



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

THIRD SECTION

CASE OF SIEBERT v. GERMANY

(Application no. 59008/00)

JUDGMENT
(Friendly settlement)

STRASBOURG

23 March 2006

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

In the case of Siebert v. Germany,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr L. CAFLISCH,

Mr C. BÎRSAN,

Mrs A. GYULUMYAN,

Mrs R. JAEGER,

Mr E. MYJER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 2 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 59008/00) 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”) by a German national, Mr Reinhold Siebert (“the applicant”), on 20 June 2000.

2. The applicant was represented by Mr G. Rixe, a lawyer practising in Bielefeld. The German Government (“the Government”) were represented by their Agent, Mr K. Stoltenberg, *Ministerialdirigent*, and, subsequently, Mrs A. Wittling-Vogel, *Ministerialdirigentin*, of the Federal Ministry of Justice.

3. The applicant complained, *inter alia*, under Article 6 § 1 of the Convention about the length of two sets of proceedings concerning guardianship of and access to his daughter. He further submitted that he had been a victim of a violation of Article 13 of the Convention in that he had not had an effective remedy in respect of his right to a hearing within a reasonable time while the said proceedings had been pending.

4. On 9 June 2005, after obtaining the parties’ observations, the Court declared the application admissible in so far as the complaints under Article 6 about the length of the said two sets of proceedings were concerned. It decided to adjourn the examination of the applicant’s complaint under Article 13 about the lack of an effective remedy. Further complaints of the applicant under Articles 6, 8 and 14 of the Convention were declared inadmissible on the same date.

5. On 8 December 2005 the Court received a formal declaration, signed by the Government on 28 November 2005 and by the applicant on

1 December 2005, accepting a friendly settlement of the case reached with the assistance of the Registry.

THE FACTS

6. The applicant was born in 1954 and lives in Gütersloh, Germany. He is also acting on behalf of his daughter Anna Kemper.

7. The applicant is married and lives with his wife and two children born in wedlock. His daughter Anna, whose mother, Ms Kemper, died after having given birth to her, was born out of wedlock on 29 December 1993. Due to her premature birth and a so-called hydrocephalous she had developed, Anna needed constant medical supervision. She stayed in hospital until 11 March 1994 and has since then been living with Mr P. and his wife Mrs P., her mother's half-sister.

1. Proceedings regarding guardianship

8. On 3 January 1994 the applicant lodged a motion with the Gütersloh District Court to appoint him as Anna's guardian. On 9 March 1994 a judicial officer of the District Court granted Mr and Mrs P.'s motion to appoint them as Anna's guardians and dismissed the applicant's respective motion. The District Court found in particular that the applicant was not in a position to ensure that his daughter received the intensive care and medical treatment she needed on account of her illness.

9. On 28 December 1994 the Bielefeld Regional Court dismissed the applicant's appeal against the District Court's decision after having heard the parties twice. On 26 February 1996 the Hamm Court of Appeal dismissed the applicant's further appeal regarding his request for appointment as guardian. Insofar as the appointment of both Mrs and Mr P. as guardians was concerned, the Court of Appeal remitted the case to the District Court as, pursuant to the applicable provisions of the Civil Code, only one person should have been appointed.

10. On 3 April 1996 a judicial officer of the Gütersloh District Court discharged Mr P. as Anna's guardian, finding that Mrs P. was taking care of the child in the first place. On 3 June 1996 the Bielefeld Regional Court dismissed the applicant's appeal against the District Court's decision. On 20 May 1997 the Hamm Court of Appeal dismissed the applicant's further appeal.

11. On 13 December 2000 the Federal Constitutional Court refused to admit the applicant's constitutional complaints lodged on 21 March 1996 and on 30 June 1997 respectively against the above-mentioned decisions of the guardianship courts in a joint decision. The decision was sent to the applicant on 27 December 2000.

2. Proceedings concerning the applicant's access to his daughter

12. On 27 March 1995 the applicant lodged a motion with the Rheda-Wiedenbrück District Court to be granted access to his daughter. On 23 February 1996 the District Court dismissed the applicant's request to be granted access to Anna by way of an interim injunction. On 28 May 1997 the District Court, after having held three hearings, dismissed the applicant's request for access. It notably found that due to Anna's fragile state of health and psychological condition and the extreme enmity between the applicant and Mrs P. access would have a detrimental effect on Anna's well-being.

13. On 22 January 1998 the Bielefeld Regional Court, without holding a hearing, dismissed the applicant's appeal.

14. On 13 December 2000 the Federal Constitutional Court, without giving further reasons, refused to admit the applicant's constitutional complaint lodged on 27 February 1998. The decision was served on the applicant on 28 December 2000.

THE LAW

15. On 8 December 2005 the Court received the following declaration from the applicant's representative, signed by the Government on 28 November 2005 and by the applicant's representative on 1 December 2005:

"The Federal Republic of Germany, represented by their Agent, Dr Almut Wittling-Vogel, *Ministerialdirigentin*, Federal Ministry of Justice, Mohrenstraße 37, 10117 Berlin, as well as the applicant Reinhold Siebert, acting on his own behalf and on behalf of his daughter Anna Kemper, both represented by legal counsel, Mr Georg Rixe, Hauptstraße 60, 33647 Bielefeld, in the proceedings concerning application no. 59008/00, declare with a view to a friendly settlement as follows:

1. The Government of the Federal Republic of Germany undertake to pay the applicant a total sum of EUR 9,000 as compensation in respect of any possible claims relating to the present application. This does not imply an acknowledgement of a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms. The parties are agreed that the applicant's daughter, Anna Kemper, has no claim with respect to the sum of money to be paid. The above-mentioned sum is to cover any claims against the Federal Republic of Germany, in particular compensation for damages, costs and expenses. The amount will be payable within three months after the European Court of Human Rights has decided, due to the friendly settlement pursuant to Article 39 of the Convention, to strike the case out of its list.
2. The applicant, represented by legal counsel, Mr Georg Rixe, 33647 Bielefeld, declares – also on behalf of his daughter Anna Kemper – that the

above-referenced application has been settled in its entirety. He agrees to the Court striking the case out of its list. In addition, the applicant, on his own behalf and on behalf of his daughter Anna Kemper, waives the possibility of pursuing any further claims against the Federal Republic of Germany in connection with the facts of the case which formed the basis of this complaint.

3. The Government Agent of the Federal Republic of Germany undertakes to promptly notify the European Court of Human Rights of this agreement.”

16. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

17. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English, and notified in writing on 23 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President