

Witness



The Role of the Witness in Civil Proceedings in the Republic of Serbia

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1. Introduction

In civil proceedings before the courts of the Republic of Serbia, witnesses serve as one of the central instruments in the evidentiary process. Their involvement is governed by the Law on Civil Procedure (Zakon o parničnom postupku — ZPP), which lays down a comprehensive framework regulating the conditions under which witnesses may be proposed, summoned, examined, and excused.

The law also establishes the rights and obligations of witnesses, ensuring a fair balance between effective fact-finding and the protection of individual rights. This structured framework plays a crucial role in maintaining the integrity and efficiency of civil adjudication, while also preventing procedural abuses.

2. Proposal and Summons of Witnesses

2.1 Proposal

Any party seeking to rely on a witness must properly propose the individual during the course of the proceedings. The proposal must include the witness's full name, occupation, and place of residence, as well as a clear statement of the facts to which the witness is expected to testify. This information must be provided no later than the preliminary hearing or, if such a hearing is not required by law, at the latest during the first main hearing.

Only persons who possess direct knowledge of relevant facts—either through personal observation or other credible means—are deemed competent to testify. Witnesses who lack capacity or whose testimony would constitute inadmissible hearsay may be excluded from examination.

2.2 Summons

Witnesses are summoned to court through a formal written notice, which must clearly specify the following:

- The full name of the witness;
- The date, time, and venue of the scheduled hearing;
- The designation of the case;
- A statement indicating that the individual is being summoned as a witness;
- A warning concerning the legal consequences of unjustified failure to appear;
- Information about the witness's right to reimbursement of expenses incurred due to their appearance before the court.

3. Examination of Witnesses

3.1 Form and Setting

Witnesses are examined individually and in the absence of other witnesses to preserve the independence of their testimonies. Testimony is given orally, under oath or after receiving a formal warning to speak the truth and to refrain from withholding any relevant information. Witnesses are also cautioned about the criminal consequences of giving false testimony.

3.2 Procedure

The examination begins by recording the witness's personal data, including their name, father's name, occupation, residence, date and place of birth, age, and relationship to the parties. The witness is then invited to present all relevant information known to them regarding the facts in dispute. The court and the parties may ask additional questions to clarify or expand upon the initial testimony, but leading questions—those suggesting the answer—are strictly prohibited.

Witnesses are required to indicate how they became aware of the facts they describe. In cases where conflicting testimony arises, the court may order a confrontation (suočenje) between the relevant witnesses. This procedure involves questioning each witness separately about the disputed points, with all statements recorded in the official court minutes.

3.3 Special Situations

If the witness does not speak the official language of the proceedings, a court-appointed interpreter must be present. For deaf or mute witnesses, the court may utilize written questions and answers or an interpreter trained in sign language, depending on the circumstances.

3.4 Alternative Methods of Testimony

In certain cases, the court may allow a witness to submit a written statement, provided that it is certified by the court or another authorized authority. Additionally, testimony may be obtained via audio or video link, especially in situations involving vulnerable witnesses or when attendance is otherwise impracticable. The court retains discretion to later require in-person confirmation. Any audio or video recordings made form part of the case file are additionally required to be transcribed into written form.

3.5 Reimbursement Rights

Witnesses are legally entitled to reimbursement for:

- Travel expenses;
- Meals and overnight accommodation, if necessary;
- Lost earnings due to court attendance.

The witness must submit a request for compensation immediately following their examination. Failure to do so results in the forfeiture of the right to reimbursement. The court is under a legal obligation to inform witnesses of this right.

4. Refusal to Testify

4.1 Privileged Relationships

A witness may refuse to testify on matters covered by legally recognized privileges, including:

- Information disclosed within the scope of attorney-client privilege;
- Religious, medical, or other professional secrets;
- Any information protected by a duty of confidentiality, unless the obligation is formally waived.

4.2 General Grounds for Refusal

Witnesses are also entitled to refuse to answer questions if doing so would likely expose them or certain close relatives to severe disgrace, substantial financial harm, or criminal liability. However, this right does not apply in matters involving mandatory legal disclosure, certain family law relations, or where the witness's knowledge is indispensable.

The court determines the legitimacy of any refusal, taking into account the nature of the questions and the justification provided. Although there is no separate right to appeal such decisions, objections may be raised within appeals against sanctions for unjustified refusal.

5. Non-Appearance and Sanctions

If a witness fails to appear and fails to provide a timely and justified reason, the court may impose sanctions.

5.1 Penalties for Unjustified Absence

A witness who unjustifiably fails to appear may be:

- Fined between RSD 10,000 and RSD 150,000;
- Ordered to pay the costs associated with their compelled attendance;
- Subject to compulsory escort to court by law enforcement officers.

If the witness continues to refuse to testify, additional sanctions may be imposed.

5.2 Retroactive Justification

If the witness subsequently provides a valid justification for their absence, the court may annul the imposed fine and relieve them of associated costs, either in full or in part.

6. Written Statements vs. Oral Testimony

Although oral testimony remains the primary method of presenting witness evidence, the law allows for written statements when in-person appearance is not feasible. Such statements must be properly certified and read aloud in court. Nevertheless, the probative value of written statements is generally considered to be lower due to the absence of direct examination and cross-examination.

In arbitration proceedings, written witness statements are more commonly accepted, allowing parties to streamline the evidentiary process and prepare more strategically.

7. Practical Challenges

Despite legal provisions for modern evidentiary techniques, many Serbian courts lack the necessary technical infrastructure to record hearings or testimonies electronically. As a result, the court clerk typically transcribes witness statements in real time, which may lead to inaccuracies or incomplete records. This proves to be challenge for legal representatives and courts in the second-instance proceedings, when the courts of the second-instance need to render a decision on the appeal by using the said transcripts, most often without hearing the witnesses themselves.

The second practical challenge the courts face are the issues regarding the witnesses' ability to give a valid and true testimony due to the passage of time. Namely, more often than not, witnesses are brought before the court to give their testimony several months or even years after the event which is the subject of the proceedings took place. For this reason, the witnesses often have difficulties to accurately convey the event they are to testify about.

Finally, the courts may also face a challenge when determining the truthfulness and sincerity of the witnesses' oral testimony. As the parties propose the witnesses to be examined during the course of the proceedings, the witnesses, although obligated to speak only the truth before the court, are often subjective and trying to present their testimony in a way which they consider appropriate. Thus, the courts need to thoroughly examine and decide on the credibility of the witness testimonies in each case.

8. Conclusion

The Serbian Law on Civil Procedure provides a detailed and balanced framework for the use of witness testimony in civil litigation. It ensures that witnesses are treated fairly and are protected, while also preserving the integrity of the judicial process. By outlining clear procedures for the proposal, examination, and protection of witnesses, and by allowing flexibility through modern evidentiary tools, the system seeks to promote both procedural efficiency and the rights of participants in civil trials.

However, witness examination hearings can often be unpredictable. That is why having an experienced and skilful lawyer by your side during the proceedings can make a significant difference in how the testimony is presented and how much weight it carries before the court.

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