

Peculiarities of Witness Participation in Anglo-Saxon Criminal Proceedings

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ANNOTATION

The article raises questions related to the specifics of the participation of witnesses in Anglo-Saxon criminal trials. In Anglo-Saxon criminal justice, issues such as the phrase “competent witness” and actions (inactions) associated with giving evidence in the broad and narrow sense were separately considered. Scientific and theoretical views on the status of a witness in the Anglo-Saxon legal system were also discussed.

KEYWORDS: *witness, criminal process, Anglo-Saxon legal system, rights and obligations, status, immunity, accusation.*

This article examines the status of a witness in criminal proceedings and the role of his testimony in the Anglo-Saxon legal system (rights, duties, liability, etc.). There is no law governing Anglo-Saxon criminal procedure (codified). It can be found in a wide range of sources: charters and general laws (in court decisions), instructions and orders of government bodies.

As for the norms of judicial practice in the field of criminal proceedings, despite the abundance of legal documents, their role remains very important today. This is considered important for the general interpretation of provisions defined in individual legal instruments and for the elimination of deficiencies in legal instruments. Taking into account the peculiarities of the Republic of Uzbekistan's accession to international treaties, it is shown that the characteristics of the national legal system, including its main provisions, should be taken into account when choosing the next direction for the development of the legislation of Uzbekistan.¹

According to U. Kholikulov, the broad influence of international law on the national legal system is part of the strategy of the human rights movement.² All this indicates the relevance of studying positive foreign experience in analyzing the status of a witness-participant in criminal proceedings, taking into account national legal traditions and doctrines.

The legal system reflects the most characteristic features and characteristics of legal regulations, on the basis of which legal fields, functions, principles and legal institutions are formed. These systems (Anglo-Saxon and Romano-Germanic), naturally, have significant differences and features.

B. Mominov stated that although Western models of criminal justice are diverse, they are currently ideologically united.³ It is based on the fundamental democratic principles of human rights: the presumption of innocence, the right to a fair trial, ensuring the right of the accused to defense, guaranteeing individual rights when applying procedural coercive measures.

As a general rule, any person can be called to give evidence as a witness in an Anglo-Saxon criminal trial. That is, any person is recognized as competent to testify and is obliged to testify. Therefore, when the phrase "competent witness" is used in Anglo-Saxon criminal justice, it means a person who

¹ Constitution of the Republic of Uzbekistan. – T.: Uzbekistan, 2022. Article 17.

² U. Kholikulov. Current issues of improving coal legal proceedings. T. Bactria press, 2016. – 98 p.

³ B. Mominov. Judicial review in the Anglo-Saxon legal system. <https://sud.uz/anglo-sakson-huquq-tizimida-sud-nzorati/>

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can give evidence in both a broad and narrow sense.

In a broad sense, witness competence refers to a person's ability to correctly perceive, remember and testify about surrounding events and events. If the duties of a witness in Article 66 of the Code of Criminal Procedure are based on the concept of the need to tell the truth about things known to him in the case, then we see that the question of the competence of the witness is extremely important. for conducting criminal cases.

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At the pre-trial stage in the United States, that is, during the preliminary investigation, any person who may know any circumstances of the crime may be questioned (explained) by the police, but he is not required to participate as a witness until he is officially summoned to court.

In a narrow sense, the competence of a witness means the ability to give certain testimony in a certain case, on certain issues.

Under the rules of evidence in US courts and magistrates, the following persons are not competent to testify: the accused cannot be a competent witness in his or her case; the wife of the accused cannot participate as a competent witness for the prosecution: the judge is not a competent witness in the case over which he presides; a member of the jury participating in a jury trial is not considered a competent witness.⁵

Such cases are called witness privileges and serve to ensure universal, civil rights and liberties, protect certain interpersonal secret relationships, and protect government interests. Such release is usually granted by law or may be granted at the discretion of the judge based on a proper assessment of the circumstances. But according to the Federal Rules of Evidence for the Courts and Magistrates of the United States and England and other rules of criminal procedure, although the above-mentioned persons have the right to witness privilege, the law⁶ allows for certain exceptions, for example, the witness will contribute to the effective disclosure of information. extremely important and dangerous crimes and public interests. In cases where he is forced to testify, the court or the state in return guarantees that his testimony will not be used against him and that he will not be prosecuted for testifying as a privileged witness. Such exceptions create the institution of "witness immunity." If a witness has been granted immunity, he may testify and is required to testify.

As we said above, there are three main criteria for the competence of a witness: firstly, his perception of the events of the surrounding reality; secondly, remember; third is the ability to repeat (tell).

According to T.A. Loskutova, regarding the perception of situations, for example, a deaf-mute can tell with gestures or other signs what he sees, a blind person can tell what he hears. The ability to perceive facts must be present at the time of the incident. If a witness has the ability to perceive facts at the time of an incident or occurrence, it does not matter that he loses this ability during the preliminary investigation or trial. For example, even if a witness to a crime becomes blind or deaf-mute before trial, he has the right to participate in court as a witness and testify about that crime.⁷

A witness's ability to remember is also a prerequisite for testifying. If a witness has a physical or mental illness, but the illness only occurs for a limited time, he will have the opportunity to testify

⁴ Polatov A. S. Procedural status of a witness in criminal proceedings and issues of its improvement: Abstract of thesis...legal. the science. philosophy. doctor (PhD). T., TDUI, 2022. – P.83.

⁵ Rule 605 of the 1995 Federal Rules of Evidence for Courts and Magistrates of the Russian Federation.

⁶ Rule 605 of Federal Rules of Evidence for Courts and Magistrates of the Russian Federation 1995.

⁷ Loskutova T. A. Witness and his testimony in criminal proceedings in England and the USA: Author's abstract. diss... cand. legal Sci. Moscow, Peoples' Friendship University of Russia, 2005. –S. 67.

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about the events he remembers. In fact, not all mental illnesses in medicine completely destroy the ability to perceive a particular event or phenomenon. For example, with some types of mental retardation, epilepsy, and schizophrenia, individuals do not lose perception.⁸ The cognitive abilities of persons with these mental defects are determined by the court during the trial (expert opinion).

The witness must have the opportunity to state (repeat) the facts. A witness must have “the ability to express what he wants to say about a certain situation (event, incident) in a way that is understandable to a person who understands it directly or through translation.” That is, the witness does not necessarily have to be physically able to speak, since he can convey his testimony through signs or in writing. If the witness does not know the language well, he can testify through an interpreter. A witness's ability to present facts is determined by the court during the trial. Same thoughts, I.I. Basetsky also supports.⁹

Even under national criminal procedure doctrine, witness testimony can have a significant impact on key evidence and the determination of the truth in most criminal cases. Therefore, he is subject to minimal restrictions and requirements to participate in the case as a witness.

Consequently, if any defect (physical or mental) does not prevent the witness from perceiving, remembering and describing (repeating) circumstances, he can testify as a witness.

The following situation of interpreting the concept of a competent witness in a narrow sense concerns the testimony of spouses against each other. Under Anglo-Saxon common law¹⁰, persons who act as witnesses in a criminal case involving one spouse are completely incompetent to testify against each other as (spousal) witnesses. Generally, the spouse of a criminal defendant is competent, but not required, to testify for the defense, but is not a competent witness for the prosecution. That is, in this case, the spouse of the accused cannot be a witness for the prosecution - he cannot be called by the prosecutor to testify against the spouse.

Thus, in a case where one of the spouses is accused, testimony in favor of (against) one of the spouses can be given, but is not obligatory (capable, but not obligatory), which is also called privilege in the general sense.

However, in a number of cases, the law allows the summoning of a spouse (one of the spouses) as a witness for the prosecution or at the request of a third party, in which case one of the parties is obliged to testify as a witness., but protective immunity remains. According to the theory of evidence, a witness may be called to testify in the following cases: in case of polygamy; criminal homicide of a fetus; crimes against children; bad behavior with children; provides for a summons to court when committing spousal property crimes and tax crimes.

According to Chapter 9 of the Family Code of the Republic of Uzbekistan, the degree of relationship is determined, according to which a married couple is not considered related.¹¹ But witness immunity has a broader meaning than relationship.¹²

For example, L. Ya. Malakhova: By the immunity of witnesses it is necessary to understand the system of norms of criminal procedure law. According to him, witness immunity gives the right to a person summoned for questioning to refuse to testify against himself, his spouse, close relatives and other relatives, to refuse to testify against a suspect accused of committing a crime against him;

⁸ Pulatov A.S. Next, the process processes procedural actions va uni takiyillashtirish masalalari: Author's abstract of thesis...legal. fan. falsafa. Doctor (PhD). T., TDUI, 2022. – B.128.

⁹ Basetsky, I. I. Witness in criminal proceedings. –Minsk: Academician. Ministry of Internal Affairs of the Republic of Belarus, 1999. – P.29.

¹⁰ Evidence Amendment Act 1853

¹¹ Family Code of the Republic of Uzbekistan. - T.: Uzbekistan, 2022.

¹² Polatov A. S. Procedural status of a witness in criminal proceedings and issues of its improvement: Abstract of thesis...legal. the science. philosophy. doctor (PhD). T., TDUI, 2022. – P.66.

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imposes on the person conducting the criminal case the obligation to explain to witnesses and other interrogated persons the rights by which they have witness immunity.¹³

Commenting on these views, for example, G.G. Chachin's opinion linked the witness's immunity only with family relationships, such a relationship applies only to all persons. But witness immunity has a broader concept than kinship and cannot be associated with other relatives. Because kinship relations, especially in Eastern countries, have a very broad concept and a long-term social and communicative feature. Granting immunity to all relatives is not considered a correct procedural decision.

In our opinion, L. Ya. Malakhova's approach to this topic also does not take into account a number of issues. In particular, in this opinion, the procedure for granting witness immunity and the peculiarities of its procedural design were overlooked.

If we turn to practice, the study of criminal cases in which close relatives of the suspect, accused were interrogated showed that the spouse, children, parents of the suspect, accused or defendant were mainly interrogated.¹⁴

To do this, it is important to give the suspect or accused the right to refuse to testify against his relatives, to refuse to testify against him. Because our country is implementing large-scale reforms to preserve family relationships, build a family based on love, and respect the rights of married couples.

Used literature:

1. Constitution of the Republic of Uzbekistan. – T.: Uzbekistan, 2022. Article 17.
2. U. Kholikulov. Current issues of improving coal legal proceedings. T. Bactria press, 2016. – 98 p.
3. B. Mominov. Judicial review in the Anglo-Saxon legal system. <https://sud.uz/anglo-sakson-huquq-tizimida-sud-nzorati/>
4. Polatov A. S. Procedural status of a witness in criminal proceedings and issues of its improvement: Abstract of thesis...legal. the science. philosophy. doctor (PhD). T., TDUI, 2022. – P.83.
5. Rule 605 of the 1995 Federal Rules of Evidence for Courts and Magistrates of the Russian Federation.
6. Rule 605 of Federal Rules of Evidence for Courts and Magistrates of the Russian Federation 1995.
7. Loskutova T. A. Witness and his testimony in criminal proceedings in England and the USA: Author's abstract. diss... cand. legal Sci. Moscow, Peoples' Friendship University of Russia, 2005. –S. 67.
8. Pulatov A.S. Next, the process processes procedural actions va uni takiyillashtirish masalalari: Author's abstract of thesis...legal. fan. falsafa. Doctor (PhD). T., TDUI, 2022. – B.128.
9. Basetsky, I. I. Witness in criminal proceedings. –Minsk: Academician. Ministry of Internal Affairs of the Republic of Belarus, 1999. – P.29.
10. Evidence Amendment Act 1853
11. Family Code of the Republic of Uzbekistan. - T.: Uzbekistan, 2022.

¹³ Malakhov L. Ya. Witness immunity in criminal proceedings of the Russian Federation: problems of legal regulation // Vestnik VGU. Law Series. Criminal law, criminal procedure. Criminology. Voronezh. 2017. -S. 246.

¹⁴ Polatov A. S. Procedural status of the witness in criminal proceedings and issues of its improvement: Autoref.diss...yuridik. science. philosophy. doctor (PhD). T., TDYuI, 2022. – B.92.

<https://cejsr.academicjournal.io>

12. Polatov A. S. Procedural status of a witness in criminal proceedings and issues of its improvement: Abstract of thesis...legal. the science. philosophy. doctor (PhD). T., TDUI, 2022. – P.66.
13. Malakhov L. Ya. Witness immunity in criminal proceedings of the Russian Federation: problems of legal regulation // Vestnik VGU. Law Series. Criminal law, criminal procedure. Criminology. Voronezh. 2017. -S. 246.
14. Polatov A. S. Procedural status of the witness in criminal proceedings and issues of its improvement: Autoref.diss...yuridik. science. philosophy. doctor (PhD). T., TDYuI, 2022. – B.92.