
The Importance of Witnesses in Civil and Criminal Proceedings

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Article Information*

Review Article • UDC: 347.963:343.148

Volume: 22, Issue: 2, pages: 70–81

Received: May 13, 2025 • Accepted: August 18, 2025

<https://doi.org/10.51738/kpolisa.2025.2r.006>

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We have no known conflict of interest to disclose.

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* Cite (APA): Stanković, M., Stanković, M., & Aleksić Oliveira, N. (2025). The Importance of Witnesses in Civil and Criminal Proceedings. *Kultura polisa*, 22(2), 70–81, <https://doi.org/10.51738/kpolisa.2025.2r.006>



The Importance of Witnesses in Civil and Criminal Proceedings

Abstract

Witnesses represent one of the oldest means of evidence used in evidentiary proceedings. A witness is a natural person who provides the court with information about a particular event. However, in practice, besides being one of the most commonly used means of evidence, witnesses may sometimes prove to be an unreliable source of evidence. It often happens that witnesses incorrectly observe an event or, due to the passage of time between the event and the court proceedings, forget or convey an altered version of their sensory perception. The subject of this paper is the evidentiary significance that witnesses may have in court proceedings. The importance of witnesses as a means of evidence is assessed differently in practice, depending on whether the procedure is civil or criminal. In civil proceedings, their credibility is ranked immediately below documents, on-site inspections, and expert opinions, which are considered more reliable means of evidence. In criminal proceedings, however, witness testimony is regarded as one of the key evidentiary actions evaluated by the court during the decision-making process.

Keywords: means of evidence, evidentiary actions, testimony, evidentiary proceedings, evidence

Introduction

Reaching a decision on the merits of a specific case before the court represents the essence of providing legal protection — whether in cases involving infringed or endangered civil rights, or in criminal proceedings aimed at safeguarding the public interest in instances of violations of the provisions of the Criminal Code. Depending on the complexity of the case, judges have at their disposal a range of means of evidence and evidentiary actions through which they may form a belief regarding the truthfulness of the subject of proof.

The means of evidence prescribed by the Civil Procedure Act [CPA] are divided into personal and material evidence. Personal evidence includes parties, witnesses, and expert witnesses, while material evidence comprises documents and on-site inspections. Regarding the application of these means of evidence, pursuant to Article 7[1] and [2] of the CPA, the parties are obliged to present all facts on which they base their claims and to propose the evidence necessary to establish those facts. The court shall consider and establish only the facts presented by the parties and shall examine only the evidence proposed by the parties, unless otherwise provided by the CPA. This means that the burden of collecting evidence lies with the parties. Exceptionally, the court is authorised to establish facts not presented by the parties and to examine evidence not proposed by the parties if the results of the hearing and evidentiary proceedings indicate that the parties are disposing of claims they are not entitled to dispose of (Article 3[3] in conjunction with Article 7[3] CPA).

The means of evidence prescribed by the Criminal Procedure Code [CPC] are categorised as general (ordinary) and special. In terms of general means of evidence, the CPC provides for the following evidentiary actions: questioning the defendant, examining witnesses, expert opinions, on-site inspections, reconstruction of events, documents, sample collection, verification of accounts and suspicious

transactions, temporary seizure of objects, and searches. The focus of this paper is placed on witnesses as a means of evidence.

On Evidence and the Process of Proving

The term *evidence* presents certain difficulties, as it is one of those terms used in various meanings in everyday language, different scientific fields, legal literature, and legislation. In civil proceedings, the term *evidence* sometimes refers to the means of evidence, sometimes to the evidentiary action, and sometimes to the result of proving. In logic, *evidence* is understood as one of the methods of knowledge: evidence (*argumentatio, documentatio*) is the derivation of the truth of one proposition from the truth of other propositions. The proposition whose truth is being derived is called a *claim*, while the propositions from which the claim follows are called *reasons for the claim* [Marković, 1966, p. 136].

According to Professor Gordana Stanković, evidence is information or a notification regarding a legally relevant fact that has been the subject of proving. This term is often used to denote the means of evidence, the result of proving, or a successful outcome of verifying the truthfulness of the subject of proof. Proving refers to procedural actions undertaken by procedural subjects during the proceedings to establish the accuracy of a party's statements concerning facts relevant to the application of law in a specific legal matter [Stanković, 2018, p. 57].

According to Professor Triva, a means of evidence or evidence (*instrumentum*) is everything—every fact—from whose sensory observation knowledge about a fact, which is the indirect subject of proving, is derived. Means of evidence are, therefore, sources of judicial knowledge regarding the content of reality [Triva, 1983, p. 385].

The term *evidence* is sometimes used cumulatively with its other meanings in provisions concerning the proposal of evidence and the determination of its presentation. By proposing evidence, the parties actually indicate the source, through whose examination the court should obtain information on the subject of proof. When determining which evidence will be presented, the court decides on the means of evidence to be examined in order to collect such information [Dika, 2018, p. 366].

In criminal matters, the concepts of evidence, sources of evidence, and means of evidence are also ambiguous and represent some of the most complex theoretical issues. Traditionally, means of evidence are defined as sources from which the bases are obtained, i.e., sources from which facts are derived, serving as a foundation for drawing conclusions about the truthfulness or falsity of what is being proved. Thus, means of evidence include: witnesses, expert witnesses, on-site inspections, etc. [Vasiljević, 1981, p. 301].

A source of evidence is a specific person or object from which evidentiary data, i.e., evidence in the broadest sense, originates. Every means of evidence has its characteristic source of evidence: the accused in the questioning of the accused, the witness in the examination of witnesses, etc. [Škulić, 2014, p. 246]. Evidence represents the data obtained through the application of means of evidence, which arise from sources of evidence, e.g., in the examination of a witness, it is the witness's statement [Škulić, p. 183].

Examination of Witnesses in Civil Proceedings

A witness is a person who provides testimony to the court regarding their perception of a fact that occurred in the past. Such a person is limited to conveying their sensory knowledge without expressing

any personal opinion regarding the perceived fact (Poznić & Vodinelić-Rakić, 2015, p. 405). According to Dika, a witness is a natural person who is not a party to the proceedings, nor an official (judge, court counsellor, court reporter), who is being examined before the court in order to obtain information about the content of their possible perceptions or otherwise acquired knowledge of facts being established, which they did not acquire in a professional capacity by order of the court (Dika, 2018, p. 568).

With regard to witnesses in civil proceedings, the Civil Procedure Act stipulates that every person summoned as a witness is obliged to appear and to testify, unless an exemption is provided by law. Only persons capable of providing information about the facts being proven may be examined as witnesses (CPA, Art. 244). The party proposing that a certain person be examined as a witness must indicate the subject matter of the testimony, as well as provide the witness's full name, occupation, and residence (CPA, Art. 252).

"The subject of testimony consists of providing information about facts, not about rules of experience or legal rules. The facts to which witnesses testify are generally those that arose and existed in the past, but not exclusively, as they may also testify about facts existing in the present, provided their knowledge is based on sensory perception" (Dika, 2018, p. 569).

Regarding the method of examining witnesses, the most relevant method is direct oral examination at the hearing (Jakšić, 2019, p. 503). However, the CPA provides that the court may decide by ruling to admit written witness statements, in which the witness states their knowledge of material disputed facts, the source of that knowledge, and their relationship with the parties. This provision is a novelty in domestic positive law compared to older procedural law concepts, as it represents a departure from the principle of immediacy (Kozar, 2011, p. 326). The written statement must be certified by a court or by an authorised public official. Before giving the statement, the person recording it must inform the witness of their rights and duties under the CPA. An uncertified written witness statement cannot be admitted as evidence and cannot form the basis of a decision, unless the parties to the proceedings have been given the opportunity to question the witness regarding the content of the statement in order to establish its truthfulness (Stanković, 2020, p. 165).

Another novelty following technological development is that the court may decide, ex officio or at the parties' request, to examine a witness via conference link, using audio or video recording devices. The witness statement obtained in this manner may be submitted to the court by a party or requested by the court directly from the witness. The court may always summon a witness who has provided a written or recorded statement to confirm their testimony in person at the hearing (CPA, Art. 245).

The prohibition of testimony is regulated by Article 247 of the CPA. A person who would, by their testimony, violate the duty of confidentiality cannot be examined as a witness until released from that duty by the competent authority. The duty of confidentiality relates to state, official, military, and business secrets, and the competent authority may release the witness from this duty. Such a witness must notify the court by written submission upon receiving the summons, informing it of the existence of a testimony prohibition. In addition to submitting the written notice, the summoned witness is obliged to attend the scheduled hearing and inform the court in person of the existence of the prohibition and the consequent refusal to testify (Stanković, 2024, p. 910).

Besides the prohibition of testimony, the CPA prescribes circumstances under which a witness may refuse to testify. A witness may refuse to testify regarding information confided by a party as their

attorney, as a religious confessor, or information obtained as a lawyer, doctor, or in another professional capacity where a duty of professional secrecy exists. The court is obliged to inform the witness of this right. Regarding individual questions, a witness may refuse to answer if there are justified reasons, especially if the answer would expose them or their relatives to severe shame, significant financial damage, or criminal prosecution. Relatives include blood relatives in the direct line of any degree, collateral relatives up to the third degree, spouse or common-law partner, in-laws up to the second degree (even if the marriage has ended), as well as guardian or ward, adoptive parent, or adoptee. The court will also inform the witness of this right (CPA, Arts. 248–249). The court before which the witness is to testify assesses the justification of the refusal and decides by ruling. If necessary, the court will hear the parties beforehand (CPA, Art. 251).

A witness cannot refuse to testify due to the risk of property damage regarding legal transactions in which they participated as a summoned witness, actions taken concerning the disputed relationship as a legal predecessor or representative of a party, facts related to family or matrimonial property relations, facts concerning birth, marriage, or death, as well as in cases where a special regulation imposes a duty to report or provide a statement (CPA, Art. 250).

The party proposing a certain person as a witness must indicate the subject of their testimony, the witness's full name, occupation, and residence. The summoning of a witness is performed by serving a written summons stating the full name of the summoned person, time and place of appearance, the case in which they are summoned, and indicating that they are being summoned as a witness. The summons must inform the witness of the consequences of unjustified absence and their right to reimbursement of expenses (Bodiroga, 2022, p. 360). Witnesses who, due to age, illness, or severe physical disabilities, are unable to attend may be examined at their residence, by reading a written statement, or via conference link (Bodiroga, p. 361). The court may order a party to notify a witness about the time and place of the hearing.

According to Article 254 of the CPA, witnesses are examined individually and in the absence of other witnesses yet to be examined. The witness is required to give oral answers. The witness shall first be admonished of their duty to speak the truth and not to conceal anything, and then warned about the consequences of giving false testimony. The court will then collect the witness's personal information: full name, father's name, occupation, residence, place of birth, age, and relationship with the parties. The witness is invited to present everything they know about the facts in question, after which questions may be posed to verify, supplement, or clarify their statements. Leading questions (suggesting the answer) are not allowed. The witness must always state the source of their knowledge regarding the facts to which they testify. Witnesses may be confronted if their testimonies contradict each other concerning important facts. Confronted witnesses are examined separately regarding each disputed fact, and their responses are recorded in the minutes (CPA, Art. 255).

A witness who does not understand the language of the proceedings shall be examined through an interpreter. If the witness is deaf, questions shall be posed in writing; if mute, they will respond in writing. If such examination is not feasible, a sign language interpreter shall be engaged. The court shall warn the interpreter of the duty to faithfully translate the questions posed to the witness and the witness's answers (CPA, Art. 256).

According to Article 257 of the CPA, if a duly summoned witness fails to appear without justification or leaves the hearing without permission or valid reason, the court may order their compulsory appearance and impose a fine. If a witness appears but refuses to testify or answer specific questions without justified reason, despite being warned of the consequences, the court may impose a fine. At a party's request, the court may order the witness to compensate for the costs caused by their unjustified absence or refusal to testify. If the witness subsequently justifies their absence, the court shall revoke the fine and may exempt the witness fully or partially from compensating the costs. The court may also revoke the fine if the witness later agrees to testify. If it is necessary to compel a member of the military or police officer to appear for testimony, the court shall contact their superior for enforcement.

The CPA also stipulates that a witness is entitled to reimbursement of travel expenses, meal and accommodation costs, as well as compensation for lost earnings. The witness must request reimbursement immediately after giving testimony; otherwise, they forfeit this right, of which the court is obliged to inform the witness.

Examination of Witnesses in Criminal Proceedings

The Criminal Procedure Act (CPA) regulates the provisions concerning witnesses as a means of evidence. Unlike the CPA governing civil proceedings, where witnesses are heard, in criminal proceedings, witnesses are examined. A witness is a person likely to provide information about a criminal offence, the perpetrator, or other facts established in the proceedings (CPA, Article 91). Any person capable of conveying their knowledge or perceptions related to the subject of testimony has the capacity to testify. The injured party, the injured party acting as a prosecutor, or a private prosecutor may be examined as a witness. Every person summoned as a witness is obliged to respond to the summons.

Regarding exclusion or exemption from the duty to testify, the CPA stipulates that persons whose testimony would breach the duty to maintain confidential information are excluded from the duty to testify, unless the competent authority or the person authorised to lift such confidentiality relieves them of that duty (the court may, upon the motion of the defendant or their defence counsel, decide to examine such a person). This applies also to persons whose testimony would breach the duty of maintaining professional secrecy (e.g. clergy, lawyers, doctors, midwives, etc.), unless relieved of that duty by a special regulation or by a statement of the person in whose interest the secrecy was established, as well as to defence counsel regarding information disclosed by the defendant in their capacity as counsel (CPA, Article 93).

Exempt from the duty to testify are persons living in marriage, common-law partnership, or other permanent cohabitation with the defendant, blood relatives in direct line, collateral relatives up to and including the third degree, relatives by affinity up to and including the second degree, and adoptive parents or adopted children of the defendant. A minor who, given their age and mental maturity, is incapable of comprehending the significance of the right to be exempted from the duty to testify, may not be examined as a witness unless the defendant expressly requests it. The authority conducting the proceedings must warn such a person of their right not to testify before the examination or as soon as the relationship with the defendant is established. This warning and the response shall be recorded in the minutes. A person entitled to refuse to testify against one of the defendants is exempt from the duty to testify against the other defendants as well, if, by its nature, the statement cannot be limited only to the other defendants (CPA, Article 94).

The prerequisites for examining a witness are prescribed by Article 95 CPA. The witness shall be cautioned to speak the truth and not to conceal anything, and warned that giving false testimony constitutes a criminal offence. The witness shall also be informed that they are not obliged to answer certain questions if there is a likelihood that doing so would expose them or a person exempt from testifying to severe shame, significant material damage, or criminal prosecution. This warning shall be recorded in the minutes. The witness will then be asked to state their full name, unique citizen identification number, parent's name, residence, temporary address, place and year of birth, and their relationship with the defendant and the injured party. The witness is also obliged to inform the authority of any change of residence or temporary address.

If a person excluded from the duty to testify is examined, or if a person exempt from the duty to testify has not been warned of this right or has not expressly waived it, or if the warning and waiver are not recorded in the minutes, or if the witness's statement is obtained contrary to Article 9 CPA (which prohibits and penalises the use of torture, inhuman and degrading treatment, force, threats, coercion, deceit, medical interventions, and other means to influence free will or extort confessions or other statements from the defendant or participants), such a statement may not serve as a basis for a court decision.

A distinctive feature of criminal proceedings compared to civil proceedings is the witness's oath. Before giving testimony, the witness shall take an oath. Prior to the main hearing, an oath may be taken only if there is a risk that the witness, due to illness or other reasons, will not be able to attend the main hearing. The reason for taking the oath in advance shall be recorded in the minutes. The text of the oath is as follows: "I swear on my honour that I will speak the whole truth regarding everything I am asked and that I will not conceal anything known to me." The oath is taken orally, by reading its text, or by affirmative answer after hearing the oath read aloud by the authority. Mute witnesses who can read and write shall sign the text of the oath, whereas deaf, blind, or mute witnesses who are illiterate shall take the oath with the assistance of an interpreter. The witness's refusal and reasons for refusal to take the oath shall be recorded in the minutes (CPA, Article 96). Witnesses who are minors at the time of examination or those who, due to their mental state, are unable to comprehend the significance of the oath are not required to take an oath.

The examination of witnesses is further regulated by the CPA. Each witness is examined individually and in the absence of other witnesses. Witnesses are obliged to testify orally. After general questions, the witness is invited to state everything known to them about the case. Once the witness finishes their statement, if it is necessary to verify, supplement, or clarify the testimony, questions shall be asked that are clear, precise, and comprehensible. These questions must not be misleading, based on assumptions about statements not given, or suggestive, except in the case of cross-examination during the main hearing. The witness will always be asked how they became aware of the facts they are testifying about (CPA, Article 98). This distinction is crucial because witnesses acquire knowledge of facts either through direct sensory perception — so-called direct witnesses — or indirectly — hearsay witnesses (Stevanović, 2001, p. 199).

A witness is obliged to testify truthfully about everything known to them concerning the subject of examination. Hence, a witness's statement can be false in two ways: by presenting facts differently from what is known to them, or by concealing certain facts. In both cases, the witness will be held liable for

giving false testimony. However, if a witness testifies to what they know, even if this does not correspond to other established facts, their testimony is not considered false, as it reflects the limits of the witness's own knowledge (Petrić, 1968, p. 203).

When the injured party is examined as a witness, they shall be asked whether they wish to pursue a property claim in the criminal proceedings. If the examination is conducted through an interpreter or translator, or if the witness is deaf, blind, or mute, the examination shall be carried out in accordance with the provisions governing the defendant's examination (CPA, Article 98).

Confrontation of witnesses is regulated by Article 99 CPA. A witness may be confronted with another witness or the defendant if their statements regarding the facts being proven are inconsistent.

When it is necessary to establish whether a witness can identify a certain person or object they have described, the person or object shall be shown to the witness together with other persons or objects with similar characteristics. The witness will then be asked whether they can identify the person or object with certainty or a degree of probability, and if affirmative, to indicate the identified person or object. If the person or object is unavailable, photographs may be shown instead, under the same conditions, and identification may also be conducted based on voice recognition. During pre-investigation and investigation stages, identification must be conducted in such a way that the person being identified cannot see the witness, nor the witness see the person prior to identification. The identification in these stages is carried out in the presence of the public prosecutor (CPA, Article 100).

If a duly summoned witness fails to appear without justifying their absence or leaves without permission, the authority may order the witness to be brought in by force, and the court may impose a fine. Should the witness appear but refuse to testify after being warned of the consequences, the court may fine them again if they persist in refusing to testify (CPA, Article 101).

Under Article 102 CPA, the authority conducting the proceedings is obliged to protect the injured party or witness from insults, threats, and any other assaults. Any participant or other person who insults, threatens, or endangers the safety of the injured party or witness before the authority will be reprimanded by the public prosecutor or the court, and the court may also impose a fine. Upon receiving information from the police or court, or based on its own knowledge of violence or serious threats directed at the injured party or witness, the public prosecutor shall initiate criminal prosecution or inform the competent public prosecutor. The public prosecutor or court may request the police to undertake protection measures for the injured party or witness in accordance with the law.

The status of a particularly vulnerable witness is regulated by Article 103 CPA. A witness may be granted this status due to age, life experience, lifestyle, gender, health condition, the nature, manner, or consequences of the criminal offence, or other relevant circumstances. The public prosecutor, presiding judge, or individual judge issues a decision granting such status *ex officio*, upon the motion of the parties, or at the witness's request. If necessary for the protection of the witness's interests, the authority will appoint a legal representative from the list of lawyers provided by the competent bar association. No special appeal is allowed against the decision granting or denying this status.

The examination rules for particularly vulnerable witnesses are provided in Article 104 CPA. Questions to such witnesses may only be posed through the authority, which must treat them with special care to avoid any harmful effects on their personality, physical or mental state. The examination may be conducted with the assistance of a psychologist, social worker, or other expert, as determined by the

authority. If the authority decides to use technical means for audio-visual transmission, the examination will be conducted without the presence of parties or other participants in the room with the witness. Particularly vulnerable witnesses may also be examined in their residence or in a specialised institution capable of conducting such examinations.

The Significance of Testimony in Civil and Criminal Proceedings

The evidentiary value of testimony is based on the general presumption that people tell the truth. It is assumed that what someone claims to have perceived with their senses is true if, according to general notions, it could be true, and if there is no reason to doubt the witness's ability to perceive accurately or their willingness to tell the truth. For testimony to have evidentiary value, the witness must both be able and willing to tell the truth, and in addition, the content of their testimony must be plausible (Marković, 1921, p. 245).

A witness is obliged to tell the truth. For a witness statement to be considered truthful, it must align with the witness's knowledge of the facts to which they testify and must be complete. A witness must not withhold any facts known to them that are the subject of examination (Bejatović, 2014, p. 309).

Professor Perić observes: "Why allow individuals to prove even the most important, often decisive legal transactions through witnesses when, given today's level of literacy, they can follow the legislator's mandate and draw up a private or public document that, as evidence, provides far greater guarantees of the truthfulness of the legal transaction than such an unreliable means of evidence as witnesses? Moreover, it can be said that witnesses are perhaps the most unreliable evidence, even less reliable than ordinary human assumptions or circumstantial evidence when such are officially established through on-site inspection or expert examination" (Perić, 1934, p. 27).

It is illusory to expect that a witness will always tell the truth. There will always be those who tell the truth, but also those who lie. However, awareness of the moral and social responsibility of witnesses must be developed, in which the court can play a significant role (Đuričin, 1990, p. 19).

The Civil Procedure Act (CPA) stipulates that the court decides based on its conviction, formed by a conscientious and careful assessment of each piece of evidence individually, all evidence as a whole, and the outcome of the entire proceedings, as to which facts it will consider proven. If the court, based on the presented evidence, cannot ascertain a fact with certainty, it shall apply the rules on the burden of proof. The party claiming a right bears the burden of proving the facts essential for the establishment or exercise of that right, unless otherwise provided by law. Conversely, the party contesting the existence of a right bears the burden of proving the facts preventing the establishment or exercise of the right, or those leading to its termination, unless otherwise provided by law.

The Criminal Procedure Code (CPC) prescribes that the court is obliged to impartially assess the presented evidence and, based on them, determine the facts that both incriminate and exonerate the defendant with equal attention. The court assesses the evidence relevant to the judicial decision based on its free judicial conviction. A verdict, or a decision equivalent to a verdict, may be based only on facts the court is convinced of with certainty. Any doubt regarding the facts essential for the continuation of the criminal proceedings, the existence of elements of a criminal offence, or the application of another provision of the criminal law shall be resolved in favour of the defendant.

The significance of testimony lies in the relevance of the court's evaluation of such testimony. Pursuant to Article 254(2) CPA, the court shall first warn the witness of their duty to tell the truth and not to withhold anything, followed by a warning about the consequences of giving false testimony, which constitutes a criminal offence. Nevertheless, despite this provision, testimony remains a less reliable means of evidence because witnesses in civil proceedings are proposed by the parties, i.e., each party proposes their own witnesses. Therefore, witnesses are considered an unreliable means of evidence. Witnesses may inaccurately perceive facts, alter their sensory perceptions, forget or fail to recall observations, be unable to reproduce perceived events, or deliberately misrepresent their observations (Stanković, 2024, p. 444).

According to Jakšić, the witness is the most commonly used but also the most unreliable means of evidence in civil proceedings. The task of a witness is to testify about facts that occurred in the past, yet not every witness possesses the same sensory and intellectual abilities. Every real-life event can be experienced subjectively (Jakšić, p. 498).

In criminal proceedings, the weight of a witness's testimony in terms of assessing its credibility by the court is greater. This relevance is perhaps reflected in the sanction prescribed by the Criminal Code, where Article 335(3) stipulates that if false testimony is given in criminal proceedings, the perpetrator shall be punished more severely (from 3 months to 5 years) than for giving false testimony in civil or administrative proceedings (up to three years), especially when such false testimony forms the basis of a judicial decision. Furthermore, witnesses in criminal proceedings take an oath, whereas in civil proceedings, testimony under oath is not foreseen, as the current CPA does not provide for an oath; it exists only in criminal proceedings (Stojanović, 2020, p. 1004).

An oath in civil proceedings was once meaningful and would still be relevant today, not only because it is believed to enhance the likelihood of truthful testimony but also because, as mentioned, the Criminal Code distinguishes between false testimony given without an oath and that given under oath (Poznić, p. 410). However, such conduct by witnesses essentially constitutes the criminal offence of giving false testimony, for which, unfortunately, witnesses are very rarely prosecuted in practice. This is due both to the impossibility of reliably proving the commission of this offence in every specific case and to the opportunistic behaviour of some officials who, in such situations, should act *ex officio* in accordance with legal regulations (Škulić, p. 212).

Conclusion

A witness, as a means of evidence, represents one of the tools regularly used in evidentiary proceedings. The act of testifying, conducted during the evidentiary process, is one of the methods for establishing the truthfulness of facts. The credibility of a witness's statement is assessed with caution, varying from case to case. In civil proceedings, witnesses are used alongside other means of evidence, after which the court, by evaluating each piece of evidence individually and collectively in relation to determining the truthfulness of facts, reaches a well-founded conclusion for its decision.

As Professor Škulić points out, "No criminal procedure legislation has yet renounced the examination of witnesses as a method of taking evidence, which only indicates that the court, or the procedural body, must conscientiously assess the actual evidentiary credibility of a witness's statement. In doing so, it must, on the one hand, consider all factors that may affect its potential unreliability, but on

the other hand, utilise all available evidence and, in accordance with the free assessment of evidence and its own free conviction, form and reason its decision regarding the evidentiary credibility of the specific witness statement" (Škulić, p. 214).

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Značaj svedoka u parničnom i krivičnom postupku

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Sažetak

Svedoci predstavljaju jedno od najstarijih dokaznih sredstava koja se primenjuju u dokaznom postupku. Svedok je fizičko lice koje sudu saopštava svoja saznanja o predmetnom događaju. Međutim, u praksi, pored toga što je svedok jedno od najčešće primenjivanih dokaznih sredstava, u određenom broju slučajeva predstavlja i nepouzdana dokazno sredstvo. Dešava se da svedoci pogrešno opserviraju događaj ili da protekom vremena od događaja do postupka pred sudom zaborave ili prenesu izmenjenu verziju svog čulnog opažanja. Predmet ovog rada biće dokazni značaj koji mogu ostvariti svedoci u dokaznom postupku pred sudom. Značaj svedoka kao dokaznog sredstva se različito vrednuje u praksi u parničnom ili krivičnom postupku. U parničnom postupku je po verodostojnosti odmah ispod isprava, uviđaja i veštačenja kao merodavnijih dokaznih sredstava, dok u krivičnom postupku zauzima jedno od vodećih dokaznih radnji koje sud ceni prilikom odlučivanja.

Ključne reči: dokazna sredstva, dokazne radnje, svedočenje, dokazni postupak, dokaz