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The Role Of The Witness In Civil Procedure

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ABSTRACT

This article provides opinions on the legal status of a witness as a person contributing to the administration of justice. There is an analysis concerning the rights, duties, and role, as well as specific features of participation of a witness in the civil process. It also provides comparative analysis between national and foreign countries' laws on civil procedure.

Furthermore, the article expresses opinions on the meaning of testimony as a form of evidence in civil cases. It also proposes ways to improve the mechanisms regulating the procedural participation of a witness in civil cases.

KEYWORDS

Witness, persons contributing to the administration of justice, legal interest, legal status, rights and obligations, witness's testimonies, information, evidence, admissibility.

INTRODUCTION

Improving the mechanisms of civil procedure, simplifying the consideration of some cases, and increasing and enhancing the status of participants in the process are integral parts of the judicial and legal reforms being carried out in Uzbekistan.

In this direction, it is essential to consider the role and importance of such participants in the process, whose task is to promote the administration of justice. A witness occupies a special place in this category of persons.

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In this context, a witness is a person summoned by the court to testify about the circumstances of the case known to him. Testimony is the actual statement made by a witness in court.

In accordance with the current Civil Procedure Code of the Republic of Uzbekistan, any person who knows any circumstances related to the case can be a witness. It should be noted that although the term «any person» has a very broad understanding, there are some limitations on who can offer testimony. For example, the person must be able to correctly perceive the circumstances of reality related to the civil case under consideration; in other words, have full legal capacity. Thus, the law can recognize any person as a witness, regardless of gender, social status, education and even age (with some restrictions).

Minor children acting as witnesses may have limited legal capacity due to age and psychological development. A young child may, for instance, perceive his environment not so much rationally as emotionally. Therefore, many countries have adopted the practice of involving specialists in the field of child psychology, parents, teachers, adoptive parents, guardians or trustees when a child is questioned in court.

A witness, unlike a specialist, expert and translator, does not need to have special knowledge, skills and competencies; it is enough for him to be able to provide information about what he has seen or heard. The testimony of a witness mainly consists of events that he perceived, which he personally saw and heard. Nevertheless, courts also accept reports of facts that the witness learned about from other sources, for example, from another person. However, hearsay evidence is inadmissible where the source of the information cannot be identified and therefore cannot be verified.

A person who is able to testify as a witness becomes a witness when summoned by the court. A witness must have the ability not only to correctly perceive reality (civil procedural legal capacity), but also to give accurate testimony about what he perceived. Accordingly, persons who, due to mental disabilities, are not able to objectively perceive the facts and give accurate testimony about them, should not be questioned as witnesses.

MATERIALS AND METHODS

The law clearly stipulates a list of persons who cannot be summoned and questioned as witnesses. They are:

1) representatives in a civil, economic, or administrative case, defense lawyers in a criminal case, and lawyers in a case of an administrative offense – regarding the circumstances that became known to them in connection with the performance of their duties as a representative, defense lawyer or advocate;
2) persons – who, due to their physical or mental disabilities, are unable to perceive facts correctly or give accurate testimony about them.

According to the principles of civil proceedings, witnesses are distinguished from subjects of substantive relations and, unlike the persons participating in the case, they do not have a legal interest in its outcome. However, in modern legal literature these rules are not always unambiguously defined. So, V.V. Molchanov argues that there is a connection between the quality of testimony and the activities of the parties in the process, which is confirmed by the following:

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1) witnesses are presented by the parties in order to substantiate their claims and objections;
2) witnesses are often persons who have a certain relation to the parties (relatives, acquaintances), i.e. not outsiders in the full sense of the word;
3) the law does not oblige the parties to give truthful explanations regarding the facts with which they substantiate their claims and objections. Thus, we can conclude that a witness in the civil process may have some interest in or relationship to the case.

One of the main features of the participation of a witness in court is that his activities in civil proceedings are regulated by imperative methods. As a facilitator of the administration of justice, a witness in a civil proceeding mainly performs procedural duties. Thus, the witness is obliged only to appear in court at the appointed time and give truthful testimony. This obligation is codified in Art. 57 of the Civil Procedure Code of the Republic of Uzbekistan. If the witness does not appear when summoned by the court for reasons recognized by the court as disrespectful, or for evading testimony, he may be fined in accordance with the established procedure. The imposition of a fine does not relieve a witness from the obligation to appear and testify. For giving deliberately false testimony, a witness is criminally liable under Article 238 of the Criminal Code of the Republic of Uzbekistan.

It should be noted that in the legislation of some CIS countries, there are exceptions to the obligation of a witness to testify. So, in accordance with Art. 69 of the Code of Civil Procedure of Russia, the following categories of persons have the right to refuse to testify:

1) a citizen against himself;
2) a spouse against a spouse; children, including adopted children, against parents or adoptive parents; parents or adoptive parents against children, including adopted children;
3) brothers and sisters against each other; grandparents against grandchildren, and vice versa;
4) deputies of legislative bodies – in relation to information that became known to them in connection with the exercise of deputy powers;
5) Commissioner for Human Rights in the Russian Federation – in relation to information that became known to him in connection with the performance of his duties (part 3 of article 69 of the Code of Civil Procedure of the Russian Federation);
6) Commissioners under the President of the Russian Federation for the protection of the rights of entrepreneurs, and authorized for the protection of the rights of entrepreneurs in the constituent entities of the Russian Federation - in relation to information that has become known to them in connection with the performance of their duties;
7) Those persons for whom federal laws provide for witness immunity due to professional duty: attorney's secret, adoption secret, notarial secret, investigative secret, pilot's secret, state secret, military secret, diplomatic secret, etc.

Similar rules are enshrined in Art. 52 Code of Civil Procedure of Ukraine. So, an individual has the right to refuse to testify against himself, family members or close relatives (husband, wife, father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, brother, sister, grandfather, grandmother, grandson, granddaughter, adoptive parent or

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adoptive child, guardian or curator, person over whom guardianship or custody has been established, family member or close relative of these persons). A person who refuses to testify is obliged to provide reasons for the refusal.

Speaking about the importance of the participation of a witness in a civil procedure, one should take into account the fact that testimony is important in a court decision to resolve a dispute in favor of one of the parties. Therefore, testimony remains the subject of research in terms of subjects and forms.

In legal literature, testimony is divided into three types depending on its content:

- Factual information;
- Information containing judgments (or opinions);
- Evidence of knowledgeable witnesses.

Factual Information is usually given by witnesses who are not familiar with the established relationship and legal issues of the disputing parties. Generally, they are limited to setting out one or more facts that are important for the resolution of a civil case. Such testimony is given by eyewitnesses who by happenstance learned about certain circumstances.

The second type of testimony (information containing judgments) is typical for witnesses who are well acquainted with the parties or with one of them and who know the development of the disputes at issue. Often, such witnesses (relatives, girlfriends, enemies of one of the parties) have an interest in one or another resolution of the case. They, as a rule, are not limited to testifying about a specific fact, but also set forth their opinions, judgments, guesses, and assessment of the circumstances related to the dispute, as well as the character of the people involved in the dispute. With this type of testimony, it can be difficult for the court to separate the information based on the witness's opinions, assumptions, and speculations from the information based on the witnesses observations. So while the testimony of these witnesses may more fully describe the controversial situation and provide context for the facts, there is a great danger of distortion of the circumstances of the case through the substitution of objective evidence with biased information.

The third type of testimony is obtained from competent witnesses who, by virtue of particularized skill, knowledge, or training, are able not only to inform the court of information of a factual nature, but also to comment on the reasons and consequences of specific circumstances. Therefore, knowledgeable witnesses are close in nature to specialists. Thus, a driver can describe the details and circumstances leading up to traffic accident (e.g. the white car was traveling too fast for the traffic and weather conditions), which he witnessed.

Regardless of what important information the testimony carries, it must relate to the factual circumstances of the case. The opinions of witnesses about the meaning of laws and the legal significance of facts should not be taken into account by the court. Moreover, it is irrelevant whether the actual circumstances are assessed from a scientific or technical point of view.

Testimony is assessed in different ways in terms of its relevance and admissibility. For example, in Germany, testimony (der Zeugenbeweis) is the most widely used means of evidence in practice, but which is investigated by the court with extreme

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caution. In the German theory of evidence, testimony is viewed as the most important and, at the same time, as the worst means of proof. This notion is premised on the recognition that a person's worldview, his thinking, feelings, fantasies and other sources of influence play an important role in both his perception and his testimony as a witness. Testimony as evidence is based on the facts presented by the witness which were elicited through questioning of the witness in court.

RESULT AND DISCUSSION

The French system of forensic evidence, in particular with regard to testimony (les preuves des temoins, la preuve testimoniale), is highly formal. Any person over the age of 18 can be a witness. Interest in the outcome of the case is not a ground for disqualification of witnesses. Unlike the English process, the French civil process does not require witnesses to directly see, hear, or personally observe everything that they report to the court in their testimony. It is considered completely admissible if the witnesses in their testimony tell the court what they learned from the words of other persons in whose presence certain factual circumstances took place.

In the United States, witness testimony is a type of evidence, and is essential in the process. First hand knowledge, that is, what the witness perceived directly with his senses is the preferred method of proof. While there are many exceptions to the hearsay rule of evidence, which generally excludes a witness from testifying about what he learned from other persons or sources, testimony of first-hand knowledge is the most used and accepted kind of non-expert testimony in American courts. In addition, a witness is subject to cross-examination, which is hardly possible when examining written statements. Also important is the fact that the witness gives his testimony under oath, which increases its reliability. Finally, the purely psychological impact that the witness can have on the trier of fact (usually a jury) cannot be understated.

In accordance with the above opinions and circumstances regarding the importance of the witness and his testimony in the civil process, the following conclusions can be drawn:

First, the witness is one of the key figures in the category of facilitators of justice. He must not have a legal interest in the outcome of the case. A witness does not have the right to take the position of one of the parties to the process, but must state all the facts and circumstances that are known to him.

Second, the functions of a witness are regulated mainly by imperative methods. He has more responsibilities than rights, and this indicates the importance of testimony in the fair and objective resolution of civil disputes.

Third, the testimony of witnesses is of great importance in deciding the question of proof of the claims made by the plaintiff, since they will be assessed by the court as admissible after the witness has taken the oath of responsibility for perjury.

And finally, the testimony of a witness has a special role in cases where the witness is not simply a person with knowledge of some tangential facts related to the civil case in question, but is an eyewitness to the circumstance that is the subject of investigation by the court in the consideration of a civil case. Thus, the importance of the participation of a witness in the civil process, as well as the importance of his testimony are

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obvious. This indicates that this issue remains the subject of further scientific research.

CONCLUSION

Based on the above, it is advisable to make the following changes to legislation concerning the legal status of a witness and the legal basis of his participation in civil proceedings:

First, it is necessary to improve the legal status of the witness by establishing new norms about his rights in the Civil Procedure Code. This will help raise the status of a witness among the participants of civil proceedings and, thereby, improve the quality of his assistance to justice.

Second, it is necessary to establish new norms that exempt him from criminal liability for refusing to testify against himself, close relatives and in other cases listed in this article. This will help to achieve fairness in civil proceedings and increase the motivation of the witness to participate in civil court and testify truthfullly.

Third, it is advisable to clearly define in the Civil Procedure Code the exact criteria for recognition of witness testimony as suitable for admission as evidence.

In conclusion, it can be noted that studying the legal status of witnesses and the improvement of the mechanisms for their participation in civil proceedings will contribute to the improvement of the quality and efficiency of justice in general.

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