



CURRENT ISSUES OF RECOGNIZING THE PRINCIPLE OF FREEDOM FROM COMPELLED SELF-INCRIMINATION AND TESTIMONY AGAINST CLOSE RELATIVES AS AN INDEPENDENT PRINCIPLE OF CRIMINAL PROCEDURE

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Article history:	Abstract:
Received: 26 th April 2026 Accepted: 24 th May 2026	This article examines the constitutional and international legal foundations of the principle of freedom from compelled self-incrimination and compelled testimony against close relatives, as well as its place within the system of criminal procedural law. The study analyzes the relationship between this principle and the presumption of innocence, the right to a fair trial, human dignity, and the right to defense. Through a comparative analysis of the legislation of the Republic of Uzbekistan, international legal instruments, the case law of the European Court of Human Rights, and the criminal procedure legislation of foreign countries, the article substantiates the necessity of recognizing this guarantee as an independent principle of criminal procedure. Based on the findings, scientifically grounded proposals are developed for introducing a separate provision into the Criminal Procedure Code of the Republic of Uzbekistan.

Keywords: criminal procedure, principles of criminal procedure, privilege against self-incrimination, right to remain silent, witness immunity, presumption of innocence, fair trial, human rights, close relatives, Criminal Procedure Code.

INTRODUCTION

In New Uzbekistan, ensuring human dignity, individual freedom, and justice within the judicial and legal system has become one of the key priorities of state policy. Among the important reforms envisaged in the Development Strategy of New Uzbekistan in the field of protecting personal and political rights, particular attention is given to "improving the mechanism for ensuring the rights and security of victims and witnesses in criminal proceedings" ¹. Strengthening the rule that no person may be compelled to testify against himself or herself or against his or her close relatives, and enhancing its legal significance, is primarily aimed at ensuring the implementation of this very objective emphasized by the Head of State.

The idea of "Human Dignity" advanced by the President of the Republic of Uzbekistan, Sh.M. Mirziyoyev, is not merely a socio-political slogan but also a conceptual approach aimed at making the legal

system serve the interests of individuals. In his speeches, the President has repeatedly emphasized the necessity of ensuring the rule of law, safeguarding human rights and freedoms, and introducing advanced international human rights standards into investigative and judicial practice.

One of the most important manifestations of ensuring human dignity in criminal proceedings is the prohibition against compelling a person to testify against himself or herself, to confess guilt, or to incriminate his or her close relatives. This rule is not merely a procedural privilege. Rather, it constitutes a fundamental guarantee directly connected with an individual's inner freedom, freedom of conscience, family relationships, the presumption of innocence, and the right to a fair trial.

Nevertheless, this issue remains the subject of scholarly debate. At first glance, granting an individual the right to remain silent may complicate the detection of crimes and create opportunities for guilty persons to

¹ National Database of Legislation of the Republic of Uzbekistan, No. 06/22/60/0082, January 29, 2022; No.

06/22/89/0227, March 18, 2022; No. 06/22/113/0330, April 21, 2022; No. 06/23/21/0085, February 10, 2023.



evade liability. According to another approach, however, the objective of establishing the truth in criminal proceedings should be achieved not by compelling individuals to incriminate themselves, but by collecting lawful, impartial, and reliable evidence. In our view, the latter approach is more consistent with the requirements of a state governed by the rule of law. This is because compelling an individual, who stands against the powerful procedural apparatus of the State in criminal proceedings, to prove his or her own guilt is incompatible with the very idea of fair justice.

DISCUSSION

Article 28 of the Constitution of the Republic of Uzbekistan expressly provides that "no one shall be compelled to testify against himself or herself or against his or her close relatives". Furthermore, this Article stipulates that a suspect, an accused, or a defendant is not obliged to prove his or her innocence and may exercise the right to remain silent at any stage of the proceedings. Thus, this guarantee has been recognized at the constitutional level.

It should be emphasized, however, that the Criminal Procedure Code of the Republic of Uzbekistan does not establish this provision as a separate and independent principle within the system of principles of criminal procedure.

Meanwhile, the principle that no one shall be compelled to testify against himself or herself is recognized in international law as an essential component of the right to a fair trial. Article 14(3)(g) of the International Covenant on Civil and Political Rights provides that every person has the right not to be compelled to testify against himself or herself or to confess guilt. This rule is based on the concept that, in criminal proceedings, an individual should be regarded not as an object of procedural actions but as a bearer of rights.

The essence of this international standard lies in the fact that the burden of proving the accusation rests upon the State. A person's decision to remain silent, to refuse to answer questions, or not to provide self-incriminating information should not be interpreted as evidence of guilt. Otherwise, the presumption of innocence would become merely a formal principle.

The case-law of the European Court of Human Rights likewise recognizes the right to remain silent and the privilege against self-incrimination as integral components of the right to a fair trial. Although the European Convention on Human Rights does not expressly provide for these rights in a separate provision, the Court has consistently derived them from

the fair trial guarantees enshrined in Article 6 of the Convention.

At this point, an important distinction should be made: although the concepts of the "right to remain silent" and the "privilege against self-incrimination" are closely related, they are not identical. The right to remain silent primarily refers to the right to refrain from giving oral or written testimony. The privilege against self-incrimination, however, is a broader concept that protects an individual from being compelled to provide explanations, information, documents, or any other evidence that may establish his or her own guilt.

Article 28 of the Constitution of the Republic of Uzbekistan clearly and unequivocally enshrines this guarantee. According to its provisions, a suspect, an accused, or a defendant is not required to prove his or her innocence, may exercise the right to remain silent at any stage of the proceedings, and no one shall be compelled to testify against himself or herself or against his or her close relatives.

The Criminal Procedure Code of the Republic of Uzbekistan also contains a number of provisions closely related to this guarantee. For example, the provision concerning the presumption of innocence stipulates that a person is not obliged to prove his or her innocence and may exercise the right to remain silent. Likewise, the provision governing the rights of a witness establishes that a witness has the right not to testify against himself or herself or against his or her close relatives. Procedural legislation also requires that a detained person be informed of his or her rights, including the fact that any statements made may subsequently be used as evidence.

However, these provisions are scattered throughout the Code and have not been elevated to the status of a single conceptual principle. As a result, in practice this guarantee is sometimes interpreted merely as a right of a witness or as a procedural entitlement of a suspect or an accused. In reality, however, this rule should constitute a general principle applicable to the entire system of criminal proceedings.

The core of the problem is that, unless this rule is expressly established as an independent principle in the Criminal Procedure Code, the scope of its legal effect becomes unduly limited. For example, this guarantee may not be ensured to the same extent during the taking of explanations, the procedural use of the results of operational-search activities, preliminary questioning, communication at the time of apprehension, confrontations, or other procedural actions. Therefore, incorporating this rule into the



system of principles of the Criminal Procedure Code is of both theoretical and practical significance.

In the theory of criminal procedural law, the privilege against self-incrimination is associated with several fundamental ideas.

First, this principle constitutes the logical continuation of the presumption of innocence. If a person is presumed innocent, he or she cannot be required to prove his or her innocence. Consequently, such a person should not be under any obligation to exonerate himself or herself or to assist the prosecution.

Second, this principle protects individual freedom and human dignity. Compelling a person to confess guilt or to testify against his or her close relatives seriously interferes with that person's inner freedom, freedom of conscience, and family relationships.

Third, this principle serves as an important safeguard against unlawful pressure, torture, psychological coercion, and forced confessions during criminal investigations. In criminal proceedings, the decisive role should be played not by a confession of guilt, but by evidence obtained through lawful means.

National scholars have likewise regarded witness immunity, the privilege against self-incrimination, and the right to refuse to testify against close relatives as important guarantees for ensuring human rights in criminal proceedings. Some studies emphasize that witness immunity extends not only to witnesses but also to other participants in criminal proceedings. This approach is well-founded, since the privilege against self-incrimination should not be restricted on the basis of an individual's procedural status.

In particular, A.S. Po'latov defines witness immunity as a set of procedural rules exempting an interrogated person from the obligation to disclose information concerning himself or herself and his or her close relatives, as well as regulating the explanation and formalization of this right².

Another national scientist M. Abdullayeva, in turn, substantiates the necessity of introducing the institution of witness immunity into the criminal

procedural legislation of the Republic of Uzbekistan from the perspective of protecting human rights, family values, and professional confidentiality.

O. Muqimbayev analyzes the right of a witness not to testify against himself or herself or against his or her close relatives as a constitutional guarantee³.

At the same time, the scholarly views of A.T. Allamuratov and Q.Q. Matkarimov on witness immunity are of considerable importance in shaping the theoretical foundations of this institution.

Foreign scholars have also expressed differing views on this issue. One group of authors regards this right as a central element of the right to a fair trial. According to their view, the State must prove the accusation by means of independent evidence rather than through information obtained by compelling an individual to testify against himself or herself. Representatives of another approach argue that an excessively broad interpretation of this right may hinder the effective investigation and detection of crimes.

J. Langbein associates the origin of the privilege against self-incrimination not only with political and historical events, such as the Star Chamber or religious persecution, but also with the strengthening of legal representation and the emergence of the adversarial criminal process at the end of the eighteenth century. In his view, this privilege developed within the common law system as a consequence of the evolution of the institution of legal defence⁴.

A. Ashworth examines this issue from the perspective of European human rights law. In his article "Self-Incrimination in European Human Rights Law – A Pregnant Pragmatism?", he analyzes the development of the privilege against self-incrimination and the right to remain silent in the case-law of the European Court of Human Rights. According to Ashworth, the privilege against self-incrimination is not merely a procedural

² Po'latkhonov, A.S. The Genesis, Current State, and Prospects for the Development of the Institution of the Witness in Criminal Proceedings. Extended Abstract of the Doctor of Science (DSc) Dissertation. Tashkent, 2026.

³ Muqimbayev, O. "Testimony in Criminal Proceedings: On Certain Historical Aspects of the Development of

the Legal Status of a Witness". Bulletin of the Advanced Training Institute of the Ministry of Internal Affairs, No. 4 (15), 2025, pp. 100-106.

⁴ Langbein J.H. The Historical Origins of the Privilege Against Self-Incrimination at Common Law // Michigan Law Review. – 1994. – Vol. 92. – P. 1047-1085.



technique but an integral component of the right to a fair trial and the protection of human rights⁵.

J. Jackson emphasizes that the right to remain silent should be distinguished from the privilege against self-incrimination. In his opinion, the right to remain silent in criminal proceedings should be strengthened as a fair trial standard that ensures the active and effective participation of the defence. Jackson argues that the right to remain silent should not be interpreted narrowly as merely the right to refuse to answer questions, but rather as a procedural guarantee that safeguards the right of defence as a whole⁶.

Paul Roberts and Adrian Zuckerman regard the privilege against self-incrimination as a constitutional guarantee that historically developed to protect individual liberty against State coercion. At the same time, they note that the theoretical foundations of this privilege remain the subject of scholarly debate and that, in some jurisdictions, its scope has gradually been narrowed through legislative measures⁷.

The Russian scholar N.Yu. Volosova considers witness immunity not merely as a separate right but also as a principle of criminal procedure and, at the same time, as an independent legal institution. In her view, witness immunity encompasses:

- (1) the privilege against self-incrimination;
- (2) the right not to testify against one's close relatives or spouse;
- (3) immunities arising from professional or official duties⁸.

Based on the views discussed above, it may be concluded that the privilege against self-incrimination is not, in the absolute sense, a mechanism that impedes criminal proceedings. It does not confer upon an individual the right to give false testimony, destroy evidence, or falsely accuse other persons. Rather, its primary purpose is to ensure that State authorities do not rely on compelled confessions or self-incriminating testimony obtained from an individual in the course of criminal proceedings.

A study of the legislation of foreign countries demonstrates that the criminal procedural laws of a

number of states expressly establish this guarantee as a separate principle, that is, in the form of an independent provision.

In particular, Article 18 of the Criminal Procedure Code of Ukraine expressly recognizes the "freedom from self-incrimination and the right not to testify against close relatives and family members" as one of the fundamental principles of criminal proceedings. Under this provision, no person may be compelled to confess guilt, to testify against himself or herself, or to provide testimony incriminating his or her close relatives or family members.

Similarly, Article 20 of the Criminal Procedure Code of the Republic of Armenia establishes, in a separate provision, the right of an individual to be exempt from the obligation to testify against himself or herself, his or her spouse, or close relatives. This approach makes it possible to regard this guarantee not merely as a right associated with the procedural status of a witness, but as a broader principle of criminal procedure.

Article 20 of the Criminal Procedure Code of the Republic of Azerbaijan also establishes the "freedom from self-incrimination and incrimination of close relatives" as an independent legal provision. This rule prohibits compelling a person to testify against himself or herself or against his or her close relatives and further implies that no adverse legal consequences may arise from the exercise of this right.

Article 28 of the Criminal Procedure Code of the Republic of Kazakhstan likewise contains a separate provision exempting an individual from the obligation to testify against himself or herself, his or her spouse, or close relatives. This rule is intended to ensure witness immunity and to safeguard an individual's procedural inviolability.

Based on this comparative analysis, it may be concluded that although this guarantee has been recognized at the constitutional level in the legislation of the Republic of Uzbekistan, its express establishment as an independent principle of criminal procedure would

⁵ Ashworth A. Self-Incrimination in European Human Rights Law — A Pregnant Pragmatism? // *Cardozo Law Review*. — 2008. — Vol. 30. — P. 751-774.

⁶ Jackson J.D. Re-conceptualizing the Right of Silence as an Effective Fair Trial Standard // *International and Comparative Law Quarterly*. — 2009. — Vol. 58. — P. 835-861.

⁷ Roberts P., Zuckerman A. *Roberts & Zuckerman's Criminal Evidence*. 3rd ed. — Oxford: Oxford University Press, 2022. Chapter 13: The Accused's Privilege Against Self-Incrimination.

⁸ Volosova, N.Yu. *The Criminal Procedural Institution of Witness Immunity: Theory, Legislative Regulation, and Practice*. Doctor of Legal Sciences (Dr. Sci. in Law) Dissertation. Moscow, 2015.



be consistent with contemporary foreign legislative practice.

In light of the foregoing, it would be appropriate to incorporate the principle of freedom from compelled self-incrimination and testimony against close relatives into the Criminal Procedure Code of the Republic of Uzbekistan.

In particular, the proposed provision may be formulated as follows:

Article 23¹. Principle of freedom from compelled self-incrimination and testimony against close relatives

No one shall be compelled to give testimony against himself or herself, his or her family members, or close relatives.

In the circumstances provided for in the first paragraph of this Article, a person shall not incur liability for refusing to give testimony.

The significance of incorporating this provision into the national legislation is manifested in several respects.

First, the constitutional guarantee would be fully and systematically reflected in the Criminal Procedure Code, while clear procedural mechanisms would be established to ensure the direct and effective implementation of the constitutional provision in practice.

Second, this principle would prevent practices such as compelled confessions, testimony obtained under coercion, and the questioning of individuals without first informing them of their procedural rights during investigation and trial proceedings.

Third, it would guarantee that the exercise of this right cannot be interpreted as an indication of guilt. In practice, circumstances such as a person's refusal to answer questions, refusal to confess, or lack of cooperation with the investigation may sometimes create a negative perception of that individual. The proposed principle would eliminate the possibility of such an interpretation.

Fourth, the prohibition against compelling a person to testify against his or her close relatives protects family relationships as well as an individual's moral and ethical autonomy. In pursuing the objective of detecting and prosecuting crime, the State should not place an individual in a position where he or she is compelled to give testimony against his or her parents, children, spouse, brothers, or sisters.

CONCLUSION

In conclusion, the principle that no one shall be compelled to testify against himself or herself or against his or her close relatives constitutes one of the

fundamental guarantees for the protection of human rights in criminal proceedings. It is intrinsically linked to the presumption of innocence, the right to a fair trial, human dignity, the right of defence, and the doctrine of admissible evidence.

Article 28 of the Constitution of the Republic of Uzbekistan clearly enshrines this guarantee. The Criminal Procedure Code also reflects this right in several of its provisions. However, its fragmented regulation is insufficient. The experience of foreign jurisdictions, international legal standards, and the logic of the ongoing judicial and legal reforms in Uzbekistan all point to the necessity of expressly establishing this guarantee as an independent principle within the Criminal Procedure Code.

Accordingly, it is proposed that the system of principles of the Criminal Procedure Code of the Republic of Uzbekistan be supplemented with the "Principle of Freedom from Compelled Self-Incrimination and Testimony Against Close Relatives." Such an amendment would facilitate the full implementation of the human rights guarantees enshrined in the Constitution within criminal proceedings, prevent unlawful coercion during investigation and judicial proceedings, strengthen the doctrine of the admissibility of evidence, and further ensure respect for human dignity.

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