraine, Article 65, part2, para. 5.

It should be noted that the secrecy of confession is not recognised and protected in all states. If the confession is recognised as a secret, it is protected in criminal proceedings by introducing material requirements for admissibility of evidence, which establish inadmissibility of information that the clergyman has learned from the confession. In addition, confession as a religious rite belongs to the Christian religion, but in some cases, inadmissible evidence is information that has become known to a clergyman of any religion if it became known to him as a result of a confidential conversation with a believer on a spiritual topic (USA). The secret of confession should not be absolute, and both the clergyman and the believer should have the procedural opportunity to break the secret of confession, since such a secret is not legally established.

Given the above and allowing for the constitutional provisions on the freedom to practice any religion (Article 35 of the Constitution of Ukraine), we consider it necessary to amend the CPC of Ukraine, Article 65, Part 2, paragraph 5, as follows: "clergymen (ecclesiastic) – in relation to information that they have learned as a result of a confidential conversation with a believer on a spiritual topic".

In the criminal procedure literature, proposals have been made to expand the circle of persons who are not subject to interrogation as witnesses. Thus, this circle should be supplemented by an interpreter if he or she participated in the conversation between the attorney and his or her client. We consider this opinion to be rational and deserving of support. After all, the current CPC of Ukraine contains provisions on the participation of an interpreter in criminal proceedings for persons who do not speak the state language or do not speak it sufficiently in terms of involving an interpreter in investigative and search actions and court proceedings, during judicial control and the translation of procedural decisions, and the CPC of Ukraine defines the participation of an interpreter in the defence as the right of a person to engage an interpreter. However, given the mandatory participation of a defence counsel in proceedings against persons who do not speak the language of criminal proceedings, we consider it necessary to amend the CPC of Ukraine, Article 65, Part 2, by adding paragraph 2-1) of Part 2 of Article 65 of the CPC of Ukraine as follows: "2-1) an interpreter – with respect to information that he/she became aware of during his/her participation in a confidential conversation between the defence counsel and the suspect, accused, convicted or acquitted person;".

**4. Conclusions**

Witness immunity as a guarantee of professional secrecy in criminal proceedings is exercised in criminal proceedings only in respect of a person who has acquired the procedural status of a witness, is necessarily regulated in the criminal procedure legislation, is based on the protection of moral values and is a paired legal category of correlation of rights and obligations within its implementation. The essence of witness immunity as a guarantee of professional secrecy in criminal proceedings should be understood as a system of witness rights that allow a witness to be exempted from testifying in criminal proceedings. The purpose of witness immunity as a guarantee of professional secrecy in criminal proceedings is to respect the rights and freedoms of a witness, to establish guarantees for the protection of his/her rights to inviolability, to strengthen the moral foundations of justice in criminal proceedings, and to establish the basis for procedural savings from perjury.

Witness immunity as a guarantee of professional secrecy in criminal proceedings is a special legal technique created specifically for achieving the socially beneficial goals of legal implementation of the procedural status of a witness in criminal proceedings and guarantees of secrecy in criminal proceedings, which establishes a procedure, status, conditions that do not correspond to reality with the purpose

of arising or preventing of certain consequences of law application.

Witness immunity as a guarantee of professional secrecy in criminal proceedings is a legal means by which the legal provisions enshrine the probable assumption that certain categories of persons are endowed with a legally protected professional secret which is presumed to be valid until facts refuting it are proven, or such persons will not be released from the obligation to keep professional secrets in order to protect various interests (of the individual, society and the state).

**References:**

Afanaseva, V.Y. (2007). Pravo ne davat pokazaniia v sviazi s vypolneniem ugolovno-protcessualnykh obiazannostei [The right not to testify in connection with the performance of criminal procedural duties]. *Izvestiia Rossiiskogo gosudarstvennogo pedagogicheskogo universiteta imeni A.I. Gertcena. Aspirantskie tetradi – Izvestia of the Russian State Pedagogical University named after A.I. Herzen. Postgraduate tetrads, 9(29),* 10-14 (in Russian).

Burtsev, S.N. (2016). Pryroda professyonalnoho svydetelskoho ymmunyteta advokata v uholovnom protsesse y eho ohranychenyia. Rossyiskoe zakonodatelstvo: novые problemы, novые reshenyia [The nature of a lawyer's professional witness immunity in criminal proceedings and its limitations. Russian legislation: new problems, new solutions]. M.: Mezhdunarodnыi yurydycheskyi ynstytut (in Russian).

Denysenko, H.V. (2018). Instytut imunitetu svidka u kryminalno-protsesualnomu pravi Ukrainy ta Velykoi Brytanii: porivnialno-pravovyi analiz [Institute of witness immunity in the criminal procedural law of Ukraine and Great Britain: a comparative legal analysis]. *Visnyk kryminalnoho sudochynstva – Herald of criminal justice, 2,* 185-194 (in Ukrainian).

Foinytskyi, Y.Ia. (1910). Kurs uholovnoho sudoproyzvodstva [Course of criminal proceedings]. S. -Pb.: Typohrafyia t-va «Obshchestvennaia Polza» (in Russian).

Kohut, N.M. (2018). Imunitet svidka u kryminalnomu protsesi Ukrainy [Immunity of a witness in the criminal process of Ukraine]. Kyiv (in Ukrainian).

Konstytutsiia Ukraïny vid 28 chervnia 1996 r. [Constitution of Ukraine dated June 28, 1996]. (1996). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text (in Ukrainian).

Korol, I.B. (2008). Zabezpechennia konfidentsiinosti spovidi hromadian kryminalno-pravovymy zasobamy: propozytsii do zakonodavstva [Ensuring the confidentiality of citizens' confessions by criminal legal means: proposals for legislation]. *Aktualni problemy vdoskonalennia chynnoho zakonodavstva Ukrainy – Current problems of improving the current legislation of Ukraine, 20*, 194-200 (in Ukrainian).

Kostin, M. (2014). Pravova pryroda «notarialnoi taiemnytsi» na osnovi balansu osobystykh i publichnykh interesiv [The legal nature of "notarial secrecy" based on the balance of personal and public interests]. *Notariat Ukrainy – Notary of Ukraine, 6 (6),* 28-33 (in Ukrainian).

Kruk, E. (2017). Obowiązek zachowania tajemnicy adwokackiej jako okoliczność uzasadniająca odmowę zeznań w trybie art. 180 § 2 k.p.k. Studia Iuridica Lublinensia. 4, 25-41 (in Polish).

Kryminalnyў protsesualnyў kodeks Ukraïny : Zakon Ukraïny vid 13 kvitnia 2012 r. № 4651-VI [Criminal Procedure Code of Ukraine: Law of Ukraine dated April 13, 2012 No. 4651-VI]. (2012). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17 (in Ukrainian).

Kulinich, O.O. (2008). Pravova okhorona konfidentsiinoi informatsii, shcho perebuvaie v rezhymi konfidentsiinoi taiemnytsi [Legal protection of confidential information that is in the regime of confidential secrecy]. *Problemy tsyvilnoho ta hospodarskoho prava – Problems of civil and economic law, 1,* 74-78 (in Ukrainian).

Lednev, A.E. (2006). Pokazanyia svydetelia kak uholovno-protsessualnoe dokazatelstvo [Testimony of a witness as criminal-procedural evidence]. *Candidate's thesis.* N. Novhorod (in Russian).

Lushpiienko, V.M. (2018). Pokazannia svidka yak protsesualne dzherelo dokaziv u kryminalnomu protsesi Ukrainy [Testimony of a witness as a procedural source of evidence in the criminal process of Ukraine]. *Candidate's thesis.* Kyiv: Kyivskyi natsionalnyi universytet imeni Tarasa Shevchenka (in Ukrainian).

Nikitin, S.Iu. (2005). Svydetelskyi ymmunytet v rossyiskom uholovnom protsesse [Witness immunity in the Russian criminal process]. *Candidate's thesis.* Cheliabynsk (in Russian).

Osodoeva, N.V. (2018). Vozmozhen li dopros advokata po ugolovnomu delu v sudebnom zasedanii v kachestve svidetelia? Gosudarstvennaia sluzhba i kadry, 2, 110-112 (in Russian).

Pohoretskyi, M.M. (2015). Kryminalni protsesualni harantii advokatskoi taiemnytsi u dosudovomu rozsliduvanni [Criminal procedural guarantees of lawyer confidentiality in pre-trial investigation]. *Candidate's thesis.* Kyiv: Nats. akad. vnutr. sprav (in Ukrainian).

Potaichuk, I.V., Kompaniiets, D.O. (2013). Uchast sviashchennosluzhyteliv v yakosti svidkiv u kryminalnomu protsesi Ukrainy [Participation of clergymen as witnesses in the criminal process of Ukraine]. *Chasopys Natsionalnoho universytetu «Ostrozka akademiia» – ournal of the National University "Ostroh Academy", 1(7),* 1–11 (in Ukrainian).

Pravyla advokatskoi etyky: vid 09 chervnia 2017 roku. [Rules of Professional Conduct: dated June 9, 2017]. *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/rada/show/n0001891-17/stru#Stru (in Ukrainian).

Prystinskyi, I.O. (2011). Pravove zabezpechennia taiemnytsi spovidi v chynnomu zakonodavstvi Ukrainy ta kanonakh Pravoslavnoi Tserkvy [Legal protection of the secret of confession in the current legislation of Ukraine and the canons of the Orthodox Church]. *Advokat – Attorney, 9*, 22-26 (in Ukrainian).

Rohatynska, N. (2016). Osoby, yaki ne pidliahaiut dopytu yak svidky [Persons who are not subject to questioning as witnesses]. *Aktualni problemy pravoznavstva – Actual problems of jurisprudence, 4*, 86-89 (in Ukrainian).

Ryvlina, A.L. (1971). Radianskyi kryminalnyi protses [Soviet criminal process]. K: Vyshcha shkola (in Ukrainian).

Serheichuk, N.M. (2010). O svydetelskom ymmunytete notaryusa [On the witness immunity of a notary]. Mynsk (in English).

Sheifer, M.M. (2005). Sotcialnyi i pravovoi status svidetelia i problemy ego realizatcii v ugolovnom sudoproizvodstve Rossii [Social and legal status of the witness and problems of its realization in the criminal justice system of Russia]. *Candidate's thesis.* Samara (in Russian).

Shynharov, D.O. (2017). Zabezpechennia prav ta zakonnykh interesiv osib pid chas provedennia dopytu na stadii dosudovoho rozsliduvannia [Ensuring the rights and legitimate interests of persons during interrogation at the stage of pre-trial investigation]. *Candidate's thesis.* Kharkiv: Nats. yuryd. un-t im. Yaroslava Mudroho (in Ukrainian).

Udalova, L.D. (2013). Svidotskyi imunitet za novym KPK Ukrainy [Witness immunity under the new Code of Criminal Procedure of Ukraine]. *Yurydychnyi chasopys Natsionalnoi akademii vnutrishnikh sprav – Legal Journal of the National Academy of Internal Affairs, 1*, 284-288 (in Ukrainian).

Vetryla, E.V. (2016). Pravovaia pryroda zapreta na dopros v kachestve svydetelia otdelnыkh katehoryi lyts [The legal nature of the prohibition on interrogation as a witness of certain categories of persons Postulat], *Postulat – Postulat, 7*, 14-18 (in Russian).

Yarmak, O.M. (2014). Okremi pytannia uchasti notariusa u kryminalnomu provadzhenni [Separate issues of notary participation in criminal proceedings]. *Nashe pravo – Our Law, 4*, 133-138 (in Ukrainian).

Zakon Ukrainy Osnovy zakonodavstva Ukrainy pro okhoronu zdorovia vid 19 lystopada 1992 roku № 2801-XII [Law of Ukraine Fundamentals of the Legislation of Ukraine on health care dated November 19, 1992 No. 2801-XII]. (1992). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/2801-12 (in Ukrainian).

Zakon Ukrainy Pro informatsiiu: vid 02 zhovtnia 1992 roku № 2657-XII [Law of Ukraine On Information: dated October 2, 1992 No. 2657-XII]. (1992). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/2657-12 (in Ukrainian).

Zakon Ukrainy Pro notariat: vid 02 veresnia 1993 roku № 3425-XII [Law of Ukraine On Notary: dated September 2, 1993 No. 3425-XII]. (1993). *rada.gov.ua*. Retrieved from http://zakon2.rada.gov.ua/laws/show/3425-12/page2 (in Ukrainian).

***Григорій Денисенко,***
*доктор філософії в галузі права, докторант, Національна академія внутрішніх справ, Солом'янська площа, 1, Київ, Україна, індекс 03035, szrukraine@ukr.net*
***ORCID:*** *orcid.org/0000-0003-4132-8195*

***Микола Погорецький,***
*кандидат юридичних наук, науковий співробітник, Науково-дослідний інститут публічного права, вулиця Георгія Кірпи, 2а, Київ, Україна, індекс 03055, pognikolay@gmail.com*
***ORCID:*** *orcid.org/0000-0003-2888-0911*

## ЗАБЕЗПЕЧЕННЯ ІМУНІТЕТУ СВІДКА У КРИМІНАЛЬНОМУ ПРОЦЕСІ ЯК ГАРАНТІЯ ПРОФЕСІЙНИХ ТАЄМНИЦЬ

**Анотація.** ***Мета.*** Метою статті є дослідження імунітету свідка як гарантії професійних таємниць у кримінальному процесі. ***Методи.*** Для досягнення поставленої мети наукового дослідження використано систему загальнонаукових та спеціальних методів наукового пізнання, які використовуються в юридичній науці. Застосування загального діалектичного методу наукового пізнання реально існуючих явищ і процесів дозволило розглянути імунітет свідка у кримінальному провадженні як гарантію професійних таємниць, що складається із взаємопов'язаних елементів. Метод системного аналізу використовувався в ході аналізу норм права, що регламентують імунітет свідка у кримінальному процесі України та системно-структурний – у разі визначення поширення імунітету свідка на осіб, які наділені охоронюваною законом таємницею та можуть бути звільнені від обов'язку зберігати професійну таємницю. ***Результати.*** Статтю присвячено правовому аналізу імунітету свідка як гарантії професійних таємниць у кримінальному провадженні. За допомогою дослідженої загальної порівняльно-правової характеристики імунітету свідка у кримінальному провадженні було з'ясовано поняття, сутність та завдання імунітету свідка як гарантії професійних

таємниць у кримінальному провадженні. Співвідношення імунітету свідка в частині права не свідчити проти близьких родичів та членів сім'ї, а також переліку осіб, які не можуть бути допитані як свідки, та засади рівності перед законом і судом, полягає в тому, що імунітет свідка визначений як одна із додаткових гарантій професійних таємниць, якою може користуватись свідок під час кримінального провадження. ***Висновки.*** Імунітет свідка як гарантія професійної таємниці у кримінальному процесі реалізується у кримінальному провадженні лише щодо особи, яка набула процесуального статусу свідка, є обов'язково врегульованим у кримінально-процесуальному законодавстві, заснований на охороні моральних цінностей та є парною юридичною категорією кореспондування прав та обов'язків у межах його реалізації. Під сутністю імунітету свідка як гарантії професійної таємниці у кримінальному провадженні необхідно розуміти систему прав свідка, які дають можливість звільнення свідка від давання показань у кримінальному провадженні. Завданням імунітету свідка як гарантії професійної таємниці у кримінальному провадженні є дотримання прав та свобод свідка, встановлення гарантій захисту його прав на недоторканність, зміцнення моральних основ правосуддя у кримінальних провадженнях, а також встановлення основ процесуальної економії від лжесвідчень. Імунітет свідка як гарантія професійної таємниці у кримінальному процесі є особливим засобом юридичної техніки, що створений спеціально для досягнення суспільно корисних цілей правової реалізації процесуального статусу свідка у кримінальному провадженні, гарантій збереження таємниць у кримінальному процесі та який встановлює порядок, стан, умови, що не відповідають дійсності, та спрямований на виникнення або запобігання певних наслідків правозастосування.

**Ключові слова:** імунітет свідка у кримінальному провадженні, гарантія таємниць, кримінальний процес, професійна таємниця, охоронювана законом таємниця, допит.

*The article was submitted 18.07.2022*
*The article was revised 08.08.2022*
*The article was accepted 29.08.2022*