



The proceedings which resulted in a Kosovar national's conviction for murder in the context of a blood feud were fair

In its decision in the case of [Shala v. Switzerland](#) (application no. 63896/12) the European Court of Human Rights has unanimously declared the application inadmissible, holding that Mr Shala's complaints were manifestly unfounded. The decision is final.

The case concerned criminal proceedings which resulted in Mr Shala's conviction by the Swiss courts for murder in the context of a "blood feud".

Mr Shala raised several complaints under Article 6 of the Convention (right to a fair trial). He criticised the Swiss authorities, in particular, for having failed to inform three witnesses, Kosovar nationals, of their right to consular assistance under Article 36 of the Vienna Convention¹ (VCCR), and alleged that the statements made by these witnesses could not be used in the criminal proceedings against him.

The Court held, among other points, that Mr Shala had not shown in a substantiated and tangible manner how the fact that the Swiss authorities had not informed the three witness of their right to consular assistance under Article 36 of the VCCR had had the slightest impact on the fairness of the proceedings against him. The use of statements from these three witnesses by the Swiss courts, which had moreover based their findings on a whole range of evidence, had thus not rendered the proceedings as a whole unfair.

Principal facts

The applicant, Shpend Shala, is a Kosovar national who was born in 1978.

In May 1997 the head of the Shala family was executed in Kosovo² by a member of the H. family. The following month, the brother of the presumed perpetrator of that murder was killed in Switzerland.

In January 2001 the Laufenburg District Court (Switzerland) delivered judgments concerning six members of Mr Shala's family, including his father, his uncle and his uncle's son.

In November 2010 Mr Shala was convicted of murder and sentenced to 18 years' imprisonment. The district court concluded that Mr Shala and his cousin had fired between 15 and 17 shots into the victim's head while he was attempting to escape. An appeal by Mr Shala before the higher court was dismissed.

Before the higher court, Mr Shala alleged for the first time that there had been a violation of Article 36 of the Vienna Convention on Consular Relations of 24 April 1963 (VCCR). Mr Shala argued, in particular, that his father, his uncle and his uncle's son had not been informed before the district court of their rights under the VCCR to consular assistance. According to Mr Shala, this procedural shortcoming had been so serious that it had rendered the statements by these witnesses unusable.

In its decision, the higher court noted that Mr Shala's father had been informed of his right to the assistance of a lawyer and an interpreter and that he had unambiguously waived these rights. It also considered that Mr Shala had had an opportunity to put questions to his father during the hearing. It

¹ Vienna Convention on Consular Relations of 24 April 1963.

² 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.

further emphasised that Article 36 of the VCCR was intended to protect foreign prisoners from discriminatory treatment in relation to non-foreign prisoners and not to guarantee defendants' right to remain silent.

In April 2012 the Federal Supreme Court upheld that judgment. Mr Shala was subsequently transferred to Kosovo, where he is serving his sentence.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 28 September 2012.

Relying on Article 6 § 1 (right to a fair trial), Mr Shala submitted three complaints. Firstly, he complained that he had been unable to put additional questions to his uncle and the latter's son. Secondly, he submitted that the statements made by his father – at a hearing in July 1998 – could not be used, as his father had made these statements without the assistance of a lawyer and an interpreter. Thirdly, he complained that the Swiss authorities had not informed his father, his uncle and his uncle's son of their right to consular assistance under Article 36 of the VCCR in the context of the proceedings which had resulted in his conviction.

The decision was given by a Committee of three judges, composed as follows:

Paulo Pinto de Albuquerque (Portugal), *President*,
Helen Keller (Switzerland),
María Elósegui (Spain),

and also Fatoş Aracı, *Deputy Registrar*.

Decision of the Court

[Article 6 \(right to a fair trial\)](#)

The Court dismissed the first two complaints as manifestly unfounded, for the following reasons:

The Court noted that the Federal Supreme Court had declared these complaints inadmissible on the grounds that the supporting reasoning was manifestly insufficient, in accordance with section 42 of the Federal Court Act of 17 June 2005 (LTF). The Federal Supreme Court had considered, firstly, that Mr Shala had not shown in his appeal pleadings if and to what extent the procedural rights guaranteed by the Swiss Constitution and by the Convention had been violated or applied arbitrarily. Secondly, the Federal Supreme Court had noted that Mr Shala had refrained from commenting on the reasoning provided in the lower court's judgment.

The Court noted that Mr Shala had not shown in his application that the Federal Supreme Court had applied section 42 of the LTF arbitrarily in the present case, in violation of Article 6 § 1 of the Convention. The Court also noted that the statements by Mr Shala's uncle and his uncle's son were not the only evidence against the applicant. Moreover, these witnesses had been excused from appearing before the higher court, and detailed and objective factual reasons for this had been given in the judgment.

The Court also noted that Mr Shala's father had been informed about his right to assistance by a lawyer and an interpreter from the outset of the proceedings brought against him, and that he had expressly waived these rights. In addition, Mr Shala's father had appeared at the hearing before the higher court and Mr Shala had had the opportunity to put questions to him.

The Court dismissed the third complaint as manifestly unfounded, for the following reasons:

The Court reiterated that, according to its settled case-law, the fact of keeping evidence in the case file which had been obtained from a co-defendant or a witness through torture or degrading

treatment rendered the proceedings as a whole unfair. In the present case, the Court found no evidence grounding a suspicion that the statements by the three witnesses had been obtained through investigation methods that were incompatible with Article 3 of the Convention. It was thus, in principle, possible to use the witnesses' statements in Mr Shala's trial. The Court also considered that Mr Shala had not shown in a substantiated and specific manner how the fact that the Swiss authorities had not informed the three witnesses of their right to consular assistance under Article 36 of the VCCR had had the slightest impact on the fairness of his trial. Consequently, the use of statements by these three witnesses in Mr Shala's trial by the domestic courts, which had furthermore based their conclusions on a whole range of evidence, had not rendered the proceedings as a whole unfair.

The decision is available only in French.

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Press contacts

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

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

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

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

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

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.