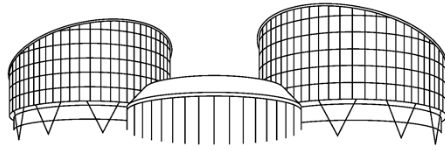

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF IGNAT v. ROMANIA

(Application no. 17325/16)

JUDGMENT

Art 6 § 1 (criminal) • Fair hearing • Overall fairness of proceedings overturning applicant's acquittal without directly hearing evidence or reviewing testimony of defence witnesses • Disagreement between first- and final-instance courts concerning manner of assessing documentary evidence, rather than reliability and credibility of defence witnesses • Applicant given opportunity to put forward all his defence arguments

STRASBOURG

9 November 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Ignat v. Romania,

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

Yonko Grozev, *President,*
Faris Vehabović,
Iulia Antoanella Motoc,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Jolien Schukking,
Ana Maria Guerra Martins, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 17325/16) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Radu-Florin Ignat ("the applicant"), on 22 March 2016;

the decision to give notice of the application to the Romanian Government ("the Government");

the observations by the Government;

Having deliberated in private on 19 October 2021,

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

INTRODUCTION

1. The present case raises issues under Article 6 of the Convention and concerns the alleged unfairness of the criminal proceedings opened against the applicant in so far as the appellate court overturned his acquittal on the basis of the same evidence which lead the first-instance court to a verdict favourable to the accused, and without a direct assessment of the testimonial evidence on which the appellate court relied.

THE FACTS

2. The applicant was born in 1985 and is detained in Turda. He was granted leave to represent himself before the Court, in accordance with Rule36 §§ 2 and 4 of the Rules of Court.

3. The Government were represented by their Agent, most recently Ms O.-F. Ezer, of the Ministry of Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. CRIMINAL PROCEEDINGS INITIATED AGAINST THE APPLICANT

5. On 14 March 2014 G.Sz. (“the complainant” (*denunţător*)) lodged a complaint with the National Anticorruption Department, accusing G.S. of influence peddling. G.S. had been detained in Cluj Police Detention Facility together with G.Sz’s son, before the latter’s transfer to Gherla Prison where he had to serve a prison sentence, having been convicted of drug trafficking.

6. The complainant stated that on several occasions, starting in 2012, G.S. had promised her that in exchange for various amounts of money, he would speak to a certain “F.” (later identified as S.V.S.), who was allegedly working in Gherla Prison, and ask him to favourably influence the allocation of her son’s work placements and courses so as to facilitate his life in prison and an early release on parole. G.Sz further contended that in August 2012 she had given “F.” 1,800 euros (EUR) in G.S.’s presence. However, the promised outcome was not delivered. At a later date, namely on 12 March 2014, the complainant met G.S. who promised her that he could speak to “F.” again in order to facilitate a transfer of her son from a prison in Satu Mare to Gherla Prison. As G.Sz. had become suspicious, she decided to involve the police (see paragraph 5 above).

7. On 18 March 2014 a criminal investigation into influence peddling was opened in respect of G.S.; the prosecutor asked the court for an authorisation to tape all of the phone communications of G.S. and G.Sz. and to take photographs or video recordings of their relevant meetings, including with other persons.

8. The recording of a meeting which took place on 18 March 2014 revealed that G.S. had told the complainant that F. had been promoted to work in Bucharest, therefore further discussions concerning her son were to be conducted with another person, “C.”, who also worked in Gherla Prison. The following day, “C.” (later identified as F.C.P.) met G.Sz. in a restaurant. In G.S.’s presence, “C.” told the complainant that he had already spoken to “F.” and that what G.Sz. had requested was about to be delivered, in exchange for EUR 1,000. “C.” also mentioned that several other services could be arranged for G.Sz.’s son, such as enrolling him in some learning courses in exchange for 1,500-2,000 Romanian lei (approximately 350-450 EUR), or getting his file ready to ensure he would be released early on parole, in exchange for EUR 5,000. The money was to be paid within a week.

9. On 28 March 2014 G.Sz. met G.S. and told him that her son no longer wanted to be transferred to Gherla Prison and that he did not want to be enrolled in any learning courses, therefore she was not going to give any money to “C.”. G.S. told her that he had already spoken to “F.”, who promised that he would come in person to talk to G.Sz. within two weeks.

10. On 25 April 2014 G.Sz. met "F.", who confirmed that "C." had acted on his behalf and that everything that "C." had promised was still valid. G.Sz. was asked to have the relevant sum of money (a part of the EUR 5,000) ready by 27 April, when "F." would be leaving the town and would no longer be able to meet her.

11. On 27 April 2014 G.Sz. and G.S., who was accompanied by his former wife, E.K., went to an inn ("N.") located between Gherla and Dej, where G.Sz. was expecting to meet with "F.". While the three of them were talking at a table, a stranger (later identified as the applicant) approached them and whispered to G.S. that he had come on behalf of "F.", who had instructed that "it" (possibly the money) had to be given to the father of "F.", who was waiting in the inn's toilets. The stranger then left the inn. G.Sz. refused to give the money as instructed, saying that she would only give the money to "F." in person.

12. On 5 May 2014 G.Sz. met with G.S., who told her that "F." was afraid to come and meet her in person, because the national media was giving a lot of information about several criminal cases which were under investigation concerning influence peddling. G.Sz. was asked to talk further to "C." She requested to be given some time to reflect, considering that the amount of money requested for the services was quite high.

13. The money was never remitted to any of the persons involved, because the perpetrators were criminally charged and placed under investigation.

14. On 11 August 2014, G.S., S.V.S., F.C.P., E.K. and the applicant were indicted and brought before the court.

II. FIRST-INSTANCE COURT PROCEEDINGS

15. Before the first-instance court, S.V.S. and F.C.P. admitted having committed the crimes they were charged with. G.S. did the same, while presenting his own version of facts, in which he argued that neither his former wife E.K. nor the applicant had been aware of the unlawful nature of his discussions with G.Sz., and that therefore they should be exonerated of any guilt.

16. In particular, G.S. argued that he and the applicant had had a plan to go on that day (namely, 27 April 2014) to Mihai Viteazu, a town near Turda (where he and the applicant lived) to buy some second-hand bicycles, which they had wanted to resell for a higher price. G.S. had asked the applicant to stop at the N. inn, where G.S. was with his former wife and with "an aunt", and to claim that he was needed outside or in the toilets (he did not recall exactly), so as to facilitate his early departure from the inn. The applicant did exactly as he was told, without having any idea about the nature of the discussions that G.S. had had with G.Sz.

17. The same version of the facts was presented by the applicant, who said that the only plan he had conceived with G.S. was the one concerning the buying and reselling of bicycles. He indicated two witnesses who could confirm his allegations (see paragraphs 18 and 19 below), asking that they be heard by the court.

18. Witness V.S.U. (the applicant's girlfriend at the relevant time) stated that she had accompanied the applicant on the day of the events in question (see paragraph 11 above); she confirmed that the applicant had gone into an inn close to Gherla, where he had stayed for about three minutes, as he had needed to ask someone there to come with him and G.S. to Mihai Viteazu, where they had to buy some bicycles. The applicant and G.S. had eventually not been able to go to Mihai Viteazu, because the applicant's parents had had some problems and had called G.S. to come and help them.

19. Witness D.G. stated that sometime in March or April 2014, in his presence, G.S., who was visiting him, had called the applicant asking to see him; the latter had arrived shortly afterwards. The two of them had together made a plan to go to a town near Turda to buy some bicycles. At that time they had not arranged a date for that trip.

20. All of the other perpetrators, as well as the complainant, declared that they did not know the applicant.

21. By a judgment of 19 June 2015 the Cluj County Court convicted G.S., S.V.S., F.C.P. and E.K. of influence peddling; it also acquitted the applicant of complicity in influence peddling.

22. The first-instance court relied on the perpetrators' statements before the court, transcriptions of the phone conversations between those perpetrators, the video recordings of some of their meetings, and the statements given by the two witnesses on behalf of the applicant (see paragraphs 18 and 19 above).

23. The first-instance court concluded that in respect of the applicant's criminal participation in the events, the evidence was not sufficient to prove that he had been aware of the unlawful nature of G.S.'s proposals to G.Sz.

24. The court found that even if, according to the transcript of the applicant's conversation with G.S. on 27 April 2014, the latter had mentioned to the applicant that they were about to "hook some money", that reference to money had not necessarily related to influence peddling. That reference could have related to the money they had planned to obtain from reselling the bicycles.

25. In addition, although the transcript of the recording of the meeting at the inn showed that the applicant had said: "I was sent by F.; leave it in the toilets" ("*m-a trimis domnul F., să-i lăsați la baie*"), it was not very clear whether he intended to indicate to G.S. to go to the toilets or to "leave it" in the toilets; in any event, this evidence was not corroborated by any other evidence in the file.

III. APPEAL PROCEEDINGS

26. The prosecutor appealed against the first-instance court's judgment, considering that it had wrongfully acquitted the applicant. He argued that the whole strategy of G.S. was that the involvement of all of the others in his unlawful activity should be well concealed, so that they could not be criminally charged. However, all of the conversations that G.S. had had with the applicant prior to the meeting of 27 April 2014 indicated that the discussions were about obtaining money from the complainant. The applicant's appearance at the inn was staged, as if he were in a drama in which he had to play his part and say his line, and in that sense, it was similar to the other acts of the drama, in which the other perpetrators had played their parts.

27. During an oral hearing of 15 October 2015, the Cluj Court of Appeal heard the applicant, who stated that he maintained all his previous statements and that he had nothing further to add. The other co-defendants did not wish to give any further statements. No further evidence was requested or adduced in the case.

28. In his oral and written submissions filed with the appellate court, the applicant's lawyer reiterated on his behalf that the only plan he had been involved in with G.S. was the one concerning the buying of second-hand bicycles in the town of Mihai Viteazu. That argument was supported by the witnesses' statements made before the first-instance court. Furthermore, the applicant's intervention in the whole sequence of events had consisted of saying a phrase to G.S., a phrase which had not been heard by the complainant and which had not had any impact on her, because she had not handed the money to anyone.

29. Without rehearing any of the witnesses, on 22 October 2015 the appellate court allowed the prosecutor's appeal and convicted the applicant, sentencing him to one year and four months' imprisonment.

30. The appellate court found that even if the first-instance court had correctly established the facts, it had assessed the evidence incorrectly in relation to the applicant's participation in the crime.

31. The court considered that more relevance should have been given to the transcripts of the phone conversations between G.S. and the applicant, which proved that the latter was aware of his involvement in obtaining money from G.Sz., money which was, possibly, to be used to buy second hand bicycles. Between 27 and 30 April 2014, the two had exchanged thirteen phone calls and phone messages, in which they had talked about obtaining money. In one such conversation on 27 April 2014 (see also paragraph 24 above), G.S. had told the applicant that "we are about to hook some money", and the applicant had agreed; the conversation also revealed that the applicant knew that the money was to be obtained in foreign currency, and not in the national currency.

32. The court further noted that the applicant's presence at the N. inn, located around Gherla, could not be justified by his version of the events, having regard to the fact that the town Mihai Viteazu, where the bicycles were allegedly to be bought, was located a long way from Gherla, and these two locations were at opposite directions from Turda (the place of residence of the applicant and G.S.). It followed that the applicant's appearance at the inn had been carried out in full awareness of his participation in the criminal acts.

33. In addition, the applicant's intervention at the inn, consisting of him whispering "leave it in the toilets", without mentioning the word "money" (see also paragraphs 11 and 25 above) had proved that he was aware of what he was doing and aware of the fact that he needed to be cautious so as not to be caught red-handed.

34. Following that meeting at the inn, G.S. had called the applicant and told him that things had not worked out as planned and that they needed to follow their "plan B". This again proved that the applicant was fully aware of G.S.'s plan to obtain money unlawfully from the complainant.

35. The statement given by witness D.G. (see also paragraph 19 above) only showed that sometime in March or April 2014, he had heard G.S. and the applicant talking about buying some bicycles from a town close to Turda.

36. The statement given by V.S.U. (see also paragraph 18 above) showed that after their stop at the N. inn, she and the applicant had not eventually gone to Mihai Viteazu to buy the bicycles; that could prove that because G.S. and the applicant had not obtained the money, they had not been able to proceed with their plan to buy the bicycles.

37. According to the Court of Appeal, in view of all the evidence mentioned above, those witnesses' statements were not sufficient to prove that the applicant was unaware that by his involvement in the incident, he was helping G.S. to unlawfully obtain money from G.Sz., under the pretext that he knew someone at Gherla Prison who was able to facilitate the early release on parole of the complainant's son.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

38. The relevant provisions of the Code of Criminal Procedure, relating mainly to the authority of the appellate courts, as in force at the relevant time, are cited in the case of *Lamatic v. Romania* (no. 55859/15, § 33, 1 December 2020).

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

39. The applicant complained that the criminal proceedings opened against him in respect of the incident of 27 April 2014 (see paragraph 11 above) had been unfair. He relied on Article 6 of the Convention, which, in so far as relevant, reads as follows:

> “1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (d) 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;
>
> ...”

A. Admissibility

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

B. Merits

1. The parties’ submissions

41. The applicant maintained his claim that he had been unfairly convicted on the basis of evidence which had not been heard directly by the court, on the one hand, and on the basis of the same evidence which had determined the first-instance court to acquit him, on the other hand. He relied on the case of *Mischie v. Romania* (no. 50224/07, 16 September 2014).

42. The Government argued that the principles set out by the Court in the case of *Găitănaru v. Romania* (no. 26082/05, 26 June 2012) were not applicable in the present case, for the reasons outlined below.

43. Firstly, the appellate court had decided to convict the applicant on the basis of corroborating evidence, predominantly of an objective nature, such as the video recordings and the transcripts of the phone conversations between G.S. and the applicant, which proved that the latter was aware of G.S.’s unlawful strategy to obtain money from G.Sz. In that respect, the present case was similar to the case of *Ursu v. Romania* ((dec.), no. 21949/04, 4 June 2013).

44. Secondly, the appellate court had not put into question the credibility of the two defence witnesses V.S.U. and D.G. (see paragraphs 18 and 19 above) or the reliability of their statements. In addition, the co-defendants had refused to give any further statements before the court (see paragraph 27 above). In any event, the conviction was based primarily on the recordings and transcripts which had been unjustifiably ignored by the first-instance court.

2. *The Court's assessment*

(a) Scope of the case

45. As to the scope of this case, the Court notes from the outset that the applicant complained, with reference to the general right to a fair hearing under Article 6 § 1 of the Convention, that the appellate court had reversed his acquittal and had re-evaluated all of the evidence without admitting any new evidence and without rehearing oral evidence from the witnesses. As to the latter point, the applicant made no reference to the right to hear witnesses under Article 6 § 3 (d) of the Convention. The Government also centred their arguments on Article 6 § 1. The Court for its part sees no need to examine any part of the complaint under Article 6 § 3 (d) of its own motion, as the application does not concern the right of an accused to examine or have examined witnesses against him or her, but rather the scope of the general right to a "fair hearing" in Article 6 § 1. Thus, the Court considers that the complaint may suitably be dealt with under that provision (see, *mutatis mutandis*, *Júlíus Þór Sigurþórsson v. Iceland*, no. 38797/17, § 31, 16 July 2019).

(b) General principles

46. The Court notes that in the case of *Júlíus Þór Sigurþórsson* (cited above), it set out the principles in its case-law concerning the conviction of a defendant by a final-instance court after he or she had been acquitted by a lower court, without the final-instance court hearing evidence from him or her, or from witnesses directly. The relevant paragraphs of the *Júlíus Þór Sigurþórsson* judgment read as follows:

> "30. The Court reiterates that while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any specific rules on the admissibility of evidence or the way evidence should be assessed, which are therefore primarily matters for regulation by national legislation and the domestic courts (see, among other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, 21 January 1999; *Kashlev v. Estonia*, no. 22574/08, § 40, 26 April 2016; and *Lazu v. the Republic of Moldova*, no. 46182/08, § 34, 5 July 2016). It is not the function of the Court to deal with errors of fact or of law allegedly committed by a domestic court unless and in so far as they may have infringed rights and freedoms protected by the Convention. In the determination of whether the proceedings were fair the Court does not act as a court of fourth instance deciding on whether the evidence had been obtained unlawfully in terms of domestic law, its admissibility or on the guilt of an applicant.

These matters, in line with the principle of subsidiarity, are the province of the domestic courts. It is not appropriate for the Court to rule on whether the available evidence was sufficient for an applicant's conviction and thus to substitute its own assessment of the facts and the evidence for that of the domestic courts. The Court's only concern is to examine whether the proceedings have been conducted fairly and that in a given case they were compatible with the Convention, while also taking into account the specific circumstances, the nature and the complexity of the case (see *Murtazaliyeva v. Russia* [GC], no. 36658/05, § 149, 18 December 2018).

...

35. ... Taking into account what is at stake for the accused, the overall question would be whether the appeal court could, "as a matter of fair trial, properly examine the issues to be determined without a direct assessment of the evidence" given by the accused or the witness in person (see *Botten* [*v. Norway*, 19 February 1996], § 52 [*Reports of Judgments and Decisions* 1996-I]).

36. Moreover, the Court's case-law on this matter, when seen as a whole and in its context, draws a distinction between situations in which an appeal court which reversed an acquittal without itself hearing the oral evidence on which the acquittal was based not only had jurisdiction to examine points of fact as well as points of law but actually proceeded to a fresh evaluation of the facts, and situations in which the appeal court only disagreed with the lower court on the interpretation of the law and/or its application to the established facts, even if it also had jurisdiction in respect of the facts. For example, in the case of *Igual Coll v. Spain* (no. 37496/04, § 36, 10 March 2008) the Court considered that the appeal court had not simply given a different legal interpretation or another application of the law to facts already established at first instance, but had carried out a fresh evaluation of facts beyond purely legal considerations (see also *Spînu v. Romania*, no. 32030/02, §§ 55-59, 29 April 2008; *Andreescu v. Romania*, no. 19452/02, §§ 65-70, 8 June 2010; and *Almenara Alvarez v Spain*, no. 16096/08, 25 October 2011). Similarly, in *Marcos Barrios v. Spain* (no. 17122/07, §§ 40-41, 21 September 2010) the Court held that the appeal court had expressed itself on a question of fact, namely the credibility of a witness, thus modifying the facts established at first instance and taking a fresh position on facts which were decisive for the determination of the applicant's guilt (see also *García Hernández v. Spain*, no. 15256/07, §§ 33-34, 16 November 2010).

37. Conversely, in *Bazo González v. Spain* (no. 30643/04, 16 December 2008), the Court found that there had not been a violation of Article 6 § 1 on the ground that the aspects which the appeal court had been called on to analyse in order to convict the applicant had had a predominantly legal character, and its judgment had expressly stated that it was not for it to carry out a fresh evaluation of the evidence; rather, it had only made a different legal interpretation from that of the lower court (contrast *Sigurþór Arnarsson* [*v. Iceland*, no. 44671/98], § 34 [15 July 2003], and *Mihaiu v. Romania*, no. 43512/02, § 38, 4 November 2008, in which the Court emphasised the predominantly factual nature of the issues). A similar conclusion was reached in *Keskinen and Veljekset Keskinen Oy v. Finland* (no. 34721/09, 5 June 2012). However, as explained by the Court in *Suuripää v. Finland* (no. 43151/02, § 44, 12 January 2010), one must at this point take into account that "the facts and the legal interpretation can be intertwined to an extent that it is difficult to separate the two from each other."

38. Finally, if the direct assessment of the evidence is deemed necessary for the reasons explained above, the appeal court is under the duty to take positive measures to this effect, notwithstanding the fact that the applicant did not attend the hearing, ask

for leave to address the court or object, through his counsel, to a new judgment being given (see *Botten*, cited above, § 53, and *Sigurþór Arnarsson*, cited above, § 38). In the alternative, the appeal court must limit itself to quashing the lower court's acquittal and referring the case back for a retrial."

(c) Application of these principles to the present case

47. At the outset and in view of the principles stated above, the Court considers that the issue to be examined in the present case is whether the proceedings against the applicant, taken as a whole, were fair in the light of the specific features of those proceedings (see *Kashlev*, cited above, § 43).

48. It notes first of all that, having quashed the first-instance court's acquittal judgment, the appellate court determined the criminal charge brought against the applicant in connection with the incident of 27 April 2014 (see paragraph 11 above) and convicted him.

49. In that connection, the Court notes that the applicant was heard both by the first-instance court, which acquitted him, and by the appellate court, which overturned the acquittal (see paragraphs 17 and 27 above). In that respect, the procedural safeguard established in the Court's case-law to the effect that in the determination of a criminal charge, the defendant should, as a general rule, be heard by the tribunal convicting him, was fully complied with (see, *inter alia*, *Júlíus Þór Sigurþórsson*, cited above, § 33 and the references cited therein).

50. The Court also notes that the witnesses were examined before the first-instance court (see paragraphs 15-20 above) in his and his lawyer's presence, and that he did not argue that the defence had been prevented from putting questions to the witnesses before the first-instance court.

51. At this juncture, the Court cannot but note that in the present case the applicant did not argue that the witnesses' statements were unreliable or that the witnesses themselves were not credible. Crucially, neither did the appellate court, which did not disregard those statements but simply reassessed their value and their significance to the proceedings when corroborated by the other evidence, and consequently drew the conclusions it considered justified in the circumstances of the case before it (see paragraphs 30, 31 and 37 above).

52. As regards therefore the question whether the Court of Appeal was required to re-examine the defence witnesses – who had already been examined at the hearing before the lower court – in person, the Court reiterates that the applicant, who was assisted by a lawyer, was aware of the content of the prosecutor's appeal (see paragraph 26 above) and was present before the appellate court (see paragraphs 27 and 28 above). The applicant should also have been aware of the Court of Appeal's powers to convict him under the relevant domestic law (see paragraph 38 above).

53. Furthermore, the appellate court reversed the first-instance court's reasoning because in its view, the non-testimonial evidence, in particular the

recordings and transcripts of phone conversations between G.S. and the applicant, had been disregarded by the lower court without appropriate justification (see paragraph 31 above). At this juncture, the Court notes that G.S. refused to give any further statements before the appellate court (see paragraph 27 above) and recalls in this respect that anyone "charged with a criminal offence", within the autonomous meaning of this expression in Article 6, has the right to remain silent and not to contribute to incriminating himself (see, amongst many other authorities, *Funke v. France*, 25 February 1993, § 44, Series A no. 256-A). The Court of Appeal could therefore not compel G.S. to testify. As far as the defence witnesses D.G. and V.S.U. are concerned, the last-instance court reassessed the evidence on file without reaching any different conclusions from those of the Cluj County Court as to their credibility; indeed, the appellate court simply considered that those witnesses' statements were not sufficient to exculpate the applicant (see paragraphs 35 -37 above).

54. The Court therefore considers that in the present case the aspect which the appeal court was called on to assess in deciding on the applicant's conviction was whether the testimonial evidence, which supported the applicant's defence, reconciled with the other evidence, which was of a more objective nature, as it consisted of video footage and phone transcripts which provided more nuanced information about the factors that were relevant to the case, such as, principally, the nature of the business relationship between the applicant and G.S.

55. Whereas it is true that, in finding that the witnesses' statements were not sufficiently endorsed by the above-mentioned objective evidence, the appellate court took a fresh position on facts which were decisive for the determination of the applicant's guilt, the crucial point remains that that fresh position was based on evidence which the appellate court was able to assess directly, by examining the recording of the meeting at the inn as well as the transcripts of the several phone conversations between the applicant and G.S. (see paragraphs 31 and 34 above).

56. Moreover, in finding that the said evidence had more relevance in the case than the testimonial evidence and that the non-testimonial evidence did not fully reconcile with the applicant's version of facts, the appellate court fully exercised its essential role of assessing the evidence before it, the way evidence should be assessed being primarily a matter for regulation by national legislation and the domestic courts (see, among many other authorities, *Kashlev*, cited above, § 40). Furthermore, the applicant did not indicate what other evidence the appellate court should have examined that would have been decisive for the outcome of the case (see paragraph 27 above; see also, *mutatis mutandis*, *Ursu* cited above, § 40).

57. In the light of the above considerations, and in particular the fact that the applicant was given the opportunity to put forward all his defence arguments (see paragraphs 49 and 50 above), and that the disagreement

between the first-instance and final-instance courts concerned the manner of assessing the documentary evidence, starting with how each of them assessed the video footage and the phone transcripts, rather than the reliability and credibility of the defence witnesses as such (see paragraphs 53 and 55 above), the Court takes the view that the applicant's case must be distinguished from other cases in which final-instance domestic courts convicted defendants who had been acquitted by the lower courts, without directly hearing evidence from them or reviewing testimony considered relevant for the defendants' convictions (see, *mutatis mutandis*, *Marilena-Carmen Popa v. Romania*, no. 1814/11, § 46, 18 February 2020; compare and contrast with, among other authorities, *Găitănaru*, cited above, § 32; *Mischie*, cited above, §§ 35-38; and *Júlíus Þór Sigurþórsson*, cited above, § 42).

58. The foregoing considerations are sufficient to enable the Court to conclude that, regard being had to the proceedings as a whole, the overall fairness of the criminal proceedings against the applicant was ensured.

59. There has accordingly been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 9 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Yonko Grozev
Registrar	President