

## **Abstrakt - Examination of a witness in civil proceedings**

The theme of this thesis is an examination of a witness in civil proceedings. The reason for choosing this theme was the internship at the District Court I had absolved, which allowed me to become more familiar with this topic and to know certain specifics of this means of evidence. Since the examination of a witness is one of the most frequent and used means of evidence, it deserves attention by itself.

The thesis is composed of eight chapters. The first chapter deals with history of examination of a witness in the Czech lands, which was significantly influenced by old Roman civil procedure. Medieval civil proceedings in its early stages used in particular official witness provided in written form. In the course of time, the civil proceedings desisted from the official witness and oral testimonies prevailed. An interesting part of this chapter is an excursion into the heart of the oldest Czech legal documents and the view of the literal legislation of testimony.

The aim of the following chapter is an overview of basic concepts and principles affecting the process of inquiry and evidence in general, which makes it easier to understand the following chapters, which are already dealing with the current legislation of examination of a witness.

Under current legislation, on which the third to fifth chapter is focused, the witness is an individual who is not a party in the civil proceedings and which is able to reproduce before the court the perception of reality as happened in the past. No further restrictions on eligibility to testify are set. The law establishes a general obligation of anyone who was summoned to the court summons to appear and testify as a witness. Since the law allows exceptions to this obligation, this part of the thesis deals with the option of refusing the testimony, with the protection of classified information, and with an obligation of confidentiality.

In order to be able to perform an examination of a witness, the so-called detaining measures are used. The detaining measures are an escorting the witness to the court and a disciplinary penalty. Therefore, the fourth chapter deals with the ways to summon a witnesses to the court, and the aforementioned detaining means. Current legislation also envisages the penal consequences of perjury, the explanation of which is also part of this chapter.

The fifth chapter is dealing with the process of the examination of a witness, and describes how the examination of a witness is carried out. It explains that at first, the identity of the witness is verified and the circumstances which may affect the witness' credibility are detected. Only after is the witness left for continuous testimony and after such testimony, it is possible to ask witness questions.

The next chapter deals with the assessment of evidence, first in general terms with regard to the principle of free assessment of evidence and then with focus on the evaluation of particular evidence. It is explained that the evidence of witness testimony should be assessed particularly in terms of seriousness or importance, legitimacy and truthfulness. For the assessment of the testimony is typical the evaluation of the credibility of submitted evidence, whereas this chapter explains how this assessment is made.

The issue of examination of a witness is connected with the institute of the witness's fee; therefore, the last chapter but one deals with this issue. The witness's fee represents reimbursement of expenses to a witness in connection with providing a testimony. There is also made clear what compensation may be admitted to a witness and how to claim the reimbursement from the court.

The last chapter of this thesis deals with the comparison of our regulation of the witness's testimony with the Austrian law. The reason for the involvement of such a chapter in the thesis has been my participating in the LLP Erasmus program in Austria and intention to trace differences as well as common elements of these two jurisdictions with regard to the witness's testimony. The merit of this chapter is to describe the particular institutes that are unknown to our legal system, such as the obligation to take a witness oath.

Since the aim of this work is not merely to describe the current regulation of the examination of a witness as a mean of evidence, but also understanding of historical influences, in which the evidence is framed, this thesis concludes sort of polemic about the possibility of further development, in connection with possible future unification of laws within the European Union.