The Many Faces of Confiscation in Italian Criminal Law

Maristella Amisano*

Abstract

The Italian criminal code knew to recover the proceeds of crime just the confiscation, but that wasn't the main goal. Over time, the Italian system has found tools to extend the recovery of sums involved in a crime. But we must be careful to remain linked to the crime, without preventing in a way contrary to the guarantee principles of the Italian criminal system.

Keywords: *confiscation, security measures, preventing measures, criminal principles*

I. Confiscation in the 1930 criminal Code

The recovery of sums involved in various capacities in a crime is an element of fundamental importance for modern legal systems. Today the idea of punishment is reduced for leaving more space to prevention and punishment is enriched with nuances that remove the centrality of prison sentence. But it has not always been this way, at least in the Italian criminal system. The current penal code dates back to 1930 and the philosophy that inspired it was – to say it as Hart would – that of punishment and responsibility. Faced with the commission of a crime, the imposition of a penalty was inexorably triggered. The recovery of sums related to a crime was only possible and accessory.

Although the recovery of sums involved in a crime was not the main objective of the legislator of the 1930 code, the Italian penal code since its inception had provided a remedy – still present today. although much changed in its extension – to ensure that the proceeds of a crime were insured to the State. That instrument is confiscation, whose declared nature is that of a security measure. Due to the fact that the nature of an institution characterizes its functioning, it is necessary to open a brief parenthesis to explain what security measures are. It is necessary to take a step back and return to the cultural climate in Italy in the early 1900s, or shortly before the code, that lives even today, was issued. In that period, two different criminological schools clashed in the Italian cultural climate: the Classical School and the Positive School, which had two visions, not opposed and irreconcilable, but undoubtedly different of criminal law and especially of the punitive system. The Classical School is based on rationalistic and natural law principles of Enlightenment origin. For the Classical School, the crime is a legal entity to be analyzed as an empirical-social phenomenon that arises from the free will of a subject. Man has free will, therefore he chooses to commit crime following a rational evaluation of disadvantages and benefits and the sanction must therefore be

* Professor, PhD., Università della Calabria, Italia. Contact: maristella.amisano@unical.it.

proportionate to the evil he has committed, in an essentially retributive perspective. An exponent of the classical school is Carrara, author of the Program of Criminal Law, a fundamental work for Italian criminal lawyers.

On the other hand, the Positive school has its roots in methodological Positivism and believed that the act of committing a crime was the result of various reasons: anthropological, family and especially social. A sort of determinism that focused more on the offender than on the crime. Exponents of this school were Enrico Ferri and the famous Cesare Lombroso. It is clear that this diversity of approach has major implications on the legitimacy of punishment because for the classical school, punishment was the consequence of the evil committed; for the positive school, punishment had to remove the causes that had led to the crime and had to be based on social dangerousness. Social dangerousness, a flexible concept and not easily identifiable, was defined in the penal code as the previous commission of a crime combined with the probability that the subject would commit other crimes.

Well, faced with this dichotomy, the penal code has attempted a conciliation, which has materialized in the double sanctioning track, composed of penalties that respond to the need for retribution, and security measures, which respond to therapeutic or social security needs. Confiscation is a security measure and this makes us understand that it responds to a partially sanctioning need but above all to social defense: it wants to eliminate those elements that present an intrinsic dangerousness, such as the things that were used to commit the crime or that what are the product of it. In fact, confiscation is the only patrimonial security measure (the others are personal or real) and is governed by article 240 of the penal code. It is worth clarifying where this rule is placed within the code. This article is the rule that closes the first book of the Italian penal code, which is the one that deals with crimes in general: describes all the elements that make up the crime and its forms of manifestation. And this means that the scope of Article 240 is a general scope, it means that it applies to all types of crimes that are identified in the second book of the Italian penal code, which is the one that deals with crimes in particular. Article 240 therefore ends the general part of the code and is placed at the end of the security measures which, being an element of the so-called double track, are located immediately after the penalties.

II. The elements of confiscation

Confiscation consists in the expropriation in favor of the State of the things that were used or intended to commit the crime or that represent the product, profit or price of the crime or even of the things whose manufacture, use, possession or alienation constitutes a crime. The things that were used or intended to commit the crime are, for example, the tools that were used for breaking in during a burglary. The product or price of the crime are the profits that the criminal has derived from the crime itself. And the things whose manufacture, use or possession or alienation constitutes a crime are, for instance, weapons or counterfeit coins[1]. It is clear that this rule was not directly aimed at recovering the sums related to a crime but to ensure that what was, in a broad sense, connected to the crime could no longer harm society. However, the idea of recovering the proceeds of the crime itself was present in the part relating to the

[1] For a complete analysis of the elements of the confiscation, see A. Alessandri, *Confisca nel diritto penale*, in Digesto delle discipline penalistiche, III, Torino, 1989.

product of the crime. In fact, confiscation consists in a forced transfer to the State of an asset, or a set of assets, in some way related to the commission of a crime and the transfer effect occurs regardless of the will of the interested parts. Confiscation is an irrevocable and instantaneous measure and it's permanent: it cannot be revoked, it cannot be modified, even in the case of repeal or declaration of unconstitutionality of a criminal law.

So the idea of recovering the profits of crime in the 1930 code was only outlined and was just a background to the aspect related to social dangerousness, as logical for a security measure. Of course, confiscation is a particular security measure because it is independent of the requirement of the perpetrator's social dangerousness. Dangerousness for confiscation is objective and not subjective: it is not so much a matter of limiting the possibility that a subject who has already committed crimes would commit other crimes again, but of limiting the intrinsic dangerousness of certain objects connected to the commission of the crime. Furthermore, while other security measures are revocable when the conditions of social dangerousness of the perpetrator cease to exist, as I said earlier, confiscation is an irrevocable provision and, in fact, is based on objective dangerousness. For this reason, confiscation is a *sui generis* sanction and not a security measure.

Confiscation can be optional or mandatory[2]: this can be deduced from the wording of the law which alternates "confiscation can be ordered" and "confiscation is always ordered". The confiscation of things that were intended or served to commit the crime, for instance: the means of execution of the crime and the confiscation of the things that are the product or profit thereof, is optional. The confiscation of things that constitute the price of the crime or the things whose manufacture, use, carrying, possession or alienation constitutes a crime is mandatory.

At this point, in order to establish the scope of operation of one or the other type of confiscation, it is important to identify the exact scope of the concepts of 'product', 'price' and 'profit' of the crime. "Product" are all the material things that originate from the crime itself; "price" are the sums of money or other benefits given or promised as compensation for carrying out the crime. More controversial is the notion of "profit", which we can summarise as the indirect economic profit, that is what can be obtained from the crime after transforming the product. Narrowing the field to the actual recovery, this involves the product or the profit of the crime and the price of the crime, but only for the price of the crime is confiscation mandatory, while in other cases it is only optional and therefore depends on the free conviction of the judge. It will be the judge, on the basis of the regulatory wording "may order confiscation", to decide how to act: whether to confiscate the product or the profit of the crime or leave them at the disposal of the offender. It is immediately clear that in this way the recovery by the State is only residual: after all, this was not the main objective of the legislator of 1930.

III. New forms of confiscation

However, over time, social and legal sensitivity has changed. Not only has the punitive prison sanction gone from being considered the solution to all evils to constituting a problem itself and therefore requiring other alternative sanctions. But what is more

[2] About mandatory confiscation, see O. Forlenza, *Confisca obbligatoria in caso di condanna definitiva*, in Guida al diritto, no. 42, 2000, p. 53 and the following.

significant is that the European Community[3], initially only in the field of environmental criminal law, but then with a general extension, has begun to introduce other sanctioning systems. Among these, depriving the offender of the gain he obtained from the crime has primary importance[4], for this reason the European Community has proposed, among other instruments, that "whoever commits a crime pays". The idea was born with "whoever pollutes pays" but has now taken on a general value. The logical basis is that the perpetrator is deprived of everything he has obtained through the crime, otherwise no restorative sanction would make sense. If the offender can keep what he has obtained from the crime, any restorative sanction would be nullified.

The idea of the need to recover the proceeds of crime has thus become established and therefore the legislator has posed the intent of extending confiscation not only to the things linked to the crime by a direct etiological link but also to the same amount in the absence of any proof of a relationship of pertinence between the assets seized and the illegal act to which the conviction refers. This is how confiscation by equivalent was born[5], whose logical and legal basis is constituted by the failure to identify and seize the assets that physically constitute the price or profit of the crime. This is a confiscation that has an undisputed capacity to deter the repetition of the crime and that has not been introduced in general but only for individual types of crimes, including, first of all, usury. If confiscation is already a hybrid institution aimed at pursuing various objectives, confiscation by equivalent has particularities that make it difficult to place it in a dogmatic category free from contamination. The various types of confiscation by equivalent all have a common purpose, that is to neutralize the economic benefits deriving from the criminal activity even when, for various reasons, there is no concrete possibility of materially finding, in the assets of the offender, the specific economic entity that he has directly obtained from the commission of the crime. The fact that the legislator has not modified art. 240 of the Criminal Code but has inserted the possibility of confiscation by equivalent only with reference to certain crimes makes the regulatory technique completely peculiar and casts doubt on the nature of the security measure.

The nature seems to become predominantly punitive[6], because confiscation by equivalent is resolved in a form of public removal to compensate for unlawful acts. But this repression has particular aspects: it is not a punishment tout court but a punishment that eliminates the advantages of the crime, with notable social, preventive and even educational implications for the offender and, through him, for the entire community. Which, all in all, includes confiscation by equivalent among the security measures, albeit with different accents. Moreover, the proliferation of figures has gone, in our system, hand in hand with a more or less explicit diversification of the sanctioning models. So, confiscation by equivalent is an institution with a hybrid and multifunctional nature.

Even the latest reform that has affected the criminal process in Italy, namely the reform of law 134 of 2021[7], has greatly extended the execution of confiscation by

[3] See G. Di Chiara, *Modelli e standard probatori in tema di confisca dei proventi del reato nello "spazio giudiziario europeo": problemi e prospettive*, in Foro it., 2002, p. 263 and the following.

[4] G. Melillo, *Il congelamento dei beni a fine di confisca o di prova nel sistema della cooperazione giudiziaria europea*, in Questione Giustizia, 2002, p. 99 and the following.

[5] See D. Fondaroli, *Le ipotesi speciali di confisca nel sistema penale. Ablazione patrimoniale, criminalità economica, responsabilità delle persone fisiche e giuridiche*, Bologna, 2007, p. 120.

[6] See L. Baron, *La confisca con "condanna sostanziale": verso un nuovo "principio generale" in materia ablatoria?*, in Cass. Penale, 2020, p. 4799.

[7] For some example, see V. Mongillo, *Confisca proteiforme e nuove frontiere della ragionevolezza costituzionale. Il banco di prova degli abusi di mercato*, in Giurisprudenza costituzionale, 2019, p. 3343.

equivalent. Equivalent confiscation is fully part of the development of a modern criminal law capable of overcoming the primacy of the prison sentence and, at the same time, effectively countering the collective and economic dimension of criminal phenomena[8]. With confiscation by equivalent there is always a link with the crime, because the seized assets must be the equivalent of those that constituted the profit or the product or the price of crime. This means that the crime is ascertained and so is the guilt of its perpetrator. Traditional confiscation and confiscation by equivalent respect the ascertainment of the crime and its perpetrator. What becomes essential is the meaning of "equivalence": civil law doctrine refers to the restoration of a pre-existing balance disturbed by the illicit conduct of a subject. That way, the equivalent is nothing more than a mechanism to re-establish the balance that the crime has broken: just as compensation tends to balance the disvalue caused to the damaged assets, as well as the consequences that such disvalue has produced, confiscation tends to coincide with the value of the illicitly acquired assets. There remains the problem of determining the value, which is not a natural fact but rather the stipulated result of the application of certain criteria conceived for the achievement of social purposes.

IV. A doubtful confiscation

But the maximum dissuasive effectiveness is that of the confiscation of assets suspected of illicit origin[9]. Which is even independent of the crime, so far from the crime that it is a measure of so-called prevention. Preventive measures, as well as all preventive criminal justice, are very welcome to politicians because criminal prevention has, by definition, the ability to generate consensus, even when statistical data testify to their poor success[10]. The problem is that preventive limitations of any freedom, even that of property, are very far from liberal principles and create para-incriminating norms that replace criminal ones, producing the same punitive effect, without ascertain either the fact of the crime or the responsibility of its perpetrator[11]. It is therefore necessary to be very careful to implement a prevention that must respect the principles that govern criminal law, where the foundation is the ascertainment of the fact of crime and, therefore, the compression of the individual's freedoms cannot be allowed only for indicators of social dangerousness not ascertained. The European Community, which in a proposed directive of 2022 sets the objective of identifying, freezing and managing assets by expanding the possibilities of confiscation and requires the introduction of a traditional non-conviction based confiscation[12], has an ambiguous position because the Cavallotti appeal is still pending at the ECHR, where the ECHR would seem to consider the

[8] In the same sense, M. Donini, *Le due anime della riparazione come alternativa alla pena-castigo: riparazione prestazionale vs. riparazione interpersonale*, in Cass. Penale, 2022, p. 2027.

[9] On the extent of preventive confiscation, see V. Manes, *L'ultimo imperativo della politica criminale: nullum crimen sine confiscatione*, in Rivista italiana di diritto e procedura penale, 2015, p. 1259.

[10] See A.M. Maugeri, *L'irrefrenabile tendenza espansiva della confisca quale strumento di lotta contro la criminalità organizzata*, in *Criminalità organizzata e sfruttamento delle risorse territoriali, in osservatorio permanente sulla criminalità organizzata* a cura di Barillaro, Milano, 2004, p. 97.

[11] See K. Gavrysh, *Il principio di proporzionalità e la confisca di prevenzione nella prassi della Corte europea dei Diritti dell'uomo*, in Cass. Pen., 2022, p. 3720.

[12] E. Zuffada, *La Corte europea giudica compatibile con la convenzione la confisca del profitto del reato anche in assenza di condanna*, in Riv.it. Dir e proc pen, 2020, p. 380.

application of confiscation in the absence of a formal finding of guilt a violation of the presumption of innocence. And so we are faced with contradictory pressures: on the one hand, the Union Europe is pushing for a greater diffusion of preventive confiscation tools such as preventive measures, in which Italy has played a pioneering role. On the other hand, the Europe of the ECHR could narrow its scrutiny and put a stop to the use of non-conviction confiscation. This road is still under construction. But the doubt concerns confiscation as a preventive measure[13], which is independent of the crime. The path is already marked for the confiscation that follows a crime, that it is very important for the purposes of preventing further crimes but also for sanctioning purposes, that the illicit act is not lucrative and that the illicitly received goes into the coffers of the State. As an effect of justice but also as a new way of understanding punishment, far and different from that which inspired the Italian penal code of 1930.

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Hearing of The Witnesses – Psychological and Evidence Value of The Statement Given in The Pretrial Procedure

Vesna Trajanovska*
Natasha Peovska**

Abstract

Witnesses are still important and very common evidence in criminal procedure. In the case of subjective evidence, it is very important to assess the credibility of the testimony correctly. The authorized official (criminalist, judge or public prosecutor) in the pretrial procedure has an extremely difficult task in evaluating the objectivity of what the witness presents during his hearing. Therefore, in addition to legal, the authorized official must also have extra-legal knowledge. To be able to conduct the hearing successfully, the authors indicate the importance of knowing the psychological processes and tactics of the authorized persons when taking the testimony from the witnesses.

At the end of this paper, the authors analyze the problems related to the probative value of the statements given in the pretrial procedure, the use and the evidence value of the statements of the witnesses given to the public prosecutor in the pretrial procedure that are used in cases of inconsistency between this statement and the statement of the witness given during the main hearing. Although the purpose of the existing Law on Criminal Procedure is primarily to present all the evidence immediately at the adversarial and public hearing, it must also provide exceptions from the direct presentation of the evidence.

Keywords: *criminal procedure, examination, psychology, witness, reliability of testimony, the probative value of the statement.*

I. Introduction

The subject of the testimony is a criminal event that happened in the past, and it refers to the crime and the perpetrator. The criminal event is fully or partially understood by the witness, which is why the criminalist has the task of separating the information obtained from the testimony into important and unimportant for the criminal procedure.

Any person can be a witness regardless of his characteristics (psychological, physical, and age). A witness is any person who was able to observe the occurrence of the crime in a certain way, to reproduce the observations by way of memory during

* PhD in criminal procedure law and associate professor. Contact: vesna.trajanovska@yahoo.com.

** Associate professor at Faculty of Security-Skopje, University “St. Kliment Ohridski”- Bitola. Contact: natasa.peovska@uklo.edu.mk.

the procedure itself. When it comes to the age of the witness, it is irrelevant because both minors and adults can appear as witnesses. Also, children can be questioned, taking into account their psychological development as well as the nature of the subject for which they have to testify[1].

One of the criteria for dividing the witnesses is the way they perceived (learned about) the specific criminal event. In connection with the above, we divide the witnesses into those who testify about the criminal event based on their own observations *causu criminalis* or so-called, real witnesses and witnesses who came to the knowledge of a certain criminal event through an indirect way by hearing from other people which is why we call such witnesses indirect witnesses or hearsay witnesses.

Personal evidence arises as a result of observation (perception) and psychological survival of the persons who were in contact with the commission of the crime (witnesses, the injured as a special category of witnesses, and the suspect in the pretrial or the accused in the criminal procedure). The evidentiary information from these persons is taken by way of hearing. This type of evidentiary information is primarily conditioned by the possibility of noticing (perceiving), remembering and forgetting, and reproducing what was observed, which on the other hand is directly conditioned by the tactics of questioning to obtain a true statement. Apart from criminalistic tactics, forensic psychology also deals with this issue.

Signals, as carriers of criminal information, arise when a crime is committed, exist in the outside world, and contain information about both the crime and the perpetrator. Crime, as a real phenomenon that surrounds us, is not in a static state, but in rapid and constant disintegration and disorientation. From the moment when the signals of the committed crime have arisen, they begin to change, transform, and disappear, regardless of whether they are personal or material carriers of information. Psychic carriers of information, that is, memories fade and change over time. Because of this, it is necessary to take criminal measures following the principle of speed and surprise, to successfully and promptly discover and fix criminal information, because only with such action can their loss and destruction be prevented[2].

The information obtained by questioning the victim of the crime, the witness, the perpetrator, or the defendant in a situation given by law, represents a solid basis for discovering and proving the crime. Even though we are talking about the hearing of witnesses, the victim or the perpetrator, the general criminal rules that are implemented in the investigative procedure must be respected. We must mention that no precisely defined template should be used by operatives in the investigative procedure. This finding is supported by the arguments that criminal acts are grouped into several subgroups, the perpetrators of them have different character traits intellectual power, and different interests.

During the hearing of the mentioned group of persons, we meet two parties, an examiner (an authorized official) and a respondent who can appear as a suspect, witness, and victim in the pretrial procedure.

In this process of examination, an interaction is established between the participants (the respondent and the subject), which is verbal, i.e. primary, on which the secondary part is added, which is the psychosomatic behavior of the respondent (nervous behavior,

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[1] N. Rot, *Opšta psihologija [General psychology]*, Beograd, 1974, p. 115.
[2] V. Pivovarov, *Istrazhna Kriminalistika [Criminal Investigation]*, Skopje, 2017, p. 4.

dry throat while giving answers, trembling of the body and voice, wandering gaze, redness of the face etc.), which allows the examiner to build the most fruitful examination tactics[3].

II. Legal basis for examination of witnesses in pretrial procedure

Although the purpose of the existing Law on Criminal Procedure is primarily to present all the evidence immediately at the adversarial and public hearing, it must also provide exceptions to the direct presentation of the evidence. Depending on the legal situation in which the person suspected of committing the crime is, or if an accusation has been brought against him, the examination of the suspect is carried out by the criminal investigator in the pretrial procedure.

According to the LCP, a witness (testis) is any natural person, a person who is obliged in the criminal procedure to present his sensory observations about all the facts that are the subject of the proof and are of importance for the criminal event. The obligation to testify arises with the decision of the court and not with the proposal of one of the parties in the procedure.

The statement given by the witness is called testimony, by which the witness conveys his immediate observations about the facts of the past that he knew (perceived), with the help of the senses of touch (for blind people), smell, hearing, and sight, which relate to on a certain criminal event. A witness statement is a statement made by a person other than the accused, given to the authority that conducts the criminal proceedings, the same to note a fact from the past, a fact that is important for the specific case and to prove that fact[4].

All those persons who are supposed to know (personal or transmitted by another person) and who relate to the crime (perpetrator, circumstances for preparation, execution, and concealment of the same) can be called witnesses. The injured party, the injured party as plaintiff, and the private plaintiff, also according to Art. 217 paragraph 2, may be heard as a witness. Even in certain situations, the other persons participating in the procedure, such as the prosecutor, the judge, and the lay judge, may be questioned as witnesses, provided that after giving their testimony as witnesses, they are exempted from further proceedings. Age, gender, social status, and business ability of persons cannot be an obstacle for them to be called to testify about a certain criminal event[5].

The duty to testify is a legally constituted obligation of all citizens, both domestic and foreign, residing in the territory of the Republic of Macedonia unless they are exempted from the obligation to testify by special legal provisions. The obligation to testify covers the following elements: the duty of the witness to appear on the summons of the court and to give his testimony.

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[3] Ž. Aleksić, *Kriminalistika [Criminalistics].* Beograd, 1982 p. 307.

[4] T. Markovikj, *Savremena tehnika istrazhivanja krivichnih dela [Modern techniques of criminal investigation*], Zagreb, 1977.

[5] Z. Milovanović, *Starosna doba svedoka kao elemenat za ocenu dokazne vrednosti prepoznavanja u krivičnom postupku. Anali Pravnog fakulteta u Beogradu [The age of the witness as an element for evaluating the probative value of recognition in criminal proceedings. Annals of the Faculty of Law in Belgrade],* 1986, pp. 34 (1-3).

During the pretrial procedure (pre-investigation and investigation), the judicial police and the public prosecutor are authorized to summon persons. According to Article 43 of the Law on Police and Article 12 of the rulebook on the way of performing police work, within the framework of police investigations, the judicial police, assuming that a certain person can give notice of facts that are important for a certain criminal event, summons the same with a summons.

The police are authorized in writing with an invitation to summon citizens to give the necessary statements necessary for the performance of police work. The written summons contains the name and surname of the person being summoned, title, place, and address of the headquarters of the organizational unit of the Police where the person is summoned, reasons for the summons, place and time of the summons, as well as instruction on the right to a defense attorney in the police procedure, as well as the consequences if he does not respond to the invitation. The subpoenaed person can be forcibly brought only by a court order and only when he refuses to respond to a duly delivered summons in which he was warned of the possibility of forced delivery and when he does not justify his non-appearance.

The person who responds to the summons or was forcibly brought, and refused to give a statement, cannot be summoned again for the same reasons. The person who is summoned or forcibly brought is instructed about the rights from Article 34 of this law, as well as about the fact that he is not deprived of his liberty and that he can leave after giving or refusing to give a statement. For the invitation and conversation, the police officer allows the invited person to make the statement by hand in a form previously prescribed by the Minister of the Interior or, if the official enters the statement in the form, reads it out loud and finally the respondent signs it. Minors are invited by submitting a written invitation to their parents or guardians.

The Law on criminal procedure obliges the justice police, as soon as it assesses that the citizen called to give a statement can come forward as a suspect, to immediately notify the public prosecutor[6].

The witness is obliged to give a statement and speak only the truth without concealing the facts known to him, and if he gives a false statement, he commits a crime – perjury. A witness is not required to testify to certain questions only if the answers given would cause embarrassment or material damage to him or a member of his family.

The accused as a witness has the legal opportunity to defend himself by remaining silent. Only in exceptional situations, the first accused may appear as a witness when his capacity as an accused ceases or when the accused has been convicted by a final court judgment in a case in which several co-perpetrators still have the capacity of an accused. The accused may, of course, voluntarily waive any of the rights, but his examination cannot begin unless the statement that he waives any of the rights is recorded and signed by him. The accused cannot waive the right to counsel if the defense is mandatory.

At the same time, the Criminal Procedure Code provides the possibility of recording the conversations of the suspect. Namely, paragraph 1 of Art. 207 stipulates that the examination of the accused by the public prosecutor or in his presence can be recorded

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[6] Criminal Procedure Law of the Republic of North Macedonia, Official Gazette no. 150 from 18 November 2010, Article 279.

with a video-audio recording device. With this, they will be able to be used as evidence in the proceedings for the first time[7].

The European Court of Human Rights particularly takes into account whether the defense has been granted the right to question the witness during the investigation or at a later stage of the proceedings[8]. When the accused did not have the opportunity to ask questions of the witness, in the investigation or at the main trial, and the verdict is based exclusively or on the decisive degree of the testimony of the witness, then violated the rights of the defense to a fair trial, guaranteed by the provisions of Article 6 paragraph 1 and 3 (d) of the European Convention for the Protection of Human Rights and Fundamental Freedoms[9].

The testimony of a witness given before the main trial cannot, as a rule, be used as evidence at the main trial, it is necessary for the party or the defense to prove to the court in advance that they have made efforts to ensure attendance. to the witness. and that despite that he remained unavailable

A certain group of persons, according to the Criminal Procedure Code, shall not be witnesses, namely:

– a person who would violate the duty of keeping a state or a military secret if he or she gives a statement, unless the competent entity relieves him or her of that duty;
– the defense counsel of the defendant on anything confided by the defendant in him or her as counsel, unless the defendant himself or herself demands it;
– a person who would violate the duty of keeping a business secret if he or she gives a statement, regarding anything learned during the practicing of his or her profession (religious confessor, attorney and physician), unless the person has been relieved of such a duty by a separate regulation or by a written statement, i.e. or by a verbal statement given on record by the person for whose benefit the keeping of the secret was instituted, i.e. by such a statement by his or her legal successor;
– a juvenile person who, bearing mind his or her age and mental development is not capable of understanding the significance of his or her right not to testify, unless the defendant himself or herself demands it; and
– any person who is not capable of testifying at all, due to his or her mental or physical illness or age[10].

Also, the Criminal Procedure Law provides for a group of persons who are excused from the duty to testify, that is, the testimony depends on their will. This group of persons consists of:

– the marital and illegitimate partner of the defendant;
– any blood relatives of the defendant in a direct line, any relatives in an indirect line up to the third degree, as well as in-law relatives up to the second degree; and
– an adopted child or a foster parent of the defendant[11].

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[7] G. Kalajdiev, *Kon predlog zakon za izmeni i dopolnuvanje na zakonot za policija, Makedonska revizja za kazneno pravo i kriminoloogija [On the draft law for amendments and additions to the Law on Police, Macedonian Review of Criminal Law and Criminology]* no.1-2, 2011/2012.

[8] *Ludi v. Switzerland*, 12433/86 of June 15, 1992.

[9] *A.G. v. Sweden,* 1315/09, 10 January 2012.

[10] Criminal Procedure Law of the Republic of North Macedonia, Article 213.

[11] Criminal Procedure Law of the Republic of North Macedonia, Article 214.