



Applicant's final conviction after first-instance acquittal, without both judges who convicted him hearing evidence directly from relevant witnesses, breached right to fair trial

In today's **Chamber** judgment¹ in the case of [Manolache v. Romania](#) (application no. 7908/17) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The case concerned the fairness of criminal proceedings against the applicant, a police officer. On trial for influence peddling, he was initially acquitted but was then convicted in a final judgment by the Pitești Court of Appeal. One of the two judges on the bench at last instance had not, however, taken evidence directly from all the witnesses.

The Court found, in particular, that the Court of Appeal, in its judgment of 2 November 2016, had indeed made a fresh interpretation of witness statements that were decisive in the case, but that both of the judges on the bench had not heard the evidence from the witnesses directly. The requirements of a fair trial had thus been breached.

The Court noted the specific features of the case, which involved, first, appeal proceedings following the applicant's acquittal at first instance – meaning that the Court of Appeal had been required to take measures of its own motion to hear evidence directly from the relevant witnesses (compare *Miron v. Romania*, no. 37324/16, §§ 31-34, 5 November 2024) – and, second, a two-judge bench whose decision could only be adopted unanimously.

Principal facts

The applicant, Nicolae-Richard Manolache, is a Romanian national who was born in 1969 and lives in Câmpulung (Romania). He was a police officer at the time of the events.

On 17 March 2015 Mr and Mrs H. lodged a criminal complaint against the applicant. They alleged that he had solicited and accepted 1,500 euros (EUR) to have Mr H. employed as a driver, but that he had then broken his promise without any justification. Mrs H., who worked for the applicant's wife, had subsequently been dismissed.

On 21 April 2015 the public prosecutor's office at Argeș County Court initiated criminal proceedings against the applicant for influence peddling. Evidence was taken from witnesses including Mr and Mrs H., who also passed a polygraph test.

The applicant was committed for trial before the County Court. At the hearings, it was noted that Mr and Mrs H. could not give evidence because they were not in Romania and could not be brought before the court despite warrants to that effect. Evidence was, however, heard from Mr and Mrs R. and from F.D. – "indirect" witnesses who had learned of the applicant's alleged wrongdoing from Mr and Mrs H.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In a judgment of 4 December 2015, the County Court acquitted the applicant. It found that there was insufficient evidence to rebut the presumption of his innocence, since the only direct evidence was Mr and Mrs H.'s statements as complainants.

The public prosecutor's office appealed against the acquittal to the Pitești Court of Appeal.

The Court of Appeal held a hearing on 8 June 2016, sitting as a two-judge bench comprising Judges C.A.N. (president) and T.G. Relying on the recently amended Article 421 § 2 (a) of the Code of Criminal Procedure, which specified the circumstances in which witnesses whose statements had led to an acquittal were required to give evidence again, it summoned Mr and Mrs H., Mr and Mrs R. and F.D. to appear before it.

At a hearing on 21 September 2016, the Court of Appeal, this time sitting as a two-judge bench composed of Judges E.P. (president) and I.F., took evidence from Mr and Mrs H. and Mr and Mrs R., who reaffirmed their previous statements.

At the next hearing on 2 November 2016 the Court of Appeal, once again sitting as a new bench, this time comprising Judges E.P. (president) and T.G., took evidence from F.D., who also reaffirmed his original statement.

In a final judgment delivered that day – on 2 November 2016 – the Court of Appeal, still sitting as a bench composed of Judges E.P. (president) and T.G., quashed the acquittal. After re-examining the merits of the case, it sentenced the applicant to a suspended term of three years' imprisonment. Unlike the County Court, the Court of Appeal found that Mr and Mrs H.'s statements were corroborated by the other evidence and were not therefore the only evidence of guilt. The body of evidence as a whole thus confirmed the facts as presented in the prosecution's submissions. The Court of Appeal made reference to the detailed and consistent statements it had heard from the other, "indirect" witnesses, who had confirmed Mr and Mrs H.'s allegations. It also referred to the interpretation of certain passages from the recorded telephone conversations between Mrs H. and the applicant's wife, and to the report drawn up after Mr and Mrs H. had passed their polygraph tests.

Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair trial), the applicant submitted that the failure by one of the judges to take evidence from witnesses directly – including from the complainants, who were the only eyewitnesses – had infringed the principle of immediacy.

The application was lodged with the European Court of Human Rights on 11 January 2017.

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

Lado **Chanturia** (Georgia), *President*,
 Jolien **Schukking** (the Netherlands),
 Faris **Vehabović** (Bosnia and Herzegovina),
 Ana Maria **Guerra Martins** (Portugal),
 Anne Louise **Bormann** (Denmark),
 Sebastian **Rădulețu** (Romania),
 András **Jakab** (Austria),

and also Simeon **Petrovski**, *Deputy Section Registrar*.

Decision of the Court

Article 6

The Court referred to its case-law on the principle of immediacy in criminal proceedings.

The Court noted that by virtue of a generally accepted principle of law relating to appeals, as reflected in Romanian law, the jurisdiction of courts hearing an appeal extended to questions of fact and law. Such courts could thus conduct full proceedings, following the same rules as for a trial on the merits.

Furthermore, the Court observed that the Court of Appeal had from the outset considered quashing the first-instance judgment and examining the merits itself, without remitting the case to the lower court for a retrial. In those circumstances, Article 421 § 2 (a) of the Code of Criminal Procedure expressly required it to take evidence again from any witnesses whose statements had formed the basis of the County Court's first-instance acquittal.

At the hearing of 2 November 2016, at the close of which the Court of Appeal had delivered a judgment convicting the applicant, the bench had comprised Judges E.P. (president) and T.G. It was thus different from the bench that had taken evidence from the complainants – Mr and Mrs H. – and from Mr and Mrs R. at the previous hearing on 21 September 2016, which had been composed of Judges E.P. (president) and I.F. Admittedly, the applicant's conviction had been based on a whole body of evidence, consisting of witness testimony, documentary evidence and recordings of telephone conversations. The fact remained, however, that that evidence alone was not capable of leading to the applicant's conviction and had served solely to corroborate the direct evidence of Mr and Mrs H., the only eyewitnesses to the disputed act. In those circumstances, and noting that the County Court had expressed doubts as to Mr and Mrs H.'s credibility, the Court considered that the witnesses' statements, especially those of Mr and Mrs H., were extremely important, if not decisive for the outcome of the case (contrast *Miron v. Romania*, cited above, § 30).

The Court observed that the credibility of Mr and Mrs H.'s statements had been called into question both by the County Court in its acquittal judgment and subsequently by the lawyer of the applicant himself. It thus considered that providing the judges on the Court of Appeal bench that had convicted the applicant with transcripts of their testimony was not sufficient to satisfy the requirements of the Court's case-law.

In addition, to the extent that the Court of Appeal had considered the possibility of reversing the applicant's initial acquittal and given the nature of the case, it was obliged under the Convention to take measures of its own motion to hear evidence directly from the relevant witnesses, with a view to determining the applicant's guilt or innocence. Such was the case even in the absence of an explicit request to that effect by the applicant's lawyer. Article 421 § 2 (a) of the Code of Criminal Procedure, moreover, contained provisions along similar lines (compare *Miron*, cited above, §§ 31-34). The Court of Appeal had taken care to point out that it had heard evidence directly from those called to testify on appeal. It had not, however, taken into account the final change in the bench and the effect of that change on compliance with the principle of immediacy.

Admittedly, only one judge, T.G., had not taken evidence directly from the relevant witnesses (excluding F.D.). The Court observed, however, that the bench in the present case had not been a large one. It had consisted of T.G. and one other judge, and had been required to adopt its decision unanimously. The fact that the other judge, E.P., had complied with the principle of immediacy could not compensate for T.G.'s absence during all witness testimony except that of the indirect witness F.D.

The Court found that the Court of Appeal, in its judgment of 2 November 2016, had indeed made a fresh interpretation of witness statements that were decisive in the case, but that both of the judges on the bench had not heard the evidence from the witnesses in question directly. The requirements of a fair trial had thus been breached.

There had accordingly been a violation of Article 6 § 1 of the Convention.

Just satisfaction (Article 41)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant. In respect of costs and expenses, Romania was to pay the applicant EUR 1,750.

The judgment is available only in French.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on X (Twitter) [@ECHR CEDH](https://twitter.com/ECHR_CEDH) and Bluesky [@echr.coe.int](https://bsky.app/profile/echr.coe.int).

Press contacts

echrpess@echr.coe.int | tel: + 33 3 90 21 42 08

We are happy to receive journalists' enquiries via either email or telephone.

Denis Lambert (tel: + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Neil Connolly (tel: + 33 3 90 21 48 05)

Jane Swift (tel: + 33 3 88 41 29 04)

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