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Editorial Words

Dear esteemed readers,

It is my great pleasure to welcome you to the latest edition of ASEJ, the academic journal that brings you the latest research in the fields of law, economics, logistics, finance, psychology, criminology, computer science, and security. This issue features a diverse range of articles from leading experts in these fields, showcasing their latest research and insights into current trends and challenges.

As we continue to face unprecedented challenges and rapidly evolving technological advancements, it is more important than ever to stay up-to-date with the latest research and trends in these fields. This issue of ASEJ offers valuable insights and perspectives that are essential for anyone seeking to stay at the forefront of their respective disciplines.

We would like to take this opportunity to express our sincere gratitude to the authors for their hard work and contributions to the advancement of knowledge. We would also like to acknowledge the invaluable support of the Bielsko-Biala School of Finance and Law for their continued commitment to publishing this journal, which serves as a platform for the exchange of the latest knowledge and insights.

Virtual reality (VR) technology has been advancing at a rapid pace, and with its growth come a range of challenges in various fields, including economics, law, security, and computer science. In the realm of economics, one challenge is determining how to integrate VR technology into existing business models. VR has the potential to revolutionize the way companies conduct business, but it also requires significant investment and infrastructure to do so. Additionally, there are concerns about how VR will impact the job market, as it could potentially eliminate the need for certain types of jobs while creating new ones in the VR industry.

In this issue, we also explore the growing significance of virtual reality in law, economics, finance, and security. As VR technology continues to evolve, it presents both opportunities and challenges in these fields. For example, in economics, VR has the potential to revolutionize the way businesses operate, but it also requires significant investment and infrastructure. In law, the use of VR raises important questions around data protection, privacy, and intellectual property rights. In finance, VR can be used to enhance customer experiences and provide new insights into investment opportunities. In security, VR presents new risks and challenges, such as ensuring the safety of users and protecting sensitive data from cyber threats.

We hope that this issue of ASEJ will prove insightful and informative for our readers, and we look forward to your feedback and contributions in future editions.

Sincerely,

Dr Muhammad Jammal
Editor of the ASEJ, Issue 4, Volume 26, 2022

Written witness testimony

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***Abstract*— According to Art. 9 sec. 2 of Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, the court or tribunal may allow written evidence from witnesses, experts or parties to be taken. The Regulation applies to cross-border cases (Regulation of 11 July 2007), i.e., cases in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal examining the case (Article 3). On the other hand, the Act amending the Act - Code of Civil Procedure and some other acts of 5 December 2008 added Art. 505 25. Pursuant to § 1 of this provision: The witness shall testify in writing if the court so decides. In this case, the witness shall make an oath by signing the text of the oath. The witness is obliged to submit the text of the testimony to the court within the time limit set by the court. The provisions of art. 165 § 2, art. 274 § 1 and art. 276 shall apply accordingly. As indicated in the justification for the draft of this legal act: Due to the fact that Polish law does not know the written form of testifying by witnesses and hearing the parties (the exception applies to mute and deaf people, cf. Art. 271 § 2 of the Code of Civil Procedure; this provision applies accordingly to hear the parties pursuant to the third sentence of Article 304), it was necessary to introduce appropriate regulations in this respect applicable to the European Small Claims Procedure, as the procedure is basically to be in writing.**

Keywords— witness evidence, written evidence, truth principle, directness principle.

I. INTRODUCTION

In 2019, the use of written witness evidence was extended. The Act amending the Act - Code of Civil Procedure and some other acts of July 4, 2019 added art. 271 [1] of the Code of Civil Procedure, according to which: A witness shall testify in writing if the court so decides. In this case, the witness shall make an oath by signing the text of the oath. The witness is obliged to submit the text of the testimony to the court within the time limit set by the court. The provisions of art. 165 § 2, art. 274 § 1 and art. 276 shall apply accordingly. In turn, the justification for the bill states that: It is obvious that submitting written testimony can significantly speed up the issuance of a decision in the case and save the parties' costs, and the court - work. This option, which has so far only been provided for in the European Small Claims Procedure, should therefore be extended to all civil court proceedings. The development of detailed rules for the application of this institution, in particular the mode of receiving such testimony and the requirements for them, should be left to practice. It should be expected that after several years of using this institution, the requirements for recognizing such testimonies as valuable evidence will develop in practice.

Since this provision has been in force for over 3 years, it seems justified to attempt to determine the consequences and limitations related to its introduction to the code.

II. ASSESSMENT OF ART. 271 [1] OF THE CODE OF CIVIL PROCEDURE IN THE DOCTRINE AND JURISPRUDENCE

The analysis of the following positions shows that the opinions contained therein do not have a clearly positive or negative connotation. There are also noticeable differences in the general assessment, which is presented in a more or less liberal form. P. Rodziewicz points out that the introduced solution may contribute to accelerating the proceedings and eliminating obstacles that prevent a witness from being heard in the traditional manner. On the other hand, in the case of written testimonies, the assessment of their credibility by the court may turn out to be much more difficult, due to the fact that the trial body is unable to assess the tone and manner of expression, as well as the witness's facial expressions during the testimonies. When deciding on the method of hearing a witness, the court should take into account the scope of circumstances to which the witness is to be admitted, the geographical distance

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of the witness's place of residence from the court, as well as the speed of the proceedings (Rodziewicz 2023). According to K. Flaga-Gieruszyńska, this provision was introduced in order to speed up the proceedings, as well as due to the rules of procedural economy (Zielińakis, Flaga-Gieruszyńska 2022). According to further views, although oral testimony, including those submitted in the form of a videoconference, is more favorable than written testimony for the court, the possibility of the witness giving written testimony is assessed positively, and their main advantage is the acceleration of the proceedings (Błaszczak 2021) . It is for the court to determine whether the witness's testimony is given honestly and whether it corresponds to the truth, and assessing the credibility of the witness' testimony is one of the most difficult tasks of the court. Attention is also drawn to simplifying and accelerating the proceedings in the context of a significant burden on common courts, highlighting a more convenient and less burdensome form for witnesses who do not have to subordinate their life or professional matters to the imposed hearing date (Cudak 2019). On the other hand, giving evidence in writing has significant disadvantages. First of all, there is no guarantee of independent witness testimony. It is not known whether the person did not use specific documents or did not use the help of other people. In addition, it is more difficult to evaluate these testimonies. Direct assessment of the witness's behavior while giving evidence facilitates the assessment of their credibility. Therefore, the written form of the witness' testimony, which is an exception to the principle of oral testimony, should be used prudently by the court (Cudak 2019).

Issues related to the above-mentioned provision were also reflected in the jurisprudence. According to the thesis of the Court of Appeal in Poznań (ACa 676/21.), according to this regulation - as the provision expressly indicates - whether a witness or a party will be questioned directly by the court is within the discretion of the judge, because the legislator has not introduced there are no restrictions or prerequisites for this ("a witness shall give evidence in writing if the court so decides"). There is no full freedom to hear the parties in writing. This is excluded, e.g., when written testimony raises doubts or, in particular, when the other party to the proceedings has submitted evidence that justifiably indicates circumstances different than those resulting from the written testimony - then the legitimacy of additional questioning of the party directly by the bench should be considered adjudicating (ACa 676/21). On the other hand, according to the Court of Appeal in Szczecin (ACa 469/21.) , in view of the possibility of taking evidence using forms of electronic communication (Article 235 § 2 of the Code of Civil Procedure), the norm of Art. 2711 should be applied only when, due to the person of the witness or the type of information that his testimony is to be obtained, there are no fears of the possibility of distortion or manipulation of his testimony. In other situations, i.e. when there is uncertainty as to whether the standard of evidence certainty is maintained when using written testimonies (e.g., due to the passage of time between the reported event and the testimonial, type of facts covered by the evidence, relations between witnesses and parties, existence of the possibility of distortion of the testimony due to emotional, personal or professional involvement of the witness in the dispute, etc.), evidence should be taken under Art. 271 of the Code of Civil Procedure (with the possible use of instruments referred to in Article 235 § 2 of the Code of Civil Procedure). This applies in particular to the hearing of the parties.

III. Analysis of the advantages, disadvantages and limitations of written witness testimony

At the outset of this part of the considerations, it should be noted that the introduction of the regulation concerning evidence from written witness statements in Art. 2711 of the Code of Civil Procedure, i.e. in Chapter 2, Section III Evidence, allows the use of evidence in this form in principle in all proceedings, applying the rules of system interpretation. Having regard to Art. 13 § 2 of the Code of Civil Procedure, this provision also applies to other types of code proceedings. Finally, the provision itself does not introduce restrictions in this regard, making its application subject to the decision of the General Court. Analyzing the provisions of the Code concerning evidence, such an assumption does not seem to be exceptional. According to Art. 309 of the Code of Civil Procedure, the manner of taking evidence by means of evidence other than those mentioned in the preceding articles shall be determined by the court in accordance with their nature, applying the provisions on evidence accordingly. The catalog of evidence in civil proceedings is therefore open, and any evidence available at a given stage of development of technology and science can be used in a case (Rudkowska-Ząbczyk 2023). Tendencies liberalizing the taking of evidence are also visible in the light of the introduction of Art. 243 [1] of the Code of Civil Procedure In this way, only such an object on which a given content was recorded in writing was abandoned as a document (Rudkowska-Ząbczyk 2023) .

The possibility of using evidence from written witness statements should also be considered from the point of view of the principle of truth, immediacy, orality and speed of the proceedings. The principle of orality is closely related to the principle of immediacy, which means that the adjudicating court should get acquainted directly with the material of the case, including the evidence (Siedlecki & Świeboda 2000) . The principle of writing does not exclude the principle of immediacy, but in some cases, it hinders its implementation (Błaszczak 2021). At the same time, the principle of truth takes precedence over the postulate of speedy proceedings (Article 6 § 1 of the Civil Procedure Code) and the so-called procedural economy, and its guarantee is the correct shaping of the principles of adversarial, immediacy and free assessment of evidence in civil proceedings (Kp 3/08, OTK-A 2009). Thus, without negating the importance of the other principles, the principle of truth appears as the central point of conduct. In turn, the principle of immediacy is not an independent entity, but is functionally subordinated to the principle of truth, the implementation of which it is supposed to serve. The issue of capturing the very essence of the principle of truth requires additional remarks. Before 1989, the concept of objective truth

prevailed, according to which the obligation to reveal the objective truth rests with both the parties and the court (Prez 195/52). Pursuant to its assumptions, the court has a special role to watch over the disclosure of the objective truth with its increased activity, to fill gaps and deficiencies caused by insufficient activity of the parties with its own actions, and sometimes even oppose the action of a party wishing to prevent the disclosure of facts significant from the point of view of social. Currently, the principle of substantive truth also means that a court's decision should always be based on factual and legal findings of the case consistent with reality, regardless of whether the parties have provided the court with sufficient procedural material to make such findings. Any deficiencies in this material should be supplemented by the court ex officio (Marszałkowska-Krześ 2023). At the same time, as a result of the changes made, the adversarial nature of civil proceedings was significantly increased. It is up to the parties to seek to clarify all the relevant circumstances of the case, so they cannot be passive and count on the use of an appeal in the further course of the proceedings, in which they could accuse the court of failing to explain the essential elements of the case. Although the court may supplement the evidence proceedings on its own initiative (Article 232, sentence 2 of the Code of Civil Procedure), it is no longer obliged to do so (Ereciński 2009). The principle of truth is related to the principle of free assessment of evidence (Article 233 of the Civil Procedure Code), and the Court should, on the basis of this assessment, strive to establish the true facts (Siedlecki 2000).

These observations seem to be important for the analysis of the written witness evidence. Since the legislator decided to introduce this form of evidence by modifying the principle of immediacy, the mere fact of basing factual findings on evidence from written witness statements does not constitute a procedural error. Only the contradiction of the findings with the principle of free assessment of evidence, based on a comprehensive consideration of the collected evidence, interpreted through the prism of the principle of truth, may constitute the basis for an effective allegation. The source of doubts may be the form of evidence (including the problem with verifying the witness's signature), inconsistency or contradiction with the collected evidence. Moreover, such an issue must then be assessed in the light of all the evidence collected in the case, taking into account the positions of the parties. Any doubts regarding the assessment of the evidence should concern the circumstances relevant to the decision, and at the same time those which cannot be categorically eliminated by the other evidence collected in the case. From the point of view of practice, which translates into the possibility of using a witness's testimony in writing, these issues are important. Many times in cases it turns out that some of the witnesses do not have essential information about the case. When requesting the taking of evidence in a case, the party often does not know what information the witness has. In these types of situations, especially in cases where multiple witness evidence is requested, written evidence eliminates such evidence. At the same time, it cannot be considered that summoning a witness to a hearing in order to give oral testimony would simplify the matter, since a witness who does not have essential information will be interrogated briefly. This is because such situations cannot be predicted, and the summoning of witnesses forces you to reserve time at the stage of scheduling a hearing. Written evidence also allows you to isolate groups of witnesses whose information is duplicated and obtained from similar sources. Also in these situations, written evidence from witnesses often makes it possible to limit the number of witnesses heard, without compromising the principle of truth. Such situations apply in particular to those cases in which the material evidence includes funds that are not personal sources. Written witness evidence is also extremely useful in those situations where the examination of a witness directly before the court encounters significant obstacles. Finally, an important factor in the assessment of evidence from written witness statements are the positions of the parties, especially those presented after the evidence has been taken. As already indicated, the evidence activity of the Court ex officio in the evidentiary proceedings is an exception to the rule and is not an obligation of the Court. The jurisprudence presents the view according to which the Court may admit evidence not indicated by the parties only in special procedural situations of an exceptional nature. As a rule, it is not authorized to replace the party's inaction with its own actions (III CKN 244/97, OSNC 1998). Such action may be justified in situations where it is to prevent violation of the legal order, as well as when, apart from private interest, there is a public interest in the case, when there is a suspicion that the parties are conducting a fictitious trial, when the subjects of the proceedings behave contrary to the law and in the event of an exceptionally clumsy party in the proceedings, i.e. when it is justified by preventing the violation of the principle of equality (equal rights) of the parties (IV CSK 346/06.) . Therefore, if the exceptional situations described above, related to the helplessness of the party, do not occur, they do not require the hearing of witnesses (or part of them) before the Court, and the content of these testimonies itself does not raise any significant doubts in the light of the evidence gathered, waiving the supplementary hearing of witnesses before The court is not a procedural error.

The purpose of this study is not to put forward the thesis according to which the written testimony of a witness constitutes "better" evidence than the testimony given directly before the Court. However, as can be seen from the examples cited above, written testimonial evidence has advantages that allow the case to be dealt with more quickly, taking into account the averaged data from all cases handled by a particular judge. Of course, it may happen that in a case in which the testimony of witnesses was conducted in this form, it will be necessary to interrogate almost all witnesses, but, as practice shows, in an "average case" this evidence allows for a significant reduction in the number of witnesses interviewed orally, without prejudice to the principle of truth (this aspect was discussed above). This, in turn, allows for setting shorter trial dates. The current situation of the judiciary should be kept in mind at all times, in which a typical judge's report covers several hundred cases, and the number of cases in the courts is systematically growing. For example, in 2002, 8,696,913 cases were filed with

common courts, and in 2017 - 15,782,479 (Siemaszko et. all 2019). This increase of over 81% was not accompanied by an adequate upward trend in the employment of judges (Joński 2016) . Of course, evidence from written testimonies is not an adequate response to the dramatic situation of the judiciary, and as indicated, the postulate of speedy proceedings (the postulate of speedy proceedings is also related to the time devoted to an "average case" in the above sense) cannot undermine the principle of truth when assessing a specific Affairs. A significant qualitative change would require a measurable reduction in the number of cases heard by a judge at the same time, e.g., by gradually introducing the requirement to use out-of-court dispute resolution methods at the stage preceding submitting the case to court, together with financial motivations for such a conflict resolution, which would also be advisable in the social dimension. Such considerations are beyond the scope of these proceedings. Certainly, however, it is advisable to use these tools which, without violating the principles of fair conduct, allow for its shortening.

IV. Conclusion

The introduction of written witness evidence into the code should be assessed positively, although its limitations should be borne in mind, taking into account the circumstances of a particular case. This evidence may, in principle, be admitted in any proceeding, and the mere fact of basing factual findings on the basis of written testimony does not constitute a procedural default, if other procedural principles, in particular the principle of truth, have not been violated in a specific case, to the extent relevant to the resolution. This evidence is important from a practical point of view, especially in order to identify witnesses who do not have relevant information about the case, duplicate information available in other evidence, already considered credible, and at the same time enables the hearing of witnesses in situations where the questioning of a witness directly facing significant obstacles before the court. The assessment of these circumstances should also include the positions of the parties, especially those presented after the evidence has been taken, regarding the need for additional hearings of some of the witnesses. While this evidence is certainly not an adequate response to a deepening crisis in the justice system, it is a useful tool to mitigate some of the unfavourable trends.

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