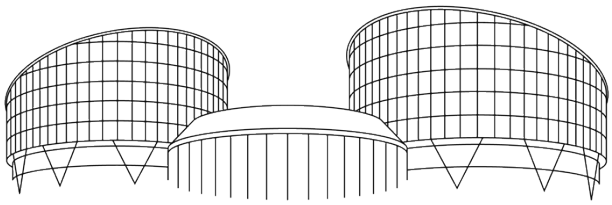

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

CASE OF BRAUER v. GERMANY

(Application no. 3545/04)

JUDGMENT
(*merits*)

Translation

STRASBOURG

28 May 2009

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. 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,*
Rait Maruste,
Karel Jungwiert,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 5 May 2009,

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 (FRG) 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. The applicant was represented by Mr F. Steinhoff, a lawyer practising in Lennestadt. The German Government ("the Government") were represented by their Agent, Ms A. Wittling-Vogel, *Ministerialdirigentin*.

3. The applicant alleged that the relevant provisions of domestic law and the decisions by the national courts had infringed her right to respect for her family life as guaranteed by Article 8 of the Convention. She also relied on Article 14 of the Convention.

4. On 26 November 2007 the President of the Second Section decided to give notice of the application to the Government. It was also decided that the Chamber would examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1948 in Oberschwöditz, in the former German Democratic Republic (GDR), and lives in Lennestadt.

A. Background to the case

6. The applicant is the natural daughter of a Mr Schildgen, who recognised her several months after her birth. She lived in the territory of the former GDR until 1989, while her father lived in the FRG. The father and daughter corresponded regularly during this period, and after the reunification of Germany she visited him. He died between 30 June and 3 July 1998 (the precise date has not been specified).

The applicant subsequently made several attempts to assert her inheritance rights in the domestic courts.

B. Proceedings in the domestic courts

7. On 10 July 1998 the applicant applied for a certificate of inheritance attesting that she was entitled to at least a 50% share of Mr Schildgen's estate.

8. In a decision of 8 October 1998 the Neunkirchen District Court (*Amtsgericht – Nachlassgericht*) refused the applicant's application, holding that, notwithstanding the reform of the law of succession following the introduction of the Inheritance Rights Equalisation Act of 16 December 1997 (*Erbgleichstellungsgesetz*), the first sentence of section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act (*Gesetz über die rechtliche Stellung nichtehelicher Kinder – Nichtehelichengesetz*) of 19 August 1969 remained in force. The provision in question stated that children born outside marriage before 1 July 1949 were not deemed to be statutory heirs (see "Relevant domestic law and practice", paragraph 18 below). The District Court also referred to a decision given by the Federal Constitutional Court (*Bundesverfassungsgericht*) on 8 December 1976 (see also "Relevant domestic law and practice", paragraph 21 below), in which the provision had been found to be in conformity with the Basic Law (*Grundgsetz*).

9. On 4 November 1998 the applicant appealed to the Saarbrücken Regional Court (*Landgericht*), arguing in particular that the law of the former GDR, which provided for equal treatment between children born within and outside marriage, should apply in her case. In any event, section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act contravened Article 3 (principle of equality before the law) of the Basic Law as there was no objective justification for the difference in treatment.

10. In a decision of 7 January 1999 the Saarbrücken Regional Court upheld the District Court's decision on the same grounds. It acknowledged, however, that the exclusion of children born outside marriage before 1 July 1949 from the statutory right of inheritance placed them at a very clear disadvantage in relation to those born after that date and also to those covered by the law of the former GDR.

11. In a decision of 3 September 1999 the Saarland Court of Appeal (*Oberlandesgericht*) quashed the Regional Court's decision and remitted the case to it to establish whether the applicant was indeed Mr Schildgen's natural daughter and whether there were any other heirs. If the applicant were to be entitled to at least a 50% share of the estate, the Regional Court should examine whether the first sentence of section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act was in conformity with the Basic Law.

The Court of Appeal confirmed at the outset that by virtue of the rules of private international law and, in particular, the settled case-law concerning section 25(1) of the Introductory Act to the FRG Civil Code (*Einführungsgesetz in das Bürgerliche Gesetzbuch*), FRG law alone was applicable in the applicant's case, since the deceased (*Erblasser*) had not been resident in the territory of the former GDR on 3 October 1990, when German reunification had taken effect.

However, it considered that the first sentence of section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act was not in conformity with the Basic Law, for the following reasons. Firstly, the legal and social status of children born outside marriage had evolved considerably since the Federal Constitutional Court's decision of 8 December 1976 and had in practice become equivalent to that of children born within marriage. The Federal Constitutional Court, moreover, had itself adopted a more restrictive approach to Article 6 § 5 of the Basic Law (principle of equal treatment between children born outside and within marriage) in its decision of 18 November 1986 (see "Relevant domestic law and practice", paragraph 23 below). Furthermore, a new situation had arisen as a result of the accession of the former GDR to the FRG, since by virtue of section 235(1)(2) of the Introductory Act to the Civil Code, taken together with section 25(1), children born outside marriage before 1 July 1949 had the same rights as children born within marriage if the father had been resident in the territory of the former GDR on 3 October 1990 (see "Relevant domestic law and practice", paragraphs 19-20 below). However, there were no objective grounds for a difference of treatment between children born outside marriage before or after 1 July 1949, or between children born outside marriage before 1 July 1949 according to whether or not the father had been resident in the territory of the former GDR on 3 October 1990. The Court of Appeal concluded that the arguments put forward by the Federal Constitutional Court in its decision of 8 December 1976 were no longer valid, particularly with regard to the practical and procedural difficulties of establishing the paternity of children born outside marriage before 1 July 1949, and the need to protect the "legitimate expectations" of the deceased (*Vertrauensschutz des Erblassers*) and his family.

12. In a decision of 25 January 2001 the Saarbrücken Regional Court confirmed its previous decision on the basis of the same arguments. Even if it was established to a 99% degree of certainty that the applicant was indeed Mr Schildgen's daughter and there were no other known heirs, she was excluded from any statutory entitlement to the estate by the first sentence of section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act. In the Regional Court's view, that provision did not contravene the Basic Law despite German reunification, as the Federal Constitutional Court had held in its decision of 3 July 1996 (see "Relevant domestic law and practice" below, paragraph 22).

13. In a decision of 7 August 2001 the Saarland Court of Appeal again quashed the Regional Court's decision and remitted the case to it to establish whether there were any other heirs of the second or third order and to re-examine whether the first sentence of section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act was compatible with the Basic Law where the State was the sole statutory heir.

The Court of Appeal held that it was not acceptable to set a cut-off date if the deceased had no other heirs and, as a result, the State became the sole statutory heir. It referred in that connection to the right of inheritance (*Erbrechtsgarantie*) guaranteed in Article 14 § 1 of the Basic Law, which in its view also protected the rights of a child born outside marriage where there were no private statutory heirs other than the State.

14. In a decision of 10 July 2003 the Saarbrücken Regional Court confirmed its previous decisions on the basis of the same arguments. It added that it was not required in the case before it to examine whether the provision in issue was in conformity with the Basic Law, since it had been established that the deceased had heirs of the third order and that the State was therefore not the statutory heir.

15. In a decision of 29 September 2003 the Saarland Court of Appeal dismissed an appeal by the applicant, on the ground that it was bound by the decisions of the Federal Constitutional Court in which the first sentence of section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act had been found to be in conformity with the Basic Law. It further refused to refer the case back to the Regional Court for a fresh examination, seeing that the State was not the statutory heir in the case before it.

16. In a decision of 20 November 2003 the Federal Constitutional Court, sitting as a panel of three judges, declined to consider the appeal.

It observed, in particular, that the aspect of protecting the "legitimate expectation" of the deceased had gained in importance since, following its decision of 8 December 1976, it had considered the inheritance rights of children born outside marriage before 1 July 1949 to have been clarified in relation to the Basic Law. It added that the first sentence of section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act had not lost its objective justification simply because children born outside

marriage in an entirely different social context had the same rights as children born within marriage. The difference in treatment in comparison with children born outside marriage who were covered by the law of the former GDR was justified by the inherent purpose of section 235(1)(2), that of avoiding any disadvantage resulting from the former GDR's accession to the FRG.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Law of succession in the FRG

17. The Children Born outside Marriage (Legal Status) Act of 19 August 1969, which came into force on 1 July 1970, provided that on the father's death, children born outside marriage after 1 July 1949 – shortly after the entry into force of the Basic Law – were entitled to compensation from the heirs in an amount equivalent to their share of the estate (*Erbersatzanspruch*). The sole exception concerned children born outside marriage before 1 July 1949:[1] the first sentence of section 12(10)(2) of the Act excluded them from any statutory entitlement to the estate and from the right to financial compensation.

18. In 1997, in the general context of the reform of family law with regard to custody and parental rights, the legislature also made changes to the law of succession for children born outside marriage through the Inheritance Rights Equalisation Act of 16 December 1997, which came into force on 1 April 1998. Children born outside marriage are in principle now treated as equal to those born within marriage as regards all aspects of the law of succession.

However, the first sentence of section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act of 19 August 1969 remains in force as a transitional provision.

B. Rules of succession applicable following German reunification

19. By section 235(1)(2), taken together with section 25(1), of the Introductory Act to the FRG Civil Code, children born outside marriage in the territory of the former GDR before 3 October 1990 (the date on which German reunification took effect) have the same inheritance rights as children born within marriage in accordance with the FRG Civil Code if the father died after 3 October 1990 and had been resident in the territory of the former GDR on that date. Section 235(1)(2) seeks to protect the rights of

1. In other words, children who had reached the age of majority (21 at the time) by the date on which the Children Born outside Marriage (Legal Status) Act came into force.

children born outside marriage prior to reunification who would have been covered by the law of the former GDR, which afforded equal inheritance rights to children born outside and within marriage.

20. It follows that the inheritance rights of children born outside marriage before 1 July 1949 are dependent on the deceased's place of residence on 3 October 1990: if the deceased was resident in the territory of the former GDR, the child born outside marriage has the same inheritance rights as a child born within marriage; if, however, the deceased was resident in the territory of the FRG, the child born outside marriage has no statutory entitlement to the estate.

C. Case-law of the Federal Constitutional Court

1. Concerning the conformity with the Basic Law of the first sentence of section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act of 19 August 1969

21. In a leading decision of 8 December 1976 the Federal Constitutional Court held that the provision in issue was compatible with the Basic Law.

It stated, in particular, that fixing 1 July 1949 as the cut-off date was objectively justified in view of the practical and procedural difficulties of establishing the paternity of children born outside marriage before that date, since the scientific methods used at the time were less developed than present-day methods. Many paternity suits were therefore unlikely to succeed owing to insufficient evidence. Moreover, the new legislation made it possible to contest declarations of paternity drawn up before 1 July 1949. Accordingly, having regard to those factors, the legislature had not overstepped its margin of discretion in this regard. Furthermore, it had to a certain extent been able to take account of existing uncertainties regarding the law of succession and of the opinion of those opposed to reforming the legal status of children born outside marriage. Lastly, the "legitimate expectation" of the deceased and their families that the exception provided for in the first sentence of section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act would be maintained also deserved a certain degree of protection.

22. In a decision of 3 July 1996 the Federal Constitutional Court confirmed its earlier position notwithstanding the reunification of Germany. It held that the legislature had taken into account the social conditions prevailing when the Children Born outside Marriage (Legal Status) Act had been enacted. This objective justification was still present even though children born outside marriage in an entirely different social context had the same rights as children born within marriage.

2. Concerning the conformity with the Basic Law of section 1934c of the Civil Code

23. In a decision of 19 November 1986 the Federal Constitutional Court held that section 1934c of the Civil Code, which provided that a child born outside marriage was entitled to a share in the estate only if at the time of the father's death his paternity of the child had been acknowledged or determined by a court ruling, or judicial proceedings to that effect were pending, was not in conformity with Article 6 § 5 of the Basic Law.

D. Subsequent developments

24. During the passage of the Children's Rights Improvement Act (*Kinderrechteverbesserungsgesetz*) of 9 April 2002, the legislature again upheld the exception in the first sentence of section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act. It took the view that that provision was compatible with the Basic Law in the light of the Federal Constitutional Court's decisions of 8 December 1976 and 3 July 1996 (see paragraphs 21-22 above), which had created an even stronger "legitimate expectation" (*Vertrauenstatbestand*) for the deceased and his family.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8

25. The applicant submitted that the first sentence of section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act, read in conjunction with section 235(1)(2) of the Introductory Act to the Civil Code, and the decisions of the domestic courts had infringed her right to respect for family life as guaranteed by Article 8 of the Convention, which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

She complained in particular that she was excluded from any statutory entitlement to inherit as a child born outside marriage before 1 July 1949 and also relied on Article 14 of the Convention, which provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

26. The Government contested that argument.

27. Since the application mainly concerns the alleged discriminatory treatment of the applicant, the Court considers it appropriate to examine it first under Article 14 of the Convention taken in conjunction with Article 8.

A. Admissibility

Applicability of Article 8 of the Convention

28. The Court reiterates that Article 14 of the Convention complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts in issue fall within the ambit of one or more of the latter (see, among many other authorities, *Pla and Puncernau v. Andorra*, no. 69498/01, § 54, ECHR 2004-VIII).

29. The Court must therefore determine whether Article 8 of the Convention is applicable in the instant case.

30. In this connection, the existence or non-existence of "family life" within the meaning of Article 8 is essentially a question of fact depending upon the real existence in practice of close personal ties, in particular the demonstrable interest in and commitment by the father to the child both before and after the birth (see, among other authorities, *L. v. the Netherlands*, no. 45582/99, § 36 *in fine*, ECHR 2004-IV). Furthermore, a right of succession between children and parents is so closely related to family life that it comes within the sphere of Article 8 (see *Marckx v. Belgium*, 13 June 1979, § 52, Series A no. 31; *Camp and Bourimi v. the Netherlands*, no. 28369/95, § 35, ECHR 2000-X; and *Merger and Cros v. France*, no. 68864/01, § 48, 22 December 2004).

31. In the instant case the Court observes that the applicant's father recognised her after her birth and had regular contact with her despite the difficult circumstances resulting from the existence of two separate German States; after German reunification, their contact became closer.

32. Accordingly, the Court is in no doubt that the facts of the case fall within the ambit of Article 8 of the Convention. Article 14 can therefore apply in conjunction with Article 8.

33. The Court observes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court further notes that no other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

34. The Court notes at the outset that the Government did not dispute that the application of the relevant provisions of domestic law gave rise to a difference in treatment for a child born outside marriage before the cut-off date of 1 July 1949, as compared with a child born within marriage, a child born outside marriage after that date and also, since German reunification, a child born outside marriage before that date who was covered by the law of the former GDR because the father had been resident in GDR territory at the time the reunification had taken effect.

35. The Court reiterates in this connection that in the enjoyment of the rights and freedoms guaranteed by the Convention, Article 14 affords protection against different treatment, without an objective and reasonable justification, of persons in similar situations (see *Mazurek v. France*, no. 34406/97, § 46, ECHR 2000-II).

36. It must therefore be determined whether the alleged difference in treatment was justified.

37. The applicant submitted that the difference in treatment as compared with children born outside marriage after the cut-off date of 1 July 1949 or those covered by the law of the former GDR was not based on any objective justification. As she had lived in the territory of the former GDR until 1989, she should have been afforded the same inheritance rights as a child born within marriage, irrespective of where her father had been resident when German reunification had taken effect. Furthermore, her father had not had a spouse or any direct descendants, but only heirs of the third order whom he had not known and whom the Saarbrücken Regional Court had, moreover, had great difficulty in tracing. By contrast, he had been in regular contact with the applicant and had therefore surely been unaware that he should have made special arrangements for her to be able to inherit from him. The applicant submitted in conclusion that her exclusion from any entitlement to the estate had been wholly disproportionate.

38. The Government, on the contrary, submitted that the difference in treatment had been based on an objective and reasonable justification. The decisions taken by the legislature and the domestic courts had been appropriate and not discriminatory.

They emphasised, firstly, that, as in the majority of Contracting States, the gradual harmonisation of the rights of children born outside marriage with those of children born within marriage had given rise to heated debates on matters of public interest and had raised numerous moral, legal, political and economic questions. Furthermore, following its reunification, Germany had been confronted with a particular situation that warranted allowing it a wide margin of appreciation, as the Court had done in *Von Maltzan and Others v. Germany* ((dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, §§ 110-11, ECHR 2005-V).

They added that the intention of the legislature had been to preserve legal certainty and any "legitimate expectation" that the deceased and their families might have had that the exception provided for in the first sentence of section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act would be maintained. This "expectation" had been further strengthened by the Federal Constitutional Court's two decisions of 8 December 1976 and 3 July 1996. The fact that after German reunification the legislature had taken account of the situation of children born in an entirely different social context could not alter that position.

Moreover, in view of the advanced age of any such fathers who were still alive, it would no longer be practicable to amend the existing legislation. Such an amendment would, furthermore, have the effect of discriminating against children born outside marriage whose father had died before the new legislation had come into force and against any children concerned who had been unable to prove the identity of their father at the time owing to the lack of sufficient technical means.

39. The Court reiterates that a distinction is discriminatory for the purposes of Article 14 of the Convention if it "has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see, in particular, *mutatis mutandis*, *Inze v. Austria*, 28 October 1987, § 41, Series A no. 126, and *Mazurek*, cited above, § 48).

40. The Court reiterates in this connection that the Convention is a living instrument which must be interpreted in the light of present-day conditions (see, among other authorities, *Marckx*, cited above, § 41, and *Johnston and Others v. Ireland*, 18 December 1986, § 53, Series A no. 112). Today the member States of the Council of Europe attach great importance to the question of equality between children born in and children born out of wedlock as regards their civil rights. This is shown by the 1975 European Convention on the Legal Status of Children born out of Wedlock, which is currently in force in respect of twenty-one member States and has not been ratified by Germany. Very weighty reasons would accordingly have to be advanced before a difference of treatment on the ground of birth out of wedlock could be regarded as compatible with the Convention (see, *mutatis*

mutandis, *Inze*, cited above, § 41; *Mazurek*, cited above, § 49; and *Camp and Bourimi*, cited above, § 38).

41. The Court considers that the aim pursued by maintaining the impugned provision, namely the preservation of legal certainty and the protection of the deceased and his family, is arguably a legitimate one.

42. It further notes that, in line with other Contracting States, the German legislature has, through the 1969 Children Born outside Marriage (Legal Status) Act and subsequently the 1997 Inheritance Rights Equalisation Act, gradually created an equal status between children born outside and within marriage as regards the law of succession. Following German reunification, in order to avoid any disadvantage for children born outside marriage in a different social context, it also granted them the same inheritance rights as children born within marriage, provided that the father had been resident in the territory of the former GDR at the time when the reunification had taken effect. However, it maintained the exception laid down in the first sentence of section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act, which excluded children born outside marriage before 1 July 1949 from any statutory entitlement to inherit. The constitutionality of that provision was also confirmed by the Federal Constitutional Court, first in 1976 and twenty years later in 1996 (see "Relevant domestic law and practice", paragraphs 21-22 above). In the instant case the Federal Constitutional Court applied its case-law, although the exchange of arguments between the Saarbrücken Regional Court and the Saarland Court of Appeal shows that the advisability of maintaining the exception has also been the subject of debate at domestic level (see paragraphs 10-15 above).

43. In this connection, the Court notes that the legislature's decision to maintain this exception reflected the state of German society at the time and the opposition of part of the public to any reform of the legal status of children born outside marriage. Furthermore, there were genuine practical and procedural difficulties in establishing the paternity of children. Accordingly, as the Federal Constitutional Court stated in its leading decision of 8 December 1976, the continued application of the provision in question could be said to have been based on objective reasons (see *H.R. v. Germany*, no. 17750/91, Commission decision of 10 June 1992).

However, in the Court's view, the arguments put forward at the time are no longer valid today; like other European societies, German society has evolved considerably and the legal status of children born outside marriage has become equivalent to that of children born within marriage. Furthermore, the practical and procedural difficulties in proving the paternity of children have receded, as the use of DNA testing to establish paternity now constitutes a simple and very reliable method. Lastly, a new situation has been created as a result of German reunification and the

equalisation of the legal status of children born outside and within marriage across a large part of German territory.

Accordingly, the Court cannot agree with the reasoning adopted by the Federal Constitutional Court in the instant case. The Court considers, in particular, that, having regard to the evolving European context in this sphere, which it cannot neglect in its necessarily dynamic interpretation of the Convention (see paragraph 40 above), the aspect of protecting the "legitimate expectation" of the deceased and their families must be subordinate to the imperative of equal treatment between children born outside and within marriage. It reiterates in this connection that as early as 1979 it held in its *Marckx* judgment (cited above, §§ 54-59) that the distinction made for succession purposes between "illegitimate" and "legitimate" children raised an issue under Articles 14 and 8 taken together.

44. As to whether the means employed were proportionate to the aim pursued, a further three considerations appear decisive to the Court in the present case. Firstly, the applicant's father had recognised her after her birth and had always had regular contact with her despite the difficult circumstances linked to the existence of two separate German States. He had neither a wife nor any direct descendants, but simply heirs of the third order whom he apparently did not know. The aspect of protecting these distant relatives' "legitimate expectations" cannot therefore come into play. Secondly, the applicant has spent a large portion of her life in the former GDR, where she grew up in a social context in which children born outside and within marriage enjoyed equal status. However, she was unable to derive any benefit from the rules providing for equal inheritance rights between children born outside and within marriage, since her father had not been resident in the territory of the former GDR at the time when German reunification had taken effect. In this connection, it should be noted that following German reunification, the legislature sought to protect the inheritance rights of children born outside marriage whose father had been resident in the territory of the former GDR; since inheritance rights come under the protection of the right of property in German law, the factor taken into account was the deceased's place of residence. Yet while this difference of treatment may have been justified in the light of the social context in the former GDR, it nevertheless had the effect of aggravating the existing inequality in relation to children born outside marriage before 1 July 1949 whose father had been resident in the FRG. Lastly, the application of the first sentence of section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act excluded the applicant from any statutory entitlement to the estate, without affording her any financial compensation.

The Court cannot find any ground on which such discrimination based on birth outside marriage can 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, for example, *Merger and Cros*, cited above, §§ 49-50, and *Mazurek*, cited above, §§ 52-55).

45. Having regard to all the above considerations, the Court concludes that there was not a reasonable relationship of proportionality between the means employed and the aim pursued.

There has therefore been a violation of Article 14 of the Convention taken in conjunction with Article 8.

46. Having regard to its conclusion in the previous paragraph, the Court is of the opinion that there is no need to examine separately the complaint under Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

1. Pecuniary damage

48. The applicant claimed the sum of 95,828.59 euros (EUR) in respect of pecuniary damage, corresponding to the total amount she would have inherited as a statutory heir. To that end, she submitted certified copies of statements of her father's various bank accounts, which indicated his assets at the time of his death. The applicant submitted that her father had had no debts; his burial costs had amounted to approximately EUR 1,000 and had been directly debited from his current account.

49. The Government referred to the total sum of 53,000 German marks – equivalent to EUR 26,500 – which the notary instructed by the applicant to apply for a certificate of inheritance had indicated in his statement of costs (*Kostenberechnung*) of 13 July 1998; the domestic courts had subsequently taken this sum as a basis for determining the value of the subject matter of the case. In the Government's submission, the precise value of the deceased's assets could not be determined from the additional documents submitted by the applicant, as they did not indicate when any sums owing to the deceased were due to be paid or whether he had any liabilities.

2. Non-pecuniary damage

50. The applicant also claimed compensation for non-pecuniary damage, which she assessed at EUR 50,000, for having been completely deprived of

her inheritance rights throughout the proceedings before the domestic courts.

51. The Government left the matter to the Court's discretion.

B. Costs and expenses

52. The applicant also claimed EUR 2,859.65 for the costs and expenses incurred before the domestic courts and the Court.

53. The Government submitted that no causal link had been established between the costs incurred and the alleged violation. Furthermore, in one set of proceedings the applicant's lawyer had specified the amount being sought in legal aid (EUR 351.41) at a very late stage and his application to that end had therefore been refused by the competent authority.

C. Conclusion

54. In the circumstances of the case, the Court considers that the question of the application of Article 41 of the Convention is not ready for decision. Consequently, it must be reserved and the subsequent procedure fixed taking due account of the possibility of an agreement between the respondent State and the applicant (Rule 75 § 1 of the Rules of Court). The Court allows the parties three months in which to reach such agreement.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 8;

3. *Holds* that there is no need to examine separately the complaint under Article 8 of the Convention;

4. *Holds* that the question of the application of Article 41 is not ready for decision;
   accordingly,
   (a) *reserves* the said question in whole;
   (b) *invites* the Government and the applicant, within three months, to notify the Court of any agreement that they may reach;
   (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in French, and notified in writing on 28 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Registrar	Peer Lorenzen President