

ITALIAN STYLE FOR PARTY TESTIMONY

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Abstract

The debate on the admissibility of the party testimony grounds on the structural equivalence between statement of the witness and statement of the party.

The modern scholars, only after recognizing that the statement of the witness is a narrative statement on the existence of past facts, as the statement of the party, addresses the problem of the use of the knowledge of the parties as a means of evidence, as one of the possible sources of conviction of the court. This issue is studied from the perspective of the proceedings as a hearing (that is, a proceedings that results in a few hearings) and the proceedings as a dossier (that is, a written proceedings in which the judgment is handed down after long time from the hearing according to the official records), rather than the usually opposition between adversary system and inquisitory one.

This is the background on which it is analyzed the principle *nullus idoneus testis in re sua intelligitur*, and the rules of evidence that exclude, or otherwise limit, the admissibility of the party testimony because the party is, by definition, surrounded by a cloud of suspicion.

The rationale for the principle fails in the hearing-proceedings, where its structure and the particular ways in which the testimony is taken (cross-examination), exceed the concerns that lead to introduce the prohibition of party testimony; so, in accordance with the best evidence principle, the knowledge of parties is treated, such as the knowledge of the witness.

The Italian civil proceedings addresses the problem of knowledge of the parties in a different way and solve it with the typical instruments of the dossier-proceedings. The Italian Code of Civil Procedure escludes the admissibility of the party testimony, but it regulates several forms party's statement gathering (party oath,

formal interrogatory of the party, free interrogatory of the party) which it is connected some legal-proof and a legal determination of the probative value that the judge must give to the various evidence so gathered, thus creating a hierarchy of evidence removed from the principle of free evaluation of evidence. This shows what is probably the true rationale behind prohibition of party testimony: this rule implements a rational principle which requires that the actors should play in the proceedings a specific and non-overlapping role.

In the end, we analyze the attempts to overcome this system of legal-proof, through the enhancement both formal interrogatory and free interrogatory of the party, to identify the situations in which a party may make statements freely evaluable by the court.

These praiseworthy attempts, however, are not convincing at least *de iure condito* for the following reasons. First, these fact-finding arrangements have different admissibility requirements and different gathering procedures, with the testimony; secondly, these interpretations seem to force the text of the law; finally, these attempts do not resolve an issue latent in the Italian system: the party has never the duty to tell the truth.

Summary:

.1 The party testimony: the problem well-posed. - .2 *Nullus idoneus testis in re sua intelligitur* - .3 *Same*: the overcoming of the prohibition of the party testimony in the proceedings as a hearing - .4 The problem of the rationality of the judgment on the facts. The relationship between the rules of proof-taking and the function of the proof - .5 The use of the knowledge of the parties in the Italian civil proceedings. An example of the hierarchy of evidence - .6 *Same*: the attempts to introduce the party testimony. Critics. - .7 Conclusion. The problem of facts that can be proved only through the party testimony.