



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

FIFTH SECTION

CASE OF BRAUER v. GERMANY

(Application no. 3545/04)

JUDGMENT
(just satisfaction – friendly settlement)

STRASBOURG

28 January 2010

This judgment is final. It may be subject to editorial revision.

In the case of Brauer v. Germany,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Isabelle Berro-Lefèvre,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 5 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 3545/04) 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, Ms Brigitte Brauer (“the applicant”), on 13 January 2004.

2. In a judgment delivered on 29 May 2009 (“the principal judgment”), the Court held that there had been a violation of Article 14 taken in conjunction with Article 8 of the Convention on account of the fact that the applicant, having been born outside of marriage, was unable to assert her inheritance rights. It could not find any ground on which such discrimination based on birth outside marriage could be justified today, particularly as the applicant’s exclusion from any statutory entitlement to inherit penalised her to an even greater extent than the applicants in other similar cases brought before it (see *Brauer v. Germany*, no 3545/04, §§ 39-46, ECHR 2009).

3. Under Article 41 of the Convention the applicant sought just satisfaction of EUR 95,828.59 in pecuniary damage and EUR 50,000 in non-pecuniary damage. She further claimed EUR 2,859.65 in reimbursement of her costs and expenses.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 54 and point 4 of the operative provisions).

5. On 23 September 2009 the Court received the following declaration from the Government, signed by both parties' representatives on 22 September 2009:

“1. The Federal Republic of Germany undertakes to effect payment to the applicant in respect of a total amount of EUR 115,000.00 in settlement of all and any claims related to the above application. All conceivable claims against the Federal Republic of Germany shall be deemed to have been settled with this amount, in particular compensation of the applicant, as well as costs and expenses. The copy of the disbursement order of the Federal Office of Justice to the competent federal cash office shall suffice as proof of payment.

2. The amount shall be payable within three months after the European Court of Human Rights has ruled to strike the case out of its list on the basis of the friendly settlement in accordance with Article 39 of the Convention in conjunction with Article 75 § 4 and Article 43 § 3 of its Rules of Procedure.

3. The applicant herewith declares her consent to having the application struck out of the list.

4. The applicant waives assertion of all and any further claims against the Federal Republic of Germany in connection with the facts on which the application is based. The Federal Republic of Germany accepts this waiver herewith.

5. In the event of her receiving payments from the inheritance, or with regard to nonparticipation in the inheritance as the result of the pending proceedings for the issuance of a certificate of inheritance or by other means, the applicant undertakes to notify the Agent of the Federal Republic of Germany of such in writing and to refund such to the Federal Republic of Germany, whilst setting off the compensation amount agreed in No. 1. She undertakes furthermore to inform the Agent of the outcome of the pending proceedings for the issuance of a certificate of inheritance.

6. The Agent of the Federal Republic of Germany shall inform the European Court of Human Rights of the present settlement.”

6. On 19 November 2009 the parties informed the Court that they undertake not to request a rehearing of the case before the Grand Chamber.

THE LAW

7. Following its principal judgment the Court has been informed that a friendly settlement has been reached between the Government and the applicant with respect to the latter's claims under Article 41 of the Convention.

Having regard to its terms, the Court finds the agreement equitable within the meaning of Rule 75 § 4 of the Rules of Court and that it 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). Consequently, it takes formal note of the agreement and considers it appropriate to strike the remainder of the application out of the list pursuant to that provision.

8. Accordingly, the remainder of the application should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

Done in English, and notified in writing on 28 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President