



German courts' decision to cancel public hearing in case concerning expropriation measures made proceedings unfair

In today's **Chamber judgment**¹ in the case of [Madaus v. Germany](#) (application no. 44164/14) the European Court of Human Rights (ECtHR) 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 complaint by a person who had brought proceedings under the Criminal Rehabilitation Act on behalf of his late father – who had been subject to expropriation measures in the Soviet Occupied Zone of Germany – that he was not granted the opportunity of an oral hearing.

The Court concluded that there had been no exceptional circumstances to justify dispensing with a public hearing and cancelling the hearing initially scheduled shortly before the date foreseen for it. In particular, the fact that the domestic courts had disagreed with the way the applicant's lawyers had handled their relations with the public – they had published a press release expressing their interpretation of why the courts had scheduled a hearing – could not be considered an exceptional circumstance.

Principal facts

The applicant, Udo Madaus, is a German national who was born in 1924 and lives in Cologne (Germany).

In 2006 Mr Madaus brought proceedings under the Criminal Rehabilitation Act on behalf of his late father, who had been subject to expropriation measures in 1946 and 1947 after an administrative body in the Soviet Occupied Zone of Germany had classified him as a "Nazi activist, "Nazi criminal" and "person profiting from the war". Mr Madaus alleged that those measures had had a penal character although his father's guilt had been determined not by a court but by an administrative body. He requested that the decisions to find his father guilty of being a Nazi, to expropriate him and confiscate his property be declared void.

In June 2008 the Dresden Regional Court scheduled a public hearing in the case, which was to take place in August 2008. Mr Madaus' lawyers published a press release in July 2008, announcing the hearing date and suggesting that the fact that the court had scheduled a hearing could indicate a turning-point in the domestic case-law on the reforms in the Soviet Occupied Zone. In the press release the lawyers also stated that they would explain in detail what that "economic reform" had really meant.

In August 2008 the Dresden Regional Court cancelled the hearing and set a time-limit for the written procedure. It referred to the relevant section of the Criminal Rehabilitation Act, pursuant to which a decision should generally be taken without holding a hearing. The hearing had been scheduled in order to give Mr Madaus the opportunity to explain his legal opinion, which conflicted with that of the Regional Court and the Dresden Court of Appeal and was supported by particularly voluminous factual submissions. However, the Regional Court considered that there was no longer any

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.

additional benefit in holding a hearing. Moreover, according to the court, the press release published by Mr Madaus' lawyers, which had given their interpretation of why a hearing had been scheduled, namely that the court would abandon its case-law, indicated that they intended to use the hearing as a public forum.

In August 2009 the Dresden Regional Court rejected Mr Madaus' request for the decisions in respect of his father to be declared void. His appeal against the judgment was dismissed and, on 19 November 2013, the Federal Constitutional Court declined to consider his constitutional complaint, in which he had alleged, in particular, violations of his right to an effective remedy and his right to be heard (file no. 2 BvR 1511/11).

Complaints, procedure and composition of the Court

Mr Madaus complained that by taking decisions without holding a hearing, the domestic courts had violated his rights under Article 6 § 1 (right to a fair trial). He further complained of a violation of his rights under Article 10 (freedom of expression).

The application was lodged with the European Court of Human Rights on 26 May 2014.

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

Ganna **Yudkivska** (Ukraine), *President*,
Angelika **Nußberger** (Germany),
Khanlar **Hajiyev** (Azerbaijan),
André **Potocki** (France),
Faris **Vehabović** (Bosnia and Herzegovina),
Yonko **Grozev** (Bulgaria),
Carlo **Ranzoni** (Liechtenstein),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

[Article 6 § 1](#)

The ECtHR observed that the domestic courts had found no reason to investigate Mr Madaus' case any further by holding a hearing. However, there had been facts in dispute between the parties, in particular whether an arrest warrant had been issued against his father.

The ECtHR also noted that under the relevant domestic law and practice, namely the proceedings under the Criminal Rehabilitation Act, it was the exception rather than the rule to hold a hearing and it was left to the discretion of the domestic courts whether there were reasons to hold a hearing. Indeed, the Dresden Regional Court had never held a hearing in these matters before. Notwithstanding, in Mr Madaus' case, a hearing had been scheduled, on the grounds that his submissions had been particularly voluminous and he was to be given the opportunity to explain his legal opinion. This indicated that at the time the Regional Court had considered that a hearing was necessary, and the ECtHR saw no reason to hold otherwise.

Furthermore, the ECtHR concluded that no exceptional circumstances – within the meaning of its case-law – to justify dispensing with a hearing had arisen after the date on which the hearing had been scheduled. The only new aspect mentioned in the Regional Court's decision to cancel the hearing was the press release published by Mr Madaus' lawyers. In the ECtHR's view, the Regional Court's disagreement with the way the lawyers had handled their relations with the public, including their interpretation of why a hearing had been scheduled, could not be considered an exceptional

circumstance. Moreover, it had not been shown that disturbances had been likely which would have rendered a public hearing impossible.

Finally, the ECtHR observed that the reason for generally not holding hearings in cases concerning claims under the Criminal Rehabilitation Act was to simplify and accelerate the proceedings for the benefit of the people concerned. However, in Mr Madaus' case the hearing had been cancelled only 11 days before the scheduled date. It had not been shown that this decision had enabled the case to be decided more speedily or that it had been necessary in order to reduce the domestic courts' general case-load.

In the absence of exceptional circumstances to justify dispensing with a public hearing and cancelling the hearing initially scheduled, there had been a violation of Article 6 § 1.

Other articles

The ECtHR declared inadmissible Mr Madaus' complaint under Article 10 for failure to exhaust the domestic remedies, observing that he had not alleged an interference with his right to freedom of expression before the Federal Constitutional Court.

Just satisfaction (Article 41)

The Court held that Germany was to pay Mr Madaus 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,500 in respect of costs and expenses.

The judgment is available only in English.

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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.