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Witnesses in Court: How to Call and Prepare Them So They Don't Sink Your Case

> *A witness who "remembers everything" does more harm than one who says "I don't remember". When to propose a witness, where influencing begins and why friendship alone does not discredit testimony.*

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Clients often hold two beliefs about witnesses. The first is that whoever brings more of them wins. The second is that a good witness remembers everything and answers every question without hesitation. Both are wrong. A witness who knows exactly what happened on a Tuesday afternoon three years ago, and tells it in the same words as the statement of claim, comes across to the court as coached. And five witnesses who disagree on the details can sink a case more reliably than a single one whose credibility the other side manages to shake.

Witness testimony is evidence that cannot be prepared on paper. That is why it pays to know when to propose a witness, what you may discuss with them before the hearing and how the court decides whether they are credible.

When to propose a witness

Every party must identify the evidence for its allegations (Section 120(1) of the Czech Code of Civil Procedure), and a plaintiff must do so as early as the statement of claim (Section 79(1)). Facts and evidence relevant to the decision can be put forward only until the end of the preparatory hearing (*přípravné jednání*) or, if none was held, until the end of the first hearing, or by the end of any time limit the court granted for supplementing them (Section 118b(1)). A witness you do not name in time will be admitted later only exceptionally, for instance to call into question the credibility of evidence already taken. If a preparatory hearing took place and the court did not properly advise you of the consequences of this cut-off, known as the concentration of proceedings (*koncentrace řízení*), the cut-off did not take effect (Section 114c(5) and Section 118b(3)). I explain why this deadline cannot be made up even on appeal in my article The appeal is written at first instance.

The law does not prescribe exactly what a proposal to examine a witness must contain. In practice, though, give the witness's name, an address to which the court can send the summons and, above all, **what the witness is to testify to**. A proposal reading "Jan Novák as a witness to the whole matter" tells the court nothing, and the court can easily dismiss it as unnecessary. A proposal reading "Jan Novák, who was present when the machine was handed over on 12 March and saw that it did not work" says exactly which allegation the evidence is aimed at.

Any natural person who is not a party to the proceedings can be a witness. The managing director (*jednatel*) of a company that is a party to the dispute, however, does not testify as a witness; they can be examined only as a party (Section 126(4)). A former managing director who is to testify about the period when they held office must attend court, but is examined in a special way, not as an ordinary witness (Section 126a). This matters in disputes involving companies: the "testimony" of your own managing director is not of the same nature as the evidence of an independent witness.

Examining a party is very much a last resort. The court may order it only if the fact to be proven cannot be established in any other way and the party to be examined consents (Section 131(1)). So do not rely on your own testimony as your main evidence.

What a witness must do and what they may do

Every natural person who is not a party to the proceedings is obliged to appear in court when summoned and to testify as a witness. They must tell the truth and withhold nothing. They may refuse to testify only if doing so would expose them or persons close to them to the risk of criminal prosecution; the court decides whether the refusal is justified (Section 126(1)). Being related to a party does not in itself confer a right to remain silent in civil proceedings. Statutory confidentiality is a different matter: the court may not examine a lawyer, tax adviser or doctor as a witness about matters covered by their duty of confidentiality unless they have been released from it (Section 124).

If a witness stays away without an excuse, the court can have them brought in by the police, provided it warned them of that possibility in advance (Section 52(1)), and if they stay away without good reason, it can impose a procedural fine (*pořádková pokuta*) of up to CZK 50,000 (Section 53(1)). A witness who gives untrue testimony about a circumstance material to the decision, or withholds such a circumstance, commits the criminal offence of perjury (*křivá výpověď*). They face imprisonment for up to three years or a ban on carrying on an activity, and if they act with intent to obtain a benefit for themselves or someone else, imprisonment for one to five years (Section 346(2) and (3) of the Czech Criminal Code).

In return, a witness is entitled to a witness allowance (*svědečné*), that is, reimbursement of out-of-pocket expenses and lost earnings. The right lapses unless they claim it within three days of the examination or of the day they were told the examination would not take place; the court must advise them of this (Section 139(1)). The advance towards it is usually paid by the party who proposed the witness, and without it the court will not take the evidence (Section 141(1)). In the end it is borne, as part of the costs of the proceedings, by whoever loses the case. Tell the witness this in advance; people are happy to come when they know they will not be out of pocket.

At a party's request, or where it is expedient, the court can also examine a witness by videoconference (Section 102a). This is useful for witnesses who are abroad or at the other end of the country. The court must verify the witness's identity and make sure nobody influences them improperly.

Preparing a witness: where the line is

This is where good practice and dangerous practice part ways. You may talk to a witness. It is sensible to explain how the examination works, where the court is, how long it will take and that they will be warned about the consequences of false testimony. You may ask them what they remember and use that to decide whether to propose them at all.

You must not tell them what to say. Anyone who induces another person to give false testimony may be liable as an instigator of the offence (Section 24(1) of the Criminal Code), and anyone who offers or promises a benefit for false testimony commits a separate offence, obstruction of justice (*maření spravedlnosti*, Section 347a(2)). A lawyer, moreover, must not propose evidence they know to be untrue, not even on the client's instructions (Article 17(2) of the Code of Ethics of the Czech Bar Association).

For civil proceedings, the Czech Bar Association has no express rule on talking to witnesses. For criminal proceedings it does: the lawyer must tell the person at the outset why they are talking to them, make clear that they are asking only for truthful information, and take care not to influence them in the client's favour (Resolution of the Board of the Czech Bar Association No. 13/2004, published in the Bulletin, Articles 4 and 6). I follow these rules in civil disputes as well and, where possible, talk to a witness with another person present and make a record of the conversation. Not only for ethical reasons, but also for the result: when the other side asks "Did anyone talk to you before the hearing?", the witness can calmly say yes and explain what about.

Do not rely on a written declaration from the witness (*čestné prohlášení*) in place of their examination. Nobody can put questions to a sheet of paper, and if the other side disputes what it says, the court will want to hear the witness.

Coached testimony is easy to spot. A witness who repeats phrases from the statement of claim, answers before the judge has finished the question and is more certain of the details than anyone would be a week after the event comes across as prepared. The court does not find such testimony more credible; if anything, the opposite.
For the same reason, I always tell a witness one thing: "If you don't know something, say you don't know." A witness who admits they do not remember the exact day, but remembers that the machine did not work, is more credible than one who knows everything. It is the same mechanism I write about in Admitting a weakness as a weapon: people who say something against themselves are more easily believed on everything else.

How the examination works

First, the court establishes the witness's identity and any circumstances that may affect their credibility, typically their relationship to the parties. It then advises them of the significance of witness testimony, of their rights and obligations and of the criminal consequences of false testimony (Section 126(2)).

The witness then begins by giving an uninterrupted account of what they know about the subject of the examination. Only after that are questions put to them, in turn, by the presiding judge, the other members of the panel, the parties and any experts. The presiding judge will not allow a party's question that is unrelated to the subject of the examination, suggests the answer or is misleading (Section 126(3)). So questions like "You saw the defendant break it, didn't you?" will not get through in court.

Two practical tips follow for a party. Prepare your questions in advance and keep them open: who, what, when, where, how. And let the witness speak first. The uninterrupted account is the most valuable part of the testimony for the court, and anything the witness says of their own accord, without prompting, carries more weight than an answer to a question.

How the court decides whether to believe a witness

The court evaluates the evidence at its own discretion, each piece individually and all of it taken together (Section 132). The law gives no witness more or less weight in advance. Not even the testimony of a relative or an employee lacks credibility in itself.

The Supreme Court said so expressly in its judgment of 22 November 2022, file no. 21 Cdo 1215/2021. In that case, the appellate court had disbelieved a witness partly because she was an employee of the plaintiff's lawyer. The Supreme Court held that a finding that testimony lacks credibility must rest on specific facts established in the proceedings: inconsistencies within the testimony, inconsistencies with other evidence, the way the testimony was given or the witness's personal relationship to the matter, not on a relationship that is merely presumed in general terms (paragraphs 23 and 25).

Proposing a witness who is close to you? That is fine, but expect the other side to look for inconsistencies. Back up their testimony with documents: e-mails, photographs, records.
Did the court disbelieve your witness merely because they are a friend, a relative or an employee? That is an argument for your appeal. The court must say what specifically makes the testimony unreliable.
A conflict between a witness and a document is a stronger signal to the court than any relationship. Before you propose a witness, compare what they remember with what is in the file.

Overview

Question	Answer	Provision
When to propose a witness	By the end of the preparatory hearing, otherwise of the first hearing, or of the time limit for supplementing evidence	Section 118b(1), Code of Civil Procedure
Must a witness attend and testify	Yes; they may refuse only where there is a risk of criminal prosecution of themselves or a person close to them	Section 126(1), Code of Civil Procedure
Stays away without an excuse	Brought in by the police, procedural fine of up to CZK 50,000	Sections 52 and 53, Code of Civil Procedure
Perjury	Up to three years or a ban on an activity; with intent to obtain a benefit, one to five years	Section 346(2) and (3), Criminal Code
Witness allowance	Claim within three days of the examination	Section 139(1), Code of Civil Procedure
Questions that suggest the answer	The presiding judge disallows them	Section 126(3), Code of Civil Procedure
Examination of a party	Only if the fact cannot be proven otherwise and the person examined consents	Section 131(1), Code of Civil Procedure

Preparing for a dispute and not sure whether the court will hear your witnesses, or believe them? We will go through with you what each witness can testify to, how to back up their testimony with documents and when it is better not to propose them at all. We handle disputes as part of our dispute resolution practice. Get in touch.

Conclusion

With witnesses, a case is won neither by numbers nor by how confidently they speak. It is won by the testimony of someone who actually saw something, says it in their own words and is not afraid to admit what they do not remember. A lawyer's job is to find such witnesses, propose them in time and with a clear subject, and back up their testimony with documents. Teaching them what to say is not only forbidden but also ineffective.

Sources

- Act No. 99/1963 Coll., the Code of Civil Procedure, Sections 52, 53, 79, 102a, 114c, 118b, 120, 124, 126, 126a, 131, 132, 139 and 141 (as in force on 1 November 2026).
- Act No. 40/2009 Coll., the Criminal Code, Sections 24, 346 and 347a.
- Code of Ethics of the Czech Bar Association (Resolution of the Board of the Czech Bar Association No. 1/1997, published in the Bulletin), Article 17.
- Resolution of the Board of the Czech Bar Association No. 13/2004, published in the Bulletin, Articles 4 and 6.
- Supreme Court judgment of 22 November 2022, file no. 21 Cdo 1215/2021.

This article is for information only and does not constitute legal advice. It describes the law as at 4 November 2026; how a court assesses the testimony of a particular witness always depends on the circumstances of the case.

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