



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

FIFTH SECTION

CASE OF BERGER v. GERMANY

(Application no. 55809/00)

JUDGMENT
(Friendly settlement)

STRASBOURG

14 June 2007

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

In the case of Berger v. Germany,

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

Mr P. LORENZEN, *President*,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 22 May 2007

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

PROCEDURE

1. The case originated in an application (no. 55809/00) 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, Karl Berger (“the applicant”), on 7 March 2000.

2. The applicant was represented by J. Berger, a lawyer practising in Coburg. The German Government (“the Government”) were represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialdirigentin*, Federal Ministry of Justice.

3. The applicant complained, *inter alia*, under Article 6 § 1 of the Convention about the length of the proceedings before the Federal Constitutional Court.

4. On 8 January 2007, after obtaining the parties' observations, the Court declared the application admissible in so far as this complaint is concerned. Further complaints of the applicant were declared inadmissible on the same date.

5. On 27 March 2007, 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 23 April 2007 and on 30 April 2007 the Government and the applicant respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicant was born in 1949 and lives in Reischach.

7. After the entry into force of the Bavarian Roads and Tracks Act (*Bayerisches Straßen- und Wegegesetz*) in 1958 the Municipality of Reischach registered a track running over the land of the applicant's mother as a public field and forest track. His mother had not been informed of this measure. When she learned about the registration of her track, she seized without success the competent German courts.

8. On 16 November 1991 the applicant's mother filed a constitutional complaint with the Federal Constitutional Court (*Bundesverfassungsgericht*) against the previous decisions. After his mother's death on 12 September 1996, the applicant continued the proceedings before the Federal Constitutional Court. On 17 September 1999 the Federal Constitutional Court, sitting as a bench of three judges, refused to accept the constitutional complaint for adjudication.

THE LAW

9. On 23 April 2004 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* 8,000 euros to Karl Berger 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, and free of any taxes that may be applicable, 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.”

10. On 3 May 2007 the Court received the following declaration signed by the applicant's representative:

“I, Josef Berger, legal counsel, note that the Government of Germany are prepared to pay *ex gratia* the sum of 8,000 euros to Mr Karl Berger 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, and free of any taxes that may be applicable, 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."

11. 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).

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases;
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 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President