

## Legal Characteristic of Immunity Judges And Features

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### Abstract

*This article examines the legal nature, scope, and limits of judicial immunity as a fundamental guarantee of the independence and security of judges, with particular reference to the legal system of the Republic of Uzbekistan. Drawing on constitutional provisions, national legislation, comparative law, and international standards, the study critically analyzes competing doctrinal approaches to judicial immunity. One approach views immunity as a source of legal inequality, while another considers it a necessary functional safeguard ensuring impartial adjudication. The article substantiates the position that judicial immunity is not a personal privilege but a functional and institutional legal regime (*sui generis*) aimed at protecting judges from unlawful pressure and interference.*

*Special attention is paid to the distinction between judicial independence as a principle governing decision-making and judicial inviolability (immunity) as a procedural mechanism establishing special rules for criminal, administrative, and disciplinary liability. The article argues that immunity should not be regarded as an integral element of independence, as it persists even after a judge's resignation and serves broader objectives related to the stability of state power. Based on international instruments and foreign practice, the author proposes amendments to national legislation to clarify procedures for searches, detention, and prosecution of judges, thereby strengthening accountability while preserving judicial independence.*

Keywords: Judicial immunity, Independence of judges, Functional immunity, Constitutional guarantees of justice, Accountability of judges, International judicial standards

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### 1. Introduction

In Article 136 of the Constitution of the Republic of Uzbekistan, the inviolability of judges is defined as an important legal guarantee for the protection of a judge's activities. This guarantee serves the interests of society, helping to protect judges from unjustified prosecution and ensuring their ability to make judicial decisions independently and impartially. In Article 63 of the Law on Courts, the legislator indicates the inviolability of a judge as one of the grounds ensuring the independence of

judges.

International standards regarding the independence and immunity of judges are known in international law as «Bangalore Principles,» «European Charter of the Status of Judges,» «International Bill of Human Rights,» «Milan Rules,» «Juvenile Justice,» «Karakas Declaration,» «Beijing Rules,» «Ar-Riyad Principles,» «Bangkok Declaration,» «Vienna Declaration,» «Criteria of Humanism,» and all of them form the basis of international human rights law and play an important role

in the independent and impartial activities of courts.

In scientific discussions on the inviolability of judges, there are two opposing approaches. Yu.Stetsovsky, A.Chuvilev, and F.Agayev argue that "judicial immunity strengthens inequality and, in particular, problems arise in holding individuals with this right accountable,» while M.I.Kleandrov, I.L.Petruhin, N.Kapinus, and V.G.Dayev believe that immunity does not violate this principle . They believe that legal equality characterizes the general state of a citizen and does not take into account the differences in the legal status of the subjects of legal relations . The opinion of Yu.Stetsovsky, A.Chuvilev, and F.Agaev cannot be agreed upon on the following grounds:

Firstly, a judge's immunity is not personal immunity, but functional immunity. That is, a judge's immunity serves to protect the independence of the judiciary and fair trial, not their personal interests. A judge must be able to act without fear of decisions made within the scope of their activities, otherwise they may be under external pressure, the influence of interested parties, and the public.

Secondly, the principle of legal equality implies not absolute equality, but equal rights and obligations, taking into account the differences in status in legal relations. As noted by M.I. Kleandrov, I.L. Petruhin, N. Kapinus, and V.G. Dayev, legal equality is ensured by considering the specifics of each subject's legal status. The inviolability of judges does not place them above other members of society, but creates the necessary procedural guarantee for the fair performance of their official duties.

Thirdly, inviolability is not absolute and unlimited. In many legal systems, the immunity of a judge is limited. Inviolability applies only to actions within the framework of professional duties, and the possibility of holding a person accountable in a special procedure for personal offenses or violations of judicial ethics is retained. Therefore, immunity does not protect judges from absolute impunity, but rather is coordinated with mechanisms for their fair and reasonable prosecution.

V.A.Rzhevsky and N.M.Chepurnova closely link the inviolability of judges with the principle of independence. In their opinion, to ensure the independence of a judge, inviolability is necessary, and these two institutions are an integral part of a single regulatory system that defines the status of a judge. They also argue that immunity stems from the principle of constitutional independence of the judicial system .

J.Abdurahmonkhojayev considers the immunity of judges primarily as an immunity that protects them from criminal and administrative liability, and believes that this protection includes not only criminal or administrative punishment but also protection from unjustified disciplinary and civil liability .

An even broader view on the inviolability of judges is put forward by the professor of the University of Latvia, Turiba Layla Jurcena (Laila Jurcena). It emphasizes that the idea of judicial independence is realized through certain privileges and rights granted to judges, and explains judicial immunity as a set of guarantees such as financial security, protection of authority, and personal inviolability .

In Article 63 of the Constitution of the Republic of Uzbekistan, the legislator considers the inviolability of a judge as an element ensuring the independence of a judge. In our opinion, the inviolability (immunity) of a judge is an important element of ensuring the independence of judges, but not an integral element of the principle of their independence. It is a completely independent legal institution (*sui generis*), possessing a special legal nature, the composition of individual subjects, and the limits of independent action.

This opinion can be scientifically substantiated by the following.

In the first If A (inviolability) is part of B (independence), logically A should end when B ends.

But practice denies this. The judge resigns - he will no longer administer justice. Consequently, it does not make independent decisions, and "independence" does not apply to it.

Nevertheless, its inviolability is preserved (part seven of Article 64 of the Law on Courts).

If inviolability persists even after the end of independence, then it is not part of independence.

Its task is to guarantee the status and security of the judge's personality outside of judicial activity.

Secondly, Independence is the principle of organizing judicial proceedings. Answers the question: "How will the trial be conducted?" (impartially, objectively).

Immunity is a legal regime that establishes a special procedure for applying criminal prosecution against a

judge. He answers the question: "How will he be held accountable?" This is the judge's "shield."

Consequently, principle (idea) does not include a procedure (special order). These are categories at different legal levels.

Thirdly, if immunity belonged only to the independence of the court, it belonged only to judges. However, both the deputies and the President have immunity. However, they do not make independent judicial decisions.

Therefore, inviolability is an institutional guarantee of state power, not justice. It is necessary to limit the illegal influence of the branches of government on each other.

While immunity in the law enforcement process is considered part of independence, the deprivation of a judge's immunity is interpreted by society and international organizations as "an encroachment on the independence of the court."

This situation, in a certain sense, can create certain obstacles in the state's fight against corruption. The High Judicial Council and the Supreme Court, concerned about

the decline in the rating of independence in international ratings and indicators, may not be sufficiently impartial in the issue of canceling the immunity of a judge.

If we believe that immunity is not an integral part of independence, we deprive a judge of immunity for accepting a bribe, but we do not affect their independence in decision-making. Separating independence and inviolability will allow us to fight more decisively against robbed criminals without disrupting the judicial system.

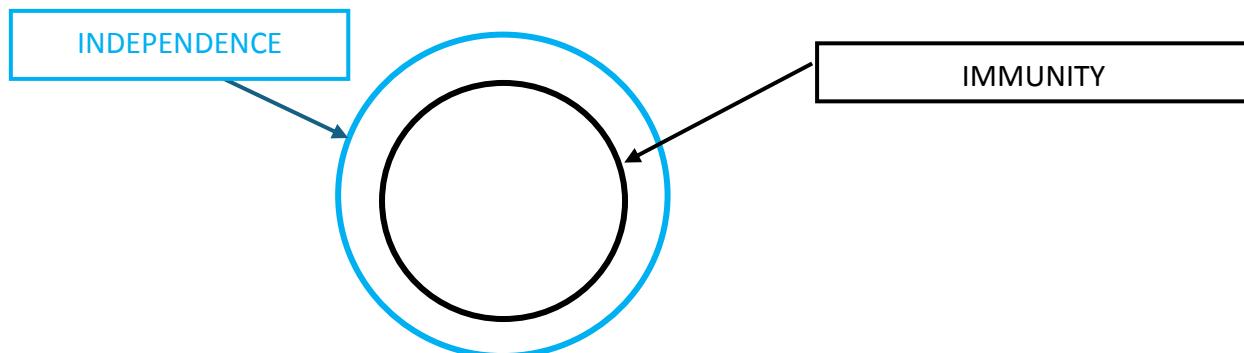
Today, there are cases of bringing judges to disciplinary responsibility for overturned decisions. This poses a direct threat to the independence of judges. However, since immunity is interpreted only as a "part" of independence, in practice, it is limited to protection from criminal liability.

Let's consider this hypothesis visually.

Current status. "Independence" is within the larger circle, while "inviolability" is within the smaller circle.

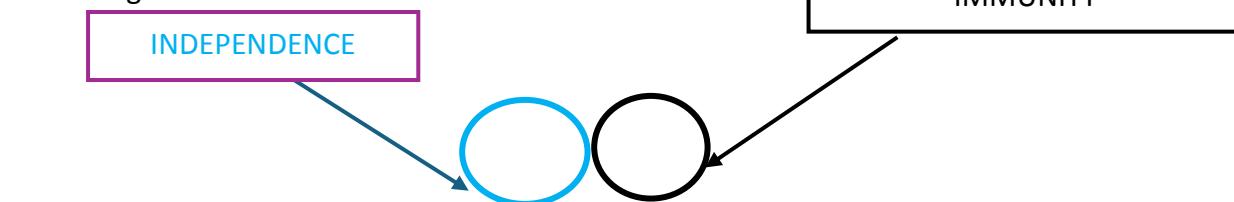
The disadvantage is that if independence is violated, the inviolability also disappears.

Figure 1<sup>1</sup>



Two equal circles called "Independence" and "Inviolability" Figure 2. They intersect (interact), but do not absorb each other. These frameworks are based on various articles of the Constitution.

Figure 2<sup>2</sup>



<sup>1</sup> Developed by a researcher

<sup>2</sup> Developed by a researcher

Independence - freedom of decision-making, Inviolability - guarantee of the judge's personal safety. Including security in freedom is methodologically incorrect, as freedom can exist without security, and security without freedom.

The comparative criteria for the independence and immunity of judges are listed in Table 1 below.

Table 1

Comparison criterion	Independence	Inviolability (Immunity)
Essence	Principle of activity (Process)	Legal Mode (Status)
Protection object	Court decision	person (Subject)
Purpose	Impartiality of the court	Judge's safety
Time range	Only during the term of authority	For life (even after resigning)
Threat	Pressure, calls, giving instructions	Detention, search, underground hearing, prosecution
Provision mechanism	Counseling room secrecy	Special order initiation of cases

Immunity is not only a procedural defense but also a complex institution that ensures the stability of the judge's status. According to J. Abdurahmonkhojayev, immunity is partially explained only as immunity from responsibility. However, immunity is related not only to protection from liability but also to the judge's material security, the right to freely perform their official duties, guarantees of service, and personal safety.

In our opinion, the immunity of judges - is a comprehensive system of legal guarantees protecting the personal safety, working conditions, professional reputation, and legal status of judges, protecting them from any administrative, criminal, or civil liability during the decision-making process.

Access to the judge's residence or office premises, the transport he uses, their inspection, search or seizure of objects from them, eavesdropping on his telephone conversations, personal search and personal search of the judge, as well as inspection, seizure or seizure of his correspondence, belonging to him, and documents may be carried out only by a court decision or with the permission of the Prosecutor General of the Republic of Uzbekistan. This requirement ensures procedural guarantees for the inviolability of judges and protects them from unjustified interference in their activities to administer justice.

The legislator indicates that the rights and freedoms related to a judge's activities and life may be violated only on two grounds. They are the decision of the court and the permission of the Prosecutor General of the Republic of Uzbekistan. The court decision eliminates arbitrary actions of law enforcement agencies and ensures the protection of the judge's rights. The Prosecutor General's permission is an additional level of supervision, and its permission guarantees that interference in a judge's activities can only be carried out in exceptional cases and with sufficient grounds.

Entering a judge's dwelling or office premises, the vehicle they use, conducting an inspection, search, listening to their telephone conversations, personal search and personal search of the judge, as well as searching, seizing their correspondence, belonging to them, and documents - each of these actions affects the personal and professional interests of the judge and therefore requires strict observance of procedural norms.

However, the legislator does not determine in which cases the court and in which cases the prosecutor permits the performance of the actions specified in paragraph ten of Article 64 in relation to the judge.

The 1994 European Council Recommendation emphasizes that judges have immunity only for the actions

they perform in the performance of their duties. At the same time, it has been established that they may be held liable for actions in their private lives based on general laws.

**International Criminal Court (ICC)** According to Article 48 of the Rome Statute, judges and prosecutors have diplomatic immunity, and any court proceedings against them may be conducted only with the court's permission.

The Bangkok Rules of Judicial Conduct also emphasize the need to protect judges from external influences to ensure their independence and impartiality. At the same time, it is determined that judges must perform their duties fairly and in accordance with the law.

Taking the above into account, based on international experience and standards, it is proposed to state part ten of Article 64 of the Law of the Republic of Uzbekistan "On Courts" in the following wording.

Entry into the dwelling or office premises of a judge, the vehicle they use, conducting a search, search, or seizure there, eavesdropping on their telephone conversations, personal search and personal search of a judge, as well as searching, seizing, or seizing their correspondence, belonging to them, and documents may be carried out only by court decision. With the permission of the Prosecutor General, such actions can only be taken in exceptional circumstances, related to the commission of a crime, before a court decision is issued.

In accordance with the ninth part of Article 64, it is stated that "If a judge is detained on suspicion of committing an offense, this shall be reported to the High Judicial Council of the Republic of Uzbekistan no later than three hours from the moment of his detention, with copies of the documents that are the basis for detention attached." However, the legislator does not specify what the Council's actions should be after receiving the relevant documents. The notification deadlines for the body detaining the judge are also somewhat disputed.

In this regard, it is proposed to state the ninth part of Article 64 of the Law on Courts in the following wording: «In the event that a judge is detained on suspicion of committing an offense, immediately from the moment of detention, it must be reported to the High Judicial Council of the Republic of Uzbekistan with the attachment of copies of the documents that are the basis for the detention. Notification must be sent by any available

means of communication indicating the time of sending.»

The High Judicial Council, upon receipt of the notification in the prescribed manner, shall issue an opinion on the legality of the judge's detention, object to the detention, or take other legal measures to ensure the immunity and protection of the judge.

Regarding the experience of foreign countries in this regard, in accordance with the second part of Article 13 of the Judicial Code of the Republic of Armenia, «A judge may not be detained, except in cases of detention in the commission of a crime or immediately after it. The President of the Republic of Armenia and the Chairman of the Cassation Court are immediately notified of the judge's detention.» In accordance with Article 87 of the Constitution of Georgia, "Judges enjoy personal inviolability. A judge cannot be arrested, detained, or held criminally liable; their house, personal car, or workplace cannot be searched, nor can they be searched without the consent of the Chairman of the Supreme Court of Georgia. The exception is crime scene detention, which is immediately reported to the Chairman of the Supreme Court of Georgia. If the chairman does not give his consent, the detained or imprisoned judge must be immediately released.»

In ensuring the inviolability of judges, it is crucial that the criminal case against a judge is within the jurisdiction of the Supreme Court of the Republic of Uzbekistan. The fact that the criminal case against a judge falls under the jurisdiction of the Supreme Court of the Republic of Uzbekistan is related to the special status of judges and the importance of their protection within the legal system. This rule is aimed at ensuring fairness, independence, and impartiality in the consideration of a criminal case in which the accused is a judge.

The determination of the Supreme Court of the Republic of Uzbekistan as the responsible authority for the consideration of a criminal case against a judge provides a number of key procedural guarantees. Including:

The Supreme Court is the highest body of the country's judicial system and ensures maximum independence and impartiality in the consideration of criminal cases initiated against a judge. This reduces the risk of political pressure or influence from other sectors of the state;

The Supreme Court has extensive experience in reviewing difficult and complex cases, which is especially important when reviewing cases related to a judge's reputation and

professional activities;

The consideration of a criminal case by the Supreme Court ensures high standards of justice and impartiality, which contributes to strengthening public trust in the judicial system.

It is no secret that judges hold a special position in the legal system, and any of their actions can significantly influence the justice and legality in society. Therefore, their criminal prosecution requires a special approach. In particular:

- the issue of protecting against unfounded accusations. At the same time, the consideration of criminal cases initiated against judges is the jurisdiction of the Supreme Court, which ensures additional protection of judges from unfounded accusations and pressure;
- procedural rigor. The process of considering a criminal case against a judge in the Supreme Court includes a high level of procedural rigor and transparency, which prevents the possibility of abuse of power.

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