

Press release issued by the Registrar

**CHAMBER JUDGMENT
BRAUER v. GERMANY**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Brauer v. Germany* (application no. 3545/04).

The Court held unanimously that there had been a **violation of Article 14 (prohibition of discrimination)** taken in conjunction with **Article 8 (right to respect for private and family life)** of the European Convention on Human Rights on account of the fact that the applicant, having been born outside of marriage, was unable to assert her inheritance rights.

The Court held that the question of Article 41 (just satisfaction) of the Convention was not yet ready for decision. ([The judgment is available in both English and French.](#))

1. Principal facts

The applicant, Brigitte Brauer, is a German national who was born in 1948 in Oberschwöditz (the former German Democratic Republic (GDR)). She now lives in Lennestadt (Germany (FRG)).

Born outside of marriage, she was immediately recognised by her father. She had regular contact with him despite the fact that they each lived in one of the separate German States; she in the former GDR, he in the FRG. After the German reunification, they had even more frequent contact.

Her father was not married and, save some distant relatives with whom he apparently had no contact, had no descendants. On her father's death in 1998 she attempted to assert her inheritance rights.

Her application was rejected at first instance on the ground that, under the Children Born Outside of Marriage Act (*Nichtehelichengesetz*) of 1969, a child born outside marriage before 1 July 1949 was not a statutory heir². Furthermore, that cut-off date, justified by the practical

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

and procedural difficulties of establishing paternity of children before that point in time and by the need to protect the “legitimate expectations” of the deceased, had been declared compatible with the Basic Law (*Grundgesetz*) by the Federal Constitutional Court in 1976 and 1996.

Ms Brauer was not able to benefit either from the equal inheritance rights provided for by the law of the former GDR, where she had lived for a considerable part of her life, since her father had been resident in the FRG at the time when Germany was reunified. Following German reunification, in order to avoid any disadvantage for children born outside marriage in a different social context (ie the GDR), the legislature granted those children the same inheritance rights as children born within marriage, provided that the father had been resident in the former GDR at the time when reunification had taken effect.

Following two sets of appeal proceedings, her case was ultimately rejected by the Constitutional Court in November 2003. It considered that the inheritance rights of children born outside marriage before 1 July 1949 had been declared compatible with the Basic Law in 1976 and 1996. Nor did that cut-off date lose its justification simply because children also born outside of marriage but in an entirely different social context (the former GDR) had the same rights as children born within marriage; the difference in treatment was justified by the aim of avoiding any disadvantage resulting from the former GDR’s accession to the FRG.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 13 January 2004 and was examined together for admissibility and merits.

Judgment was given by a Chamber of seven judges, composed as follows:

Peer **Lorenzen** (Denmark), *President*,
Rait **Maruste** (Estonia),
Karel **Jungwiert** (the Czech Republic),
Renate **Jaeger** (Germany),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Zdravka **Kalaydjieva** (Bulgaria), *judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

3. Summary of the judgment³

Complaint

Relying on Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination), the applicant complained that, following her father’s death, her exclusion from any entitlement to his estate had amounted to discriminatory treatment and had been wholly disproportionate.

² In other words, children who had reached the age of majority (21 at the time) by the time the Children Born Outside of Marriage Act had come into force.

³ This summary by the Registry does not bind the Court.

Decision of the Court

The Court noted that it was not in dispute that the application of the relevant provisions of domestic law had created a situation in which a child born outside marriage before the cut-off date of 1 July 1949 was treated differently not only to children born within marriage but also to children born outside marriage both before – as concerned children covered by the law of the former GDR whose father had been resident in GDR territory at the time of reunification – and after that cut-off date.

In the Court's view, the arguments put forward for maintaining the provision in question were no longer valid today; like other European societies, German society had evolved considerably and the legal status of children born outside marriage had become equivalent to that of children born within marriage. Furthermore, the practical and procedural difficulties in proving the paternity of children had receded, as the use of DNA testing to establish paternity now constituted a simple and very reliable method.

Indeed, given the evolving European context in this sphere, and the importance attached to equality between children born in and out of marriage by the member States of the Council of Europe, underscored by the 1975 European Convention on the Legal Status of Children born out of Wedlock, the aspect of protecting the "legitimate expectation" of the deceased and their families had to be subordinate to the imperative of equal treatment between children born outside and within marriage.

Furthermore, 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; protection of distant relatives' "legitimate expectations" could not therefore come into play.

Following German reunification, the legislature had adapted inheritance rights in order to protect children born outside of marriage whose father had been resident in the territory of the former GDR; that nevertheless had only aggravated the existing inequality in relation to children born outside marriage before 1 July 1949 whose father had been resident in the FRG, such as the applicant.

Finally, the application of the relevant provision of the Children Born outside Marriage Act had excluded the applicant from any statutory entitlement to her father's estate, without any financial compensation.

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

Given that conclusion, the Court held that there was no need to examine separately the complaint under Article 8.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.