The Limitation and Outlet of the System of Witness Appearing in Court in Civil Litigation

Zhi Liu, Yan Zhang

Law School of Anhui University of Finance and Economics; Bengbu; 233030, China.

Abstract

There are some problems in the system of witness appearing in court to testify in China's civil litigation, such as the ambiguity of the standard of compensation for witnesses' appearing in court to testify, the low rate of investigation and punishment of perjury, and the lack of legislation for refusing to testify, which is not conducive to the promotion of the basic strategy of "governing the country according to law" put forward for the first time in the Fourth Plenary Session of the 18th Central Committee of the Communist Party of China, and is not conducive to the establishment of a strong socialist. We need to improve the cost standard of witnesses in court, improve the guarantee mechanism of witness's truthful testimony, set up the system of refusing to testify, and constantly improve the system of witness appearing in court to build a powerful socialist country under the rule of law.

Keywords

Witness to Testify in Court; Right to Refuse to Testify; Testimony of Witness.

1. Introduction

As early as ancient times, my country's "Zhou Li" during the Western Zhou Dynasty recorded that "everyone who is responsible for lawsuits should be compared with the ground" and "everyone who is responsible should listen to his words by his land"; the Qin Dynasty stipulated the necessary procedures for hearing cases One is to ask witnesses for their testimony; the Tang Dynasty even set up a system of "direct record tracking", which increased the possibility of witnesses appearing in court to testify. All these indicate that witnesses can trace their historical traces as early as in ancient my country. The Fourth Plenary Session of the 19th Central Committee of the Party continued to advance the basic strategy of "ruling the country according to law" first proposed at the Fourth Plenary Session of the 18th Central Committee, and continued to promote a trial-centered litigation system to continuously improve my country's witness testimony system.

2. Overview of Witnesses Appearing in Court to Testify

2.1. The meaning of witnesses appearing in court to testify

Witnesses to testify in court refer to the activities of witnesses providing relevant witness testimony to the court in accordance with the relevant laws and regulations of our country during the course of the court hearing on the relevant case facts they have.

2.2. Theoretical basis for witnesses to testify in court

2.2.1. It is the requirement of the basic obligations of citizens

The witness has a unique role. As one of the directly involved parties, he can understand the facts and circumstances of the specific case, which cannot be replaced by any subject. Rights and obligations are relative. Each of us enjoys the rights from the country and therefore needs
to fulfill certain obligations. Appearing in court as a witness is an important way of fulfilling the obligation to maintain national stability and unity.

2.2.2. It is a requirement of the principle of open trial
The principle of open trial requires witnesses to testify in court. In judicial practice, for a reasonable and legal case, its results and process should be reasonable and legal. Witnesses appearing in court to testify is one of the ways to participate in the trial process, which can effectively test the authenticity of the witness's testimony, which is conducive to the increase of the public's recognition of judicial justice.

2.2.3. It is the requirement of the principle of direct speech
The principle of direct speech is one of the basic principles of the civil law system of national litigation systems. It means that during the trial of a case, the judge should listen to the court arguments of both parties to the case and other litigation participants. During the trial process, witnesses use their own language power to provide the facts of the case that they understand, which can help judges form correct judgments and facilitate a fair trial of the case.

2.3. Status Quo of Witnesses Appearing in Court to Testify
In recent years, a common phenomenon in various civil cases tried by our courts is that the number of witnesses who testify in court is relatively small, but the witness testimony provided is more and more, which makes it more and more difficult to investigate the true situation. According to the survey data of relevant scholars, more than 90% of cases have witnesses, but only 5% of witnesses are willing to testify in court. In addition, we found that some witnesses would rather provide three or more testimonies, most of which are written testimonies, rather than appear in court for questioning.

3. Problems in the system of witnesses appearing in court in our country

3.1. The determination of the compensation standard of the witness’s testimony fee is vague
The author used "civil litigation" and "costs of witnesses to testify in court" as keywords, A search for civil cases on China Judgment Documents Network found a total of 39 judgment documents issued from January 1, 2020 to September 1, 2020, of which 9 were judgements. Because the documents are divorce rulings, dismissal of appeals, plaintiff’s request for change of litigation, dismissal of prosecution rulings, and the reason for the failure of witnesses to
testify in court, the author does not meet the conditions. Therefore, the author uses the remaining 30 judgment documents involving the costs of witnesses to appear in court as a sample of witnesses to testify. and retrieved 39 judgment documents on the China Judgment Documents website that involve the handling of the costs of witnesses to testify in court. Among them, there are 30 judgment documents that meet the conditions, and only 10% of the judgment documents provide detailed and specific explanations on the standards of the witness’s testimony in court. In the judgment, 60% are expressed in relatively simple language, and the remainder The lower 30% of judges disclaimed the cost of witnesses in court on the grounds that the parties did not have sufficient evidence to prove the cost of testimony in court or did not accept the testimony of witnesses who appeared in court. The details are shown in Figure 1:

My country's current Civil Procedure Law has imperfect standards on the fees for witnesses to testify in court, and Article 11 of my country's "Methods for the Payment of Litigation Costs" also provides relatively vague provisions on the fees for witnesses to testify in court. my country’s judicial practice also differs in specific determination standards, and different courts even have conflicting judgments. In (2017) Jin 08 Min Zhong No. 165 Shenzhou Metal Structure Thermal Equipment Co., Ltd. and Li Zhangchun, Yangmei Fengxi Fertilizer Industry (Group) Co., Ltd. Jishan Branch of the right to health dispute, witnesses provided evidence to appear in court. The total transportation expenses incurred during the testimony were 779.5 yuan, but the court found that Liu Ting's 779.5 yuan transportation cost was 601 yuan in the air ticket, but the witness Liu Ting's flight was obviously a high cost, and the court only supported the reasonable expenses. Therefore, it is advisable to consider the price of the train ticket. The train ticket from Xiamen to Xi’an should be 243 yuan. From this, it can be seen that the court classified the expenses incurred by flying into high consumption, which did not meet the standards of the expenses of witnesses to testify in court, so they were not accepted. However (2012) Ning Tie Min Chu Zi No. 21 Zheng XX v. Guangzhou-Shenzhen Railway Co., Ltd. Railway Transportation Personal Injury Liability The court accepted the plaintiff’s claim of up to 2053 yuan for witnesses to testify in court, including transportation expenses. 1400 yuan for the witness’s round-trip ticket and insurance invoice. The two courts have made completely different determinations for the same travel expenses incurred by the plane to testify in court. In judicial practice, only a very small number of judges strictly follow the relevant provisions of the judicial interpretation of the Civil Procedure Law of China to calculate the necessary transportation, accommodation, dining and other related expenses incurred by witnesses in court to testify in civil litigation. In accordance with the standards of travel expenses and subsidies for staff of government agencies and institutions, among the 39 judgment documents concerning the expenses of witnesses appearing in court in civil litigation in 2020, only a few such as (2020) Zhejiang 03 Minzhong 1813 Dong Xiuchun, Su Zhiguang, Wenzhou Rui The second-instance civil judgment of Gaoping Industrial Machinery Co., Ltd. and other lease contract disputes clearly stated the compensation standard in detail. The vast majority of the 39 documents stated in the judgment that “the cost of the witness’s appearance in court is XX yuan, as appropriate,” and “the cost of the witness’s appearance in court is XX yuan, and XX party shall bear it.” Specify in detail the criteria for determining the cost of witnesses to testify in court. Most judges calculate the expenses of witnesses in court based on the actual situation and the relevant bills provided by the parties concerning the expenses incurred by the witnesses in court. To sum up, there are certain differences in the determination of compensation standards for the expenses of witnesses in court in various courts in my country, and the determination standards are vague.

3.2. Low rate of investigation and punishment of perjury
According to a survey by related scholars, 90% of judges have found witnesses making false statements, but only 20% of judges have criticized and educated perjury.
The rate at which judges take civil coercive measures and pursue criminal liability is very low, and most judges have no choice but to do perjury.

One of the important reasons for the frequent occurrence of perjury in our country is the lack of legislation. Developed countries such as the United States and Italy have made strict regulations on witnesses' perjury. According to the Civil Procedure Law of the United States, the court can impose some sanctions on perjury in court, and will be punished with contempt of court. Relevant Italian laws stipulate that witnesses who give false testimony are punished by imprisonment ranging from six months to three years. Our country's "Civil Procedure Law" and judicial interpretations also stipulate that witnesses who give false testimony shall be fined, detained and even held criminally liable. However, in my country’s actual judicial practice, the vast majority of Chinese judges only give some verbal warnings and fines to witnesses for perjury, and the statutory responsibility of witnesses for perjury is very small. Our country's legislation does not clearly define the criteria for perjury. The legal liability for perjury is mainly admonition, fines and detention, which are relatively loose. The most important point is that although the criminal liability of perjury is stipulated in the legislation, the crime of perjury in the criminal law does not include the perjury in public prosecution.

3.3. Lack of legislation to refuse to testify

As a basic obligation of citizens to testify in court, witnesses have been recognized by the laws of many countries and regions. However, taking into account the complexity of judicial practice, in general, there are exceptions that witnesses do not need to testify in certain circumstances. The United States’ 1999 Uniform Rules of Evidence in the Anglo-American law system stipulates that both spouses have the right to exempt from certificates in a husband-wife relationship, and one party in professional relations such as the relationship between doctors and patients, lawyers and clients has the right to exempt from certificates. It also stipulates that the head of state, Senior officials, etc. have the right to exempt from certificates. The Civil Procedure Law of Japan in the civil law system also stipulates the exemption: if the witnesses appear in court to testify, they may have an adverse effect on the witnesses, and the witnesses have the right to refuse to testify.

People with special occupations also have the right to refuse to testify regarding the personal privacy they have obtained in relation to their position. The establishment of the system of refusal to testify is mainly based on the measurement of legal value. When the social interests protected by refusal to testify exceed judicial interests, the obligation to testify can be exempted. The establishment of this system is necessary. However, our country’s current laws do not provide for the right to exempt from certificates, which is not conducive to our country’s advancing the rule of law in a comprehensive way, and it is also not conducive to the development of the socialist rule of law with Chinese characteristics.

4. The basic idea of perfecting our country’s witness testimony system

The loopholes and shortcomings of the witness testimony system in our country restrict the operation of good testimony behavior in our country. Based on the actual data and relevant overseas excellent laws and regulations, based on the specific national conditions of our country, we propose to improve our witness testimony system. A few suggestions.

4.1. Improving the fee standard for witnesses to testify in court

Our country should stipulate uniform and specific compensation standards, and not treat them differently due to differences in the profession or status of witnesses. It is necessary to formulate relevant laws and regulations and judicial interpretations to provide specific and detailed regulations. You can refer to the compensation standard for accommodation fees stipulated by the Supreme Court of Japan. At the same time, the compensation standard for the
expenses of witnesses to testify in court should be appropriate. For example, in the
determination of the transportation expenses incurred by the witnesses in court, if ordinary
public transportation can be selected, the transportation that incurs high expenses such as
flying by air will not be recognized. Many foreign countries have also made such regulations.
For example, Japan’s "Law on Civil Litigation Fees, etc." has relevant provisions that divide tolls
into four categories: air fares, distance fares, boat fares, and rail fares. The determination of air
fares can only be determined if the witness has special reasons. The rationality is only
recognized when you must take an airplane. Obviously, Japan has adopted a uniform and
specific compensation standard for the expenses of witnesses to testify in court, and has also
stipulated flexible regulations under special circumstances. In summary, it is imminent for our
country to stipulate a uniform and specific fee standard for witnesses to testify in court.

4.2. Improving the guarantee mechanism for witnesses to testify according to
the facts

4.2.1. Encouragement mechanism

The measures to encourage witnesses to testify in court as stipulated in the Civil Procedure Law
of my country and its related judicial interpretations are mainly a single economic
compensation, and they are not perfect. The incentives for witnesses to testify in court should
include not only economic aspects, but also personal and property safety protection.

To clarify the compensation conditions for witnesses to testify in court. Only when the
obligation to testify in court can be paid for the witnesses to testify in court. If the witnesses
perjury will be deprived of the right to be compensated, the witnesses’ fees for appearing in
court will be recovered by the court in accordance with the law.

Establish an insurance system for witnesses to testify in court to protect the legal personal and
property safety of witnesses and their close relatives when the infringer is unable or insufficient
to compensate, eliminate the worries of witnesses appearing in court to testify, and allow
witnesses to testify truthfully.

4.2.2. Punishment mechanism

Effective punitive measures can exert a powerful deterrent effect, use diversified sanctions to
regulate witnesses' perjury behavior, guide witnesses to testify truthfully, and reduce perjury
behavior.

Improve the accountability mechanism for perjury. According to the different degrees of impact
on the case, different levels of perjury accountability plans have been designed. For perjury that
has little impact on the case, simple criticism, education and other measures are adopted; for
perjury that has a greater impact on the case, compulsory measures such as fines and detention
are required; for the very bad impact on the case and the determination of the facts of the case
Wrong actions should be held criminally responsible.

Establish integrity files. Record the witness’s perjury in the personal integrity file. If the
witness’s perjury is recorded in the register, there will be a record of dishonesty, and the daily
life, work, and study of the witness will be greatly affected. In view of the fact that the witness
considered the serious consequences of perjury during the testimony process, he was able to
testify truthfully. Civil litigation activities are closely related to the lives of the general public.
In the eyes of the public, witnesses will have an invisible pressure, prompting them to tell the
truth of the case.

4.2.3. Civil sanctions

Although the legislation provides for the criminal liability of perjury, the crime of perjury in the
criminal law does not include perjury in civil prosecutions. The crime of perjury cannot be fully
applied in civil cases. At the same time, the penalties for civil sanctions are also very limited. In
France, relevant laws stipulate that for acts of perjury or malicious litigation, the parties have
the right to file a lawsuit for financial compensation, and the law is used to sanction the perjury. The scope of the lawsuit includes the civil scope. My country should learn from the economic sanctions for perjury in developed countries such as France and promote the improvement of the civil compensation mechanism for perjury from the aspect of economic compensation. If the act of perjury misleads the trial and causes the parties to suffer unnecessary losses and infringements, the perjury witness should make financial compensation, and the compensation received during testimony should also be cancelled. In addition, if the witnesses maliciously colluded with the parties to deceive the judge for their own private interests or provided perjury due to the coercion or temptation of the parties, the parties shall also be liable for compensation in this case.

4.3. Establishing a system of the right to refuse to testify

My country needs to establish a witness refusal to testify system, whether it is analyzed from the social level or from the legal level, it will have a perfect effect on the witness testimony system in our country.

First, it stipulates the right to refuse testimony between relatives by blood. The scope of the subject of the right of refusal to testify for the blood relationship of the relative needs to be appropriate, and it should be defined as the spouse and direct blood relative of the party concerned.

Second, it provides for the right of refusal to testify with special professional subjects. According to different occupations, it is distinguished whether they have the right to refuse to testify. In some special occupations, certain secrets will inevitably be touched in professional activities, such as doctors and lawyers. If the subjects of these special occupations use professional acquisitions to disclose this is not only a violation of professional ethics, but also aggravated society’s distrust of these special professions.

However, the law must also provide for the above-mentioned exceptions for witnesses to testify in court. In cases involving national security and major social interests, witnesses must appear in court to testify; when witnesses use refusal to testify for illegal activities, witnesses must appear in court to testify.

References

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