

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

FOURTH SECTION

CASE OF HÖLSCHER v. GERMANY

(Application no. 44567/22)

JUDGMENT

STRASBOURG

8 July 2025

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Hölscher v. Germany,

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

Lorraine Schembri Orland*, President*,
Anja Seibert-Fohr,
András Jakab*, judges*,
and Veronika Kotek, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 44567/22) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 8 September 2022 by a German national, Mr Thomas Hölscher ("the applicant"), who was born in 1971, lives in Sofia and was represented by Mr S. Schnitzer, a lawyer practising in Offenbach;

the decision to give notice of the application to the German Government ("the Government"), represented by one of their Agents, Ms N. Wenzel, of the Federal Ministry of Justice;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the German Federal Bar Association (*Bundesrechtsanwaltskammer*), who was granted leave to intervene as a third party by the President of the Section (Rule 44 § 3 of the Rules of Court);

Having deliberated in private on 17 June 2025,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the question whether the dismissal of the applicant's appeal against his criminal conviction, without an examination of its merits, was in breach of Article 6 § 1 taken together with Article 6 § 3 (c) of the Convention.

2. On 1 November 2016 the Tiergarten District Court convicted the applicant of preferential payments during insolvency (*Gläubigerbegünstigung*) and three counts of fraud and sentenced him to one year and ten months' imprisonment suspended on probation. Furthermore, it convicted the applicant of delaying insolvency proceedings and three counts of bankruptcy and sentenced him to a fine.

3. The applicant, represented by counsel, lodged an appeal against that judgment.

4. On 5 May 2020 the Berlin Regional Court held a hearing at which the applicant's counsel was present whereas the applicant did not attend in person. At the end of the hearing, the Berlin Regional Court fixed the date for the next hearing for 12 May 2020. It ordered the applicant to appear in person and orally summoned him via his counsel who was authorised to receive

summonses on behalf of the applicant. The Regional Court indicated that the appeal would be dismissed should the applicant fail to attend the hearing on 12 May 2020 without sufficient excuse.

5. On 6 May 2020 the Regional Court also served a summons in writing and ordered the applicant to appear in person at the hearing on 12 May 2020. The written summons indicated that another hearing would be scheduled should the applicant fail to attend the hearing on 12 May 2020.

6. On 11 May 2020 the Regional Court served another summons in writing ordering the applicant to appear in person on 12 May 2020 and indicating that the appeal would be dismissed should the applicant fail to attend the hearing without sufficient excuse. It stated that the written summons of 6 May 2020 was void because it had erroneously indicated that another hearing would be scheduled should the applicant fail to appear. The applicant received this summons on 13 May 2020.

7. At the hearing of 12 May 2020 the applicant's counsel was present whereas the applicant did not attend. The Regional Court dismissed his appeal without examining the merits pursuant to Article 329 § 4 of the Code of Criminal Procedure. This provision allows for the dismissal of an appeal on points of fact and law filed by the defendant without an examination of its merits, if the appeal court summoned the defendant to appear in person at the hearing because his presence is deemed necessary despite his being represented by counsel, and the defendant, who had been instructed in the summons about the possibility of such dismissal, does not attend the hearing in person without sufficient excuse. The Regional Court considered that the applicant had been properly summoned on 5 May 2020, ordered to appear in person and warned that his appeal would be dismissed if he failed to attend the hearing on 12 May 2020 in person (see paragraph 4 above). There was also no sufficient excuse for his absence.

8. The Berlin Court of Appeal subsequently dismissed the applicant's appeal on points of law against the Regional Court's decision, finding, *inter alia*, that the applicant had been properly summoned on 5 May 2020 and the summons of 6 May 2020 did not declare the previous summons void so that the contradictory instruction contained in the summons of 6 May 2020 (see paragraph 5 above) had evidently been erroneous and therefore could not affect the validity of the summons of 5 May 2020 and the instructions as to the consequences of a failure to appear at the hearing.

9. On 29 April 2022 the Federal Constitutional Court declined to accept the applicant's constitutional complaint, without providing reasons (no. 2 BvR 2256/20). The decision was served on the applicant's counsel on 17 May 2022.

10. The applicant complained before the Court that the dismissal of his appeal without an examination of its merits, on the ground that he had not attended the hearing on 12 May 2020 in person, despite his counsel being

present and ready to defend him, had been in violation of Article 6 § 1 taken together with Article 6 § 3 (c) of the Convention.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 TAKEN TOGETHER WITH ARTICLE 6 § 3 (C) OF THE CONVENTION

11. The Government acknowledged that, in view of the contradictory instructions set out in the summonses of 5 and 6 May 2020 and the late service of the summons dated 11 May 2020 which addressed those contradictions, the applicant had not been properly summoned to the hearing before the Regional Court on 12 May 2020. Consequently, he could not reasonably have foreseen that the Regional Court would dismiss his appeal if he failed to appear in person at that hearing. They submitted that a violation of Article 6 § 1 taken together with Article 6 § 3 (c) of the Convention could therefore not be ruled out. They added that they refrained from making a unilateral declaration in view of the Court's judgment in *Dridi v. Germany* (no. 35778/11, 26 July 2018), noting that the applicant stated that he wanted to obtain the reopening of the criminal proceedings against him in accordance with Article 359 no. 6 of the Code of Criminal Procedure.

12. 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.

13. The general principles concerning the right of an absent defendant to be effectively defended by a lawyer under Article 6 §§ 1 and 3 (c) of the Convention have been summarised, *inter alia*, in *Van Geyseghem v. Belgium* ([GC], no. 26103/95, § 33, ECHR 1999-I); *Kari-Pekka Pietiläinen v. Finland* (no. 13566/06, § 31, 22 September 2009); and *Neziraj v. Germany* (no. 30804/07, § 49, 8 November 2012).

14. The Court consistently found that the fact that a defendant, in spite of having been properly summoned, did not appear, could not justify depriving him of his right under Article 6 § 3 (c) of the Convention to be defended by counsel (*ibid*.). The Court considers that, irrespective of the amendments to Article 329 § 4 of the Code of Criminal Procedure following the Court's judgment in *Neziraj*, the same reasoning applies *a fortiori* where the applicant was not properly summoned, which occurred in the present case, as acknowledged by the Government (see paragraphs 4-6 and 11 above; for the failure to properly summon, see also *Dridi*, cited above, §§ 32-33).

15. Accordingly, the dismissal of the applicant's appeal by the Regional Court, without an examination of its merits, because the applicant had failed to attend the hearing on 12 May 2020 in person, despite his counsel being present and ready to defend him, was in violation of Article 6 § 1 taken together with Article 6 § 3 (c) of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. The applicant did not submit a claim in respect of just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 taken together with Article 6 § 3 (c) of the Convention.

Done in English, and notified in writing on 8 July 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Veronika Kotek Acting Deputy Registrar	Lorraine Schembri Orland President