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

FIFTH SECTION

DECISION

Applications nos. 31553/19 and 29809/20
Oleksandr Valentynovych PALYANOV against Ukraine
and Kateryna Oleksandrivna KAZANTSEVA against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 8 September 2022 as a Committee composed of:

Arnfinn Bårdsen*, President,*
Kateřina Šimáčková*,*
Mykola Gnatovskyy*, judges,*
and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the applicants listed in the appended table ("the applicants"), on the various dates indicated therein;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicants' complaint under Article 6 §§ 1 and 3 (d) of the Convention that the domestic courts did not examine witnesses who had signed administrative-offence reports charging them with refusing to undergo alcohol and drug testing proposed by the traffic police.

2. A list of the applicants, who are Ukrainian nationals, is set out in the appendix.

3. In the above-mentioned administrative-offence reports, the police charged the applicants with driving while displaying signs of intoxication and refusing to undergo alcohol or drug testing. The courts convicted them as charged, fined them, and suspended their driving licences for one year.

4. The domestic courts referred to the administrative-offence reports signed by police officers and, in both cases, two witnesses. They also referred to written statements of the officers and those same witnesses setting out the same allegations against the applicants as in the reports, and to footage from

the officers' body cameras of the relevant events. The officers and witnesses were not examined.

5. On the dates set out in the appendix, the appellate courts dismissed appeals lodged by the applicants (in which they complained in particular that they had been unable to examine the witnesses in question) and upheld the trial courts' judgments.

THE COURT'S ASSESSMENT

6. The Court reiterates that the guarantees in paragraph 3 (d) of Article 6 are specific aspects of the right to a fair hearing set forth in paragraph 1 of that Article and will consider the complaint under both provisions taken together (see *Schatschaschwili v. Germany* ([GC], no. 9154/10, § 100, ECHR 2015).

7. The applicants complained that the domestic courts had failed to examine witnesses who had signed administrative-offence reports against them. The first applicant primarily considered those witnesses to be witnesses for the defence. The second applicant, in her complaint about the non-examination of the same witnesses and of the police officer who had drawn up the report, considered those witnesses to be witnesses for the prosecution.

8. However, whether those complaints are examined in the light of the principles concerning witnesses for the prosecution (see *Schatschaschwili*, cited above, §§ 110-31) or witnesses for the defence (see *Murtazaliyeva v. Russia* [GC], no. 36658/05, §§ 139, 144-49 and 158-67, 18 December 2018), they are manifestly ill-founded for the reasons set out below.

9. The ultimate test, in both cases, is whether the non-examination of the witnesses undermined the fairness of criminal proceedings as a whole (see *Chernika v. Ukraine*, no. 53791/11, §§ 51 and 52, 12 March 2020, and *Bondar v. Ukraine*, no. 18895/08, § 81, 16 April 2019).

10. The first applicant did not contest that he had refused to undergo testing but alleged that he had been unable to undergo it since he had been in a rush to bring medicine to his sick grandmother. Even assuming that that would have been a valid defence under domestic law, he did not contend that the witnesses in question could have testified to his motives for his refusal to undergo testing, but rather only questioned the authenticity of their signatures on the administrative-offence report. Moreover, that report was not the only evidence against the applicant; the evidence also included a video recording of the events, which the court could observe directly.

11. The second applicant's key defence was that she had not really refused to be tested and, if she had, she had not been sufficiently advised of the consequences. The courts examined the video footage of the events in detail and undertook a detailed analysis of the recording itself; they also examined,

at the applicant's request, her husband, who had arrived at the scene after she had been stopped by the police. The courts concluded that her defence was untrue and that she was guilty as charged. They held that it was unnecessary to examine the other witnesses, since all the relevant circumstances could be sufficiently seen on the video recording and were correctly reflected in the police reports.

12. In both cases, therefore, the domestic courts directly observed the relevant events on video recordings. Moreover, in the first case, the witnesses could not testify concerning the applicant's motivation, which was central to his defence, and in the second case, although the witnesses might have observed or participated in the relevant interactions between the police and the applicant, their statements would have only concerned their own interpretation of the events, whereas the courts themselves could directly observe the events on the video recording.

13. In view of the other evidence available to the domestic courts, there is no indication that the evidence of the witnesses in question constituted the "sole or decisive" evidence on which the applicants' convictions were grounded or that it carried such significant weight as to handicap the defence (see *Mikhaylova v. Ukraine*, no. 10644/08, § 52, 6 March 2018). Taking also into account the reasons given by the applicants for their requests to examine the witnesses and by the courts for not examining them, there is no indication that the non-examination of those witnesses undermined the overall fairness of the proceedings against the applicants.

14. It follows that the applications are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 29 September 2022.

Martina Keller Deputy Registrar	Arnfinn Bårdsen President

Appendix

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Representative	Final domestic decision
1.	31553/19	Palyanov v. Ukraine	31/05/2019	**Oleksandr Valentynovych PALYANOV** 1984 Dnipro	Dnipro Court of Appeal, 17 /01/2019
2.	29809/20	Kazantseva v. Ukraine	24/06/2020	**Kateryna Oleksandrivna KAZANTSEVA** 1984 Kyiv Represented by Andriy CHYCHYRKIN	Kyiv Court of Appeal, 09/01/2020