



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

FIRST SECTION

CASE OF SHALA v. ITALY

(Application no. 71304/16)

JUDGMENT

STRASBOURG

31 August 2023

This judgment is final but it may be subject to editorial revision.

In the case of Shala v. Italy,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Péter Paczolay, *President*,

Gilberto Felici,

Raffaele Sabato, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 71304/16) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 23 November 2016 by a Kosovar¹ national, Mr Sami Shala, born in 1963 and detained in Saluzzo (“the applicant”) who was represented by Ms M.S. Mori, a lawyer practising in Milan;

the decision to give notice of the application to the Italian Government (“the Government”), represented by their Agent, Mr L. D’Ascia;

the parties’ observations;

Having deliberated in private on 27 June 2023,

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

SUBJECT MATTER OF THE CASE

1. The issue in the case is whether the applicant – who was declared to be a “fugitive” (*latitante*) and tried *in absentia* – had a fair trial according to Article 6 §§ 1 and 3 of the Convention, given that, in the proceedings that were reopened after his arrest, he was denied the opportunity to exercise certain rights of defence.

2. On 4 October 1999, in the context of criminal proceedings against the applicant for drug offences, the judicial authorities ordered his pre-trial detention. Since the applicant – who was already listed in the investigation documents as living at an unknown address in Bratislava – was considered untraceable, on 25 October 1999 he was declared to be a fugitive and assigned an officially appointed lawyer.

3. He was tried *in absentia* and sentenced to twenty-six years’ imprisonment by the Milan District Court by a judgment of 24 October 2001, which became final on 26 March 2002. All procedural documents, including the judgment, were served on the applicant’s lawyer.

¹ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

4. On 28 August 2013, after being arrested by the Albanian police, the applicant was extradited to Italy. He applied under Article 175 § 2 of the Code of Criminal Procedure, as applicable at the material time, for leave to appeal out of time against the judgment.

5. Having obtained it, he lodged an appeal against the judgment. He requested, *inter alia*, that the proceedings be reopened *ab initio*, since he had been declared a fugitive even though he was not aware of the proceedings and had not voluntarily escaped them. He further contested the territorial jurisdiction of the courts of Milan and he requested, in any event, that the summary procedure (*rito abbreviato*) be adopted.

6. In a judgment of 27 October 2014, the Milan Court of Appeal upheld the first-instance conviction, rejecting all of the applicant's claims. It held that the applicant's voluntarily evasion of the proceedings had been proven (he had no fixed address; some wiretaps had shown that he was aware that others involved in drug trafficking had been arrested and that he feared that he might also be arrested) and that he was not entitled to have the proceedings reopened *ab initio*. It further considered that the applicant was no longer within the time limit to request the adoption of the summary procedure and that the officially appointed lawyer should have challenged the territorial jurisdiction in the first-instance trial.

7. In a judgment of 10 May 2016, the text of which was deposited with the registry on 1 June 2016, the Court of Cassation upheld the Milan Court of Appeal's judgment.

8. The applicant complained, under Article 6 §§ 1 and 3 of the Convention, that he had been convicted *in absentia* without having had a genuine and effective opportunity of presenting his defence before the Italian courts. Despite the fact that he had become aware of the proceedings only when he was arrested, he had been refused the possibility to have the proceedings reopened *ab initio*. He further complained that, in any event, he was not heard personally and he was denied the right to contest the territorial jurisdiction and to be tried under the summary procedure.

THE COURT'S ASSESSMENT

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 § 1 OF THE CONVENTION

9. The Government submitted a unilateral declaration which did not offer a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*). The Court rejects the Government's request to strike out the application and will accordingly pursue its examination of the merits of the case (see *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, § 75, ECHR 2003-VI).

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

10. The relevant domestic law and practice (in force at the relevant time) have been summarised in *Huzuneanu v. Italy*, no. 36043/08, §§ 27-32, 1 September 2016.

11. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

12. The Court refers to its judgments in the case of *Sejdovic v. Italy* [GC], no. 56581/00, §§ 81-95, ECHR 2006-II, and *Huzuneanu*, cited above, §§ 47-48, for a summary of the relevant principles applicable in the present case.

13. In application of those principles, the Court notes that it was not contested that the applicant had been tried *in absentia* and that before his arrest he had not received any official information about the charges or the date of his trial. It is also not disputed that already during the preliminary investigation he was found to be living outside Italy, in an unspecified place in Bratislava. Moreover, contrary to what the Government argued in their observations, there are no elements in the case file unequivocally showing that the applicant was aware of the proceedings against him and that therefore he waived his right to appear in court or sought to escape trial. In fact, the arguments relied on by the domestic courts in order to uphold the validity of the fugitive decree – i.e. the applicant’s awareness of the arrest of others involved in drug trafficking, the mere fear of the possibility of being arrested himself, and the fact that he had no fixed address – cannot be deemed sufficient in order to prove, in an unequivocal manner, that the applicant sought to escape trial or waived his right to appear at the trial (see *Sejdovic*, cited above, § 87).

14. Having so established, the Court is therefore called up to examine whether the applicant, convicted *in absentia*, subsequently had an effective opportunity of obtaining a fresh determination of the merits of the charges against him by a court which had heard him in accordance with his defence rights (see *Sejdovic*, cited above, § 105, and *Rizzotto v. Italy (no. 2)*, no. 20983/12, §§ 53-54, 5 September 2019).

15. In the instant case, the applicant did not have the opportunity to have the proceedings reopened *ab initio*, but only to appeal against the first-instance judgment, with all the limitations inherent in appeal proceedings. It does not appear from the case file that there was any evidence-taking activity before the Court of Appeal, nor that the applicant was heard personally by that court. He was denied the rights to contest the territorial jurisdiction of the courts and to obtain to be tried under the summary procedure, that he could have exercised, if he had been present, in the first-instance trial, when indeed he was absent and represented by an officially appointed lawyer.

16. The Court reiterates that being represented by an officially appointed lawyer in proceedings held *in absentia* is not of itself a sufficient guarantee against the risk of unfairness (see *Huzuneanu*, cited above, §§ 47-49). Moreover, being tried by a court having jurisdiction in accordance with the domestic law is a relevant issue in order to establish the overall fairness of the proceedings under Article 6 § 1 of the Convention (see *Richert v. Poland*, no. 54809/07, § 41, 25 October 2011, and *Jorgic v. Germany*, no. 74613/01, § 64, ECHR 2007-III).

17. These considerations are sufficient to conclude that the overall fairness of the proceedings was vitiated and that, contrary to the Government's view, the applicant did not obtain an effective fresh determination of the merits of the charges against him in accordance with the requirements of Article 6.

18. There has accordingly been a violation of Article 6 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicant did not submit a claim for damage, considering the reopening of the trial as adequate just satisfaction. However, he claimed 15,387.28 euros (EUR) in respect of costs and expenses incurred before the Court, and 10,636.98 euros (EUR) in respect of costs and expenses that would be incurred before the domestic courts in case of reopening of the trial. He requested that the sums to be awarded to him by the Court be paid directly to his lawyer, the latter having advanced them.

20. The Government submitted that the amounts claimed were excessive and requested that they be largely reduced.

21. Since the applicant has made no claim for damage, the Court does not make an award under this head.

22. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 7,000 for the proceedings before the Court, plus any tax that may be chargeable to the applicant. This sum should be paid directly to the applicant's representative.

23. The Court rejects the claim in so far as it concerns the costs and expenses that would be incurred in case of reopening of the trial, as they are merely hypothetical.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Rejects* the Government's request to strike the application out of its list of cases under Article 37 § 1 of the Convention on the basis of the unilateral declaration which they submitted;
2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 6 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the amount of EUR 7,000 (seven thousand euros), plus any tax that may be chargeable to the applicant, to be paid directly to the applicant's representative, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 August 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Péter Paczolay
President