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CONFLICT OF INTEREST IN THE PROTECTION OF WITNESS IDENTITY WITH THE RIGHT OF THE ACCUSED TO ADVERSARIAL EXAMINATION AND THE APPLICABILITY A TESTIMONY AS AN EVIDENCE IN THE LEGAL ORDER OF THE SLOVAK REPUBLIC*

Introduction

European Convention on Human Rights¹ in Article 6(3)(a)(d) states the following: “Everyone charged with a criminal offense 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.”

The right to a defence counsel is perhaps one of the most well-known fundamental principle in criminal proceedings which has to be respected. The expression of this principle can be found in provision section 2(9) Code of Criminal Procedural of the Slovak Republic² which declares, that everyone, against whom there is a criminal prosecution has the right to a defence counsel. According to Constitutional Court of the Slovak Republic the expression of this principle and its application in criminal proceedings shows not only the level of democracy in country but also the interest of state for searching the true. It is instrument which establishes equity between

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* This work was supported by Slovak Research and Development Agency under the Contract No. APVV-190050.

¹ European Treaty Series (ETS), No. 5 [hereinafter: ECHR].

² Law no. 301/2005 Coll. [hereinafter: CCP].



public interests.³ Its immanent part is a guarantee of the adversarial principle of witness examination, which in itself offers a wide range of ways to defend itself in criminal proceedings, as effectively as possible mainly by effort to deconstruct the credibility of witness through asking questions. However, with the gradually evolving legal order, we are witnesses of ascending conflicts between individual rights of the accused on one hand and the interests of law enforcement authorities on the other one. Through the decisions of European Court of Human Rights (ECtHR) we focus on above-mentioned right of the accused to the adversarial principle in examination of witness whose identity must remain classified and on the applicability a testimony of this witness as the evidence in criminal proceeding of the Slovak Republic.

1. A brief introduction to the problems of adversarial principle of witness examination and secrecy of witness identity

1.1. The right of the accused to an adversarial examination of a witness

Adversarial principle, as one of the legal guarantees of the accused in criminal proceedings, became more widely known in Europe from the end of the 19th century, with the adoption of a French law called *loi Constans* [Mulák 2019]. By adoption of CCP, the adversarial elements of criminal proceedings expanding and the accused right to defence counsel has been substantially strengthened.

An explicit definition of the term adversariality, which has its basis in the Latin word *contradicere* – the mutual contradiction of the parties, which cannot be found in in our legal system unnecessarily.⁴

In general, it is an immanent part of the accused's right to defence counsel, which is enforced by the specific right of the accused lawyer, whether to study the file or to ask questions of witnesses by examination. According to the Constitutional Court of Slovak Republic is adversarial principle connected with "equality of weapons" as one aspect of the right

³ Decision of Supreme Court of Slovak Republic of 24 June 2015, ref. no. 1 Tdo 27/2015.

⁴ <https://www.etymonline.com/> [accessed: 01.01.2022]

to a fair trial that all parties have a real opportunity to apply their procedural rights to put forward arguments and respond to the “counter-arguments” of the other party.⁵

The elements of adversarial principle in criminal proceedings are expressed in different legal sources with different legal force. These are sources not only of national but also of European and international levels. More specifically, it is necessary to point out the provision of para. 208, section 1; para. 213, section 1 CCP, but also to articles forming part of legal acts of higher legal force – Article 48, para. 2 of the Constitution of the Slovak Republic,⁶ Article 6, para. 3(d) ECHR or Article 14, para. 3(e) the International Covenant on Civil and Political Rights.⁷

Following broad frame legislation and protection, it is not surprise that big emphasis is placed on its compliance. Respecting of adversarial principle is also the decisive attribute of the efficacy of an evidence in criminal proceedings. A typical example of a non-adversarial examination, so the examination of witnesses at the stage after the accusation for the absence of the accused or his lawyer without validation of this deficiency at the main hearing, which can be qualified as a procedural error in criminal proceedings with consequent an effect on the applicability of such a testimony as ineffective evidence in court proceedings.

However, the legal guarantee of adversarial principle by examination of witness is subjected to a relatively large number of restrictions and exceptions. In this context, it is possible to point out the area of examination of underage, which is therefore becoming an increasingly discussed legal topic. The question states how to proceed in situation when the accused has the right to an adversarial examination of a witness, but the identity of witness must remain classified. Can adversarial principle be guaranteed to the accused even in this case? How can the accused deconstruct credibility of witness whose identity must remain classified?

⁵ Decision of Constitutional Court of Slovak Republic of 7 June 2016, ref. no. III. ÚS 32/2015.

⁶ Constitution of the Slovak Republic, Act. no. 460/1992 Coll. as amended [hereinafter: Constitution].

⁷ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976.

1.2. Institute of secrecy of witness identity

Witness can be define as a physical person who has been summoned by a law enforcement authorities or a court to testify as a witness about the facts relevant for the criminal proceedings which he or she perceived with his or her senses. Relevant facts for criminal proceedings consist of information about the crime, about the perpetrator, but also about other circumstances important for criminal proceedings. In this context, the law does not explicitly mention witness requirements, so minors or persons with physical or mental disabilities may also be witnesses [Čentés 2019, 385]. Nevertheless, in the event of a suspicion that a witness has a reduced ability to perceive or testify, it is possible to examine his or her mental state on the basis of an expert from the psychiatry department on the basis of a court order or in the preparatory proceedings [Ivor, Polák, and Záhora 2017, 442].

The necessity to establish the institute of a witness whose identity must remain classified can be considered especially in connection with the expansion of organized crime in 1990. This was due to the announcement of amnesties by newly elected President Václav Havel, resulting in the release of several thousand prisoners and more than tripling crime. This period can be characterized as a period in which the unwritten rule on confidentiality applied in cases of organized crime, mainly due to people's concern for their health or life.

Because of many witnesses who testified in these cases were under danger of their life or health, the legislators introduced some form of protection for those who testify as witnesses in criminal proceedings. The result of this effort was the adoption of Act no. 247/1994 Coll. as amended the Code of Criminal Procedure, the content of which was primarily to regulate the issue of witness secrecy, the position of agents or the process of examination of secret witnesses. After, in four years later the Act no. 256/1998 Coll. about witness protection was adopted. Historically, for the first time in Slovak Republic, the institute of secret witness identity was used in the context of organized crime at the beginning of the 21st century in the trial of Mikuláš Černák.

There is no doubt that the testimony of a witness is given the strongest probative force in many cases. It should be noted, that this probative force has decreased significantly because of secret identity of witness.

1.2.1. Adequate reason for secret identity of witness

Para. 136 CCP states the following: “If there is a reasonable concern that the witness’s identity, residence or whereabouts endanger his or her life, health, physical integrity or if such a danger threatens a person close to him or her, the witness may be allowed not to state his or her personal data.”

On the basis of the above, it can be concluded that the identity of witness can be classified only if there is a reasonable threat or danger to the life, health, physical integrity of such a witness or persons close to him. It must not be an abstract, unsubstantiated concern, what emphasized also the international organization of the Council of Europe in its recommendation about intimidation of witnesses and the rights of the defence.⁸

Legislation of secrecy of a witness’s identity similarly applies to the legal status of the person of the agent, who the prosecutor “may hear in the preparatory proceedings with the appropriate application of the provisions of § 134 sec. 1 so that his identity cannot be revealed; the agent may exceptionally be heard in court only if the provisions of § 134 sec. 1, § 136 and § 262, so that his identity cannot be revealed” (para. 117, section 11 CCP).

About the necessity to classified identity of witness can we sometimes speak also with connection to person who is in custody and testifies as a witness. They occur are mainly in the cases of organized crime.

1.2.2. The issue of the credibility of witness whose identity must remain classified from the point of view of the accused

Assessing the credibility of a witness whose identity is secret is a relatively common issue of examinations. Problem is that the accused cannot

⁸ Council of Europe, Committee of Ministers, Recommendation No. R (97) 13 to Member States Concerning Intimidation of Witnesses and the Rights of the Defence [hereinafter: Recommendation], <https://polis.osce.org/council-europe-committee-ministers-recommendation-no-r97-13-member-states-concerning-intimidation> [accessed: 01.01.2022].

asses the credibility of the person who testifies, because of secret identity, as well as other information related to the identification of the person of the witness is confidential. The following are considered to be indicators of the witness's credibility: contradiction, consistency and logic of the statement, significant changes in behaviour, manifestations of uncertainty or giving of unnecessary details [Kubik 2012, 159-70].

Currently a testimony of such a witness may be characterized by a certain inconsistency, given that a witness cannot testify about circumstances which could lead to the disclosure of identity. There is also a very limited attribute of observing changes in behavioural manifestations, such as increased sweating, vocal cord tremor or nervousness, as the statement is made via a videoconferencing device, which is subjected to the person's voice or appearance, just to protect him or her. A special case of the issue of the credibility of a witness is the situation where the witness whose identity is classified is also a convicted person who is in custody and whose conviction itself constitutes a partial breach of credibility.

In these cases, a certain level of protection of the accused is ensured only through a possible objection concerning the insufficient verification of the credibility of the classified witness. The issue of the restriction of the rights of the defence counsel in connection with the questioning of the credibility of secret witnesses was also outlined by the ECtHR in the case of *Kostovski v. The Netherlands*.⁹ In this case ECtHR stated that in the situation when accused doesn't know the identity of witnesses who are examined, it is difficult to prove credibility of their testimonies, which can be mendacious.

1.2.3. Method of the examination of a witness whose identity is confidential

Provision para. 136, section 3 CCP further provides: "Before questioning a witness whose identity is to be kept confidential, the law enforcement authority and the court shall, if necessary, take measures to protect the witness, such as changing the witness's appearance and voice, or examine him using technical facilities, including videoconferencing."

⁹ Judgment of the European Court of Human Rights of 20 November 1989, no. 11454/85.

The expansion of technologies on the global market and their subsequent application also affects the criminal law sector, specifically the area of criminology or selected methods of examination, which was reflected in the number of amendments we encounter, an example is 2004, when it was signed Agreement between the European Union and the United States on standardizing the use of videoconferencing in judicial proceedings.¹⁰

It should be noted that this agreement also emphasized the maintenance of at least the minimum requirements for the adversarial interrogation of witnesses whose identity is confidential. In connection with it, an amendment to CCP was adopted, which entered into force on 1 August 2019 and introduced the term videoconferencing facility together with the amendment of para. 61b, and thus the method of conducting the examination of a witness whose identity is secret through such a facility.

In application practice an examination of these witnesses looks like this: a person who can be referred to as a witness whose identity is confidential is examined by the law enforcement authorities through a camera system, while the accused or his lawyer is in a different room in which the camera recording is projected in such a way that the identity of this person cannot be revealed. Adversarial principle, the accused is guaranteed by the right to ask questions to a this witness in most cases through a microphone. However, it must be emphasized that the secret identity of a witness makes it very difficult to adequately applies the accused's right to a defence counsel.

In this case, the accused do not know the identity of the person of the witnesses, and the answers to the questions are not sufficient as well, given that they may lack detailed details that could lead to the disclosure of the witness's identity. In such an examination, the defence has only a minimal presumption that its witness's credibility will be rebutted.¹¹

However, this restriction does not affect the prosecutor, which is the right to a fair trial and equality of arms, the so-called "fair trial" considerably out of balance. In the event of such a serious interference with

¹⁰ <https://www.epravo.sk/top/clanky/novelizacia-trestnych-kodexov-a-modernizacia-dokazovania-v-trestnom-procese-prostrednictvom-videokonferencii-4560.html> [accessed: 01.01.2022].

¹¹ Judgment of the European Court of Human Rights of 20 November 1989, no. 11454/85.

the rights of the accused, its necessity must therefore be proved and, if possible, the purpose can also be achieved by less restrictive measure – principle of subsidiarity.¹²

2. Secret identity of witness and the strength of its testimony as an evidence in criminal proceedings according to requirements of the European Court of Human Rights

ECtHR has outlined the following procedure as evidence of the testimony of a secret witness, which it has confirmed in several decisions. There are three cumulative conditions:

- 1) *Absolute necessity of confidential identity of witness*: this condition states that there must be a reasonable conclusion that the witness's anonymity is necessary and justified. As mentioned above, a legitimate concern for life, witness health, or the existence of a danger to a person close to him or her;
- 2) *Respect of adversarial principle although not in the absolute sense of the word*: in this context, ECtHR emphasized that the right of the accused to adversarial examination of witness must be respected, but not absolute. Especially in the case of a witness whose identity must be classified, which creates a kind of imaginary limit to the application of the adversarial interrogation.¹³ In such cases, therefore, there is a conflict of two interests: the interest in protection of witness (condition 1) and the interest of the accused to the right to a defence counsel (condition 2). In such cases, States have an obligation to ensure that criminal proceedings are conducted in such a way that possible conflicts of interest, namely witness protection and the rights of the defence, are balanced. In other words, counterbalancing methods must be taken;¹⁴

¹² Judgment of the European Court of Human Rights of 23 April 1997, no. 21427/93, 21363/93, *Van Mechelen and Others v. The Netherlands*.

¹³ Judgment of the European Court of Human Rights of 16 February 2000, no 2052/95, *Jasper v. the United Kingdom*; Judgment of the European Court of Human Rights of 16 February 2000, no. 28901/95, *Rowe and Davis v. United Kingdom*.

¹⁴ Judgment of the European Court of Human Rights of 26 March 1996, no. 20524/92, *Doorson v. the Netherlands*.

- 3) *The court's caution in assessing the evidence thus obtained and the existence of supporting evidence* whose strength outweighs the probative strength of the testimony of a witness whose identity is secret: this condition states that when there are many supporting evidence as documentary evidence, testimony of witnesses whose identity is known, etc., the strength of this evidence, which may seem controversial is less (in this case, the testimony of a witness whose identity is confidential).¹⁵ ECtHR has repeatedly emphasized that the examination of a secret witness must not be placed in the position of decisive evidence.¹⁶ It is necessary to consider such evidence as decisive evidence, without which is not enough to decide about guiltiness [Šamko 2013]. Only if all the conditions described are met can the testimony of a secret witness be used as one of the pieces of evidence.

However, it must be emphasized that the procedure thus defined is ground-breaking not only in the question of the interrogation of a secret witness as evidence, but also in the limitation of the legal guarantee for adversarial principle *in aliis verbis* the official exclusion of its absoluteness.

3. Institute of secret identity of witness in judgments of Constitutional Court of Slovak Republic

The issue of right of accused to adversarial interrogation of witness belongs to one of the most significant topic which is included also in decisions of Constitutional Court of the Slovak Republic and in this respect there are many times in which are fundamental rights of the accused violated.

3.1. Testimony of secret witness as a decisive evidence in criminal proceedings

In selected case was person convicted for illicit production of narcotic and psychotropic substances, poisons or precursors, their possession

¹⁵ Judgment of the European Court of Human Rights of 15 December 2011, no. 26766/05 and 22228/06, *Al-Khawaja and Tahery v. United Kingdom*.

¹⁶ Judgment of the European Court of Human Rights of 27 October 2004, no. 39647/98, 40461/98, *Edwards and Lewis v. United Kingdom*.

and trafficking in them with sentence of 10 year's imprisonment.¹⁷ The defendant filed an appeal against this judgment, which, was rejected by the Regional Court of Nitra. He subsequently lodged an appeal against this resolution of the Regional Court, which was also lodged by the Supreme Court of the Slovak Republic rejected. In both cases, he objected to the violation of the Constitution and the Convention guaranteed rights, which he had to conclude on the grounds that his finding of guilt as part of the qualified facts was based solely on the testimony of secret witnesses, while also emphasizing that without the exclusive consideration of the testimony of these witnesses, his conduct could be qualified on the basis of a fundamentally milder penalty. Than the convicted further objected to the unfoundedness of the witness's secrecy and their credibility, as they were persons who were also the accused of drug crime and testified as secret witnesses and on the basis of their testimony he was to committed an act on several persons with a more severe punishment.¹⁸

Based on the unsuccessful previous attempts the convicted, represented by his lawyer, lodged a complaint with the Constitutional Court of the Slovak Republic. The Constitutional Court discussed the complaint and accepted it in the part of the objection that the complainant was found guilty exclusively on the basis of the testimony of secret witnesses and rejected it in the remaining part.

The Constitutional Court agreed with the statement of the Regional Court of Nitra in the matter of filing an objection to the justification of the secrecy of witnesses. He stated that due to the nature of the crime, the court's procedural procedure was legal and regular. However, the objection concerning the testimony of secret witnesses as main evidence on the basis of which the convict had to commit a crime on several persons (specific qualification feature) wasn't responded.

In this case, the constitutional court reached the same conclusion as ECtHR if the testimonies of secret witnesses are the decisive evidence of the guilt of the accused, this evidence is not sufficient to reach a conclusion on the guilt of the accused.

¹⁷ Decision of the Constitutional Court of Slovak Republic of 22 September 2011, ref. no. IV.CC 268/2011.

¹⁸ According to provision para. 127, section 12 CCP we mean at least three people.

Based on the content of the conviction of the district court and also the resolutions of the regional court, according to the Constitutional Court, the following can be asserted: with regard to the crime (basic facts), the evidence was supported not only by the above statements, but also by telephone transcripts, customs records, customs records of the crime scene with photo documentation, expert opinion of Institute of Forensic Science in Bratislava, on the basis of which the court said that the convicted person held heroin.

From the reasoning of the judgment of the district court according to the constitutional court that the applicant had sold heroin to at least four consumers, which the district court had proved thanks to the testimony of three secret witnesses and other witness. Secret witnesses testified that the applicant had sold heroin to other persons, but that they had each directly identified themselves. Each of these witnesses therefore spoke of the sale of heroin in relation to his own person. It follows from the above that without taking into account the testimony of secret witnesses, it would not be possible to conclude whether the defendant committed a crime on several persons, and therefore his criminal activity could not be assessed in the light of higher penalty. On the basis of these facts, the constitutional court stated that fundamental rights of defendant in connection with the objection that he was found guilty solely on the basis of the testimony of secret witnesses, by the procedure of the Regional Court in Nitra were violated.

Based on the above, it can be argued that the Constitutional Court of the Slovak Republic ruled on the violation of the third condition in connection with the position of the testimony of a secret witness as a decisive and single evidence, which can be qualified as a material violation of the right to defence counsel. With regard to the case law of ECtHR, it is possible to identify with the judgment of the Constitutional Court of the Slovak Republic. At the same time, the present finding can be perceived as one of the fundamental decisions concerning the assessment of the question of the need to respect the right to the right to be heard in the legal order of the Slovak Republic.

3.2. Non/existence of a testimony of a secret witness

Despite the fact that Article 6 ECHR declares the need to respect the right of the accused to adversarial examination of witness, it must be interpreted in two ways in terms of the application of the law. On one hand, it is a right to examine or have witnesses examined against him, and on the other hand, it is also a right to have witnesses summoned and examined in his favour. In the light of the above, we have stated that the application of the right of the accused to adversarial examination is, in the context of the secrecy of a witness's identity, considerably limited but not entirely excluded. For the purpose of a potential violation of Article 6 ECHR, a distinction must be made between the rejection of a defence proposal for the examination of a witness and the conviction of an accused person based solely on the testimony of a witness whose defence has not been able to examine. While the first circumstance doesn't mean conflict with ECHR, the second one is mostly the reason for the conclusion about violation rights of the accused, which is all the more important in the case of a witness whose identity needs to be kept secret.¹⁹

In the next selected case, the complainant claimed violation of rights after previous unsuccessful attempts. One of the reasons should have been the fact that the applicant was not given access to the report of the examination of the secret witness and was not allowed to conduct an adversarial examination of this witness.²⁰

Based on the facts, the relevant prosecutor, in justifying the complainant's custody, pointed out, *inter alia*, the need to examine a secret witness, stating that the process of secrecy of the witness had just taken place. However, in reality the report of the examination of that witness are not in the criminal record and at the same time it is not clear whether the examination in question took place in fact. In this context, the Constitutional Court of the Slovak Republic states that it remains questionable whether the secret witness was examined, if so, what was the scope of his or her testimony, in the negative case why it was not realized or what the prosecutor expected from the interrogation in question. In that regard, the court

¹⁹ Decision of the Constitutional Court of Slovak Republic of 26 April 2018, ref. no II. ÚS 54/2018.

²⁰ *Ibid.*

considered that it was not possible to determine objectively from the circumstances of the case whether the examination of a witness was necessary for a decision in the case, due to the complete absence of the basic information necessary for that decision. For this reason, the court decided about violation of Article 46, para. 1 of the Constitution, and Article 6, para. 1 ECHR.²¹

Conclusion

One of the important features of criminal proceedings is its conduct in accordance with the adversarial principle, but whose explicit definition we don't find in CCP. However, its features can be found in pieces of several statutes of legislation of different legal force. Whether the Constitution, ECHR, the International Covenant on Civil and Political Rights or even CCP. Even though it is necessary to maintain it throughout the criminal proceedings, more can be found at the pre-trial stage after the accusation, in relation to the accused person. The accused, or his advocate is afforded by CCP the right to adversarial conduct of the interrogation in relation to the interrogation of witnesses who may or may not testify in relation to that person. Under this right, we can imagine, in particular, the right to take part in such interrogation and to argue out all the facts which the witness claims in his testimony, including the possibility to ask the witness questions with the intention of refuting his credibility. However, the problem arises when, as a result of the witness's protection, his or her identity is kept secret and the right of the accused's to an adversarial interrogation is severely restricted. The accused are at a considerable disadvantage compared to the prosecutor's side, especially in the sense that the secrecy of the identity of the witness relates only to the accused person or the advocate and not to the counterpart. Thus, the known 'fair play' rule is not maintained, and the accused person is not given the opportunity to effectively defend himself or herself in criminal proceedings by attempting to refute the witness's credibility, in particular by asking questions, because he or she doesn't know his identity. With increasing crime, the risk of a conflict between the right of accused to adversarial

²¹ Ibid.

interrogation and the interest in secrecy of the witness's identity because of fear about his life and health is growing. But how can we deal with this conflict so that both rights will be well balanced? The answer to this question is so fundamental that about its destiny had to be decided by ECtHR by using counterbalancing methods for balanced the rights of the accused and the witness and introduced a procedure by which the law enforcement authorities, as well as the courts, should be guided in similar situations.

The aim of this article was to describe this procedure and in particular to define the conditions that need to be maintained for the assessment of the situation and to demonstrate this procedure in a specific judgment of the Constitutional Court of Slovak Republic. Although the adversarial principle is considered to be one of the immanent and fundamental principles of criminal proceedings, it can be observed that the institution of secrecy of witness's identity has limited its absoluteness. In this context, I would like to express the opinion that in the analysed area the legal regulation of this principle in the legal order of the Slovak Republic is sufficient and reflects all requirements of the current continental criminal process, respecting the case law of ECtHR and ECHR. This fact can also be observed with regard to the case law of the Constitutional Court of the Slovak Republic, which also took into account the requirements for its application in the cases we selected. In this context, I would only like to express the expectation that it will continue in the set standard.

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Conflict of Interest in the Protection of Witness Identity with the Right of the Accused to Adversarial Examination and the Applicability a Testimony as an Evidence in the Legal Order of the Slovak Republic

Abstract

The adversarial principle can be considered as one of the indispensable principles of not only criminal proceedings but also proceedings integrated in other branches of national law of the Slovak Republic. So it is appropriate to recognize its important position and emphasize that its omission may have far-reaching consequences. Its importance underline also wide range sources of law. In practice, focusing primarily on criminal law, we encounter with its limitations, particularly from the perspective of the accused person in the ongoing criminal proceedings, especially by examination of witness whose identity must remain classified. The main aim of the article is to point out how the right of an accused person on adversarial examination of witness whose identity must remain classified can be guaranteed through the conditions which declares European Court of Human rights and which are required for the applicability a testimony of this witness as an evidence in criminal proceedings.

Keywords: adversarial principle, witness, examination, evidence, European Court of Human Rights

Konflikt interesów w ochronie tożsamości świadka z prawem oskarżonego do przesłuchania kontrydktoryjnego i stosowaniem zeznań jako dowodu w porządku prawnym Republiki Słowackiej

Abstrakt

Zasadę kontrydktoryjności można uznać za jedną z niezbędnych zasad nie tylko postępowania karnego, ale także postępowania zintegrowanego z innymi gałęziami prawa krajowego Republiki Słowackiej. Właściwe jest więc uznanie jej ważnej pozycji i podkreślenie, że jej pominięcie może mieć daleko idące konsekwencje. Jej znaczenie podkreślają także różnorodne źródła prawa. W praktyce, skupiając się przede wszystkim na prawie karnym, spotykamy się z jej ograniczeniami, zwłaszcza z perspektywy oskarżonego w toczącym się postępowaniu karnym, szczególnie przy przesłuchaniu świadka, którego tożsamość musi pozostać niejawna. Głównym celem artykułu jest wskazanie, w jaki sposób prawo oskarżonego do kontrydktoryjnego przesłuchania świadka, którego tożsamość musi pozostać niejawna, może być zagwarantowane przez warunki, które ogłasza Europejski Trybunał Praw Człowieka i które są wymagane do wykorzystania zeznań świadka jako dowodu w postępowaniu karnym.

Słowa kluczowe: zasada kontradyktoryjności, świadek, przesłuchanie, dowód, Europejski Trybunał Praw Człowieka

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