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LEGAL IMMUNITY IN CIVIL PROCEEDINGS: CURRENT CHALLENGES

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*The purpose of this article is to study the current problematic issues related to legal immunity in civil proceedings. To this end, the author analyzes the concepts of "immunity", "legal immunity", "procedural immunity", "attorney's immunity, witness immunity, court immunity in civil proceedings", as well as external and internal elements of immunity. The author also analyzes the peculiarities of the legal regime of the parties to court proceedings and their practical significance. **The methodological basis** of the study is general scientific and special methods of scientific cognition. The use of these methods made it possible to analyze legal immunity in civil proceedings and to describe the problems of its legal regime. **Results:** procedural immunity of an attorney-at-law, an expert, and a judge is their protection from the influence of external and internal factors of public life, both in the course of their professional activities and in their everyday personal life. **Discussion:** it is necessary to distinguish between external and internal elements of the immunity of an attorney, expert, and judge, which have their own content and therefore affect the external forms of manifestation of independence and inviolability of these persons in connection with their professional activities (for example, for an attorney representing a client in civil proceedings).*

Key words: *immunity; legal immunity; procedural immunity; civil proceedings; immunity of subjects of civil proceedings; attorney's immunity; judicial immunity; expert immunity; witness immunity; procedural legal regime of subjects of civil proceedings.*

Problem statement and its relevance. The idea of human and civil rights and freedoms has become entrenched in Ukrainian society, which is naturally linked to the overall reform processes in Ukraine. The issue of ensuring and protecting rights and freedoms is considered to be one of the most important and necessary, especially in the current period for Ukraine in all spheres of its life. Improving the national judicial system and reforming civil proceedings to improve the effectiveness of judicial protection is a priority in

Ukraine's domestic policy. In the state legal mechanism for ensuring human and civil rights and freedoms, the main role is assigned to judicial protection with the possibility of providing qualified legal assistance to the parties to the case by a lawyer.

The procedural activity of the advocate in court is associated with the provision of various types of legal aid, which should be carried out in accordance with the principles and principles enshrined in the Constitution of Ukraine and special laws. On the

other hand, the guarantees of protection of the rights and interests of the advocate, expert, and judge in the performance of their professional duties, both in civil proceedings and outside of their judicial activities, must also be observed. We are talking about "attorney's immunity", "witness immunity", "expert immunity", "judge immunity", which require scientific and practical research.

Analysis of recent research and publications.

Scientific, theoretical and practical issues related to the study of the peculiarities of professional activities of an attorney-at-law, an expert, a judge in general, and in civil proceedings in particular, were carried out by domestic scholars, for example: T.V. Varfolomeieva, T.B. Vilchuk, N.S. Horban, K.V. Husarov, U.Y. Polyak, O.F. Tkalya, V.A. Kroytor, S.S. Safulko, R.H. Melnichenko, O.G. Yanovska, E.V. Chuprun, etc.

Presentation of basic material of the research.

The existence and gradual development of any person in society is nothing more than the need to satisfy their natural needs, without which a person cannot exist or such existence will be inferior, uncomfortable or inadequate, given the existence of modern dimensions, level or standard of ensuring the rights and freedoms through which such needs and interests of an individual are satisfied.

Article 3 of the Constitution of Ukraine proclaims that the establishment and protection of human rights and freedoms is the main duty of the state [1]. The current stage of formation and strengthening of national statehood in Ukraine is accompanied by a gradual process of its integration into the European Union. This requires reorientation of all spheres of life of our society, including the legal sphere, towards the introduction of modern democratic approaches in understanding and practical implementation of standards related not only to the recognition, guarantee, protection, but above all to the defense of such rights, freedoms and interests of man and citizen. Ensuring and protecting human and civil rights, freedoms and interests proclaimed by international instruments and the Constitution of Ukraine is one of the priority functions of the Ukrainian state. Article 3 of the Constitution of Ukraine states that a person, his or her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value [1].

The effectiveness of the mechanism of protection of the individual in a particular state determines its level of development of democracy, humanity and civilization. This also makes it possible to determine the guarantee of state and public protection of the individual, both in social and everyday life.

In this regard, the theoretical and practical issues of organization and procedural activities of a representative attorney-at-law in civil proceedings, whose activities are primarily related to the provision of professional legal aid, are of great relevance. Also, the issues related to the need to ensure the protection of the rights, personal and professional interests of an attorney-at-law, which are defined and characterized as attorney's immunity or attorney's privilege, are becoming equally relevant today.

The term "immunity" is of Latin origin from the words *immunitas*, *immunitatis* and means exemption from duty, inviolability, non-subordination, independence, freedom from prosecution [2, p. 668]. If we consider immunity from the standpoint of its general legal content, this term will mean the exemption of certain subjects of law from the application of general legal norms to them [3, p. 180]. Thus, immunity can be viewed in a general sense as privileges granted by the state to certain categories of state officials, judges, law enforcement agencies, lawyers, notaries, etc., which consists in their freedom of professional activity and inviolability.

Legal dictionaries and reference books emphasize the need for such an understanding of the concept of immunity.

In the theory of civil procedural law and in court practice in civil cases, the term "immunity" is usually used in relation to a witness, and less often in relation to a court or a judge or a judge's chairman.

It may be noted that the term "immunity" is not used in the current laws of Ukraine at all, which, in our opinion, should be considered as a drawback in the legal regulation of the procedural activities of an attorney, expert, judge both before he or she goes to court and during the trial and resolution of a civil case by the court, and in some cases even after the completion of the trial.

The literature on civil procedural law considers legal immunity as a special type of legal exception,

a kind of deviation from uniform, standardized rules of regulation [4, p. 183].

Given the above concepts of legal immunity, it can be assumed that this legal category is permeated mainly by two elements: inviolability and independence. Due to the manifestation of such internal and external elements of immunity, it can be divided into internal and external immunity.

Therefore, it is possible to define "attorney's immunity", "expert immunity", "judge's immunity" as protection of these persons from the influence of external and internal factors of public life, both in the course of their professional activities and in their everyday personal life.

The professional activity of a lawyer, expert, or judge is associated with the emergence of legal relations with various subjects of political, economic, and social affiliation. Such relations may be opposite and sometimes mutually exclusive. The state, represented by legislative bodies, may establish or regulate the balance of interests of the participants in such relations in the field of legal aid provision by an attorney or the performance of procedural duties by an expert or judge. For example, the Law of Ukraine "On the Bar and Practice of Law", namely, part one of Article four, stipulates that the practice of law is based on the principles of the rule of law, legality, independence, confidentiality and avoidance of conflicts of interest. As explained in paragraph eight of Article one of this Law, a conflict of interest is a conflict between the personal interests of an advocate and his or her professional rights and duties, the existence of which may affect the objectivity or impartiality in the performance of his or her professional duties, as well as the performance or non-performance of actions in the course of the practice of law [5]. Without using the term "immunity" in any case, it can be assumed that at the very beginning of the Law it is actually about the immunity of the advocate. We can offer the following meaning of the concept of attorney's immunity or attorney's immunity - a procedural and legal regime established by the state, i.e., a certain part defined by law that requires state legal regulation, namely, determination of ways to achieve the necessary legal goal by permitted means, taking into account the balance of interests of participants of public interests in the field of

legal aid, with the possibility for the attorney to determine the priority of some interests over others.

Thus, it is possible that the advocate may prioritize some interests over others or subordinate some to others. In this regard, we can talk about the existence of certain risks in the exercise of the advocate's professional activity, which may come from state bodies, local authorities and local self-government bodies, political parties and public organizations, certain groups of citizens or an individual. Such a threat may concern not only the advocate or judge, but also their family members, relatives, acquaintances or persons close to them. Therefore, for example, the advocate's immunity provides for the external and internal independence of the advocate from possible influence on his or her professional activities in representing the client's interests in court from family, family, official or other outside pressure to achieve a certain end result contrary to the legal goal, task, which may even affect the effectiveness of judicial protection of the client's rights and interests.

The procedural and legal regime is an element of the civil procedural form and characterizes the procedural content (side) of the activity of the subject of civil proceedings. This is a certain procedure established by law for the advocate's procedural activity to achieve the goals and objectives defined by law using the procedural means provided (or permitted) by law. The correct selection and application of procedural means by the advocate help to resolve life situations, remove obstacles that arise in the client's life and, therefore, prevent him or her from exercising his or her rights and interests.

As a rule, legal goals should be determined by the social interests of society. This allows choosing the optimal combination of legal means to achieve them (permits, prohibitions, legal incentives, obligations, restrictions, etc.), timely identifying shortcomings in legal regulation, conflicts in legal acts, ineffectiveness of a legal provision, etc. It is not for nothing that attorneys-at-law are among the initiators of improving the provisions of national legislation and developing ways to improve the efficiency of the courts of Ukraine, not only in terms of achieving legal goals, but also in terms of achieving social goals and results.

In Ukraine, based on international standards for the provision of legal aid, legal guarantees have

been created, primarily by practicing lawyers, to provide such legal aid to interested parties, ensuring their access to justice in civil cases to protect their rights, freedoms and interests. The state legal policy on mandatory representation of the interests of the parties to a case in court has almost been implemented in Ukraine. Thus, the legal vector of reforms in Ukraine in the field of judicial defense was mainly aimed at creating guarantees for the provision of legal aid by a lawyer for a person to apply to the court for judicial defense or providing free legal aid to certain segments of the population. This is quite understandable, since any civil proceedings, in accordance with the principle of adversariality, always involve two parties to the case with opposing interests. Pursuant to Article 60 (1) of the Civil Procedure Code of Ukraine, each of such parties to a case wishes to have a representative attorney-at-law in order to win the trial to satisfy their material interests in a civil case. A successful lawsuit brings satisfaction both to the client in connection with material satisfaction and to the attorney-at-law in terms of material and professional satisfaction with possible further growth of the attorney's authority in the society.

However, if a party to the case is dissatisfied with the result of the final consideration and resolution of the case by the court, which is recorded in the court decision, such a person usually has certain claims against his or her attorney, believing that he or she did not properly perform his or her professional duties in the field of representation in court. In this case, as the case law in civil cases shows, the losing party to the case may file a claim against his or her attorney-at-law in court due to improper or dishonest conduct of the client's case in court or on the grounds that the attorney-at-law lacks sufficient qualifications in this category of case. Sometimes, in order to achieve the goal of advocate's representation in court of the interests of a party to the case, the advocate may be dishonest in the performance of his or her professional duties.

Thus, the advocate's immunity provides for the protection of the advocate's rights and interests from internal and external negative influence. The external legal features guaranteeing the independence of the advocate include the provisions enshrined in the Law of Ukraine "On the

Bar and Practice of Law" that the Bar is independent of state authorities, local self-government bodies, their officials and employees (Article 5), requirements for incompatibility (Article 7), the practice of law in the prescribed organizational forms (types) (Articles 13-15), the existence of the Unified Register of Advocates (Article 17), guarantees of the Practice of Law (Article 23), which protect the rights, honor and dignity of the.

The internal guarantees of the advocate's immunity include equality with other participants in court proceedings (Article 23 (1) (5) of the Law of Ukraine "On the Bar and Practice of Law"), protection of life, health, honor and dignity of the advocate and members of his or her family, their property (Article 23 (1) (6) of the Law of Ukraine "On the Bar and Practice of Law"), and others.

Internal attorney's immunity can be characterized as protection of an attorney from negative influence on him or her by relatives and friends in relation to a court case, which he or she is professionally engaged in as a representative attorney. Also, the internal components of the advocate's immunity include the right to express his or her own professional judgment regarding the case file and the behavior of the participants in the trial in a particular case, even with the possibility of predicting the outcome of the civil case in which he or she participates.

Thus, the participation of an attorney-at-law in civil proceedings involves the implementation of procedural activities related to the representation of a person in court in order to provide qualified legal assistance to protect the rights, freedoms and interests of such a person in civil proceedings.

Conclusions. The procedural immunity of an attorney-at-law, an expert and a judge is their protection from the influence of external and internal factors of public life, both in the course of their professional activities and in their everyday personal life.

It is necessary to distinguish between external and internal elements of the immunity of an attorney, expert, and judge, which have their own content and therefore affect the external forms of manifestation of independence and inviolability of these persons in connection with their professional activities (for example, for an attorney representing a client in civil proceedings).

The advocate shall not have the right to hide behind, i.e. to invoke immunity to avoid liability for material damage caused to the represented person

(client) in case of unsuccessful conduct of his or her civil case in court .

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ПРАВОВИЙ ІМУНІТЕТ У ЦИВІЛЬНОМУ СУДОЧИНСТВІ: АКТУАЛЬНІ ПРОБЛЕМИ

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*Метою даної статті є дослідження актуальних проблемних питань щодо правового імунітету у цивільному судочинстві. Для цього було проаналізовано поняття «імунітет», «правовий імунітет», «процесуальний імунітет», «імунітет адвоката, імунітет свідка, імунітет суду в цивільному судочинстві», а також зовнішні та внутрішні елементи імунітету. Також у результаті аналізу було розглянуто особливості правового режиму суб'єктів судового судочинства та їх практичне значення. **Методологічною основою** дослідження є загальнонаукові та спеціальні методи наукового пізнання. Використання цих методів дало можливість проаналізувати правовий імунітет у цивільному судочинстві та описати проблеми його правового режиму. **Результати:** процесуальний імунітет адвоката, експерта, судді – це їх захист від впливу зовнішніх і внутрішніх факторів суспільного життя, як при здійсненні своєї професійної діяльності, так і в повсякденному особистому житті. **Обговорення:** потрібно розрізняти зовнішні та внутрішні елементи імунітета адвоката, експерта, судді, які мають свій зміст, а отже впливають на зовнішні форми прояву незалежності і недоторканості вказаних осіб у зв'язку із здійснення ними своєї професійної діяльності (наприклад, для адвоката з представництва інтересів клієнта у цивільному судочинстві).*

***Ключові слова:** імунітет; правовий імунітет; процесуальний імунітет; цивільне судочинство; імунітет суб'єктів цивільного судочинства; адвокатський імунітет; суддівський імунітет; імунітет експерта; імунітет свідка; процесуальний правовий режим суб'єктів цивільного судочинства.*

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