

The Fifth Section of the European Court of Human Rights (ECHR), with a judgement of December 9th 2021, ruled against Ukraine for a violation of the right to a fair trial which is guaranteed by art. 6 of the European Convention on Human Rights.

The applicant was convicted of a violation of traffic rules and failure to undergo an alcohol test; under Article 6 §§ 1 and 3 (d) he complained that he had been unable to examine the driver of the other car involved in the incident because under the relevant Ukrainian law the courts could not order the police to escort witnesses to the court. This would have resulted in a violation of his right to a fair trial to the extent that «in the determination of [...] any criminal charge against him, everyone is entitled to a fair [...] hearing [...] by [a] tribunal [...] » (art. 6§1). Moreover, «everyone charged with a criminal offence has the following minimum rights: [...] to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him» (art. 6§3(d)).

On April 3rd 2015, the applicant and two other people were in an SUV which collided with another man's car, damaging it. When the traffic police arrived on the scene, the driver of the damaged car identified the applicant as the SUV's driver. The police requested the applicant to undergo a breathalyser test but he refused, claiming that one of the other two people with him was driving the SUV; he was thus tried before the Lutsk Court for violation of traffic rules and refusal to undergo an alcohol test: during the trial he continued to affirm that he was not driving the SUV and this was also confirmed by the other two people in the car. The court summoned the driver of the damaged car three times but he always failed to appear; he limited himself to informing the judicial authorities about his willingness to confirm the statements he had given to the police on the day of the accident and that he was unable to appear in court due to family problems that forced him to stay out of town. On May 20th 2015, the applicant was convicted and his driving license was suspended for two years: the evidence provided by him and the statements of the other two people in the SUV were distrusted because they were considered incongruous by the Ukrainian judges. The applicant challenged the decision, contesting the judges' assessment of his evidence: in particular, he argued that it was not possible to rely on the statements of the driver of the damaged car since it had never been examined in court. However, on July 1st 2015, the Volyn Regional Court of Appeal upheld the applicant's conviction, finding that the trial court's assessment of the evidence was correct as it could not order the police to escort the driver of the damaged car into court and was therefore justified in relying on his mere pre-trial statement.

The European Court found that the only reason for the absence of the driver of the damaged car from the trial was his stay out of town: in the case file there was, however, no information on the nature or duration of this absence. The Ukrainian trial court, however, was willing to accept such absence as it did not dispose of the power to order the police to escort him to the court. The fact that Ukrainian law does not provide national judicial authorities examining administrative offence cases with the same tools for ensuring the presence of witnesses (including victims), notably the power to order that they be brought to the court by the police, as those available to the courts in civil and criminal proceedings is considered a matter of serious concern by the European Court. Due to this legal gap, no good reason has been shown for the key witness's absence from the trial and the admission of his untested statements as evidence. Thus, assessing the trial's overall fairness, the Strasbourg Court stressed that the applicant's key defence argument consisted in contesting that he had been driving; the only witness for the prosecution with direct knowledge of this fact was the driver of the damaged car, whose pre-trial statements were decisive for the conviction. The opportunity to examine him was therefore fundamental to the effective exercise of the applicant's defense: the applicant, as also admitted by the domestic courts and the government, did not have such an opportunity mainly due to a flaw in the national legislative framework. As a result, there was a violation of his right to a fair trial.

Riferimenti Normativi:

- art. 6 Convenzione Europea dei Diritti dell'Uomo



The legal gaps in the national laws of the Member States do not justify the adoption of judicial measures that violate the right to a fair trial

Diritto processuale penale

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