



INJURY AND WITNESS ADJUSTMENT IN ONLINE ARBITRATION

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ABSTRACT

Commercial arbitration, as a quasi-judicial method of dispute resolution, is one of the methods of peaceful settlement of disputes in the national and international arenas outside of traditional judicial authorities, i.e. state courts. With the advancement of new communication technologies, including online communication technology, the arbitration process has also undergone innovative and dramatic changes, one of these changes is online arbitration. Based on this, one of the important issues and stages that the parties and arbitration authorities face during online arbitrations is the issue of hearing the testimony of witnesses in general and the modification of witnesses in particular. In this article, which is written in a descriptive and analytical manner, the author aims to analyze and explain the fact that according to the arbitration laws, it is possible to implement the process of cross-examination and modification of witnesses in online arbitrations, and this cross-examination method is based on the majority of laws and regulations governing arbitrations. National and international, it is considered to have legal and judicial validity. Of course, it requires that Iran's arbitration system, like other arbitration systems in the world, harmonizes and adapts itself to the rapid, growing and newly emerging international legal developments, and for this purpose, make the necessary reforms in its laws and judicial system, as well as in other relevant areas Apply.

KEYWORDS: online arbitration, testimony and editing of witnesses, testimony of witnesses, online, interrogation and editing online.

1- INTRODUCTION

In a general view, the methods of dealing with disputes are divided into two categories: judicial methods and non-judicial (or quasi-judicial) methods. Dealing with disputes through government courts is one of the judicial methods of dealing with disputes. On the other hand, dealing with disputes through methods such as arbitration, negotiation, mediation, etc., also refers to non-judicial methods of dispute resolution. Therefore, commercial arbitration, as one of the methods of peaceful settlement of national and international disputes outside of government courts, plays a significant role in the definitive and peaceful resolution of commercial disputes concluded between domestic and international businessmen and businessmen who are parties to the arbitration dispute. With the global and increasing expansion of new communication technologies, including online technology, the process of commercial arbitration proceedings has also undergone special and innovative changes. Among these changes and developments is holding the arbitration proceedings online. Also, one of the important stages in the process

of online arbitration is the stage of hearing the testimony of witnesses and precisely and specifically, the stage of cross-examination and modification of witnesses. In the upcoming article, the researcher intends to state that it is possible to implement the judicial process of cross-examination and modification of witnesses in online arbitration, and this cross-examination method, with the review and approval of the laws and regulations governing national and international arbitrations, has legal validity and value It is proof. Therefore, the importance of the issue requires that Iran's arbitration system, like other arbitration systems, in order to eliminate the weaknesses and gaps in its national and international arbitration system, align itself with the ever-increasing and emerging developments of the world, and for this purpose, its legal provisions and judicial system and also correct other relevant areas as needed. The main hypothesis of this research is that according to the national and international laws and regulations governing arbitration, it is possible to implement the process of cross-examination and adjustment of witnesses in online arbitrations. In this

article, in order, hearing the testimony of witnesses in online arbitration, the characteristics and necessary conditions of witnesses to testify in online arbitration, questions and answers from witnesses in online arbitration, and the examination and adjustment of witnesses in online arbitration will be analyzed and examined.

2- BACKGROUND

1-Akhwan Fard, Masoud and Shahidi Sadeghi, Reza, "Comparative examination of the hearing of witness testimony in cyber space arbitration in American, European and Iranian arbitration systems", *Ahrar Private Law Journal*, Volume 1, Number 2, Autumn and Winter 2019

2-Akhwan Fard, Masoud and Shahidi Sadeghi, Reza, (2018), "Introduction to Cyber Arbitration Laws", first edition, Majd Publications.

3- DISCUSSION

3-1- Witness testimony in online arbitration

First, it is necessary to examine the legal and judicial validity of hearing witnesses in online arbitrations. The first legal article that refers to the hearing of witness testimony in online arbitration is Article 35, paragraph b, of the United States Arbitration Association, amended in October 2013, which reads: "A witness may testify in any way that is available to him under the law." listen and submit to the agreed arbitration court". Therefore, it is used that one of these methods by which the witness can listen to the testimony is online testimony. The approval of the aforementioned legal article in the American arbitration system has removed any obstacle to hearing testimony in online arbitration and leaves no room for doubt in its legal validity (Commercial Arbitration Rules and Mediation Procedure, 2016). Also, based on the meaning of Rule 44 of the 2017 United States Federal Rules of Civil Procedure, it seems that witness testimony can be heard in different situations and its contents sent to the arbitration institution. The United States is more advanced than other countries in terms of variety of judicial methods. Therefore, most of the reasons that are sent online to the judicial authorities based in this country are received by the aforementioned authorities, and if approved, they are considered to have evidentiary value and are accepted (Federal Rules of Civil Procedure, with Forms, 2014). As another example, the seventh part of the US Federal Arbitration Act is used, which states that the witness has the right to hear and produce his testimony in various ways, such as in person, affidavit, and electronic file, and send it to the arbitration institution (Woolhouse, 2015). Also, according to the provisions of the UNCITRAL sample text in Article 19 (1), which states: "The parties are free to hear the testimony of the witnesses", to In turn, it is the confirmation of our legal validity (Dupeyron, 2016). Another proof of the possibility of hearing the testimony of witnesses in online arbitrations is Article 25, Clause 4 of the 2010 Amended UNCITRAL Arbitration Rules, which stipulates: "The hearings of witness testimony in

arbitration are generally held through cameras". From the use of the word "camera" in the above article, it can be understood that the arbitration can be heard through video cameras or more desirable tools in terms of performance, such as video conferencing, and since the use of video conferencing in arbitrations requires online communication. It seems that the testimony can also be heard online, and by studying the UNCITRAL Arbitration Rules, there is no legal restriction on the implementation of such a method of hearing testimony in international commercial arbitrations (Uncitral Arbitration Rules, 1976). In addition, the clarity stipulated in paragraph 3 of Article 28 of the UNCITRAL Arbitration Rules also conveys the same meaning. (UNCITRAL Arbitration Rule (as revised in 2010), 2011). Arbitration courts based in the state of New York, USA, tend to receive the testimony of witnesses through electronic exchanges, and after evaluating the competence of the witnesses, the content of the testimony and also finding out the truth of their statements, the jury agrees to hear the testimony on behalf of Masharali. The witness will be able to listen to his testimony through video conference and send it online to the website of the arbitration institution. According to the provisions of the seventh part of the American Arbitration Law, the video recorded electronic files will also be sent to the aforementioned authority through the electronic arbitration system and will be assessed by competent experts and finally filed in the archives of the Arbitration Court. (Epstein, 2015). From the point of view of American arbitration law, when testimony is heard and exchanged online, this way of hearing and producing reasons, in compliance with its legal standards and regulations, is considered a relatively suitable and acceptable alternative to the traditional reason as a proof. Because the arbitrators have the authority to summon the witness according to the case and when necessary through the arbitration system for question and answer or to give some explanations about the testimony. The proposal of this legal system is to summon witnesses, which can be used through the "FRCD 43" system; The recent system provides suitable conditions for summoning witnesses and ensures the protection of safe and reliable information (Ibid). In the French legal system, this method has been implicitly accepted that testimony can be heard by witnesses in absentia. In addition, the aforementioned testimony may be prepared in the form of a written electronic testimony, and therefore it is obvious that according to the French Arbitration Law in 2011, the arbitration courts of this country consider themselves obliged to establish rules and regulations. The rules chosen by the parties govern the arbitration process and there is no need to follow the traditional judicial procedures of arbitration courts (De La Hossieraye, and Huard, 2016). According to Article (2) 1467 of the French Arbitration Law, the hearing of witnesses can even be conducted by live telephone call, and question and answer and witness summoning can also be done in the same way; Although it seems that following the hearing and summons by phone, we will face some challenges (Ibid). According to the provisions

of article (2) 34 of the 1996 English Arbitration Act, it is accepted that the parties to the arbitration agreement can agree on the hearing and how it will be conducted. For example, from Article (3) (2) 34 of the Arbitration Law of this country and in addition, according to the clause of the word “file” contained in the last article, it is clear that the testimony can be prepared in the form of a file and in the form of an electronic written testimony and online be presented to the arbitration court and on the other hand, by using the implicit expression of the English legislator contained in Article (5) (2) 34, even the parties will be able to decide on the manner of questioning and Answers from intuition also reach an agreement with each other in this space (Pendell, and Bridge, 2014). Arbitration in England based on Article 34 (1) can be heard completely online, and in principle, the arbitration system of this country does not have any legal requirement to hold hearings in person. Testimony in the English legal system based on article 37 of the arbitration law of this country can be heard through ordinary persons and also relevant expert witnesses and through the electronic arbitration system. Therefore, in this country, the arbitration organizations have appointed experts to carry out investigations and provide the required reports, and the parties will be able to rely on the expert opinions of the said experts during the arbitration and when necessary, as a basically neutral and independent witness Benefit from (Ibid). In the United Kingdom, arbitration courts are free to ask the petitioner to swear an oath in order to confirm the testimony of witnesses, but there is no legal requirement in this regard. One of the methods of evaluating the veracity of witnesses’ statements and claims in the arbitration system of this country is the same method of questioning and answering the customary witnesses in the common law legal system, based on which the arbitration authority asks questions for each of the witnesses, including expert witnesses, through the arbitration system. Or sends an email and sets a specific time limit to answer them, so that the witnesses can answer the questions within the said time limits (Dahlberg Angeline Welsh, 2012) In Germany’s arbitration system, witnesses usually appear before the agreed arbitration authority and begin to testify, and the arbitration authority turns the testimony of the witnesses into a written testimony at the first opportunity. It should be noted that the authors of the German Arbitration Law of 1998 have also issued this permission, according to the first paragraph of Article 1047, that the parties to the arbitration can, in case of reaching a final agreement to hear the testimony online, hold the hearing of the testimony on the mentioned voice and the arbitration institutions In this country, they implement the decision of the parties. At the same time, if the parties come to the conclusion at some point of time that some of the stages of testimony hearing should be heard in person in order to ensure the rights of the litigants in a proper way, they can reach an agreement on this issue as well. Otherwise, when it is an “electronic hearing”, the arbitration authority will issue an appropriate decision based on the electronic data that the parties produce in the cyberspace and

exchange to the institution’s website. In the German arbitration courts, if the witnesses submit their testimony to the arbitration system within the legally prescribed deadlines, the aforementioned authorities will give effect to the cited reference and according to Article 1042 of the German Arbitration Law, it will be examined and evaluated and if approved Initially, the arbitration authority will start the question and answer stage from the witness online through video conference. Regarding the expert witness in the arbitration, in this legal system, according to the provisions of the first and second paragraphs of Article 1049, if the parties have chosen the expert in the arbitration in order to provide appropriate reports, the selected expert will appear online as a witness and proceed to the hearing Testifies. However, it requires the arbitration authority to question and answer and investigate him, like a normal witness, on the occasion of the title of witness in the last article (Lorture, 2013). By examining the major provisions of the valid arbitration systems in the world, we will come to the conclusion that less arbitration systems have emphasized the exchange of electronic evidence and the hearing of witnesses’ testimony online as much as the Dutch arbitration system. This is confirmed by the fact that on June 30, 2004, the Dutch Arbitration Act of 1986 amended the definition of the documents and reasons submitted by the parties to its arbitration institutions and explicitly called “Arbitration Agreement Forms”, meaning that arbitration can be to be concluded through electronic agreement forms, he said. On the other hand, with regard to the concept stipulated in Article (6) 1020 of the mentioned law, the Dutch arbitration system has officially announced that the parties as well as the arbitration institutions are obliged to send and receive their documents and documents electronically and online. The proposal of the Dutch arbitration legislator to the arbitration systems is that in order to hear the testimony of witnesses in international arbitrations, it is necessary that the arbitration institutions design and adjust electronic forms in accordance with the requirements and requirements of an international arbitration in the arbitration system of the relevant institutions, and the parties upon entering The mentioned system, without attending the arbitration institutions, complete the forms and exchange their reasons. One of the opportunities resulting from the amendment and implementation of the above legal article in the arbitration procedure of the Netherlands is saving time for the benefit of the litigants (Lazic, 2007). The meaning of Rule 35 of the Rules of Procedure of International Investment Arbitrations (ICSID) 1986 for the purpose of implementation in the international arbitration process and with regard to the phrase “documents and testimony presented by the parties or experts” contained in the said rule, is inferred in this order. Whether an ordinary person testifies or the testimony is heard by an expert witness, the arbitral authority is obliged to determine the subject of the appropriate investigation that it intends to carry out from the witnesses according to the case, and the date of its

hearing, the laws and rules of arbitration governing Determine the testimony hearing according to the agreement of the parties. Even with the opinion regarding the granting of relatively large powers to the parties according to the ICSID Arbitration Rules, it seems that the parties have the opportunity to request the method of hearing witnesses and asking questions and answers from the arbitral tribunal through the system (ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules), 1986).

3-2- Characteristics of witnesses in online arbitration

Considering the commonalities and similarities between traditional international commercial arbitration and online arbitration, it seems that the characteristics and conditions of the witness for hearing the testimony of witnesses in the online arbitration in Iran's legal system are the same characteristics and conditions required for testifying in the civil law. According to the legal articles related to the testimony of witnesses in the Iranian Civil Code of 1313, i.e. Articles 1313 to 1320, the witness must have the qualifications and conditions to hear the testimony in the dispute resolution judicial authorities, and the online commercial arbitration authorities, like the traditional arbitration authorities, require the competence of the witnesses. They check. Therefore, in order to hear the testimony, the witness must have qualities such as: "Eligibility (maturity, reason, intention), not being known for corrupting morals, not engaging in begging and vagrancy, not having a bad criminal record and good record, not taking false testimony, completeness and certainty of the contents and support of witness testimony, and also, accurate and sufficient knowledge of the content and meaning of the testimony expressed by the witnesses" (Electronic Testimony Witness, 2018). In addition, especially in international commercial arbitrations, witnesses must be "relevant" witnesses, "relevant experts" (for example, an expert selected by the arbitral authority) who is in a specific field such as calendaring and calculating the Riyal value of (requested) commercial goods. To specialize in a bachelor's degree." Lack of interest or harm in the proposed lawsuit"; Because by taking the criterion of unity from the cases of rejection of the judge in the civil procedure law, despite such a description, the possibility of giving false testimony and even denying the issue, when the testimony is against the witness, increases greatly. At the same time, justice and fairness require that testimony be given by a person regardless of the benefits and harms of the dispute. Moreover, intuitions need to have "independence"; It means "absence of the relationship of servant and servant" between the witness and the person who testifies on his behalf (such as the relationship between the guarantor and the client or the lawyer and the client) and "impartiality" which means the negation of partiality and lack of heart inclination towards the parties. Therefore, examining the sufficiency of witnesses in national and international commercial arbitrations is of great importance, which is within the jurisdiction of the jury. This is why the testimony of

witnesses has a special importance and has a direct effect on the results of claims or lawsuits raised in certain legal cases (Akhwan Fard and Shahidi Sadeghi, 2018). At the same time, it should be noted that the absence or fulfillment of any of the characteristics and conditions of hearing the testimony mentioned above is one of the causes of injury and modification of witnesses in the arbitration.

3-3- Questions and answers from witnesses in online arbitration

Considering the topic of discussion, i.e., online arbitration, it requires that the process of questioning and answering and investigating the witnesses should also be done online through the arbitration system of international arbitration institutions. Based on this, by evaluating the different dimensions of the discussion, it is concluded that the best tool among the electronic means of information exchange is "video conference"; With the argument that both the right of face-to-face face-to-face witness with the arbitration authority, the opposite party and his lawyer will be relatively guaranteed, and the right of questioning and answering of the disputing parties and the arbitration panel will be preserved from the witness in the said space. Questioning and answering and measuring the authenticity of witness testimony in national and international online arbitrations requires the approval of laws and regulations in legal systems to apply them in the mentioned space and facilitate the exchange of proof evidence. The Canadian arbitration system, as a leading legal system in the field of international commercial arbitration, thinks and implements some measures and arrangements in order to facilitate the implementation of the question and answer process from witnesses. Therefore, paragraph 5 of article 23 of the rules of the Canadian International Center for Peaceful Dispute Resolution approved in 2015 reads: "The arbitration court may monitor and control the questions and answers of witnesses in the arbitration through non-attendance methods". The application of the term "In-person methods" contained in this legal article and also the broad scope of such methods, considering the appearance of the mentioned article, is considered as a confirmation stamp on the opportunity to evaluate and investigate witnesses in online arbitration, and its enforcement process is legally supported. With the approval of such a legal article, there is no longer a legal gap in the aforementioned field in international laws. But in any case, arbitration, especially in the age of information technology, requires more explicit and comprehensive laws to be formulated in the legal systems, so that this facility is offered to the general businessmen and commercial companies of the parties to the dispute. Although it should be acknowledged that the topic of our discussion is considered one of the novel topics in the field of international trade law (Canadian Dispute Resolution Procedures, 2015). According to the first paragraph of Article 24 of the amended UNCITRAL Arbitration Model Law of 2010: "In order to hold hearings, it is the arbitral tribunal that decides whether

there is a need to hold an arbitration hearing in order to exchange documents and documents by the parties to defend their claims and demands. No"? Considering the application and generality of the provision in the above legal article, as well as the discretionary nature of its provisions, it is inferred that the parties to the arbitration agreement can agree that regardless of whether the testimony of the witness is heard online, the question and answer of the witness is also done in order to conduct investigations. And the evaluation of the authenticity of their claims should be done online and through the system of arbitration institutions. In other words, the latter article is used in such a way that it is not possible to establish a subjectivity for the purpose of questioning and answering the witnesses in person only, and by using this legal article, as another confirmation of the discussion, we will be able to reduce the legal gaps in the mentioned field to some extent To give." Question from the other party's witness" is a very important institution in the procedure of the common law legal system, which is accepted and used in international arbitrations; Although this method is often used for traditional arbitrations. However, it seems that the mentioned method, due to its proper function and effectiveness, has the ability to be extended to online arbitrations, and witnesses can be questioned and answered in the mentioned space as well, according to the special rules and regulations of this institution. This method makes even many claimants who have the right to testify according to the law, refuse to resort to it. Because their testimony gives the other side's lawyer the right to ask them many questions online, even in the video conference hearing, and the wisdom of the case is that giving false testimony, regardless of the testimony hearing space, even online, It doesn't seem like an easy task (Math, 1369). Usually, appropriate research is done in order to set the strategy of questioning witnesses from two aspects: firstly, "reliability and qualification of the witness online", secondly, "the validity of his testimony. "Regarding the reliability of the witnesses, then, the lawyer should try to find out the relational event that may be an incentive for false testimony, to the detriment of his client, who is on the arbitration authority. Discover what is not obvious online. Among these factors, we can mention "relationships" between the witness and the party who relied on the testimony. Therefore, it is necessary for the lawyer of the other party to defend his client, through the electronic form "Witness Authentication" available in the arbitration system, to request the jury to check the identity and relationship between the parties and the witness. Then, the arbitration authority examines the lawyer's request and follows up on this issue through "electronic inquiry" from relevant authorities and organizations such as the country's state registration organization (ibid.). Or the existence of "business relations" of the witness with the party who relied on the testimony, or if the witness is a "partner or shareholder" in the same business company in which the disputing party is engaged in business as a businessman. Or there may be a "servant relationship" between the witness and

one of the parties, for example, the witness is an employee of an organization whose high-ranking official is one of the parties involved in the arbitration case. Of course, if any of the factors or situations mentioned above exist or occur, it will be possible to injure witnesses. Naturally, judges look more suspiciously at the testimony of people who have an incentive to "perjure". Of course, online arbitration institutions are obliged to access the criminal records of witnesses by electronic inquiry and according to the information obtained through the judiciary (ibid.). The first rule In recognizing the authenticity of electronic testimony is "the absence of any contradiction in the statements of witnesses"; The arbitrators must make sure that the witness makes non-contradictory statements during the hearing and sends them to the arbitrators through the system. Because witnesses may make contradictory statements through electronic equipment, and the second rule is whether the witness's statements are compatible with the "certain facts of the case" and whether his testimony can be given "probative value" or not? Having sufficient information and documents about the witness and the subject of the testimony allows the lawyer to prove the falsity of his statements to the jury. For example, if the witness denies his employment in a certain office, the other party's lawyer can verify the falsity of the Masharaliyeh's claims to the arbitrators by inquiring from the relevant office and scanning his employment order and subsequently uploading it to the arbitration system. The lawyer should always keep in mind that the witness may not give the desired answer to his question in online arbitrations, and be ready to ask him other questions through electronic tools during the investigation process, or by presenting documents. In the form of valid electronic files, before or during the hearing to the arbitration system, to make him inclined to give the true answer (ibid). In the case of electronic written testimony, there are significant differences regarding the preparation and application of written testimony in the two systems of written law and customary law; In most countries subject to the customary legal system, electronic written testimony is a relatively new tool; Because basically, the witness is expected to attend the hearing and give his testimony. Before submitting the written statements of the witness to the arbitration authority, the standardized procedure in the aforementioned system is that before holding the hearing, the lawyer of each party to the case negotiates with his client's witnesses (Dibafar, 2014). According to the procedure of the aforementioned legal system, it seems that even if the arbitration is heard online, the lawyers of the parties will be able to appear before the witness and negotiate with him; This negotiation is not about what the witness will say in the hearing, but the lawyer wants to know the content of what the witness intends to testify in the hearing. For example, according to the "Professional Conduct Guidelines for Attorneys in England", it is possible for a lawyer to negotiate with his client's witness in person and write down his statements, and after converting the witness's statements into a file, the recorded file in Upload the website of the desired

arbitration institution (Guide to the Professional Conduct of Solicitor, 2013) In most of the countries subject to written legal system, the situation is significantly different; First, the written statements of the witnesses, such as the electronic testimony, are practically not accepted in the arbitration authority or they are not limited to it. Only each party to the dispute who intends to rely on the evidence of testimony must introduce his witness through the arbitration system and if the arbitration authority determines that his testimony is relevant and effective in the litigation, he must take the initiative to hear the testimony through video conference. In the written legal system, there is no procedure for lawyers to negotiate with witnesses in person and prepare them before the hearing. In many countries subject to the aforementioned system, in order to prevent the abuse of testimony, the professional rules of lawyers prevent the lawyer from negotiating with the witness before giving his testimony in the arbitration hearing. According to Al-Qaida, the testimony of witnesses in countries subject to written legal system is the second documented evidence in their procedural system and after the document and compared to other evidences, it is considered an acceptable evidence (ibid.). In every judicial system, the witness is obliged to tell the truth; In many legal systems, such an obligation is reinforced by "taking an oath."

When there is a problem in the testimony of the witness due to the religious character of the oath, at the discretion of the arbitration authority or at the request of the parties, special conditions for the oath are determined. The rules of the American International Bar Association have chosen to remain silent regarding the swearing of the witness during the hearing of the testimony, and few international arbitration rules have mentioned this issue, among which are the "Dubai International Arbitration Center Rules. "Article 29 paragraph 7 states: "The arbitration authority requests the witnesses to swear before that authority that their testimony is equal to the mandatory provisions of the applicable law." It follows from the concept of the mentioned article that the witness can swear an oath in online arbitrations as well. In this way, after his testimony is heard through video conference under the judicial supervision of the arbitration authority and is transferred to the arbitration system at the same time, Masharalieh takes an oath live, so that this is a confirmation of the truth of his claims (ibid).

3-4- Legal and judicial validity of witness injury in online arbitrations

With regard to the explicitness of the first part of the third paragraph of Article 3 of the rules of the International Bar Association in the field of obtaining documents in international commercial arbitrations approved in 2010, all the documents and documents of the presented case, It can be uploaded In the arbitration system through the links in the system of arbitration institutions in the form of electronic files, for example, in writing, program, data (which must be in a secure

format), recording documents electronically, audio, video or any other way. Send and then save in the electronic archive of arbitration files. It is inferred from the above legal article that when witness testimony as a proof can be produced electronically and exchanged with the website of the arbitration institution, therefore, witness examination can also be done online and through the electronic arbitration system of international arbitration institutions. Because naturally, when the infrastructures for sending and receiving reasons in the form of electronic files and online are designed and established by international arbitration institutions, there are also plans regarding the various dimensions of witness testimony and its multiple stages by the said institutions, one of the most important of these stages is And the modification of the witness in case of discovery of the causes of the injury is also foreseen by the arbitration authority (Robert, 2015). The recent legal regulation Is considered one of the most valid regulations approved in the judicial system of the United States of America, which is considered as a standard in order to confirm and prove such an issue in this space (Ibid). Based on paragraph 2 of Article 22 of the Arbitration Law of the International Chamber of Commerce 2017, which reads:" In order to guarantee the effectiveness of the management of international arbitration cases by the arbitration court, the aforementioned authority can agree with the parties to the dispute regarding the hearings and the manner of conducting them, in order to apply the appropriate formal rules and also to organize the process governing the proceedings". The stipulation contained In this article means that the parties will be able to propose to the arbitration authority that the examination of witnesses and the procedures specific to it be held online, and if the causes of the examination are found, the witnesses will be examined through the arbitration system Put. It seems that according to the recent article, the drafters of this law have not considered any prohibition or objection regarding this matter, and at the same time, obtaining this agreement and stipulating such a condition will not conflict with the mandatory laws governing arbitration. According to the interpretations of the Swiss legislator in Article (4) 25 of the International Commercial Arbitration Rules 2012 in the arbitration chambers of Switzerland: "The testimony of witnesses may be heard in different ways", for example, the parties to the lawsuit may decide that the testimony of witnesses by Listen to the video conference. Therefore, it is understood from the mentioned rule that if the witnesses have reasons to be injured, the parties can by mutual agreement and notify the arbitration authority and provide supporting documents for witness injury during the hearing, request for witness injury online by completing The special electronic forms that exist in the system and are designed for this purpose, submit the referee reference. Therefore, carefully in the laws and arbitration procedure of Switzerland as a country subject to the civil law legal system, we will come to the conclusion that the process of cross-examination of witnesses can be implemented online

(Swiss Rules of International Arbitration, 2012). Looking at the laws and regulations governing Iran's current arbitration system, it seems that we are facing the lack of a legal text in the field of law, which we can rely on to legally support witness injury in online arbitration, and our country is in this field., has legal shortcomings. It is hoped that the Iranian legislator will think of a solution to the recent issue and by enacting comprehensive and appropriate laws, they will rid the country's arbitration system of the gaps affecting the fate of arbitration cases. Nevertheless, it seems that it is possible to infer from the application of the provision as well as the concept of some articles of internal laws and regulations, the violation of online witnesses. According to paragraph d of Article 45 of the Arbitration Law of the Iranian Arbitration Center: "The cases of witness tampering in domestic arbitration are according to the Civil Procedure Law, and in international arbitration, witness tampering will be done based on the agreement and consent of the parties". Also, looking at the provisions of the Civil Procedure Law of Iran, it seems that each of the parties to the dispute is willing to injure the witnesses by citing valid reasons; For example, to state that the witness is a beneficiary in the lawsuit and submit valid documents to prove this claim to the arbitration authority. Therefore, it is analyzed that due to the optional nature of the arbitration rules and the possibility of an agreement contrary to the provisions mentioned in Iran's International Commercial Arbitration Law and specifically in the case of witness injury, if the arbitration agreement is concluded by the parties electronically and the arbitration is held online. And the testimony is given on the same basis by the witness, the opposite party or his lawyer has the right to cross-examine the witness. Suppose the witness "lacks independence from the parties"; For example, he has an "employment relationship" with one of the parties and intends to testify for that person's victory in the lawsuit. At the same time, it may be directly or indirectly interested in the victory of one of the parties in the dispute. Despite such conditions, when the opposite party gets information about this issue, he can request the cross-examination of the witness from the arbitration authority by entering the system of the institution where the arbitration process is ongoing, through the electronic forms of "witness cross-examination." Of course, it is necessary for him to submit sufficient documents and documents in the form of electronic files proving his claim to the arbitration authority. In national arbitrations, according to Article 234 of Q.A.D.M. And the following note: "If one of the parties who intends to injure a witness requests a deadline, the arbitral tribunal will give him a maximum of one week to use the right to injure witnesses, and in Iran's international arbitrations, request for adjournment based on the above article. It is according to the agreement of the parties. Therefore, until the approval of the appropriate law on the topic of discussion in Iran's national arbitrations, which will be heard online, the provisions of the Civil Procedure Law will oversee the process of domestic arbitration proceedings and will be

implemented. From the point of view of the approved laws of different legal systems in the world, one of the attributes that witnesses should possess is that they should listen to their testimony based on "truth and honesty"; If the witnesses give false testimony, the arbitration authority will have the authority to examine their testimony through questions and answers to verify whether the testimony of Masharali is based on facts or false statements (Kliuchkovskiy, 2011). The mentioned procedure is such that the witness is usually asked multiple questions and answers according to the order of the judges or the request of one of the people around the case, in order to reveal the truth of his claims and statements to the jury. This is the dominant procedure in the common law legal system and the United States is considered the leader in using this method of witness evaluation. In some countries, testimony must be sworn to confirm the truthfulness of the witnesses' claims. On the other hand, the parties can previously agree in the online arbitration agreement that in case of perjury, the mediator is bound to "compensate damages" according to its special provisions if the elements of civil liability are fulfilled (Ibid). Another cause of witness injury is "lack of impartiality"; The witness does not have the right to be a beneficiary in the lawsuit; Because when the witness in a lawsuit has a beneficial interest, even if it is little, in fact, he is considered a "plaintiff" and assumes himself to be the owner of the rights, and subsequently, the witness will also lose his neutrality. And practically, he is considered to be the beneficiary in the lawsuit and he considers himself to be the right in the lawsuit, and in this way, he will lose the two basic characteristics of a witness, and the members of the arbitration panel on the one hand, and the parties on the other hand, can as soon as they know the fact order to submit the request for witness examination through the institution's arbitration system and by completing the electronic witness examination forms and submitting electronic positive documents to the arbitration authority. On the other hand, as another confirmation of the discussion, taken from Article (3) 20 of the Arbitration Rules of the International Chamber of Commerce 2017: "The arbitration authority is obliged to examine the impartiality of the witness even if the parties do not request to testify, and in case of lack of impartiality, judge him through the institution's arbitration system and inform each of the parties of the actions taken. To notify electronically by sending special messages". It is recommended that in important matters, including witness tampering, due to its power to influence the fate of commercial cases, arbitrators should inform and send the answers of their investigations and actions in the subject matter to the parties through e-mail as well (Commercial Arbitration Rules and Mediation). Procedures, 2016) Another solution that is taken from the regulations of the Swedish arbitration system as a method of examining witnesses in the arbitration courts of this country is that according to the seventh part of article (6) 7 of the Swedish Arbitration Law of 1999, it is possible for the arbitration authority to manage questions

and answers from witnesses at its own discretion. Or, according to the agreement of the parties, apply through “telephone conference” and if a witness makes specific claims during the hearing of the testimony through video conference. However, during the question and answer session of the arbitrators, which is conducted through the telephone conference, if he gives answers that are contradictory to his testimony, due to the lack of specific description in the contents of the testimony presented, the aforementioned reason is declared invalid, and subsequently, the arbitration authority can itself Rasa should cross-examine the witness through the conference call and inform him of the cross-examination through the aforementioned method (Nordenson, and Öhrström, and Setterwa, 2015). One of the justifications for the adoption of such a legal article in the Swedish arbitration system is that access to a conference phone is easier than access to a video conference tool, and therefore, online communication can be established faster with witnesses. On the other hand, by reflecting on the practical procedure of Swedish arbitration courts, usually the effectiveness of case management in testimony hearings in arbitration will be improved through the mentioned tool (Ibid). Of course, some researchers believe that if the testimony of the witness was heard through video conference, the questioning and answering of the witness should also be done through the same tool; The decisive stage in the testimony is the stage of questioning and answering and evaluating the witnesses, and in this way, the arbitration authority will determine the authenticity of the testimony of the witnesses. After that, another criticism of the use of the conference phone is that the jury and the parties will not be able to observe the face of the witness during the hearing. Hence, finding out the authenticity of testimony will be affected and on the other hand, the right of face-to-face confrontation, which is one of the principles of hearings and also the basic right of the litigants, will be violated and ignored (Ibid). Some of the arbitration professors of the law schools of the United States of America state that witness tampering is one of the issues that must be heard in person in the arbitration courts. Because they argue that in order to harm the witnesses, it is necessary to challenge the witness directly or “alive” and in this way, it can be easily done by putting him under observation by the jury and the other party and his lawyers in the arbitration courts. He recognized the truth of his statements and online witness testimony is not considered reliable (Javier, 2004). But if we are going to criticize the testimony in such an environment and come to the conclusion that it is absolutely not possible to hear the testimony online, perhaps it is possible to mention the hearing of the testimony and question and answer from the witnesses in such an environment. Because it is true that the examination of witnesses is one of the stages of witness testimony and has an impact on the fate of the arbitration, but making a decision regarding examination of witnesses, compared to questioning and answering from witnesses, usually has more limited complications and the implementation of the process in online

communication is easier. Of course, by defending the mentioned idea, we acknowledge that it is logical that there are gaps and challenges for various dimensions of witness testimony online. However, we believe that the hearing of witnesses’ testimony and the questioning and answering of witnesses, and in the case of discovering the causes of injury, injury to witnesses, can be done online to a significant extent in national and international arbitrations, considering the current developments in the field. New technologies and access to extensive online communication facilities will be implemented worldwide (Akhan Fard and Shahidi Sadeghi, 2019).

4- CONCLUSION

The following points can be summarized from all the legal content and debates analyzed in this article: According to the specification of the first clause of the third paragraph of Article 3 of the rules of the International Bar Association in the field of obtaining documents in international commercial arbitrations approved in 2010 AD, all the documents and documents of the arbitration file can be uploaded in the arbitration system in the form of electronic files and through the designed links. And sent and stored in the files and documents archive section. It is inferred from the above legal article that when the testimony of witnesses as a proof can be produced electronically and exchanged through the website of the arbitration institution, the cross-examination of witnesses can also be done online through the arbitration system. Naturally, when the infrastructures for the exchange of electronic reasons are designed by international arbitration institutions, plans for the testimony of witnesses and its various stages, including cross-examination and adjustment of witnesses, will also be foreseen. This legal provision is considered one of the important provisions in the judicial system of the United States of America, which is considered as a legal confirmation of witness injury in online arbitration. Clause 2, Article 22 of the Arbitration Law of the International Chamber of Commerce 2017 states: “In order to ensure the effectiveness of the management of international arbitration cases by the Court of Arbitration, the aforementioned authority, in line with the application of appropriate formal rules and also organizing the process governing the proceedings, can, regarding the hearings and the manner Holding it, think with the parties. Based on this, the parties can propose to the arbitration authority that the examination of witnesses and its process be held online, and if the reasons for the examination are discovered, the witnesses will be examined through the arbitration system, which according to the last article, there is also a prohibition in this regard by the drafters of this article. The law is not considered. According to Article (4) 25 of the Swiss International Arbitration Rules 2012 in the arbitration chambers of this country: “Witness testimony may be heard in various cases”, for example, it may be heard through video conference. Therefore, if the witnesses have reasons for the injury, the parties can, by mutual agreement, inform the arbitration authority and provide

the documents related to the injury of the witness and online and by filling out special electronic forms to submit. The arbitration authority requests the injury of the witness. Therefore, according to the laws and arbitration procedure of Switzerland, as a country subject to the civil law legal system, the process of cross-examination of witnesses can be carried out online. Looking carefully at the laws and regulations governing Iran's arbitration system, it seems that we are facing a lack of legal text in the discussion of witness tampering in online arbitration, and our country has legal gaps and shortcomings in this field. It is hoped that the Iranian legislator, by enacting comprehensive and appropriate laws, will free the country's arbitration system from the gaps affecting the fate of arbitration cases. Nevertheless, it seems that it is possible to infer online witness abuse from the application and meaning of some articles of internal laws and regulations. According to paragraph D of Article 45 of the Arbitration Law of the Iranian Arbitration Center: "In domestic arbitration, witness tampering is done according to the Civil Procedure Law, and in international arbitration, witness tampering will be done based on the agreement of the parties". Also, looking at the provisions of the Civil Procedure Law, it seems that each of the parties to the dispute is willing to injure the witnesses by citing valid reasons. Therefore, considering the optional nature of arbitration rules and the possibility of an agreement contrary to the provisions of Iran's international commercial arbitration law and specifically in the case of witness injury, if the arbitration is heard online and the testimony is given in the same way by the witness, the opposite party or his lawyer. They have the right to cross-examine the witness online. In domestic arbitrations, according to Article 234 of Q.A.D.M. And the following note: "If one of the parties who intends to harm the witness, requests a deadline, the arbitration court will give him a maximum of one week, and in Iran's international arbitrations, the request for adjournment is based on the agreement of the parties". Therefore, until the approval of the appropriate law on the topic of discussion in online internal arbitrations, the provisions of the Civil Procedure Law will supervise the process of internal arbitration proceedings and will be implemented. Taken from Article (3) 20 of the Arbitration Rules of the International Chamber of Commerce 2017: "The arbitral authority is obliged to examine the impartiality of the witness and in case of lack of impartiality, criticize him through the institution's arbitration system and the measures taken communicate to each of the parties electronically by sending special messages. Another method that is taken from the regulations of the Swedish arbitration system as a method of examining witnesses in the arbitration courts of this country is that according to the seventh part of Article (6) 7 of the Swedish Arbitration Law of 1999, it is possible to manage the questions and answers of the witnesses by the arbitration authority with at his own discretion or according to the agreement of the parties, through "conference call." And if a witness makes certain claims during the hearing of the testimony through video

conference, but during the question and answer from the judges that takes place through the conference phone, he gives contradictory answers to his testimony. Due to the lack of a special description in the contents of the presented testimony, the mentioned reason for declaring it invalid is one of the external reasons and the arbitration authority can personally injure the witness. Of course, some professors of law schools in the United States believe that if the testimony of the witnesses was heard through video conference, the questions and answers from the witnesses should also be done through this tool; What's more, the decisive stage in the testimony is the stage of questioning and answering the witnesses, and in this way, the arbitration authority will determine the authenticity of the testimony. Also, another criticism of the use of the conference phone is that the jury and the parties will not be able to see the face of the witness during the hearing; Therefore, realizing the authenticity of the martyrdom is affected. On the other hand, the right of face-to-face encounter, which is one of the principles of hearings and also the fundamental right of the litigants, may also be violated. If we are going to criticize the testimony in such an environment and come to the conclusion that it is absolutely not possible to hear the testimony online, perhaps we can point to hearing the testimony and questioning and answering the witnesses in such an environment. Because it is true that the examination of witnesses is one of the stages of testifying, but making a decision regarding examination of witnesses is usually less complicated and the implementation of the process in online communication is easier compared to the questioning and answering of witnesses. Of course, by defending the mentioned idea, we acknowledge that it is logical that challenges for various dimensions of witness testimony online are conceivable. But we believe that whether it is listening to witness testimony or questioning and answering from witnesses, or in the case of discovering the causes of injury, injury to witnesses, considering the advances of the current era in the field of new technologies and access to wide online communication facilities in the world, to be implemented online in national and international arbitrations.

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