



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF GAYDASHEVSKYY v. UKRAINE

(Application no. 11553/21)

JUDGMENT

Art 6 § 1 (criminal) • Impartial tribunal • Absence of prosecuting party before the Court of Appeal in proceedings against the applicant for a minor administrative traffic offence • Situation distinguished from that in *Figurka v. Ukraine* • Court of Appeal on its own motion added evidence to the case file which was detrimental to the applicant and used it to contradict his defence and convict him • No other party to the proceedings • Impression of confusion created between roles of prosecutor and judge • Concrete circumstances identified by applicant casting justified doubts on domestic court's objective impartiality

Prepared by the Registry. Does not bind the Court.

STRASBOURG

6 February 2025

FINAL

06/05/2025

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Gaydashevskyy v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mattias Guyomar, *President*,
Armen Harutyunyan,
Stéphanie Mourou-Vikström,
Andreas Zünd,
Diana Sârcu,
Kateřina Šimáčková,
Mykola Gnatovskyy, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 11553/21) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Vadim Oleksandrovykh Gaydashevskyy (“the applicant”), on 15 February 2021;

the decision to give notice to the Ukrainian Government (“the Government”) of the complaint under Article 6 § 1 of the Convention concerning alleged lack of impartiality of the domestic appellate court and to declare inadmissible the complaint under Article 6 § 1 of the Convention concerning the alleged lack of opportunity for the applicant to present his arguments before the domestic courts;

the parties’ observations;

Having deliberated in private on 14 January 2025,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns mainly the applicant’s complaint under Article 6 § 1 of the Convention that the domestic court which examined an administrative offence case against him had lacked impartiality on account of the absence of a prosecuting party in the proceedings.

THE FACTS

2. The applicant was born in 1990 and lives in Khmelnytskyi. The applicant was represented by Ms A. Sadovnikova, a lawyer practising in Khmelnytskyi.

3. The Government were represented by their Agent, Ms M. Sokorenko.

4. The facts of the case may be summarised as follows.

5. On 22 January 2020 an administrative-offence report was drawn up against the applicant by the police for driving while under the influence of drugs. It stated that the applicant’s level of intoxication had been established

by the local psychiatric care centre (“the centre”). The medical report, on which the administrative-offence report was based, indicated that the applicant had been in a state of narcotic intoxication, as established by a quick test for six types of drugs. The report was on a standard form and the section dedicated to the results of laboratory testing was crossed out.

6. On 12 February 2020 the Khmelnytskyi Local Court heard the case in the absence of the parties and convicted the applicant as charged by the police, fined him 10,200 Ukrainian hryvnias (about 377 euros at the time) and suspended his driving licence for a year. It noted that the applicant had failed to appear in court even though he had been notified of the hearing, as evidenced by his signature in the administrative-offence report.

7. The applicant appealed. He argued, in particular, that the evidence of intoxication included in the file was inadmissible. He contended that the relevant regulations required that intoxication be established through laboratory testing of biological material. However, the doctor had established intoxication based on a superficial examination, with no laboratory testing. The relevant medical examination report drawn up by the doctor did not even specify which narcotics had been discovered. He submitted a letter from the centre, issued at the request of his lawyer, which stated that no laboratory testing of the biological samples collected from the applicant had been conducted.

8. The Khmelnytskyi Court of Appeal, sitting as a single judge (Judge K.), held hearings in the presence of the applicant and his lawyer, at which no other party was present.

9. On 8 May 2020 the Court of Appeal requested certain information from the centre. In response, the centre provided a copy of the medical examination report on the applicant’s level of intoxication (see paragraph 5 above).

10. On 22 May 2020 the Court of Appeal held another hearing, examined the centre’s response and decided to request information from the centre about “the lawfulness of the laboratory testing (whether it was in accordance with the regulations) and what specific narcotics were detected”.

11. On 15 June 2020 the centre sent the Court of Appeal a letter which stated, in response to the court’s request, that the quick test mentioned in the report had constituted “laboratory testing” and that the applicant had tested positive for amphetamine and marijuana.

12. On 13 July 2020 the applicant challenged the presiding judge. He stated that he had just discovered the latest letter from the centre in the file. He argued that, despite his having provided information clearly indicating that no proper laboratory testing had been conducted and that he had only been subjected to superficial preliminary screening, the presiding judge had managed to obtain the “right” response from the centre.

13. The applicant also stated that the presiding judge had already called the centre and had been told that quick testing constituted laboratory testing, but that had not been reflected in the centre’s initial response to the judge’s

request and the judge had stated, at the hearing of 22 May 2020, that she could not decide the case until she received a response to her request (even though the relevant information had already been provided by the defence and was in the file). In that connection the applicant referred to *Malofeyeva v. Russia* (no. 36673/04, 30 May 2013) and argued that the court could not, on its own initiative, search for evidence for the prosecution.

14. A different Court of Appeal judge rejected the applicant's challenge, considering that he had not shown any circumstances which could cast doubt on Judge K.'s impartiality.

15. On 13 August 2020 the Court of Appeal (sitting as a single judge – Judge K.) upheld the trial court's judgment. It noted, in particular, the following:

“[T]he defence's arguments to the effect that the procedure for determining that the [applicant] was under the influence of drugs has been breached because that could only be determined through laboratory testing are disproved by the [centre's letter], provided at the [court's] request, from which it follows that the [applicant] had been examined on 22 January 2020 and the test for amphetamine and marijuana was positive.”

16. The applicant was notified of the court's decision on 17 August 2020.

RELEVANT LEGAL FRAMEWORK

17. The Order of the Ministry of Internal Affairs and Ministry of Health no. 1452/735 of 9 November 2015 approved the Instructions on the procedure for detecting signs of alcohol, drugs or other intoxicating substances or being under the influence of substances that reduce attention and reaction time in drivers of vehicles.

Under section II subsection 12 of the Instructions, if there are reasons to believe that the driver may be under the influence of narcotics, other intoxicating substances, or medicines that reduce attention and reaction time, the police officer should escort the driver to the nearest healthcare facility.

Under section III subsection 3 of the Instructions, the medical examination of the driver is carried out by a specialist doctor. Under subsection 7 it is mandatory to carry out laboratory tests in order to identify narcotics or psychotropic substances. Subsection 22 provides that conclusions of medical examinations for intoxication that do not comply with the requirements of the Instructions are deemed invalid.

18. Other relevant provisions of domestic law can be found in *Figurka v. Ukraine* (no. 28232/22, §§ 11-15, 16 November 2023).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

19. The applicant complained that the absence of a prosecuting party in the proceedings meant that the Court of Appeal could not be considered impartial, in breach of Article 6 § 1 of the Convention. He also relied on Article 13 of the Convention, claiming that no effective remedy was available in his situation.

20. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), considers that the applicant's complaints fall to be examined solely under Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

A. The parties' submissions

21. The Government submitted that the applicant had failed to lodge his application within the six-month time-limit under Article 35 § 1 of the Convention, as in force at the relevant time, as the final decision in his case had been delivered on 13 August 2020 in the presence of the applicant's lawyer. The application had been lodged, however, on 15 February 2021.

22. The Government referred to *Thorgeir Thorgeirson v. Iceland* (25 June 1992, Series A no. 239) and submitted that in the present case, as in that case, the domestic courts had delivered decisions based on the relevant facts and had not violated Article 6 § 1 of the Convention. They distinguished the present case from that of *Karelin v. Russia* (no. 926/08, 20 September 2016). They pointed out that in that case the judge's impartiality had been undermined by the fact that he had changed the charges on which Mr Karelin had subsequently been convicted from those that had been indicated in the administrative-offence report. That had not occurred in the applicant's case.

23. The applicant submitted that he had only familiarised himself with the full text of the decision of the Court of Appeal on 17 August 2020. He had therefore not missed the time-limit under Article 35 § 1 of the Convention.

24. In his application the applicant argued that the Court of Appeal was not impartial. The Court of Appeal had refused to accept the evidence of the absence of laboratory testing provided by the applicant and based its decision establishing the applicant's guilt on a document issued by the medical centre at the request of the Court of Appeal's presiding judge. That document contradicted those obtained by the applicant's lawyer.

B. The Court's assessment

1. Admissibility

25. The Court refers to the general principles concerning the calculation of the time limit provided for in Article 35 § 1 of the Convention, as summarised in *Sabri Güneş v. Turkey* ([GC], no. 27396/06, §§ 39-42, 29 June 2012). It reiterates that where an applicant is entitled to be served automatically with a copy of the final domestic decision, the object and purpose of Article 35 § 1 of the Convention are best served by counting the period as running from the date of service of the copy of the written decision, irrespective of whether that decision was previously delivered orally (see *Akif Hasanov v. Azerbaijan*, no. 7268/10, § 27, 19 September 2019).

26. As the applicant was notified of the final decision on 17 August 2020, he lodged the application form in compliance with the established time-limit.

27. The Court further observes that the parties have not disputed the applicability of Article 6 of the Convention, under its criminal limb. Having regard to its case-law (see *Figurka v. Ukraine*, no. 28232/22, §§ 23-29, 16 November 2023) and the facts of the present case, it sees no reason to find otherwise.

28. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

29. The relevant principles of the Court's case-law are summarised in *Figurka* (cited above, §§ 23-29). In particular, the absence of a prosecuting party at an oral hearing may raise an issue under Article 6 §§ 1 and 3 of the Convention since it may give rise to doubts about the court's objective impartiality by leading the court to take up the prosecution's case (*ibid*, § 29, with further references).

30. In the present case, the Court of Appeal, which had jurisdiction to deal with questions of law as well as questions of fact, held hearings but did not summon either the prosecutor or the police officer who had drawn up the administrative offence report. As a result, no party supported the prosecution's case against the applicant at the hearing. Despite that, and despite the applicant affirming his innocence at the hearing, the Court of Appeal upheld the applicant's conviction (see paragraphs 8 to 15 above).

31. In addition, importantly, and in contrast to the situation in *Figurka* (cited above), it cannot be said that, in the present case, the Court of Appeal did no more than examine the evidence prepared by the investigating authority. On the contrary, evidence was added to the file at the Court of Appeal's request, in particular the medical examination report and an explanation of its meaning issued by the relevant medical centre (see

paragraphs 10, 11 and 15 above; compare also *Ozerov v. Russia*, no. 64962/01, § 53, 18 May 2010).

32. It is also relevant that the Court of Appeal defined the issue on which it collected evidence of its own motion as a decisive one. The applicant alleged in his appeal that the medical examination of his state of intoxication did not comply with the relevant domestic regulations (the Instructions), therefore his guilt had not been proven by admissible evidence. The Court notes that under the relevant domestic regulations, conclusions of medical examinations for intoxication that did not comply with the requirements of the regulations had to be deemed invalid (see paragraph 17 above). The Court of Appeal itself apparently saw the matter of laboratory tests as a key issue in the case and adjourned the court hearings until the receipt of the respective confirmation from the medical centre (see paragraphs 9, 10, 13 above).

33. It follows that the Court of Appeal, on its own initiative, searched for key evidence detrimental to the position of the accused person and used it in its judgment to contradict the arguments raised by the defence. No other party to the administrative proceedings was present to ask the court to carry out those enquiries or to collect evidence.

34. By searching for such evidence on its own motion, and further convicting the applicant on the basis of the evidence obtained in that manner, the Court of Appeal created the impression of confusion between the roles of prosecutor and judge and had accordingly given the grounds for legitimate doubts as to the court's impartiality under the objective test.

35. Therefore, in the present case, unlike *Figurka* (cited above), where the Court found that there was no violation of Article 6 of the Convention, the applicant identified, with reference to specific facts, concrete circumstances, other than the physical absence of a representative of the prosecuting party in the hearing, clearly casting doubt on the impartiality of the domestic court that had examined his case.

36. Given their nature, the justified doubts about the Court of Appeal's objective impartiality, as identified in the present case, cannot be seen as compatible with Article 6 of the Convention despite the fact that the applicant's case concerned a minor traffic offence and hence proceedings in which the criminal-law guarantees of Article 6 do not apply with their full stringency (see *Marčan v. Croatia*, no. 40820/12, § 37, 10 July 2014, and *Figurka*, cited above, §§ 42-43).

37. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only

partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

39. The applicant did not submit a claim in respect of just satisfaction when invited to do so. The Court does not discern any exceptional circumstances (see *Nagmetov v. Russia* [GC], no. 35589/08, §§ 74-82, 30 March 2017) which justify making an award in respect of non-pecuniary damage in the present case. There is, therefore, no call to make any award.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 6 February 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Mattias Guyomar
President