



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

FOURTH SECTION

CASE OF LAMATIC v. ROMANIA

(Application no. 55859/15)

JUDGMENT

Art 6 § 1 (criminal) • Fair hearing • Reversal of acquittal by appellate court without hearing applicant or re-examining essential witness in person • Express waiver of applicant's right to be heard by appellate court, who was given the opportunity to put forward all his defence arguments • Disagreement between the first and final-instance courts on the manner of directly assessing the objective corroborating evidence (camera footage and documents), rather than the reliability and credibility of witness with unvarying consistent statements • Distinction from other Court cases • Overall fairness ensured

STRASBOURG

1 December 2020

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

In the case of Lamatic 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. 55859/15) 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 Ioan Valentin Lamatic (“the applicant”), on 3 November 2015;

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

the parties’ observations;

Having deliberated in private on 9 November 2020,

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 without a direct assessment of the relevant testimonial evidence on which that court relied.

THE FACTS

2. The applicant was born in 1992 and lives in Piatra Neamț. The applicant’s father, Mr V. Lamatic, was granted leave to represent him before the Court, in accordance with Rule 36 §§ 2 and 4 of the Rules of Court.

3. The Government were represented by their Agent, most recently Ms O. 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. The applicant was accused of having committed three acts of robbery with violence in Bacău, on the nights of 30 July, 2 September and 11 September 2014.

6. The applicant admitted having committed the crimes in respect of the incidents of September 2014; however, he denied any involvement in the crime committed on 30 July 2014.

7. In connection with the latter incident, in the early morning of 31 July 2014, the victim, A.M.D., told the investigating authorities that on 30 July at around midnight, while she was crossing the street, she had seen the applicant's reflection in the windows of a building as he was following her. She hesitated as to whether to make a phone call for help, but was then hit from behind; as she fell, her handbag was taken from her hand. When she attempted to get the purse back, the perpetrator kicked her. She immediately called the police, but by the time they came it was too late, the perpetrator having escaped. She further described the perpetrator as a "young person, 23-24 years of age, white, about 1.75 m tall, with dark-brown hair, medium beard, dressed in a white jacket and dark blue jeans, with a black backpack".

8. She also indicated that the value of the stolen goods was 100 Romanian lei (RON – approximately 25 euros (EUR)), and claimed compensation in that amount.

9. On 18 September 2014 she was called by the police and asked to identify the perpetrator by looking at a selection of six pictures of various persons, including the applicant. She identified the applicant as the perpetrator by pointing to his photograph.

10. On an unspecified date, the victims of the robberies committed on 2 and 11 September had also identified the applicant as the perpetrator, choosing his picture from a set of different photographs.

11. On 27 September 2014, in a statement to the prosecutor, the applicant said that on the night of 30 July 2014 he had been at work at the fast-food company Q.M., located in Piatra Neamț. His shift had started at 8.30 a.m. and ended at around midnight, hence it was impossible for him to have been present in Bacău at that time. He also stated that in 2014, the first time he had gone to Bacău was in September.

12. On 17 October 2014 A.M.D. was summoned before the prosecutor in order to identify the perpetrator from a group of a few persons. She pointed to the applicant, identifying him as the perpetrator. She also mentioned that at the time of the incident the perpetrator had been dressed in a white jacket, a pair of dark blue jeans and white running shoes and had had a black backpack.

13. On that occasion the applicant, assisted by his lawyer, denied having possessed or worn clothes such as those indicated by the victim.

II. PROCEEDINGS BEFORE THE FIRST-INSTANCE COURT

14. On 20 November 2014 the applicant was indicted on three counts of robbery committed in July and September 2014 (see paragraph 5 above) and was committed for trial before the District Court.

15. On 17 December 2014 A.M.D. submitted a written statement to the court informing the latter that she wished to waive her civil claims against the applicant and that she was withdrawing her complaint against him.

16. On 25 February 2015 the Bacău District Court convicted the applicant of the robberies committed on 2 and 11 September and sentenced him to two years and eight months' imprisonment. It acquitted him of the robbery committed on 30 July 2014 against A.M.D.

17. The court heard evidence from the applicant, A.M.D. and one more witness, E.I.L. No reference is made in the court's reasoning to E.I.L.'s statement.

18. During the hearing of 15 January 2015 before the first-instance court, the applicant stated that he could not have been the perpetrator of the act committed on the night of 30 July, because on 31 July 2014 he had been on duty at his workplace at company Q.M. and his shift had started at 8.30 a.m. For the work he did, he needed to be well presented and freshly shaven; hence, he did not have a beard, unlike the perpetrator as described by A.M.D.

19. Before the court, A.M.D. confirmed her previous statements (see paragraphs 7, 9 and 12 above), stating that she had noticed that the perpetrator had a beard, in the sense of not having shaved for two or three days. She also pointed to the applicant, who was present in the hearing room, as being the perpetrator.

20. The first-instance court had also watched a short sequence of footage taken by a camera which was located in the area where the incident had occurred. The court considered that the person who could be seen stealing the victim's handbag did not have the same physiognomy as the applicant, in so far as the shape of that person's face, nose and eyebrows was different from the applicant's. Furthermore, the clothing of the person on the footage was different from the clothes found at the applicant's home.

21. The court also considered that the victim's statement was not corroborated by any other evidence. She had indeed pointed to the applicant's photograph on 18 September 2014 (see paragraph 9 above), but that identification had been made almost a month and a half after the incident. Furthermore, the incident had occurred at around midnight, so that the light had been quite dim, and the victim had been attacked from behind. Therefore, it was unlikely that she could have actually seen the perpetrator in sufficient detail to be able to identify him.

III. APPEAL PROCEEDINGS

22. The prosecutor as well as the applicant appealed against the first-instance court's judgment.

23. The prosecutor argued that there was no reason why the court should disregard the statement given by A.M.D., given that she had identified the applicant as the perpetrator several times, and that her description of him and of his clothes corresponded to what was shown by the camera footage.

24. Before the Bacău Court of Appeal, during the oral hearing of 5 May 2015, the applicant's representative argued that the footage taken showed a person with different characteristics (different hairstyle and different clothes). Moreover, the sketch drawn on the basis of the details provided by A.M.D. regarding the facial features of the perpetrator (see paragraph 7 above) pointed to someone totally different from himself.

25. The applicant, present during the oral hearing and assisted by his chosen lawyer, stated that he waived his right to be heard again in the appeal proceedings and that he maintained his claims as set out in writing as well as all of his previous statements.

26. The appellate court did not re-examine any of the witnesses.

27. On 5 May 2015 the Bacău Court of Appeal reversed the findings of the lower court in respect of the crime committed on 30 July 2014 as being ill-founded, and upheld its findings in respect of the other two crimes. It sentenced the applicant to a total of four years and four months' imprisonment.

28. The court considered that the evidence corroborating A.M.D.'s statements pointed to the applicant as the perpetrator of the robbery committed on the night of 30 July 2014.

29. The first item of evidence was the description given by the victim immediately after the incident (see paragraph 7 above), which corresponded to the applicant's facial features, to what the footage had shown, and also to the description given by the other two victims of the robberies of 2 and 11 September respectively. A.M.D. had then identified the applicant both from a set of pictures laid out by the investigating authorities and from a group of persons, indicating that he was the perpetrator (see paragraphs 9 and 12 above). She had given the same details regarding the description of the perpetrator before the first-instance court, where she had again identified the applicant, who was present in the hearing room, as the perpetrator (see paragraph 19 above).

30. The appellate court also considered that even though the clothes of the person on the camera were not identical to those found at the applicant's home, the style of dress of the perpetrator was similar for each of the three crimes, which had been committed at short intervals. Moreover, the backpack and the running shoes worn by the perpetrator in the incident of 30 July were the same as those used in the incident of 2 September.

31. Furthermore, the court noted that the applicant's statements had varied throughout the proceedings.

32. In particular, the alibi relied on by the applicant, to the effect that on the night of 30 July 2014 he had been working at the company Q.M. (see paragraph 11 above), had not been confirmed by the company, which had submitted documents proving the contrary. The applicant then changed his version and stated that his working shift had started at 8.30 a.m. on 31 July (see paragraph 18 above). The applicant had also stated that he had not been in Bacău before September 2014; however, certain documents found in a pawn shop in Bacău proved that the applicant had pawned various objects – which most probably had not belonged to him – at various dates before September. The court also noted that the applicant lived in Piatra Neamț; therefore, if those objects had belonged to him, there was no reason why he could not have pawned them in the city where he lived.

RELEVANT LEGAL FRAMEWORK

33. 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 set out below:

“Article 378 – Hearing of the defendant [before the first-instance court]

...

(5) When the defendant refuses to give any statements before it, the court shall read out his or her statements made in the previous stages of the proceedings.

Article 420 – Proceedings on appeal

....

(4) The appellate court shall hear evidence from the defendant, where possible, according to the rules applicable to the court of first instance.

(5) The appellate court may re-examine the evidence submitted to the court of first instance and may order new evidence, according to the requirements set out in Article 100 [rules on the taking of evidence].

...

(7) The prosecutor and the parties shall have the right to reply to any new points raised as a result of the hearing. The defendant shall have the last word.

(8) The court shall examine the contested decision based on the case file and on any other evidence adduced before it.

(9) In ruling on the appeal, the court may assess the evidence afresh, providing reasons.

(10) The court shall rule on all the grounds of appeal raised by the parties ...

Article 421 – Outcome of appeal proceedings

In giving judgment on appeal, the court may ...:

...

2. allow the appeal and:

a) quash the contested decision and deliver a new decision according to the procedure governing the ruling on the criminal and the civil aspects of the case by the court of first instance;”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

34. The applicant complained that the criminal proceedings opened against him in respect of the incident of 30 July 2014 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

35. The Court notes that this complaint 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

36. 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. He relied on the case of *Mischie v. Romania* (no. 50224/07, 16 September 2014).

37. 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.

38. Firstly, the appellate court had decided to convict the applicant based on corroborating evidence, predominantly of an objective nature, such as the camera recordings and the description of the applicant's facial features and clothing. Furthermore, the applicant's alibi was not confirmed by the documentary evidence added to the file, and the applicant had waived his right to be heard by the appellate court (see paragraph 25 above) and thus to offer plausible explanations for any inadvertent errors.

39. While relying also on the victim's previous statements in its decision to convict the applicant, the appellate court had considered that re-examining her would be of limited usefulness, having regard to the fact that her submissions had been consistent, with no significant variations. Hence, the court preferred to give priority to the statement given by A.M.D. immediately after the incident, on 31 July 2014 (see paragraph 7 above), when all the details had been fresh in her memory.

40. Finally, the Government submitted that the applicant had never provided any argument or evidence casting doubt on the credibility of A.M.D.

2. *The Court's assessment*

(a) **Scope of the case**

41. 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 the oral evidence without hearing evidence from A.M.D. 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 *Július Þór Sigurþórsson v. Iceland*, no. 38797/17, § 31, 16 July 2019).

(b) **General principles**

42. The Court notes that recently, in the case of *Július 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 was acquitted by a lower court, without the final-instance court hearing evidence from him or her and from witnesses directly. The relevant paragraphs of the *Július Þór Sigurþórsson* judgment read as follows:

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“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 (*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, *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

43. 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).

44. It notes first of all that, having quashed the first-instance court’s judgment of acquittal, the appellate court determined the criminal charge brought against the applicant in connection with the incident of 30 July 2014 and convicted him (see paragraph 27 above).

45. While it is true that the domestic courts cannot, as a matter of fair trial, properly determine the question of the applicant’s guilt or innocence without a direct assessment of the evidence given in person by an accused who claims that he has not committed the act alleged to constitute a criminal offence (see *Constantinescu v. Romania*, no. 28871/95, § 55, 27 June 2000, and *Sándor Lajos Kiss v. Hungary*, no. 26958/05, § 22, 29 September 2009), the Court nevertheless notes that the applicant, assisted by a lawyer, took part in the hearings at first instance as well as before the appellate court. Evidence was heard from him at the District Court hearing, at which the witnesses were also examined (see paragraphs 17-18 above). The applicant did not argue that the defence was prevented from putting questions to the witnesses before the District Court.

46. Furthermore, the applicant, in the presence of the lawyer of his choice, waived his right to be heard by the appellate court (see paragraph 25 above), even though that would presumably have given him the opportunity to provide further clarifications as to the disputed evidence or any other alleged inadvertent errors shedding a distorted light on the circumstances of the case (see, notably, the Government’s submissions summarised in paragraph 38 above). However, his lawyer was able to orally present to the appellate court all the defence arguments on behalf of the applicant (see paragraph 24 above).

47. In that connection the Court reiterates that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial, if such waiver is established in an unequivocal manner and attended by minimum safeguards commensurate with its importance (see *Hermi v. Italy* [GC], no. 18114/02, § 73, ECHR 2006-XII, with further references).

48. In the light of the above, the Court considers that in compliance with the requirements of fairness, the applicant was given the opportunity and was able to provide his own version of the events and to cast doubt on the credibility of A.M.D.'s testimony before the first-instance and the appellate courts (see paragraphs 18 and 24 above).

49. As regards the question whether the Court of Appeal was required to re-examine the witness A.M.D. – who had already been examined at the lower court's hearing – in person, the Court reiterates that the applicant, who was assisted by a lawyer, was aware of the content of the prosecutor's appeal and was present before the appellate court (see paragraphs 23 and 25 above). The applicant was also aware of the Court of Appeal's powers to convict him under the relevant domestic law (see paragraph 33 above).

50. The applicant submitted that the sketch based on A.M.D.'s description depicted a person who did not resemble him, and that the footage showed a different person with a different style of dress and different physical traits (see paragraph 24 above). In the Court's view, both arguments relate to factors of a factual nature and thus outside of A.M.D.'s subjective perception, since their existence as such (a sketch already drawn and the camera footage of the incident) is independent of her recollection of the impugned events.

51. In that connection the Court notes that the first-instance court itself, in disregarding A.M.D.'s statements, relied on the fact that her statements were not corroborated by the other evidence, in so far as the camera footage showed a person with a different physiognomy to that of the applicant. The first-instance court also considered that proper recognition by the victim would have been difficult, and was therefore improbable, in view of the concrete circumstances of the incident (the robbery having been committed from behind and at midnight and thus in the dark), and in view of the fact that the identification at the police station had occurred more than a month after the incident and was therefore potentially tainted by subjectivity (see paragraphs 20 and 21 above).

52. Having regard to the above, and in view of the applicant's own arguments relating to the unreliability of the witness, the fact that the appellate court did not consider it necessary to re-examine A.M.D. does not appear either arbitrary or unreasonable, as the record of her statements showed that she had provided the same information each time she had given evidence to the domestic authorities (see paragraphs 7, 9, 12 and 19 above).

The Court reiterates in this connection that the fact that an appeal court is empowered to overturn an acquittal by a lower court without hearing witnesses in person does not as such and on its own infringe the fair hearing guarantees in Article 6 § 1 (see *Július Þór Sigurþórsson*, cited above, § 34).

53. It is evident from the appellate court's decision that it examined the applicant's allegation that A.M.D.'s statements were not sufficiently reliable to justify a conviction.

54. In examining the reliability of A.M.D.'s testimony in that regard, the appellate court weighed in the balance factors such as its value and significance to the proceedings when corroborated by the other evidence, as well as its reliability, noting that her statements had remained consistent throughout the proceedings (see paragraph 29 above and, *mutatis mutandis*, *Zelčs v. Latvia*, no. 65367/16, § 72, 20 February 2020; see also, by way of contrast, *Manoli v. the Republic of Moldova*, no. 56875/11, § 30, 28 February 2017).

55. At this juncture the Court reiterates that the assessment of the trustworthiness of a witness is a complex task which cannot usually be achieved merely by reading a record of his or her words, especially when only some of those words are taken into consideration (see *Manoli*, cited above, § 32).

56. However, in the present case the appellate court's essential task was not to assess the trustworthiness of an essential witness, namely A.M.D., but rather to verify whether her statements were corroborated by the other evidence in the file, or whether, as held by the first-instance court (see paragraph 21 above), such corroborating elements were missing.

57. This appears evident in view of the fact that A.M.D. maintained a consistent position in all her statements, both in respect of the factual details of the incident and in relation to the facial features of the perpetrator, pointing to the applicant as the perpetrator before the investigating authorities, both at the beginning of and during the investigations, and before the first-instance court (see paragraphs 7, 9, 12 and 19 above). Moreover, the appellate court took into consideration her full statements, and not only parts thereof, precisely because they were unvarying and consistent.

58. Furthermore, the appellate court reversed the first-instance court's reasoning because at the outset, in its view, the camera footage had shown a person resembling the applicant and resembling the description given by A.M.D. as well as by the other two victims (see paragraph 29 above).

59. 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 A.M.D.'s statements, which, as already mentioned, remained consistent throughout the proceedings, were corroborated by the other evidence, which was of a more objective nature as it consisted of camera footage and documents contradicting the applicant's alibi.

60. While it is true that, in finding that the witness statement was corroborated 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 this fresh position was based on evidence which the appellate court was able to assess directly, by examining the footage showing the perpetrator (see paragraphs 29-30 above) and the documents on file which contradicted the applicant's alibi for the day of the incident (see paragraphs 31-32 above).

61. Moreover, in finding that the said evidence corroborated the victim's statements, the appellate court fully exercised its essential role, that 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).

62. In the light of the above considerations, and in particular the fact that the applicant expressly waived his right to be heard by the appellate court, that he was nevertheless given the opportunity to put forward all his defence arguments (see paragraph 48 above), and that the disagreement between the first and final-instance courts concerned the manner of assessing the corroborating evidence, starting from how each of them assessed the camera footage, rather than the reliability and credibility of A.M.D. as such (see paragraph 59 above), the Court takes the view that the applicant's case may 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, *Găitănanu*, cited above, § 32; *Mischie*, cited above, §§ 35-38; and *Július Þór Sigurþórsson*, cited above, § 42).

63. 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.

64. There has accordingly been no violation of Article 6 of the Convention in the particular circumstances of the present case.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 6 of the Convention.

LAMATIC v. ROMANIA JUDGMENT

Done in English, and notified in writing on 1 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Registrar

Yonko Grozev
President