



Summons to appear in court served via public notification was not sufficient under the Convention

In today's Chamber judgment¹ in the case of [Dridi v. Germany](#) (application no. 35778/11) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 §§ 1 and 3 (c) (right to a fair trial/to defend oneself in person or through legal assistance) of the European Convention on Human Rights regarding the serving of a summons by public notification, and

a violation of Article 6 §§ 1 and 3 (b) and (c) (right to a fair trial/time and facilities for defence/defence in person or through legal assistance) because Mr Dridi's lawyer was not given adequate opportunity to prepare his defence or attend the appeal hearing.

The case concerned criminal proceedings in which the summons to a hearing was served by public notification and the time given to the defence to prepare for the hearing and attend it.

The Court observed in particular that Mr Dridi had a new address in Spain which was known to the Regional Court and that only a public notification of the summons had been made, at a time when he had not been represented by a lawyer.

The subsequent hearing before the Regional Court had not been adjourned, contrary to the request of Mr Dridi's lawyer, whose authorisation had been withdrawn and only restored a day before the hearing. The lawyer had not been properly summoned, had been unable to attend the hearing and had not had a chance to inspect the court's case file anew.

In conclusion, the Court found that Mr Dridi's rights under Article 6 §§ 1 and 3 (c) and Article 6 §§ 1 and 3 (b) and (c) had been violated.

Principal facts

The applicant, Abdelhamid Dridi, is a German national who was born in 1982 and lives in Cadiz (Spain). In March 2009 he was convicted of assault and fined 1,000 euros by the Hamburg District Court. At the applicant's request, the court authorised a law student, Mr Arif, to act as defence counsel. Both sides appealed. Mr Dridi later moved to Spain, giving his new address to the court.

On 24 April 2009 the Hamburg Regional Court withdrew Mr Arif's authorisation and rejected Mr Dridi's application to be released from the obligation to appear in person. The decision was served on Mr Dridi in Spain. On the same day, the Regional Court fixed a date for the appeal hearing, but decided to serve the summons on Mr Dridi via public notification – pinning it to its notice board – because he had moved abroad.

One day before the hearing, on 12 May 2009, Mr Arif learned that the Court of Appeal had quashed the Regional Court's withdrawal of his authorisation and that the appeal hearing had been scheduled for the following morning. He applied for an adjournment owing to a planned absence.

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.

On 13 May 2009 the Regional Court decided to refuse Mr Arif's application. Simultaneously, it dismissed Mr Dridi's appeal without an assessment on the merits because he had not appeared or been represented by a lawyer. Mr Dridi's request for restoration of the *status quo ante* was dismissed by the Regional Court in March 2010, whose decision was upheld by the Court of Appeal.

An appeal on points of law by the applicant against the Regional Court's judgment of 13 May 2009 was rejected by the Court of Appeal in July 2010. A constitutional complaint was also unsuccessful.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 3 (b) and (c) (right to adequate time and facilities for preparation of defence and right to defend oneself in person or through legal assistance), Mr Dridi complained that the hearing before the Regional Court had not been adjourned and that his lawyer had thus not had an adequate possibility to examine the case file for preparation or to attend the appeal hearing.

The application was lodged with the European Court of Human Rights on 7 June 2011.

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

Erik **Møse** (Norway), *President*,
 Angelika **Nußberger** (Germany),
 André **Potocki** (France),
 Yonko **Grozev** (Bulgaria),
 Síofra **O'Leary** (Ireland),
 Gabriele **Kucsko-Stadlmayer** (Austria),
 Lətif **Hüseynov** (Azerbaijan),

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

Decision of the Court

Article 6 §§ 1 and 3 (c)

The Court first dealt with a unilateral declaration by the Government to resolve the complaints.

The Government accepted that there had been a violation of Mr Dridi's rights under Article 6 § 1 and/or under Article 6 § 3 (c), offered compensation and asked the Court to strike out the case. At the same time, it acknowledged that there was no domestic case-law on whether domestic legislation on reopening criminal proceedings following the finding of a violation by the Court also applied to cases where the Government had acknowledged a violation in a unilateral declaration. Indeed, domestic courts had applied that provision narrowly.

The Court found that under German law neither a unilateral declaration nor a decision by the Court to strike out an application provided the same assured access to a procedure on reopening criminal proceedings as a Court judgment finding a violation. Accordingly, it rejected the Government's strike-out request and continued its examination of the case.

It reiterated that Article 6 taken as a whole showed that a person charged with a criminal offence was entitled to take part in hearings.

Even though domestic law had allowed for the serving of the summons by way of public notification in the present case, the Court observed that Mr Dridi's address in Spain had been known to the Regional Court and that there had been no unsuccessful attempts to serve court documents on him.

Despite a provision for procedural documents to be sent to the applicant by post under Article 5 of the EU Convention on Mutual Assistance in Criminal Matters of 25 May 2000, the summons had neither been served in Spain, nor communicated to Mr Dridi in any other way than public

notification. Moreover, Mr Dridi was at the time not represented by his lawyer, Mr Arif, as his authorisation had been withdrawn. Mr Arif learned the date of the hearing only one day beforehand and his request for an adjournment was refused.

The Court concluded that serving the summons via public notification had not been sufficient. Accordingly, there had been a violation of Mr Dridi's rights under Article 6 §§ 1 and 3 (c).

Article 6 §§ 1 and 3 (b) and (c)

The Court noted that Mr Arif had had his authorisation restored and learnt the date of the hearing one day before it was due to take place. He had not received any documents to prepare for it and his application for an adjournment had been dismissed. The Court considered that Mr Arif had not waived the right to be summoned in a manner that allowed him to prepare the applicant's defence and to attend the hearing.

The Court concluded that Mr Dridi's lawyer had not been given adequate opportunity to access the court's case file or to attend the appeal hearing. There had accordingly been a violation of Article 6 §§ 1 and 3 (b) and (c) of the Convention.

Just satisfaction (Article 41)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Dridi. It further held that Germany was to pay the applicant 2,500 euros in respect of costs and expenses.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

Press contacts

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

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

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

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

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

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

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.