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УДК 343.1

ІНСТИТУТ ІМУНІТЕТУ СВІДКА У КРИМІНАЛЬНО-ПРОЦЕСУАЛЬНОМУ ПРАВІ УКРАЇНИ ТА ВЕЛИКОЇ БРИТАНІЇ: ПОРІВНЯЛЬНО-ПРАВОВИЙ АНАЛІЗ

У статті розглядається правове регулювання інституту імунітету свідків у кримінальному провадженні України та Великої Британії, спираючись на порівняльно-правовий аналіз. Виходячи з аналізу наукового дослідження вбачається, що імунітет свідка є інституцією, покликаною забезпечувати звільнення у передбачених законом випадках особи, яка підлягає допиту як свідок, від обов'язку давати показання у кримінальному провадженні.

У статті поставлено за мету здійснити ретельний аналіз установленого та функціонуючого імунітету свідка у формі процесуальної інституції, яка закріплена у нормативно-правових актах Великої Британії та порівняти її з формою, закріпленою національним Кримінальним процесуальним кодексом.

Інститут імунітету свідків знаходить своє відображення і в законодавчих актах Великої Британії: перед допитом особі роз'яснюються її права, в ході яких описується суть пред'явленого звинувачення, роз'яснюється, що вона не зобов'язана давати показання, і все, що буде нею показано в ході допиту – буде доказом у кримінальній провадженні.

Залежно від категорії свідка на прикладі «solicitor» адвоката процесуальний закон розділяє імунітет на обмежений і абсолютний. В першому випадку свідку надано право відмовитися від дачі показань, а в другому йому належить обов'язок не розголошувати певні відомості, які стали йому відомими у зв'язку з виконанням професійної діяльності.

У статті зроблено висновок про особливості імунітету свідків в обох країнах та сформульовані пропозиції щодо подальшого вдосконалення цього інституту в українському законодавстві.

Ключові слова: кримінальний процес, кримінальне провадження, свідок, недоторканість свідка, Кримінальний процесуальний кодекс України, кримінально-процесуальне законодавство Великої Британії, порівняльно-правовий аналіз, право на захист.

According to part two of Article 3 of the Constitution of Ukraine, human rights and freedoms and their guarantees determine the content and directions of the government's activities. Thereby the government is accountable to people for its activities. The assertion and provision of human rights and freedoms is the main responsibility of the government. One of the aspects of compliance with the above provision, as a rule of direct effect, should be the introduction of legislative provision for the settlement and implementation of the provisions of the criminal procedure institute of immunity of witness in the national legal system.

Legislative consolidation of the above-mentioned institute at the constitutional level endues criminal procedural legislation with such vital objectives as strengthening the democratic and moral principles of the criminal process and criminal proceedings at all its stages.

In particular, Article 2 of the Criminal Procedure Code of Ukraine stipulates the primary objectives of criminal procedure, such as the protection of individuals, society and the state from criminal offence, the protection of rights, freedoms and legitimate interests of participants in criminal proceedings, as well as the insurance of quick, comprehensive and impartial investigation and trial in order that everyone who committed a criminal offence was prosecuted in proportion to his guilt, no one innocent was accused or convicted, and no one was subjected to ungrounded procedural compulsion and that an appropriate legal procedure applied to each party to criminal proceedings.

It is of utmost interest for the researchers, who study the field of criminal procedural law, to use the comparative legal analysis and the characteristics of relevant legislative norms in various countries, especially in European ones, which, similarly to Ukraine, belong to the Romano-Germanic legal family or in those that have the Anglo-Saxon (precedent) system of law, and thus serve as an actual pattern to follow.

Accordingly, it appears to be evident that England, with its Code of Criminal Procedure being one of the oldest ones in Europe, successfully combines long-standing conservative norms with the implementation of new democratic principles. As a result, this fact leads to the conclusion that it is indeed necessary to analyze such experience and implement it in national legislation. In addition, in the context of the globalization of legal systems of the world, there exists the necessity for a more detailed study and discovery of patterns in the development of the legal system and its particular aspects of one of the most developed countries of the Anglo-American legal family and the whole world. Therefore, in accordance with the principle of complementarity, it is indeed important to search for new theories of understanding the immunity of witness in England's criminal procedure in order to address the problems of ensuring the rights and freedoms of citizens of Ukraine, and at the same time establish the norms of international law in national legislation.

The general principles of the legal status of the witness were repeatedly investigated in the works of such Soviet scholars as G. Horskyi, L. Karnieiev, L. Kokoriev, M. Strogovych, who particularly substantiated the expediency of introducing the witness immunity institute into the criminal procedure. Moreover, during the years of independence, M. Myheienko, S. Stahivskyi, V. Shybiko and other scholars also supported this idea in the development of constitutional provisions.

Consequently, after consolidation in the Code of Criminal Procedure of Ukraine in 1969, the legal norm, which exempted a person having the procedural status of a witness from responsibility for refusing to testify against members of his family and close relatives, was extensively studied by R. Barannik, O. Belkova, S. Volkotrub, just to name a few. At the same time, with the entry into force of the new Criminal Procedure Code of Ukraine in 2012¹, the issue of functioning of the immunity institute of the

¹ Criminal Procedural Code of Ukraine: Law of Ukraine dated April 13, 2012 No. 4651-VI <<http://zakon2.rada.gov.ua>>

witness has once again become remarkably relevant, including in the aspect of using the experience of foreign countries in improving the effectiveness of the domestic criminal procedure, especially at a time when all national legislation is being tailored to European standards.

The article is aimed at investigating the procedural status of a witness in the aspect of the witness immunity in the criminal procedure of both Ukraine and England, carrying out a comparative legal analysis of the named institute.

The Institute of witness immunity is one of the procedural guarantees aimed at ensuring the rights and legitimate interests of citizens in the criminal procedure¹.

In Latin, the term «immunity» means «liberation from something»². In jurisprudence, immunity is treated as the exclusive right not to obey certain rules³.

In the criminal process, privileges and immunity apply to those who appear in court as witnesses and give testimony. Privileges affect the amount of information provided by the witness and represent the preferential right of the person to refuse to testify or answer certain questions. While the immunity is provided by the court, it guarantees that the witness will not be prosecuted on the basis of his own testimony.

Indeed, different interpretations of the immunity of witness are offered in the criminal-procedural literature, and still there is no single point of view regarding the scope of this concept at present. Some authors proceed from the narrow definition of this institute, explaining the terms as the right of the witness in exceptional cases to be exempted from the duty to testify⁴. In sub-

stantiating this position, proceduralists emphasize that the immunity of witness should be implemented only providing the person falls under the category of witnesses, and has the right to refuse to testify. Accordingly, it is stated that the immunity of witness is the right provided by the law to the person being interrogated as a witness to testify in the case exclusively on the basis of his own discretion. Thus, the subjects of such immunity cannot be those individuals who, in some instances under no circumstances may have the procedural status of a witness. Similarly, they exclude from the number of witnesses individuals whom law prohibits from being interrogated⁵. On the other hand, other researchers, interpreting the immunity of witness in its broad sense, believe that the immunity of witness is meant as a prohibition on interrogating some individuals as witnesses, granting these individuals the right to refuse to testify or answer questions⁶. Also, in their perspective the witness immunity appears to be the set of rules regarding the absolute or limited release of certain groups of individuals from the duty to testify⁷.

It seems that the position of scholars who adhere to a broad interpretation of such immunity is the most systemic, since the scope of the witness immunity covers two aspects: on the one hand, it embraces the prohibition of interrogating certain individuals as witnesses, and, on the other hand, there is a comprehensive definition in law of the circle of individuals, who have the right not to testify as witnesses or refuse to answer some questions. For instance, V. Molchanov claims that the definition of testimony immunity, which is

gov.ua/laws/show/4651-17> accessed 04.05.2018.

¹ N Litvintseva, 'Witness immunity as an element of the principle of protection of rights and freedoms of a person and citizen in criminal proceedings' (2015) 1 Siberian Criminal Procedural and Criminalistic Readings 17–18.

² 'A modern dictionary of foreign words' (St. Petersburg: Duet 1994) 230.

³ V Daev, 'Immunities in Criminal Procedural Activities' (1992) 3 Izhvestiya Vuzov: Jurisprudence 48.

⁴ T Shmareva, Witness in the Russian criminal trial (Moscow, Yurlitinform 2014) 50.

⁵ V Budnikov, The immunity of a witness in a criminal trial (Volgograd: Publishing house Volgograd. state. University, 1998) 11, 16.

⁶ N Litvintseva, Witness immunity in the Russian criminal proceedings (Irkutsk, Publishing house of BSEEP 2014) 29.

⁷ I Smolkova, Actual problems of secrets protected by federal law in Russian criminal proceedings (Moscow, Yurlitinform 2014) 114.

essentially an analogy of immunity of witness, as the right to refuse testifying, and as a prohibition on interrogating certain categories of individuals as witnesses, is substantiated by the lexical meaning of the word «immunity» («liberation from something»¹. Additionally, it is worth mentioning the definition of witness immunity, offered by O. Gryshina and S. Saushkin: «a set of legally rooted rules, which exempt certain categories of witnesses from the obligation provided by law to testify in a criminal case, as well as those that release anyone being interrogated from a duty to testify against oneself»². It is also of interest to define E. Petukhov's notion of «testimonial immunity». The author highlights two different concepts: «immunity» and «privilege». In his opinion, the privilege of witnesses is a privilege, being the right to choose whether to testify or not, whereas the term «testimony immunity» includes provisions that are mandatory and prohibit interrogation of witnesses of certain categories of individuals. Accordingly, in the first case, the testimony can be recognized as evidence, in the second – they are considered inadmissible³. At the same time, we believe that the concept of «immunity of witness» involves the concept of «privilege». Hence, it means that, on the one hand, there is an exemption from the procedural status of a witness, and, on the other hand, there is an exemption from obligation to testify.

It should also be noted that in the theory of criminal procedure, depending on the will of a person, who is endowed with testimony immunity, two types of immunity are distinguished: imperative (absolute, unconditional) and dispositive (relative, conditional)⁴. This classification is the most common, but some authors suggest a differ-

ent approach to systematizing the types of immunity of witness, highlighting the general and special immunity of witness. Generally, immunity represents the right of everyone (witness, victim, suspect, accused or any other person) to refuse to testify against himself, his/her husband or wife and close relatives. The special form, in turn, is defined by the authors as the immunity of certain categories of citizens exempted from the obligation to testify, and this immunity applies only to individuals having the procedural status of a witness⁵. At the same time, supporters of this approach do not consider the immunity of witness as a strict prohibition on interrogating some individuals as witnesses, which thereby narrows the content of such an institution as immunity of witness. Therefore, the first classification of the immunity of witness appears to be the most complete and accurate, since it covers all types of witness immunity.

Consequently, imperative immunity is formulated in the prohibition on interrogating some individuals as witnesses. This immunity is granted to individuals who must keep confidential information, which they obtained in the performance of their professional or official duties. Dispositive immunity is expressed in the right of the witness to refuse testifying. A kind of dispositive immunity is the right not to testify against himself, his/her husband (wife) and other close relatives. According to R. V. Barannik, the subject of the right to freedom from self-disclosure, the disclosure of family members or close relatives is «the testimony, explanation or other detailed data containing information on the actions of a person being interrogated, a member of his/her family or a close relative, for there exist a certain type of legal liability, as well as

¹ V Molchanov, 'Witness immunity in civil procedural law' (2006) 2 *Jurisprudence* 112–113.

² S Saushkin, Ec Grishina, 'Legal support of witness immunity: current state and development issues' (2002) 5 *Advocacy practice* 28.

³ E Petukhov, 'Contradictions in the new Criminal Procedure Code of Russia' Problems of application of the new criminal procedural legislation in pre-trial proceedings: materials of scientific-practical. Conf. In 2 hours Part 1. (Barnaul, Barnaul. jurid. Institute of the Ministry of Internal Affairs of Russia 2002) 82.

⁴ I Smolkova, Actual problems of secrets protected by federal law in Russian criminal proceedings (Moscow, Yurlitinform 2014) 116.

⁵ V Lopatin, A Fedorov, 'Witness Immunity' (2004) 6 *State and Law* 52.

information constituting the secret of personal life»¹.

S. Volkotrub, studying the question of witness immunity, concludes that immunity should not extend to witness's testimony, which he/she provided earlier, since the possibility of excluding the above testimony from the set of evidence is inappropriate, as it complicates the course of evidence and does not promote the individual's awareness of not only legal, but also, most importantly, moral responsibility for his/her own decisions², however, it is rather debatable issue.

In Ukraine the Criminal Procedure Code of Ukraine, adopted on April 13, 2012 (hereinafter referred to as the CPC of Ukraine), is currently in force. According to its norms, a witness is an individual who knows or may know circumstances that are subject to proof in the course of criminal proceedings, and whom is called for testimony. Age restrictions do not affect the status of a witness, however, the CPC of Ukraine in articles 135 and 226 provides for a special procedure for the summoning and interrogating of minor witnesses. In court, witnesses are questioned under oath³.

According to Part 2 of Article 65 of the CPC of Ukraine, the following persons may not be interrogated as witnesses:

1) a defense counsel, a representative of a victim, civil plaintiff, civil defendant and legal person in whose respect proceedings are taken, a legal representative of a victim, civil plaintiff in criminal proceedings – in regard of circumstances which they became aware of as a result of their fulfilling functions of representative or defense counsel;

2) defense attorneys, about information which constitutes counsel's secret;

3) notaries, about information which constitutes notarial secret;

4) medical practitioners other persons who in connection with the performance of

professional or official duties, became aware of disease, medical checkup, examination and results thereof, intimate and family sides of a person's life – about information which constitutes doctor's secret;

5) clergymen, about what a believer confessed to them;

6) journalists, about confidential information of professional nature provided on condition of non-disclosure of its author or source;

7) professional judges, people's assessors, and jurors – about discussion in the deliberation room of issues which arose during adoption of court decision, except proceedings in the case related to the adoption by a judge (judges) of a knowingly wrongful judgment, ruling;

8) individuals who participated in concluding and fulfilling a conciliation agreement in criminal proceedings, about circumstances which they became aware of as a result of participation in concluding and fulfilling a conciliation agreement.

9) persons to whom security measures have been applied, about their bona fide personal data;

10) persons who are aware of bona fide information about individuals in respect of whom security measures have been applied, about such information.

In this case, the individuals listed in items 1–5, regarding the above information, may be exempted from the obligation to keep professional secrecy by the person who entrusted them with this information, to a certain extent. The release is made in writing, signed by the person who entrusted the said information. Individuals cannot be questioned as witnesses, without their consent, providing they have the right of diplomatic immunity, as well as employees of diplomatic missions – without the consent of the representative of a diplomatic institution.

¹ R Barannik, 'The right of the individual to freedom in the self-covetousness, detection member of the family or of close relatives in the criminality process of Ukraine the author's abstract' (dis. Cand. Sc. K., 2002.) 13.

² S Volkotrub, 'Actual nutrition in the criminal justice in criminal courts' <<http://www.nbuv.gov.ua/e-journals/FP/2009-3/09vcgvkc.pdf>> accessed 04.05.2018.

³ Criminal Procedural Code of Ukraine: Law of Ukraine dated April 13, 2012 No. 4651-VI <<http://zakon2.rada.gov.ua/laws/show/4651-17>> accessed 04.05.2018.

It is also worth mentioning the constitutional principle that a person is not responsible for refusing to testify against oneself, his or her family members, or close relatives, the circle of which is determined by law (Part 1 of Article 63 of the Constitution of Ukraine).¹ It should be noted that the content of definitions of «family members» and «close relatives» in the norms of the current legislation of Ukraine are rather ambiguous, in particular, different approaches to interpretation include family and anti-corruption legislation.

It should be noted that the testimony of a witness, who then may be recognized as a suspect or accused in this criminal proceeding, must be recognized by the court as inadmissible evidence during any trial (Article 87 of the CPC of Ukraine). That is, such pieces of evidence do not possess the evidentiary power².

In England, however, there is still no criminal procedure code. In fact, legal institutes that arose a few centuries ago, namely, the legal procedure is based on more than 300 legislative acts and numerous court precedents³. Criminal procedural law consists of the common (unpublished) law – a right based on precedents, and statutory law – legal norms set forth in separate parliamentary acts. Precedents are cases that are taken as a model when dealing with the relevant legal relations. Particularly precedents are the decisions of the Court of Appeal and the Chamber of Lords, the official publication of which began in 1865. Criminal proceedings are carried out with the participation of the peace judges and the jury of the Crown Court⁴.

In the criminal procedure of the Anglo-Saxon system of law, a witness is any per-

son testifying in court⁵. That is, those, who appear in court in order to communicate the information related to the case, are witnesses, and the reported data are testimony of those witnesses. Thus, witnesses are the accused and the victim (victim of a crime), and the witness (in the narrow sense of the word), as well as an expert called to provide an expert conclusion. To these individuals the general rules of their participation in the court, their interrogation, and special, taking into account their differences in the interest in the outcome of the case, different roles in the proceedings, which also include the immunity of the witness, are applied⁶.

The main immunity of the witnessing person is the «privilege against self-incrimination,» which consists of the right of individuals to refuse to give evidence or to answer questions of an incriminating nature. Indications are such as to disclose information on the basis of which a person can be found guilty of committing any crime or, in conjunction with other evidence, which is related to an indirect proof of guilt. The questions are incriminating if the answer to them also leads to the prosecution of a crime. This privilege is not a way to avoid responsibility, but rather an essential element of the basic principle of the criminal procedure – the presumption of innocence. A person is not obliged either to prove his innocence, or to give his / her accusatory testimony against himself. One of the basic elements of the above-mentioned immunity is the «right to silence», which belongs to the accused (or suspect). Therefore, in England, interrogation of a suspect (still at the stage of police investigation) is preceded by a warning in the following statements: «You do not have to say anything. But, it

¹ The Constitution of Ukraine: Law of Ukraine dated June 28, 1996 No. 254к / 96-ВР <<http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>> accessed 04.05.2018.

² Criminal Procedural Code of Ukraine: Law of Ukraine dated April 13, 2012 No. 4651-VI <<http://zakon2.rada.gov.ua/laws/show/4651-17>> accessed 04.05.2018.

³ B Malishev, Sudoviy precedent for the legal systems of England (theoretical and legal aspect) (Kyiv National National University. Taras Shevchenko 2002) 24.

⁴ M Allen, Criminal law (London 1991) 105–110.

⁵ A Romanov, Legal system of England: Academy of National Economy under the Government of the Russian Federation. 2 ed. (The case 2002) 101.

⁶ Mitchell, P Richardson, D Thomas, Archbold: pleading, evidence and practice in criminal cases. 43d éd. (London 1994) 290.

may harm your defense if you do not mention when questioned something that you later rely on in court. Anything you can say can be given in evidence»¹. If previously the silence of the defendant could not be evaluated in any way, now the court, the jury and the prosecutor can give any assessment of the silence of the defendant, «which ... for no valid reasons may be justified, especially in those cases when a person could say something in his/her defense. «

As we see, in the criminal procedure in England, the defendant's right to silence exists, but its use is associated with a significant risk of instigating in a judge and jury some biased attitude. In addition, according to the theory of evidence, the defendant's silence during police interrogation may be regarded as controversial behavior if, in court, the accused decides to give evidence and refer to certain circumstances in his favor². Such controversial behavior may serve as the basis for distrust of the defendant, which will also affect the jury when making their verdict.

The privilege against self-prosecution in its entirety does not extend to an accused in the English criminal procedure. That is, if the accused, willing to abandon the right to silence, testifies, then he is obliged to answer all questions of the incriminating nature concerning the crime under consideration. The privilege against self-prosecution «comes into effect» only if the prosecutor begins to ask questions about another crime that is not related to the given one.

The next group of privileges provided to a witness relates to the testimony given by the spouse of the accused. The essence of this privilege is that the person (wife or husband) of the accused has the right to refuse to testify regarding the information received by one from another while in marriage. In the presence of marital privilege, a person may appear in court as a witness, but he/she cannot be forced to give evidence about certain information. This information must be received by the spouses from each

other while in marriage, disclosure of it is unacceptable in any case, including in court proceedings.

In England, the marital privilege was enshrined in the Law of Evidence of 1853, which stated: «A man can not be compelled to declare a message made by his wife during his marriage, and also his wife can not be compelled to announce a message made to her by her husband while in marriage «. Then this privilege was confirmed by the Law on Evidence in the Criminal Procedure of 1898. In England, this privilege is interpreted very narrowly, that is, the precedent law has developed a rule that this privilege ceases to work after the end of marriage, that is, does not extend to divorced persons, widows, widowers. The marriage of the spouses does not apply to cases of crimes committed by one spouse with respect to another, and also with respect to their children.

One of the oldest and most widely recognized privileges is the «lawyer-client» immunity. This privilege applies not only to relations arising in connection with the trial, but also to the entire professional activity of a lawyer, but only with regard to confidential information that the client does not want to disclose.

In the relations that arose in connection with the trial, its essence lies in the fact that the party in the criminal proceedings is not obliged to answer questions related to his/her communication with a lawyer. In this case, the privilege is not only limited to information exchanged between a lawyer and a client, but it also applies to the communication between each of them and a third party, as well as to documents drawn up by a third party, provided that they are made in connection with the given criminal case.

The privilege of the lawyer and the client, as well as the marital privilege, is absolute, that is, the information cannot be disclosed not only in the court session, but also in any other circumstances. Therefore, the court also recognizes the confidentiality

¹ A Ashworth, Sentencing and Criminal Justice. 2d ed. (London, Dublin, Edinburgh, 1995) 16.

² A Lovegrove, The framework of judicial sentencing. A study in legal decision making (Cambridge 1997) 125.

of the relationship between a lawyer and a client that arose not only in connection with a criminal case.

Granting privileges regarding the information exchanged between a lawyer and a client is at the discretion of the judge, which takes into account the subject matter of the information exchanged, the source of information, the purpose of the exchange of information, and the nature of information and communication.

The privilege of «doctor-patient» is not recognized by all courts. However, it is recognized that the relationship between the doctor and the patient is trusting and confidential. To recognize the privilege of information exchanged between the doctor and the patient, their communication must be confidential and related to the issues of treatment and medical consultation. The carrier of immunity is the patient: only the patient has the right to declare information in the court session, the doctor can do it only after the patient gives such consent. The privilege of the «clerk and priest» lies in the confidentiality of confession. In England, this privilege is not recognized by the courts. These types of privileges are intended to protect certain relationships characterized by trust and confidentiality. In addition, there are certain types of information that may be prohibited for disclosure in order to protect and safeguard certain public interests. Such information includes: state secret, official information, professional, business secrets, privilege of the informer, privilege «source of information – journalist».

The immunity of witness is a set of rules that exempts certain groups of individuals from the obligation to testify in criminal proceedings, and also exempts anyone being

interrogated from the duty to testify against himself/herself. In this regard, the immunity of witness is divided into two types: the imperative (absolute, unconditional) and the dispositive (relative, conditional). Nowadays, the legislators attempt to bring the existing criminal-procedural legislation in line with the norms of the Constitution of Ukraine, but some questions still remain unsettled, such as the normative definition of the circle of family members barring such immunity. Moreover, it is of utmost significance to improve the guarantees of the implementation of immunity for minors.

In particular, it requires a clear definition of the circle of subjects to which the norms set forth in Part 1 of Article 63 of the Constitution of Ukraine apply. Also, if the witness is a minor, and for this reason or for other reasons does not fully understand the importance of the right to immunity, on the legislative level there must be a guarantee that he/she can be questioned or interrogated only with the permission of his legal representative. When comparing the institute of privileges and immunity of witness in Ukraine with those in the countries of the Anglo-Saxon system of law, it is obvious that they have completely different content. In particular, although in England the privileges of witness are legally established, their provision in some way depends on the judge's discretion, whereas in the Ukrainian criminal procedure a witness who referred to immunity right may insist on it and refuse to give evidence on a legitimate basis. On the other hand, the immunity of a witness in England has a wider interpretation and application in comparison with Ukraine, which may serve as a precedent for Ukrainian criminal procedural law.

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Denysenko G. The institute of witness immunity in the criminal procedure law of Ukraine and England: the comparative-legal analysis

The Article gives a decent attention to the institute of witness immunity in criminal proceedings of two different countries, Ukraine, which belongs to the Romano-Germanic legal family, and England, a representative of Anglo-Saxon legal family, relying on techniques of the comparative-legal analysis.

It carefully explores the existing national studies of the issue, which mostly fail to ensure the full disclosure of the immunity of witness in the criminal proceedings and its classification that in turn prevents from solving all current problems of law enforcement in Ukraine.

To promote a deeper understanding of what is lacking, this Article summarizes the existing theory of criminal procedure law on the content and type of immunity of witnesses existing in Ukrainian legislation and offers perspective ways to categorize the notion of witness immunity. Accordingly, the Article proposes to divide the immunity of witness into two distinctive groups: a) the personal direct immunity of witness and b) the mediated lawful immunity of witness. Similarly, the Article examines the institute of witness immunity represented in the country with Anglo-Saxon (precedent) system of law, England, expanding on its broad interpretation and extensive experience. Although in England the privileges of witness are legally established, their provision in some way depends on the judge's discretion, whereas in the Ukrainian criminal procedure a witness who referred to immunity right may insist on it and refuse to give evidence on a legitimate basis. Finally, the Article draws conclusion highlighting distinctive features of witness immunity in both countries and offers suggestions of further improvement of the institute in Ukrainian legislation. Particularly, the normative definition of the circle of family members bearing witness immunity should be clearly defined in Ukrainian legislation as well as the guarantees of the implementation of immunity for minors are to be strongly established.

Key words: criminal procedure, criminal proceedings, witness, immunity of witness, Criminal Procedure Code of Ukraine, Criminal Procedure law of England, comparative-legal analysis, right to protection.

Стаття надійшла до редакції журналу 06.06.2018.