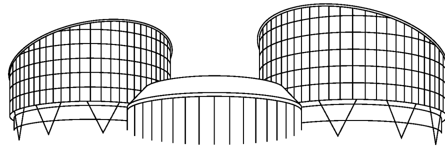

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

# CASE OF SHULI v. GREECE

*(Application no. 71891/10)*

JUDGMENT

STRASBOURG

13 July 2017

*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 Shuli v. Greece,**

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

Kristina Pardalos, *President,*
Linos-Alexandre Sicilianos,
Krzysztof Wojtyczek,
Ksenija Turković,
Armen Harutyunyan,
Pauliine Koskelo,
Jovan Ilievski, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 20 June 2017,

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

# PROCEDURE

1. The case originated in an application (no. 71891/10) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Albanian national, Mr Astrit Shuli ("the applicant"), on 26 October 2010. The applicant was represented by Ms K. Katsia, a lawyer practising in Thessaloniki.

2. The Greek Government ("the Government") were represented by their Agent's delegates, Ms E. Tsaousi and Ms K. Karavasili, Legal Counsellor and Legal Representative respectively at the State Legal Council. The Albanian Government did not make use of their right to intervene (under Article 36 § 1 of the Convention).

3. The applicant alleged, in particular, that the dismissal of his appeal as inadmissible on the grounds that he had not included any specific reasons for appeal on the pre-printed form which had been completed by the registrar of the court had violated his right of access to a court.

4. On 9 March 2016 the complaint concerning access to a court was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1983 and lives in Portoheli.

6. On 12 September 2007 the applicant was convicted of forming a criminal organisation, of – together with others − kidnapping an adult, of robbery committed together with others, and of the theft and illegal possession of a gun, and was sentenced to twenty-two years' imprisonment by the Nafplio three-member Court of Appeal for felonies (*Τριμελές Εφετείο Κακουργημάτων*) acting as a first-instance court (decision no. 317/2007). The applicant, who had been in pre-trial detention since 7 April 2006, was represented by a lawyer in the proceedings.

7. Following the delivery of the judgment, the applicant expressed his wish to lodge an appeal against the decision of the first-instance court and was escorted, handcuffed, by policemen to the registry of the court in order to do so. In the registry there were pre-printed forms for lodging an appeal, which included the following wording:

> "In Nafplio, in the Nafplio Court of Appeal today on ... day... and time ... came to me, the Registrar of Nafplio Court of Appeal .... (name), the ... (name) of ... (father's name) and of ... (mother's name) who was born on ... in ..., whose profession is ... and resides in ..., street ... no. ... and has the no. ... identity card issued on ... by.... And REQUESTED that this report be drafted declaring that: (he) APPEALS before the Nafplio five-member Appeal Court against decision no. .... of the Nafplio three-member Court of Appeal by which he was convicted of ... to a total sentence of ... requesting that the decision under appeal be set aside and that he be acquitted from the charge for the reasons he will cite before the Appeal Court."

8. Under the above paragraph there was an empty space and then followed the phrases:

> "He appoints as his representative the lawyer practising in Nafplio ...(name).
>
> This report was read and confirmed and is signed by the person lodging the appeal and the registrar".

9. The registrar completed the pre-printed form with the applicant's personal data, the number of the decision against which he wished to lodge the appeal, the sentence that was imposed to him and the name of the applicant's representative. He then signed the report and the applicant was momentarily released from handcuffs in order to sign it as well.

10. On 7 May 2009 the applicant's appeal was heard by the Nafplio five-member Court of Appeal ("the Appeal Court"). The Appeal Court by a majority dismissed the legal remedy as inadmissible on the grounds that no reasons had been included in the report, as required by law (decision no. 113/2009). The President of the Appeal Court did not agree with the majority of the panel, expressing the view that from the phrase "*...for the reasons he will cite before the appeal court*", one could easily infer that the applicant was complaining about erroneous assessment of the evidence by the court of first instance.

11. The applicant lodged an appeal on points of law against the decision of the Appeal Court, arguing that his appeal should not have been dismissed as inadmissible. The applicant submitted that it was standard practice in all

Appeal Courts for the defendants to be given a pre-printed form which included the phrase: "*because the court of first instance did not assess correctly the facts of the case and declared the defendant guilty of an act he did not commit and for the reasons he will cite before the Appeal Court*". In the instant case, the Nafplio Court of Appeal had printed a form in which the first part of the phrase was omitted and the applicant was not to blame for this omission. He was only given the form to sign and was handcuffed at the time, making it even more difficult for him to read the report thoroughly.

12. The Court of Cassation dismissed the applicant's appeal on points of law as unfounded on the grounds that the content of the appeal was the applicant's responsibility, as distinct from the formalities which were the responsibility of the registrar (decision no. 848/2010). The decision was finalised on 28 April 2010.

13. The applicant served his sentence in Patras prison until 23 July 2015 when he was given a conditional release.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

14. The relevant parts of the Code of Criminal Procedure read as follows:

**Article 473**

"1. When there is no special legal provision which provides differently, the time-limit for lodging a legal remedy is ten days from the delivery of the judgment ..."

**Article 474**
**Report and grounds for applying for a legal remedy**

"1. Without prejudice to Article 473 § 2, an application for a legal remedy shall be lodged by a declaration to the registrar of the court which issued the decision ... If he is detained in prison, the declaration may be made before the director of the prison. The registrar to whom the application for a legal remedy has been made shall draft a report which is signed by the person who has lodged the application for the remedy or his representative (Article 465 § 1) and by the person who accepts it.... If the report is drafted by another registrar or by the prison director, it shall immediately be sent to the registrar of the court which issued the decision.

2. The report must include the grounds on which the application for the legal remedy has been lodged ..."

**Article 476**
**When a legal remedy is inadmissible**

"1. Where an application for a legal remedy has been lodged by someone not entitled to it or it has been lodged against a decision or order for which the law does not provide a legal remedy, or where the time-limit has not been complied with, or if the formalities required by law have not been observed, or where the legal remedy has been lawfully withdrawn, or in any other case where the law provides expressly that

the legal remedy is inadmissible, the competent Indictment Division or court (as an Indictment Division) shall declare the legal remedy inadmissible after hearing the public prosecutor and the parties to the proceedings ...”

**Article 498**

“A report shall be drafted by the competent employee pursuant to Article 474 § 1 for the lodging of an appeal, which includes the reasons for appeal in accordance with the second paragraph of that Article. The party who lodges the appeal must appoint a representative in that report ...”

15. In accordance with domestic case-law, when the law does not require specific reasons for appeal, a convicted person may invoke any legal or factual error allegedly committed by the court of first instance, including the erroneous assessment of evidence, without the need to provide further specifications (see decision no. 569/2010 of the Court of Cassation).

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

16. The applicant complained that the dismissal of his appeal as inadmissible, on the grounds that he had not included any reasons on the pre-printed form provided to him by the registry of the domestic court, had violated his right of access to a court as provided for in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

17. The Government contested that argument.

### A. Admissibility

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

### B. Merits

#### *1. The parties’ submissions*

19. The applicant submitted that the dismissal of his appeal, on the grounds of failure to include reasons on the pre-printed from with which he had been provided by the registry of the domestic court, had been

excessively formalistic and had resulted his being deprived of his right of access to a court. The applicant argued that the procedure for lodging an appeal in Greece was a mere formality and a matter of few minutes. It was standard practice that the defendants be provided by domestic courts with a pre-printed form for lodging an appeal in which a standard phrase, with slight variations, was included as the reason for the appeal, essentially that: "*the defendant complained about erroneous assessment of facts and/or evidence*". According to domestic case-law, this phrase was considered sufficient reason for appeal as the text of the decision would only become available months later and a defendant could therefore not provide more specific reasons for appeal at that time. In his case, this standard phrase had been omitted in the report completed by the registrar of the Nafplio Court of Appeal but this was not the applicant's fault. The applicant had been handcuffed and escorted by policemen into the office of the competent registrar and had been requested merely to sign the report, which he had not been able to read, partly due to the handcuffs but also because he could not read the Greek language. He had not been accompanied by his lawyer at the registry office, as it was not obligatory to lodge an appeal in the presence of a lawyer. In any event, he had shown complete trust in the registrar's assurance that his appeal had been lawfully lodged. It had been the registrar's responsibility to complete the report correctly and to inform the applicant whether he should add anything.

20. The applicant further argued that in any event, from the text of the pre-printed form one could easily understand that he had lodged the appeal complaining about the assessment of evidence by the first-instance court and about his conviction and his appeal therefore contained at least one valid reason. The dismissal of his appeal was a disproportionate measure for achieving the legitimate aim of legal certainty and the limitations imposed on him in the circumstances of the present case restricted his access to a court to such an extent that the very essence of his right was impaired.

21. The Government submitted that the applicant had not proved that a judicial practice for lodging an appeal using pre-printed forms existed. In any event, it had been the applicant's responsibility to include at least one reason for appeal on the form completed by the registrar in order for the appeal to be legally lodged. The pre-printed form available at the Nafplio Court of Appeal had had an empty space above the signatures in order for the persons lodging an appeal to include the relevant reasons. The applicant had signed the relevant form, thus expressing his wish for the report to be submitted as it stood. The registrar was responsible for noting down the applicant's personal data and any reasons he might have provided, and for signing the report, in other words for fulfilling the formal requirements of the report, whereas the applicant was responsible for the content thereof. The registrar of the court could not have replaced the applicant in expressing his reasons for appeal, nor had it been his responsibility to

inform him that the content of the report was not complete. In any event, at both the first-instance court and the Appeal Court the applicant had been represented by a lawyer, who should have advised him on the requirements for lodging an appeal.

22. The Government further argued that the applicant could have requested a copy of the report and reviewed it with the assistance of his lawyer; if he had considered then that the report was not complete, he could have submitted additional reasons for appeal within the time-limit of ten days, either with the assistance of his representative or by himself before the prison director.

23. The Government concluded that they enjoyed a wide margin of appreciation in respect of the rules they introduced for the exercise of the right of access to a court and in this case, the rule that the reasons for appeal should have been included in the report by which the legal remedy was lodged did not violate Article 6 of the Convention. The dismissal of the applicant's appeal as inadmissible was entirely the applicant's fault as he had omitted to include the reasons for his appeal in the relevant report, even though he could have consulted his lawyer.

### 2. *The Court's assessment*

#### (a) General Principles

24. The Court reiterates that the right of access to a court secured by Article 6 § 1 of the Convention is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision regarding observance of the Convention's requirements rests with the Court, which must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim pursued (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 89, ECHR 2016 (extracts), and *Erfar-Avef v. Greece*, no. 31150/09, § 40, 27 March 2014).

25. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of national legislation (see *Perez v. France* [GC], no. 47287/99, § 82, ECHR 2004-I, and *Papaioannou v. Greece*, no. 18880/15, § 39, 2 June 2016). This applies in particular to the interpretation by courts of rules of a procedural nature such as time-limits governing the filing of documents or the lodging of appeals. The Court's role is confined to ascertaining whether the effects of such an interpretation

are compatible with the Convention (see *Yagtzilar and Others v. Greece*, no. 41727/98, § 25, ECHR 2001-XII).

26. In applying the rules of procedure, the national courts must avoid both excessive formalism, which would affect the fairness of the procedure, and excessive flexibility, which would result in removing procedural requirements established by law (see *Walchli v. France*, no. 35787/03, § 29, 26 July 2007, and *Peca v. Greece (no. 2)*, no. 33067/08, § 30, 10 June 2010). In fact, the right of access to court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court (see *Kart v. Turkey* [GC], no. 8917/05, § 79, ECHR 2009 (extracts); *Efstathiou and Others v. Greece*, no. 36998/02, § 24, 27 July 2006; *Vamvakas v. Greece*, no. 36970/06, § 26, 16 October 2008; *Louli-Georgopoulou v. Greece*, no. 22756/09, § 39, 16 March 2017).

27. Lastly, the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. This is particularly true for the guarantees enshrined in Article 6, in view of the prominent place held in a democratic society by the right to a fair trial with all the guarantees under that Article (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 45, ECHR 2001-VIII).

**(b) Application of the above principles to the present case**

28. The Court observes that the Nafplio five-member Appeal Court, in its decision no 113/2009, dismissed the applicant's appeal as inadmissible on the grounds that no reasons for appeal had been included on the pre-printed form by which the appeal was lodged. Without any doubt, the dismissal of the applicant's appeal constituted a limitation of his right of access to a court. In order for the Court to verify whether this limitation is compatible with Article 6 § 1 of the Convention, it will first examine whether the limitation pursued a legitimate aim.

29. The Court notes in this connection that refusing to consider an appeal for which no reasons have been provided pursues the legitimate aim of ensuring the good administration of justice and legal certainty. In the present case, however, the question arises as to whether the Nafplio five-member Appeal Court, in pursuing such legitimate aims, struck a fair balance between the means employed and the aims pursued. More specifically, the question arises as to whether the applicant's appeal was declared inadmissible as a result of excessive formalism on the part of the domestic courts in view of the importance of the appeal and what was at stake in the proceedings for the applicant, who had been sentenced to a long term of imprisonment (see *Labergere v. France*, no. 16846/02, § 20, 26 September 2006). The Court will therefore next assess whether the restriction was proportionate to the aim pursued.

30. The applicant maintained that, in keeping with judicial practice in Greece, appeals were lodged by completing pre-printed forms provided to defendants by the registry, which included a general reason for appeal. The Government, without explicitly denying the existence of such a practice, submitted that the applicant had not proved its existence. The Court notes that, regardless of the existence or not of such a judicial practice, the applicant lodged his appeal against the decision of the court of first instance on the standard form which was provided to him by the Nafplio Court of Appeal. It additionally notes that the wording of the form led to the assumption that it was complete. In particular, the form included the phrase "*... (he) APPEALS ... requesting that the decision under appeal be set aside and that he be acquitted from the charge for the reasons he will cite before the Court of Appeal*" leading one to believe that there was no requirement for a specific reason to be included on the form and that it would be sufficient for the reasons to be provided before the Court of Appeal. Contrary to what the Government maintains, one could not reasonably assume that the empty space after this phrase was destined for completing the reasons for appeal as, if that were the case, the empty space would immediately follow the phrase "*for the reasons ...*", leading one to expect that the above phrase should be completed.

31. The Court additionally notes that the applicant availed himself of the possibility provided by domestic legislation to lodge an appeal without the presence of a lawyer, even though he had been represented by one at the court of first instance. It also notes that he had been handcuffed when he lodged the appeal, which must have hindered his ability to thoroughly review the document.

32. The Court takes note of the Government's argument that the content and reasons for appeal were the applicant's responsibility; however, it cannot but observe that according to domestic case-law, no specific reasons for appeal are required and a standard phrase by which the convicted person complains about the erroneous assessment of facts and/or evidence is sufficient (see paragraph 15 above). Therefore, one could reasonably expect that the registrar who drafted and signed the report would have drawn the applicant's attention, if necessary, to any formalities he needed to complete (see *Vamvakas*, cited above § 33). The Court cannot share the Government's view that the applicant could have completed the reasons for appeal within the time-limit of ten days. While this possibility was afforded by the domestic legislation, it is obvious that the applicant was under the impression that his appeal had been lawfully lodged using the form provided and completed by the registrar of the Nafplio Court of Appeal and there was thus no reason for him to submit an additional document. This is made even more pertinent by the fact that the domestic legislation provides for the possibility of giving a copy of the report to the appellant but not an

obligation so to do (see *Boulougouras v. Greece*, no. 66294/01, § 26, 27 May 2004).

33. The Court lastly observes that the consequences for the applicant were particularly severe. His appeal was dismissed as inadmissible and he had to serve a sentence of twenty-two years of imprisonment without having the opportunity of obtaining a fresh examination of the merits of the case. He was not given a new deadline to complete the reasons for his appeal nor were any other more lenient measures taken.

34. In view of the circumstances described above, in particular the provision of a pre-printed form to the applicant by the registry of the court which gave him the impression of having lawfully lodged an appeal, as well as the role of the registrar in the present case, and what was at stake for the applicant, the Court considers that the Nafplio five-member Court of Appeal, by dismissing the applicant's appeal as inadmissible, prevented the applicant from using a legal remedy available to him under domestic law (see *Louli-Georgopoulou*, cited above, § 47). The Court of Cassation later failed to remedy that situation.

35. The foregoing considerations are sufficient to enable the Court to conclude that the applicant was disproportionately hindered in his right of access to a court and that, accordingly, there has been an infringement of the very essence of its right to a tribunal.

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

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

38. The applicant argued that he suffered distress on account of the violation of Article 6 § 1 of the Convention. His sentence of twenty-two years of imprisonment became final and he did not have the chance to obtain a fresh examination of the merits of the charges which could have led to his acquittal or at least to a lesser sentence. He spent nine years in prison until he was finally given a conditional release in 2015. In view of the above, the applicant claimed 60,000 euros (EUR) in respect of non-pecuniary damage.

39. The Government argued that the sum claimed by the applicant was excessive in view of the financial situation of the country. In the

Government's view, the mere finding of a violation would constitute sufficient just satisfaction. In any event, there was no causal link between the alleged violation of Article 6 of the Convention and the amount requested by the applicant.

40. Making its assessment on an equitable basis and having regard to the nature of the violation found, the Court awards the applicant EUR 7,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

### B. Default interest

41. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,800 (seven thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 July 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| Renata Degener | Kristina Pardalos |
|---|---|
| Deputy Registrar | President |