



Criminal conviction based on a single statement by a fugitive witness was in violation of the right to a fair trial

In today's **Chamber** judgment¹ in the case of [Cafagna v. Italy](#) (application no. 26073/13) the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 6 §§1 and 3 (d) (right to a fair trial within a reasonable time and right to examine witnesses) of the European Convention on Human Rights.

The case concerned the applicant's conviction on the basis of a statement made by an individual who claimed to have been assaulted by him but who did not give evidence at the hearing.

The Court found that the domestic courts, despite conducting a rigorous examination, had been unable to conduct a fair and proper assessment of the reliability of the witness's statements. It held that Mr Cafagna's defence rights had been restricted in a manner incompatible with the requirements of a fair trial.

Principal facts

The applicant, Gaetano Cafagna, is an Italian national who was born in 1970 and lives in Barletta (Italy).

On 3 June 1996 an Italian national, C.C., lodged a criminal complaint against Mr Cafagna, alleging that the latter and an accomplice had attempted to rob him in the street. C.C. claimed that when he had tried to run after them, he had been punched in the face by Mr Cafagna. When he made his statement of complaint, which was taken by L.R., a member of the *carabinieri*, C.C. formally identified Mr Cafagna and his accomplice from photographs.

On 13 September 1996 the public prosecutor requested that evidence be heard from C.C. and that an identification parade be held. Despite being summoned and compelled to appear on several occasions, C.C., who according to his parents no longer lived with them, could not be traced and never confirmed before a court his allegations concerning his assailant's identity.

In a judgment of 11 April 2005 the District Court sentenced Mr Cafagna to one year and four months' imprisonment. It found that the precise and detailed statement made by C.C. to the *carabinieri* was sufficient to establish Mr Cafagna's guilt. In the court's view, the fact that a witness's whereabouts were unknown made it "objectively impossible" to examine him at the hearing; the court was therefore entitled, in determining the charges, to use any statements made in advance of the trial. The District Court also found that Mr Cafagna's conviction rested on other evidence arising out of the testimony given by L.R., the member of the *carabinieri* who had taken C.C.'s statement.

Mr Cafagna appealed against the judgment, which was upheld by the Court of Appeal. He then lodged an appeal on points of law. In a judgment of 17 October 2012 the Court of Cassation dismissed his appeal, finding that C.C., who had been convicted *in absentia* in another set of criminal proceedings, could not be traced, that this fact could not have been foreseen at the time of his

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

statement to the *carabinieri*, and that the District Court had therefore been entitled to admit C.C.'s statements in evidence.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 (right to a fair trial within a reasonable time) and 3 (d) (right to examine witnesses), Mr Cafagna alleged that the criminal proceedings against him had been unfair.

The application was lodged with the European Court of Human Rights on 27 March 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Kristina **Pardalos** (San Marino), *President*,

Guido **Raimondi** (Italy),

Aleš **Pejchal** (the Czech Republic),

Krzysztof **Wojtyczek** (Poland),

Ksenija **Turković** (Croatia),

Pauliine **Koskelo** (Finland),

Tim **Eicke** (the United Kingdom),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

Article 6 §§ 1 and 3 (d)

The Court observed that C.C. had been questioned by the *carabinieri* but had never appeared before the trial court. Therefore, neither the latter nor the applicant had been able to observe him during questioning in order to assess his credibility and the reliability of his statements.

The Court also noted that the domestic courts had based their decisions not just on C.C.'s statements but also on the testimony of the *carabiniere* L.R. It observed that the Court of Appeal had examined C.C.'s credibility with care before concluding that his statements were sufficiently reliable.

Nevertheless, the Court considered that the examination by the domestic courts of the evidence of the applicant's guilt had not been sufficient, by itself, to compensate for the fact that the witness had not been questioned by the defence. However thorough the examination conducted by the trial court, it was not capable of providing the information that could be gleaned from a confrontation at a public hearing between the accused and his or her accuser, and hence of testing the reliability of the evidence. The Court therefore concluded that Mr Cafagna's defence rights had been restricted in a manner incompatible with the requirements of a fair trial, and found a violation of his right to a fair trial.

Just satisfaction (Article 41)

The Court held that Italy was to pay the applicant 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 10,000 in respect of costs and expenses.

Separate opinion

Judge **Wojtyczek** expressed a separate opinion which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.