

Witness testimony is, along with testimony of the accused person, expert and detained person, one of pieces of evidence, the essence of which is person's testimony about the matters important for decision-making in criminal proceedings. The witness always testifies about what he perceived by his own senses.

Witness is a natural person different than the accused person, who has been called (summoned) by authorities involved in criminal proceedings to testify about matters important for criminal proceedings, which he has perceived (learned) through his senses, i.e. what he saw, heard etc. Therefore a witness is irreplaceable by another person.

Until a joint criminal proceeding is being conducted, the co-accused person cannot be interviewed as a witness concerning the criminal activity of the other co-accused person, even if he should testify about a crime he himself is not being prosecuted for.

Witnesses may be persons, **who are of age, underage persons** (including persons under the age of fifteen), and even **men**
tally or physically challenged persons

. A witness may also be the

aggrieved person

, even though he has more interest in the outcome of the proceedings than other witnesses.

Code of Criminal Procedure stipulates general witness obligations, which include:

- **obligation to appear before the authorities involved in criminal proceedings when summoned,**

- **obligation to testify as a witness about what he knows about the crime, its perpetrator and circumstances important for criminal proceedings.**

The fundamental obligation is to **appear upon summons** of authorities involved in criminal proceedings. The obligation of persons to appear may be enforced by

imposing a disciplinary

fine or by

having the person brought before the authorities

. The obligation to appear upon summons applies to

all persons

, i.e. also persons, questioning of which is prohibited, and persons who have the right to refuse to testify. The only exceptions are persons enjoying privileges and immunities according to the domestic or international law.

The obligation of a witness to appear when summoned must be complied with given the irreplaceability of the witness, **representation of the witness is not possible.**

The obligation to testify as a witness means to tell truly everything the witness knows about the matters important for criminal proceedings, i.e. about the crime in question, its

perpetrator or other matters of fact important for criminal proceedings. In case the witness testifies falsely or withdraws a piece of information important for criminal proceedings, he may be held liable for committing perjury.

There are three exceptions from the obligation to testify implying that some persons do not have to (or must not) give testimony, however they are obliged to appear to the interview when summoned. These exceptions are justified in particular by public interest (to keep certain facts confidential) or by private interests. This concerns the following cases:

- persons enjoying privileges and immunities according to domestic or international law

- persons, questioning of which is prohibited

- persons entitled to refuse testimony

- members of the Chamber of Deputies or the Senate and judges of the Constitutional Court; these persons are entitled to refuse testimony concerning only the facts they learned in connection to the performance of their duties, even after they ceased to perform that position; this is their right they do not have to exercise.

Furthermore, witnesses have the following obligations:

- submit to inspection of their mental health

- submit to physical examination

- allow withdrawal of blood or a similar action, unless these are associated with danger to their health, including taking samples of biological material

- submit to performance of actions necessary to ascertain the identity of the person, who was present at the crime scene

- to write the necessary amount of words, should it be necessary to ascertain the authenticity of handwriting

- to describe a certain person within the frame of identification by recognition

- to submit to participation on confrontation with the accused person

- to submit to participation in other actions of criminal proceedings (e.g. investigative experiment, reconstruction, on-site verification, examination etc.).

Compliance with these duties may be enforced by having the person brought before the competent authority or by imposing a disciplinary fine. No other measures besides these two may be applied against a witness, i.e. incarceration or apprehension of a witness in order to perform a certain action is not possible.

Witness has the following rights:

Right for respecting the prohibition of questioning (in case of confidential information or obligation to maintain secrecy)

The prohibition of questioning a witness will be applied *ex officio*, unless of course the witness has not been relieved of the obligation to maintain secrecy of the facts related to confidential information according to a special Act.

The witness also cannot be interviewed if his testimony would breach an obligation to maintain secrecy imposed or recognized by the state, unless he was relieved of this obligation by the competent authority or by the person, in whose interest this obligation serves.

Right to refuse testimony

The right to refuse testimony as a witness belongs to relatives of the accused person in direct line, his sibling, adoptive parent, adoptive child, spouse, partner and companion. The witness is also entitled to refuse testimony, if by doing so he would cause a risk criminal prosecution to himself, to his relative in direct line, his sibling, adoptive parent, adoptive child, spouse, partner and companion. or to other persons in family or similar relationship, whose harm he would rightfully perceive as harm incurred to himself. The witness must always be advised on the right to refuse testimony prior to commencing the questioning..

Right to testify in his mother language or a language he knows

Right to the presence of an interpreter

Right for legal assistance

Right to information on the place of residence of the accused person

Right to concealing his identity and appearance

Right to witness fees (travel expenses and lost profit)