

Evidence of Testimony in Cyberspace

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Abstract

The testimony of witnesses as one of the most important proofs of a lawsuit is effective in both court and arbitration cases. This article examines the acceptance of witness testimony and its process in cyberspace, as well as how intuition is Challenge in Iranian law and some legal systems. In this article, which has been done by descriptive-analytical method. The authors intend to discuss the Hearing the testimony of witnesses in cyberspace arbitration comparatively in US, European and Iranian arbitration systems. And in continuation of the legal and judicial validity of this method of hearing testimony, as well as how to denial witnesses, and finally the opportunities and challenges in the process of hearing witnesses in cyberspace arbitration should be examined.

Keywords: "Arbitration", "Cyberspace", "Hearing testimony", "Challenge of witnesses", "Opportunities and Challenges".

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1-INTRODUCTION

Commercial arbitration has been one of the most common methods of resolving disputes in domestic and international litigation outside of State courts. In fact, according to some lawyers, it is a "quasi-judicial" method of handling disputes in parallel with the courts by arbitrators selected by the parties. The purpose of writing such an article is that because of the challenges and gaps that exist in traditional litigation, members of the legal community and the parties to the dispute are struggling with it. Such as: low speed of judicial proceedings, excessive time spent and prolongation of procedures and consequently, imposing high costs on the parties to the dispute and the presence of litigation as challenges even in international commercial arbitrations, It is desirable that arbitration in cyberspace, as a method of resolving disputes in absentia and quickly, It has greatly influenced the order of the world legal community. And also be a suitable model for improving the methods of dispute resolution and exchange of Electronic Positivism evidence, especially "testimony of witnesses" in the commercial

arbitration authorities of Iran [1].

Before entering the main discussion, we should know that one of the of the award arbitration that verdicts that has approved the implementation of the international commercial arbitration process in cyberspace. The arbitration case relates to the settlement of disputes over "European continental shipping and grain" which has been heard in the English legal system by a British arbitrator named Lord Denning. And based on the Expressive evidence of the parties, one of which was the Positive reasons for the testimony of witnesses, an electronic verdict was issued and then executed [2]. According to ranks mentioned and also, due to the developments of new technologies, especially in cyberspace, the need to enter this field is

¹ - For further reading, refer to: Akhavanfard, Massoud and Shahidi Sadeghi, Reza, (2019), Introduction to Cyber Arbitration Law, First Edition, Majd Publications, Vol. 3 and 4.

² - European Grain and shipping Ltd v Johnson, CA, {1982} 3 ALL ER 989 (992) Johnson.

the same as the need to use this technology. And the impact of cyber technology in the field of legal issues, especially domestic and international arbitration, is quite tangible and noticeable. Now, before entering the main discussion of this article, which has been done by descriptive-analytical method and using library resources, the question is what are the opportunities and challenges of hearing the testimony of witnesses in virtual arbitration? In response, it should be said that hearing the testimony of witnesses in virtual arbitration has opportunities and challenges for the arbitration authorities of the parties to the dispute and intuition.

2. Hearing the testimony of witnesses in virtual arbitration (legal and judicial validity)

In this section, the legal and judicial validity of hearing the testimony of witnesses in cyberspace arbitration will be discussed first in the arbitration systems of the United States and reputable European countries and then in the arbitration system of Iran

A) Hearing the testimony of witnesses in virtual arbitration in US and European arbitration systems:

The first article of the law that legally protects the issue of hearing the testimony of witnesses in cyberspace arbitration, Paragraph B of Article 35 of the Rules of the United States Arbitration Association, as amended in October 2013, Prescribes as follows: "The witness may hear his testimony in any manner permitted by law and submit it to the agreed arbitral tribunal." Therefore, it is used that one of the methods by which the witness can hear the testimony is testimony through cyberspace. Approval of the legal article in the US arbitration system removes any obstacle to the hearing of testimony in virtual arbitration and leaves no doubt as to its legal validity [3]. Taken from the concept Rule 44 of the US Federal Civil Procedure Code 2017 also states that the testimony of witnesses can be heard in a variety of situations and sent to arbitration. Therefore, for the mentioned reason, most of the reasons that are sent electronically (audio, video files, etc.) are received by the judicial authorities based in this country, and if they are authenticated, they are considered to have a positive value [4]. Section 7 of the US Federal Arbitration Act 1990 is also used, which gives the witness the opportunity under the law to hear and produce his testimony in various ways, such as face-to-face, testimony and electronic file, and send it to the arbitral tribunal. Also, according to the provisions of the text of the UNCITRAL sample in Article (1) 19, which states: "The parties are free in the manner of hearing the testimony of witnesses", in turn, confirms the validity

of the subject under discussion [5]. Another confirmation is the possibility of hearing the testimony of witnesses in the arbitration of cyberspace, paragraph 4 of Article 25 of the Amended UNCITRAL Arbitration Rules 2010⁶, which stipulates: "Meetings of Witness testimony hearings in arbitration are held on camera, unless the parties to the dispute agree otherwise." From the term "Camera" in the above article, it is understood that the judgment can be heard through video cameras or more desirable tools in terms of performance, such as video conferencing. Therefore, it seems that testimony can also be heard through cyberspace, and there are no legal restrictions on the conduct of such a hearing in international arbitration [7]. In addition, the explicitness provided in paragraph 3 of Article 28 of the UNCITRAL Arbitration Rules [1,8]. Express the same meaning [9]. In accordance with Section 7 of the United States Arbitration Act 1990, recorded electronic video files are sent to the authority through the arbitration system. And then, it will be evaluated by competent experts and will finally be archived in the court archives.¹⁰ According to this law, when testimony is heard and exchanged in cyberspace, This method of hearing, considering its legal criteria and regulations, is considered a relatively suitable alternative as a positive reason. Because the judges have the right to summon the witness in appropriate cases in the arbitration

⁵ - Dupeyron, C., Shall National Courts Assist Arbitral Tribunals in Gathering Evidence? ICCA Mauritius, May 2016, p. 5.

⁶ - Clause 4 Article 25 United Nations Commission on International Trade Law (UNCITRAL) UNCITRAL Arbitration Rules 1976: Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the Retirement of any witness or witnesses during the testimony of other witnesses. The arbitral tribunal is Free to determine the manner in which witnesses are examined.

⁷ - Uncitral Arbitration Rules. United Nations Commission On International Trade Law (Uncitral), 1976, p.17.

⁸ - Clause 3 Article 28 UNCITRAL Arbitration Rules as revised in (2010):

Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may Require the Retirement of any witness or witnesses, including expert witnesses, during the Testimony of such other Witnesses, except that a witness, including an expert witness, who is a Party to the arbitration shall not, In Principle, be asked to retire.

⁹ - UNCITRAL Arbitration Rule (as revised in 2010), 2011, p. 1.

¹⁰ - Epstein, L, Chair Hossain, N., Secretary, the International Commercial Disputes Committee and the Arbitration Committee of the New York City Bar Association, A Model FederalL Arbitration Summons to Testify and Present Documentary, Evidence at an Arbitration Hearing, The Committee on Arbitration. Committee Members – May 2015, p. 29.

³ - European Grain and shipping Ltd v Johnson, CA, {1982} 3 ALL ER 989 (1992) Johnson.

⁴ -Federal Rules of Civil Procedure, with Forms, Printed for the Use of the Committee on the Judiciary House of Representatives, 2014, p.62.

system to give some explanations about the testimony. The proposal of this legal system is that the "FRCD" system can be used; The latter system provides favorable conditions for the summoning of witnesses and provides protection of safety information [11]. In the French legal system, too, the law implicitly accepts that testimony can be heard in absentia by witnesses. However, this testimony may be in the form of an electronic testimony. And so it is obvious that according to the arbitration law of this country, Arbitration courts based in this legal system are obliged to govern the arbitration rules and regulations agreed upon by the parties in this regard. And there will be no need to follow the usual enforcement procedures in traditional arbitration courts.^[12] Hearing of witnesses under Article (2) 1467 of the French Arbitration Law 2011, can even be in the form of a live telephone call (conference phone) and the question and answer and summoning of witnesses can be done in the same way [13]. Pursuant to Article 34 (2) of the UK Arbitration Act 1996, it is accepted that the parties to the arbitration agreement may agree on the hearing and its proceedings. For example, it is clear from Article (3) (2) 34 of the Arbitration Law of this country [14] and the phrase "file" in the recent article that the testimony can be prepared in the form of a file and submitted to the Arbitration Court as an electronic testimony. On the other hand, by using the implicit statement of the English legislator in Article (5) (2) 34 [15], the parties will be able to agree on how to ask and answer questions from witnesses in this space [16]. Arbitration in the United Kingdom under Article 34 (1) [17] can be heard in full written and electronic form, and also the arbitration system of this country does not have any legal obligation to convene and hold hearings in person only. In the German arbitration system, witnesses are usually present at the arbitral tribunal and testify. And the arbitral tribunals also turn oral testimony into written testimony at the earliest opportunity. It should

be noted that the authors of the German Arbitration Law of 1998 also issued this license in accordance with the first paragraph of Article 1047. That the arbitrators can hold a testimony hearing in cyberspace if a final agreement is reached and the arbitral tribunals located in this country respect the decision of the parties. When it's "Electronic Hearing". The arbitrators will issue an electronic judgment based on the electronic data generated by the parties and exchanged on the Institute's website. If the parties have selected an expert or consultant in arbitration to submit reports, The selected expert also appears in cyberspace as a witness and listens to the testimony [18]. It seems that less arbitration system than the Dutch arbitration system has emphasized the exchange of electronic information; Thus, on June 30, 2004, the Netherlands Arbitration Act 1986 amended the definition of evidence presented by the parties and explicitly referred to it as "Forms of Arbitration Agreement", in the sense that the arbitration agreement is made through electronic forms of the arbitration system. It is concluded, it is spoken. In addition, with regard to the meaning provided for in Article (6) 1020 of the said law [19], the Dutch arbitration system has officially declared that the parties and the arbitral tribunals are obliged to upload and download the documents electronically [20]. Arbitration in Case No. 36 " Flexi - Van Leasing 'Inc ", Against the Government of the Islamic Republic of Iran [21], the Tribunal stated: "The arbitral tribunal, like other international authorities, has paid special attention to the verification of the witness's oral statements by concurrent or related written evidence in assessing the testimony of witnesses. The provisions of this judgment imply that if the written testimony is submitted in absentia and at the same time it is possible for the witness to give explanations, This is a positive and valid reason; In the virtual arbitration hearing, the opportunity to give explanations and oral statements of witnesses through the arbitration system of the institute is considered possible.

¹¹ - Ibid, p. 30.

¹² - De La Hosserye, J. de Giovanni, S and Huard, J – Bourgoi. Arbitration in France, CMS Guide to Arbitration, Vol I, 2005,p. 350.

¹³ - Ibid, P.351.

¹⁴ - Article 34 (2) (C) England Arbitration Act 1996: Whether any and if so what form of written statements of claim and defence is to be used, when these should be supplied and the extent to which such statements can be later amended.

¹⁵ - Pendell, G and Bridge, D., CMS. Arbitration England and Wales, CMS Guide to Arbitration, Vol I., 2008,p. 311.

¹⁶ - Pendell, G and Bridge, D., CMS. Arbitration England and Wales, CMS Guide to Arbitration, Vol I., 2008,p. 311.

¹⁷ - Article 34(1) England Arbitration Act 1996:It shall be for the tribunal to decide all procedural and evidential matters, subject to the right of The parties to agree any matter.

¹⁸ - Lörcher, T., CMS , Arbitratio in Germany. CMS Guide to Arbitration, Vol I., 20011,p.377-378.

¹⁹ - Clause 6 Article 1020 Netherlands - Arbitration Act 1 December 1986 Code of Civil Procedure - Book Four: Arbitration Netherlands: Arbitration rules referred to in an arbitration agreement shall be deemed to form part of that Agreement.

²⁰ - V. Lazić., Arbitration Law Reform in the Netherlands: Formal and Substantive Validity of an Arbitration Agreement. Netherland Vereniging Voor Rechtsvergelijking. Netherland Comparative Law Association. Electronic Journal of Comparative Law, Vol.11.1 ,May 2007, 2007,p. 1-15.

²¹ - IRAN-UNITED STATES CLAIMS TRIBUNAL: case No. 36 Flexi - Van Leasing 'Inc , against the Government of the Islamic Republic of Iran, Judgment No. 1-36-259 Date: 1986/05/09.

B) Hearing the testimony of witnesses in virtual arbitration in the Iranian arbitration system:

In discussing the hearing of witnesses in virtual arbitration in the Iranian legal system, it should be said that so far no laws have been passed that explicitly prescribe the possibility of convening a virtual testimony hearing. Nevertheless, it seems that despite the gap in the text of the law, Some of the legal articles related to arbitration, Implicitly inferred the latter. In this regard, it should be said that so far, no regulation related to commercial arbitration has been observed in Iran, which has prevented the holding of a virtual testimony hearing, and its prevention lacks legal principles and standards. Referring to the first paragraph of Article 23 of the International Arbitration Law, which states: "If the parties to the dispute request a meeting at the appropriate time, It is necessary to hold a hearing". The application of this Article to the phrase "hearing" apparently means that the parties to the arbitration may agree that the hearings of witnesses be held in cyberspace. Using the explicit statement of the legislator of the Electronic Commerce Law of Iran in 2003, provided in Article 12 there of [22], intuitive testimony that is heard, produced and exchanged in the form of electronic files through telex, fax, telephone, computer systems, networks and virtual facilities, in absolute judicial authorities (Court and Arbitration Court), can be cited. And judges (judges and arbitrators) do not have the authority to value them merely by comparison or legal presumption. Which, in turn, make them their own Accept or possibly exclude from the list of reasons. The latter article is clearly useful in that the virtual testimony sent to the arbitral tribunals, relying on the opinions of some legal doctrines, had a legally positive value within the limits of ordinary documents. It is generally accepted in the judiciary and is governed by the rules of ordinary documents, on the basis of which it can be challenged, denied or questioned. In examining the authenticity of the electronic file, considering the coordinates of cyberspace, in accordance with the provisions of Article 13 of the Electronic Commerce Law of Iran 2003 [23], a special measurement of this space will be used [24]. Clause B of the Arbitration Rules of the Arbitration Center of the Iranian Chamber of Commerce, Industries and Mines in 2007 also reads: "The testimony of

witnesses can be submitted in the form of a signed written testimony that the authenticity of the witnesses' signature can be verified. "Witness testimony is usually heard in person, but witness testimony does not have to be in Presence. It seems that the main motivation of the arbitration institution in this regard is to shorten the arbitration process. As far as it is legally permissible and the right of the parties to defense is not harmed. In addition, the hearing of testimony to assess the authenticity of witnesses is always accompanied by questions and answers, and this often takes a long time. Therefore, it is in the interest of both parties that the testimony of witnesses be submitted to the arbitral tribunal in the form of a testimony and a copy thereof. In general, according to the generality mentioned in the mentioned article, in the Iranian arbitration system, hearing testimony in person is not objectivity, but methodical. In other words, considering the fact that it is not necessary to hear the testimony in person, the testimony of witnesses can be produced and exchanged live in the form of electronic testimonies or audio or video files or through video conferencing [25].

3. Challenging of witness in virtual arbitration

In this section, challenging of witness in international commercial arbitration in cyberspace will be discussed first in the legal systems of the United States and European countries and then in the Iranian arbitration system.

A) Challenging of witness in virtual arbitration of American and European arbitration system:

The first part of the third paragraph of Article 3 of the rules of the International Bar Association explicitly states in the field of obtaining documents in the international arbitrations of 2010: "All documents and records of the case can be recorded in the form of electronic files, photos, programs, data, recording documents electronically, audio, video or any other method through the links in the arbitration system in the form of electronic files. "and Send it to the arbitration system and save it in the electronic archive of arbitration files." [26] It is inferred from the above article that when the testimony of witnesses as a positive evidence, it can be produced electronically and exchanged with the website of the Arbitration Institute. Therefore, challenging of witness can also be achieved in cyberspace and through the arbitration system of international arbitration institutions. Because, of course, when the infrastructure for sending, exchanging and receiving positive evidence in cyberspace is designed

²² - "Evidence and Evidence of a positive litigation may be in the form of message data and in no court or government office, according to the rules of available evidence, the probative value (message data) can be denied simply because of its form and format.

²³ - Law of Iran 2003: "In general, the positive value of 'message data' is determined by certain factors, including: the appropriateness of the safety methods used to the subject and purpose of the message data exchange."

²⁴ - Qajar Qayunlu, Siamak, (2012), Introduction to Cyber Law, First Edition, Tehran: Mizan Legal Foundation, p. 568.

²⁵ - Dibafar, Soheila, (2015), The System of Evidence in International Commercial Arbitration, First Edition, Tehran: Dadnameh Publications, p.188.

²⁶ - D, Robert J. C, Canada, V., Production of Electronic Documents in International Arbitration: Issues, Ractice and Ethics.BLG: Borden Ladner Gervias. Singapore International Arbitration Academy 2015. 26 November 2015,p.18.

and established by arbitration institutions, Special plans have also been envisaged by these institutions for the various dimensions of witness testimony and its various stages. The recent rule of law is one of the most valid rules in the American legal system, which is considered a criterion for proving such an idea. The second paragraph of Article 22 of the provisions of the Arbitration Law of the International Chamber of Commerce 2017 [27] reads:

"In order to ensure the effectiveness of the management of international arbitration cases by the arbitral tribunal, the said authority, in order to apply the appropriate formal rules and also to organize the proceedings, can discuss the hearings and the manner of holding them with the litigants". This article wants to state that the parties will be able to suggest to the arbitral tribunal that the challenging of witness and its special ceremonies are held in cyberspace.

And in case of existence and discovery of the causes of challenging of witness, we should challenging of witness through the arbitration system, which according to the recent article, has not been prohibited by the legislators of this law, and obtaining this agreement and stipulating such a condition is contradictory. It will not be subject to arbitration rules governing arbitration.

According to the Swiss legislature under Article (4) 25 of the Rules of International Commercial Arbitration 2012 in the Swiss Arbitration Chamber, the testimony of witnesses may be heard in different ways. For example, the litigants may mutually decide that the testimony of witnesses be heard by videoconference. Hence, this rule is used in such a way that if intuitions are also challenging, The parties may, by mutual agreement and notification to the arbitral tribunal and the presentation of evidence to challenge the witnesses, Submit the request to the arbitration authority by completing special forms that specifically exist in the system and were previously designed for this purpose. Therefore, by contemplating the arbitration laws of Switzerland as a country subject to the civil law system, we will come to the conclusion that the process of challenging intuition can also be carried out virtually [28]. Suppose the witness lacks the description "Impartiality"; For example, he has an "employment relationship" with one of the parties and intends to testify in order for that person to win the lawsuit. At the same time, it may be "Beneficiary" in the success of one of the parties. With such conditions, the other party, when informed of this issue, can log in to the system of

the institution where the arbitration process is underway, through a special form called "Forms of Witnesses Challenge", request the witness challenge from the authority Request arbitration. Of course, it is necessary to subsequently provide sufficient evidence in the form of an electronic file proving his recent claim to the arbitral tribunal. From the point of view of the laws passed by different legal systems of the world, one of the characteristics that witnesses must have is that they must hear their testimony based on facts. If witnesses testify falsely, the arbitral tribunal will have the power to examine their testimony through questions and answers to determine whether their testimony is based on facts or false statements.[29] The procedure is such that the witnesses are usually questioned and answered at the discretion of the arbitrators or at the request of one of the parties to the case to reveal the truth of his claims and statements to the jury. This practice is prevalent in the common law system and the United States is a leader in using this method of assessing witnesses. In some countries, as mentioned earlier, testimony must be taken with an oath to confirm the veracity of the witnesses' claims. On the other hand, the parties can agree in the virtual arbitration agreement that in case of giving false testimony, they are obliged to act in accordance with the special rules of "Remedy" if the principles of "Civil Liability" are fulfilled [30]. Another challenge to intuition is "Impartiality"; the witness has no right to be advantaged in the beneficiary. Because when the witness has a small beneficiary in the lawsuit, in fact, he is considered a "Claimant" and considers himself the owner of the rights, and the witness will also come out of impartiality and is actually considered a beneficiary in the lawsuit. And considers himself rightful to dispute. Thus, the two basic characteristics of a witness will be lost and the arbitral tribunal and the parties can, as soon as they know the truth of the matter, request the witness challenge through the arbitration system by completing the forms for challenging witnesses and submitting electronic documents, and submit to the arbitration authority. .On the other hand, as another emphasis of the discussion, taken from Article (3) 20 of the Arbitration Rules of the International Chamber of Commerce, the arbitral tribunal is obliged to examine the impartiality of the witnesses even if the parties do not request the challenge of witnesses. In the absence of a description of impartiality, challenge him through the arbitration system of the institution and "Electronic notification" the actions taken to each party by sending special messages. It is recommended that in matters of importance, in order to have the power to influence the fate of arbitration cases, arbitrators announce their investigative responses and actions in the proposed field

²⁷ - Article 22 (2) Arbitration rules International Chamber of Commerce 2017:

In order to ensure effective case management, the arbitral tribunal, after consulting the

²⁸ -Swiss Rules of International Arbitration. Swiss Chambers Arbitration Institution, 2012, 20.

²⁹ - Kliuchkovskiy, M. Partner., Ethical Issues, of Parties Witnesses and Counsel In International Arbitration, Egorov Puginsky Afanasiev & Partners, Kiev ArbitrationDays|1718. (November 2011),p.4-6.

³⁰ -Ibid.p 7 -9.

to the parties by e-mail [³¹]. Another solution that the rules of the Swedish arbitration system, as a method of challenging witnesses, have advocated for its implementation in the arbitral tribunals of this country, is that according to Part Seven of Article 7 (6) of the Swedish Arbitration Law, the question and answer management of witnesses may be referred to Arbitrate through Telephone conference. And if a witness makes specific claims while hearing testimony via videoconferencing, but when asked and answered by the judges by telephone conference call, To give contradictory answers to his testimony during the hearing, due to the lack of attributes in the testimony presented, If this reason is declared invalid, it will be excluded from the list of reasons and subsequently the arbitral tribunal may challenge the witness himself by telephone and inform him of the challenge through this method. It seems that one of the justifications for passing such a legal provision in the Swedish arbitration system is that access to conference telephones is easier than access to videoconferencing tools, and therefore electronic communication with witnesses can be made faster. On the other hand, by reflecting on the current practice of the Swedish arbitral tribunals, the effectiveness of case management in testimony hearings in arbitration through these tools will usually be improved.³²Of course, a group of researchers believe that if the testimony of witnesses is heard through video conferencing, questions and answers from witnesses should be done through the same tool; What is more, the decisive and important stage in testimony is the question and answer and evaluation of witnesses, and in this way, the arbitral tribunal will find out the authenticity of the testimony of witnesses. Furthermore, another criticism of the use of conference telephones is that the arbitration board and the parties will not be able to observe the faces of witnesses during the hearing. While if we want to support this electronic intermediaries, with this assumption, the realization of the authenticity of testimony will be overshadowed. On the other hand, the "right to face-to-face confrontation", which is one of the principles of hearings and the fundamental right of the litigants, will also be ignored.³³ Some American law school arbitration professors state that the challenge of witnesses is one of the topics that must necessarily be heard in the presence of traditional arbitration courts; Because they state that in order to challenge the witnesses, it is necessary that Challenged witnesses through "live" and In this way, it is easy to determine the veracity of his statements by listening to him by the arbitration board and the other

party or his lawyers to hear the testimony. And the challenge of witnesses in cyberspace is not considered safe and legally valid.³⁴ But the objection to this argument is that if we are to conclude that this is absolutely not possible, Perhaps we can refer to hearing to the testimony of witnesses and questions and answers from witnesses in such an atmosphere. Thus, in defending this idea, we state that it is logical that challenges for the various dimensions of the subject under discussion be conceivable. But we believe that whether hearing the testimony of witnesses or finding out the causes of the challenge, The witness challenge can be implemented to a considerable extent given the availability of extensive cyberspace facilities around the world.

B) The challenge of witnesses in virtual arbitration of the Iranian arbitration system:

Carefully in the laws and regulations governing the Iranian arbitration system, it seems that facing the lack of a legal text in what is the subject of our discussion, By relying on them, we can legally support the challenge of witnesses in virtual arbitration and it is hoped that the Iranian legislators will think of a solution to the recent issue and, And by impose appropriate laws, to save the country arbitration system from effective gaps in the fate of arbitration cases. However, it seems that the challenge of witnesses in cyberspace can also be deduced from the expression in some articles of domestic laws and regulations. According to paragraph T of Article 45 of the Arbitration Law of the Arbitration Center of the Iranian Chamber of Commerce: "The cases of challenge of witnesses in domestic arbitration are in accordance with the Code of Civil Procedure, and in international arbitration, the challenge of witnesses will be done in accordance with the agreement and consent of the parties."By considering the Iranian Code of Civil Procedure, it seems that either party to the dispute can challenge the witnesses by stating justifiable reasons. For example, state that the witness is beneficiary in the lawsuit and provide credible evidence to the arbitral tribunal to substantiate this claim. Therefore, it can be analyzed that considering the major nature of the arbitration rules and the possibility of agreement contrary to the provisions of the articles mentioned in the International Commercial Arbitration Law of Iran, Especially in the field of challenging witnesses, if the arbitration agreement is concluded by the parties in cyberspace and the arbitration is heard in this space and the testimony is expressed by the witness accordingly, the arbitral tribunal or the other party or his lawyer still

³¹-Commentary on the New IBA Rules of Evidence in International Commercial Arbitration. IBA Working Party, the New IBA Rules on the Taking of Evidence in International Commercial Arbitration. (Op.Cit), p. 26.

³² - Nordenson, H and Öhrström, M, Setterwa., Arbitration In Sweden. Cms Guide to Arbitration, Vol I. P. 862.

³³ -Ibid

³⁴ - Javier, R., International Commercial Arbitration: Reflections at the Crossroads of the Common Law and Civil Law Traditions Perspective. This Article is brought to you for Free and Open Access by the Faculty Scholarship at Chicago Unbound. It has been accepted for Inclusion in Journal. Articles by an Authorized Administrator of Chicago Unbound. 2004,p. 309.

has the power to Challenge the witness in cyberspace. In domestic arbitrations, according to Article 234 of the Code of Civil Procedure of Iran and its note: [1]. "If one of the parties intends to challenge the witness, he requests a deadline; the arbitral tribunal shall give him a maximum of one week to exercise the right to challenge the witness." And in the international arbitrations of Iran, the request for time limit according to the above article is "in accordance with the agreement of the parties". Therefore, until the adoption of an appropriate law related to the subject of discussion in Iran's virtual domestic arbitration, the provisions of the Code of Civil Procedure will prevail and will be implemented.

4. Evaluation of hearing the testimony of witnesses in virtual arbitration

In this section, first, the opportunities and benefits of hearing the testimony of witnesses in cyberspace judgments are explained, and then the gaps and challenges facing the hearing process will be examined:

A) Opportunities for hearing the testimony of witnesses in cyberspace arbitration

It seems that one of the purposes of accepting the hearing of witnesses in cyberspace arbitration is to prevent delays that usually exist in the process of face-to-face hearing in arbitration courts and to encourage an expedited solution to the resolution of international disputes [35].

In virtual arbitration, it is common for the testimony of witnesses to be submitted to the arbitral tribunal in the form of electronic files through the arbitration system of the institute in order to "save time" in the arbitration proceedings. Thus, when the "speed of proceedings" in arbitration increases to this extent and the delays in traditional proceedings that lead to the prolongation of proceedings. In order to meet deadlines or during different stages of the trial, it will be reduced and, consequently, will save time, even more than traditional arbitrations. Consequently, the costs of hearing the testimony incurred by the parties in traditional judgments will also be significantly reduced [36]. In the testimony of virtual witnesses, the anxiety of witnesses' confrontation with the arbitration board, the other party and their lawyers is reduced; Because when the hearing is in person, The witness is afraid of being convicted because of his presence in a judicial authority and the need to observe the affairs of that authority, fear of trial and cross-examination, and in case of giving false testimony. Hence, testimony is heard in cyberspace with "more peace of mind" as well as less

³⁵ -Moghian, Mohammad Ali, (2013), Evidence of Proof of Lawsuit in Domestic and International Arbitration Systems with Emphasis on Judicial Procedure, First Edition, Tehran: Javadaneh Jangal Publications, p.73.

³⁶ - Ibid.p.123.

worry than in the traditional way.³⁷ In addition to hearing witnesses through this method, due to its "effectiveness and special functions", it also provides "satisfaction of litigants" in a more favorable way than hearing witnesses in traditional arbitrations.³⁸ Other possibilities include hearing testimony in virtual arbitration, "Challenges and Gaps of Hearing in Traditional Space," such as: The "disappearance of paper testimonies due to the negligence of the competent authorities, theft, destruction of the traditional arbitral tribunal" on the occasion of the establishment of the "Electronic Archive Infrastructure" is not accompanied by documents designed in the electronic arbitration system. Another opportunity to hear testimony in virtual arbitration is that the "ability to replay virtual hearings frequently" increases the ability of the hearing authority to accurately review the reasons, and in particular the statements and claims of witnesses, and this increases the likelihood that "a fairer and more correct verdict will be issued than a traditional arbitral award." In addition, the observance of the principles of procedure and the special structure of virtual arbitration in the need for brevity of proceedings, which "increases the control of the parties over the arbitration process [39]". Other opportunities to hear virtual testimony include "eliminating administrative bureaucracy". In the traditional judicial system, such as inserting a signature or stamp to confirm the documents by the judicial authorities, the possibility of their absence in the judiciary, which itself entails many other problems for the traditional judicial system, such as: Increasing the volume of arbitration cases and the difficulty in archiving them, making it difficult for arbitrators to perform their duties and the possibility of missing paper evidence during the filing of the case [40].

B) Challenges of hearing the testimony of witnesses in cyberspace arbitration

Regarding the challenges of hearing the testimony of Witnesses in cyberspace arbitration, it should be said that sometimes the contents of testimony may be recorded through low quality electronic means and uploaded in the arbitration system with the same

³⁷ - Lavi, D., Three is not a Crowd: Online Mediation-Arbitration in Business to Consumer Internet Dispute. Published by Penn Law: Legal Scholarship Repository, 2016,p. 888.

³⁸ - Online Dispute Resolution and the Courts. JTC Resource Bulletin. Version 1.0. Adopted 30 November 2016,p. 8.

³⁹ - Alsan, Mustafa, Legal Rules of Online Arbitration, Mofid Qom Monthly, No. 58, February, 2007, pp.85-89.

⁴⁰ - Haas, A. Texas Rio Grande Legal Aid, San Antonio, Texas, Videoconferencing in Immigration Proceedings, University of New Hampshire Law Review, Number 1 Pierce Law Review, Vol.5, No.1, December 2006, pp.87-88.

quality. The recent situation can create problems in the arbitration process, especially for judges and cyberspace experts. Therefore, it requires that the parties cooperate with the arbitral tribunal and record the files containing the testimony with the desired quality or scan the electronic testimony and, after ensuring its desirable quality, send it to the said system. "Technical issues" such as communication problems, Internet interruptions or low Internet speeds may interfere with the arbitration and hearing process and make sending or receiving electronic files and processing difficult or delayed. Therefore, it is necessary for the parties to ensure the health and quality of electronic communication facilities. Each country has a level of access to virtual communications to the extent of advances in its technologies, the latter of which can cause "uneven internet speed" in different countries, and consequently, less developed countries by stopping or possibly slowing down the Internet speed in Face the flow of hearing to witnesses. Therefore, it is necessary to increase the speed of Internet bandwidth by the relevant authorities in each country, which in Iran is the Regulatory Commission and Radio Communications of the Information Technology Organization of the Ministry of Communications. One of the criticisms of the practice of some International arbitration institutions in hearing testimony via videoconferencing is that in such hearings, the cameras are usually focused solely on the face of the witness and the other parts of the body and the reactions he receives during the testimony, such as in the hands, trembling of the hands, trembling or nervous shaking of the legs occurs, especially when giving false testimony, which increases the likelihood of fear of exposing the falsehood of the testimony, and in addition, the environment around him is neglected. It is recommended that in hearing testimony in this way, the relevant authorities focus the cameras on the witnesses in such a way that the main limbs and physical dimensions of the witnesses are covered and in case of any negative physical reaction from them, the arbitral tribunal will take appropriate action. There is a possibility of "forgery" in the case of electronic evidence; This means that the content of the testimony contained in the electronic files may be fake. However, it is necessary to deal with this new phenomenon appropriately by attracting the attention of relevant research and experts. Sometimes this forgery occurs in information that has been stated and recorded during the arbitration process. In fact, one of the topics discussed in the arbitration system is the issue of "electronic files." One of them is the set of negotiations concluded during the proceedings.⁴¹ Some people may "electronically hack" to corrupt files that are likely to contain positive evidence. Our suggestion is that by

using "powerful technologies", the possibility of access to "confidential information" of the parties by persons other than the parties, judges and witnesses is minimized. This is called the "balance between privacy and public access" and if the parties to the dispute agree to publish it, they can sign the written consent and send it to the relevant arbitral tribunal [⁴²]. In principle, in the jurisprudence of the country, the issue of citing electronic files is not accepted as a proof by these authorities, and the above reasons can usually be used as "Judicial Presumptions". And if this sound or image is original, it can also be considered by the arbitrators. It seems that the reason why this type of testimony is not accepted in the Iranian judicial system is that judges think that the authenticity of audio and video can not always be discovered and therefore, its legal validity can not be imagined. What seems certain is that for this reason there will be no legal prohibition on presenting electronic files as evidence, and especially in the rules governing domestic arbitrations. In addition, the legislator has mentioned a set of arguments in Iranian civil law, such as: "confession, document, testimony ..." as evidence to prove the case. Of course, if the judges determine the influence of electronic reason on the fate of the referral case, they are obliged to ensure the accuracy of these images and sounds by referring the matter to an expert [⁴³]. If the witnesses hear testimony in addition to one or more other positive reasons, in addition to these reasons, the electronic reason can be considered as a helper along with one of the demonstrative evidences.

RESULTS AND SOLUTIONS

Examining the valid international arbitration systems in the world and evaluating the rules and regulations related to the issue such as the Amended UNCITRAL Arbitration Model Law of 2006 and the International Chamber of Commerce Arbitration Rules of 2017 and corrective uncitral arbitration rules in 2010, the US Arbitration Association Rules of 2013, the French Arbitration Act of 2011 and the UK Arbitration Act of 1996 will conclude that most of these legal systems have a legal and judicial structure in order to implement the process of "hearing the testimony of witnesses in cyberspace", which explicitly or in some cases implicitly refers to the possibility of convening a hearing of witnesses in the said space. And they have confirmed its legal and judicial validity. From Article 12 of Iran Electronic Commerce Law approved in 2003, the first paragraph of Article 23 of Iran International Commercial Arbitration Law 1997 and the application of paragraph B of Article 45 of the Arbitration Rules and Procedure of the Arbitration Center of the Iranian Chamber of Commerce in 2007 can also be inferred that hearing the testimony of witnesses in person is not

⁴¹ - Maharafshan, Alireza, virtual trial; A New Concept in Judicial Justice, Studies of Jurisprudence and Private Law, Semnan University, Third Year, No. 5, Fall and Winter 2011, p.137.

⁴² - Ibid.p.137.

⁴³ - 1. Akhavanfard, Massoud and Shahidi Sadeghi, Reza, (2020), An Introduction to Cyber Arbitration Law, First Edition, Tehran: Majd Publications, p.175.

relevant but "methodical" In other words, due to the lack of legal obligation to hear testimony in person, the testimony of witnesses can be produced and presented in the form of "electronic testimony" or in the form of "audio or video files" through electronic devices or by "video conferencing" or other "secure software" "Cyberspace" to be listened to live. Opportunities to hear witness testimony in cyberspace arbitration, "Encourage the solution to expedite the resolution of the dispute, produce and present a positive evidence in the form of electronic files as an alternative to the testimony of witnesses or paper testimony to save time and reduce arbitration costs in favor of the parties and reduce the anxiety caused by witnesses' confrontation with the arbitral tribunal, the other party and their lawyers, and the greater peace of mind of witnesses than traditional arbitration, greater effectiveness and satisfaction of litigants in a more desirable way than traditional arbitration, without geographical restrictions and ease of hearing testimony to learn Cyberspace facilities and" There is no need to obtain a visa for witnesses and to leave the legal borders of a country in order to testify, to eliminate the costs of accommodation, transportation and food for witnesses. "One of the challenges and gaps in hearing testimony of witnesses in cyberspace arbitration is "lack of trust among users due to suspicions related to network security, lack of equal access to cyberspace, doubts about the authenticity of electronic testimony in written testimonials and the validity of witness testimony." Electronic testimony (recorded in the form of audio and video files) and Hearing live testimony (videoconferencing), sending several electronic files containing testimony to the arbitration system, hearing testimony inconsistent with the provisions of the former testimony, testimony unrelated to the subject of litigation and errors occur when sending such files due to lack of familiarity with how to use Websites of Arbitration Institutions "can be mentioned. In order to provide a solution in order to resolve the challenges and respond to the ambiguities and doubts raised by this method of listening to intuition, it should be said that, firstly, it is the duty of governments to provide the necessary training and culture in this field. And in a way to acquaint the citizens with this new way of judging and listening to witnesses and gain the trust of the legal community on this issue. Secondly, the Islamic Consultative Assembly is also obliged to adopt appropriate laws that meet the current needs of the arbitration community; because our arbitration system in particular has a legal vacuum in this area. Thirdly, it is necessary to increase the speed of Internet bandwidth by the relevant authorities in each country, which in Iran is the Regulatory Commission and Radio Communications of the Information Technology Organization of the Ministry of Communications. Fourth, the legal validity of electronic evidence has been accepted in the major legal systems and the UNCITRAL Model Arbitration Law as well as the Oxide Convention, and even in the Iranian arbitration

system, citing Article 12 of the Electronic Commerce Law, which provides: "The documents and evidence of the lawsuit may be in the form of message data and the positive value of the message data cannot be denied because of its form and format." These evidence are valid, citationable and have proven positive value. However, it is appropriate that the authenticity of the electronic citation reason be assessed by determining and referring the matter to the relevant cyberspace experts or in the discussion of digital signatures, the digital certification authority. In addition to the above solutions, these challenges should be monitored by international organizations, especially the International Chamber of Commerce, through "supervisory committees" and a "correction proposal" for virtual arbitration criteria should be provided on an ongoing basis throughout the year. Virtual arbitration issues, while having special differences from traditional arbitration, are important, but the "challenging aspects" of the issue must also be considered.

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