



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

FIFTH SECTION

CASE OF BECKER v. GERMANY

(Application no. 8722/02)

JUDGMENT
(Friendly settlement)

STRASBOURG

14 December 2006

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

In the case of Becker v. Germany,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

Mr K. JUNGWIERT,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 20 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 8722/02) 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, Mrs Elke Becker (“the applicant”), on 19 February 2002.

2. The applicant was represented by Mr L. Ose, a lawyer practising in Ludwigshafen. The German Government (“the Government”) were represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialrätin*, of the Federal Ministry of Justice.

3. The applicant complained under Article 6 § 1 of the Convention about the length of a set of civil proceedings which the applicant had joined as a private party.

4. On 8 July 2004, after obtaining the parties' observations, the Court declared the application admissible.

5. On 24 August 2006, after an exchange of correspondence, the Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 19 and 16 October 2006 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicant was born in 1952 and lives in Frankenthal.

7. On 28 May 1991 the applicant's husband instituted proceedings with the Frankenthal District Court, sitting as a court competent in family matters, with a view to obtain the spouses' divorce.

8. On 21 February 1992 the Frankenthal District Court pronounced the spouses' divorce. It ordered the applicant's former husband to pay alimony to their son. Having regard to a marriage contract in which both parties had agreed to manage their property separately and to waive alimony in case of a divorce, it found that the applicant was not entitled to any alimony payments. Contrary to the applicant's allegations, it considered the marriage contract to be compatible with German law, finding that the applicant's pregnancy at the time that it was concluded did not place her at an excessive disadvantage that would automatically make the contract null and void.

9. On 12 November 1992 the Palatinate Court of Appeal, following the applicant's appeal, amended the District Court's decision. It obliged her former husband to pay her a monthly alimony of DEM 300 (approximately EUR 153), finding that this was necessary to ensure the upbringing of their child and the applicant's other child from an earlier marriage, who is severely disabled. The Court of Appeal also increased the monthly alimony to be paid to the spouses' son. Referring to the reasoning in the District Court's decision, it also found that the marriage contract was compatible with German law.

10. On 2 December 1992 the applicant lodged a constitutional complaint with the Federal Constitutional Court.

11. On 29 March 2001 the Federal Constitutional Court found that the decision of the Court of Appeal violated the applicant's rights under the German Basic Law. It found that when determining the validity of the marriage contract, the Court of Appeal had not taken into account that the applicant's pregnancy, in addition to the strain of caring for a handicapped child, placed her at an obvious disadvantage towards her former husband when concluding the marriage contract. The matter was thus remitted to the Court of Appeal.

12. On 8 November 2001 the proceedings before the Court of Appeal were discontinued following the engagement of the applicant's former husband, in the context of a court settlement, to pay monthly alimony to the applicant, as well as a lump sum with respect to the past.

THE LAW

13. On 16 October 2006 the Court received the following declaration from the Government:

“I, Mrs Almut Wittling-Vogel, Agent of the Government, declare that the Government of Germany offer to pay ex gratia 9,500 euros to Mrs Elke Becker with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the judgment by the Court pursuant to Article 39 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention.”

14. On 19 October 2006 the Court received the following declaration signed by the applicant's representative:

“I, Mr Ludwig Ose, Lawyer, note that the Government of Germany are prepared to pay ex gratia the sum of 9,500 euros to Mrs Elke Becker with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the judgment by the Court pursuant to Article 39 of the European Convention on Human Rights. 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.

I accept the proposal and waive any further claims against Germany in respect of the facts of this application. I declare that this constitutes a final resolution of the case.

This declaration is made in the context of a friendly settlement which the Government and the applicant have reached.

I further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court's judgment.”

15. 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).

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 14 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President