

In denying biological father access rights, German courts failed to consider children's best interest

In today's Chamber judgment in the case [Anayo v. Germany](#) (application no. 20578/07), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights

The case concerned the German courts' refusal to grant the applicant access to his biological children with whom he had never lived.

Principal facts

The applicant, Frank Eze Anayo, is a Nigerian national who was born in 1967. He entered Germany in 2003 and lived in Achern before moving to Spain in 2008. His request for asylum in Germany was dismissed, a decision which became final in February 2006. For about two years, he had a relationship with a married woman, Mrs B., who had three children with her husband. In December 2005, four months after leaving Mr Anayo, she gave birth to twins, of whom he is the biological father. Mrs B. is bringing up the twins together with her husband, who is their legal father. Mr and Mrs B. repeatedly refused requests by Mr Anayo, both before and after the twins' birth, to be allowed contact with them.

In September 2006, the Baden-Baden District Court granted Mr Anayo contact with the twins once per month for one hour, finding that he was entitled to access under the German Civil Code, as he was a person with whom the children had close ties. Relying on a psychological expert report, it held that contact between Mr Anayo and the twins was in the children's best interest, as it would be essential for them to get to know their roots. The court further found that that contact arrangement would not adversely affect Mr and Mrs B.'s other three children because dealing frankly with the realities would be in the best interest of all concerned.

In December 2006, the Karlsruhe Court of Appeal allowed an appeal lodged by Mr and Mrs B., quashed the decision of the District Court and dismissed Mr Anayo's request for access to the twins. It held that he was not entitled to access under the relevant provision of the Civil Code, which provided for the right of a parent to have contact with his or her child, because, according to the court, that provision only referred to the entitlement of the legal father, as opposed to the biological father. The court further found that as Mr Anayo had not borne any responsibility for the children in the past and

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

thus had no social and family relationship with them, he did not fulfil the requirement for a third person other than the legal parents, with whom the children had close ties, to be entitled to access. In the court's view, it was thus irrelevant whether contact between him and the twins was in the children's best interests. The German Basic Law protected the biological father's access to his child only where a social and family relationship between them already existed; it did not protect the wish to build up a relationship with the child in the future, the reasons why there was no relationship between the biological father and his child being irrelevant. On 29 March 2007, the Federal Constitutional Court declined to consider Mr Anayo's constitutional complaint against that decision.

Complaints, procedure and composition of the Court

Mr Anayo complained that the German courts' refusal to grant him access to his children violated his rights under Article 8.

The application was lodged with the European Court of Human Rights on 10 May 2007. Mr and Mrs B. were granted leave to submit written comments as a third party.

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

Peer **Lorenzen** (Denmark), *President*,
Renate **Jaeger** (Germany),
Karel **Jungwiert** (the Czech Republic),
Mark **Villiger** (Liechtenstein),
Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),
Zdravka **Kalaydjieva** (Bulgaria),
Ganna **Yudkivska** (Ukraine), *Judges*,

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

Decision of the Court

Article 8

The Court found that the domestic courts' decisions to refuse Mr Anayo contact with his children constituted an interference with his rights under Article 8. It was true that, given that he had never cohabited with the twins and had never met them, their relationship did not have sufficient constancy to be qualified as existing "family life". However, the Court had previously found that a desire for family life might fall within the ambit of Article 8 where the fact that family life had not been established was not attributable to the applicant. That was the case with Mr Anayo, who had not had any contact with the twins solely because their mother and legal father refused his requests.

Mr Anayo had demonstrated a genuine interest in the children by expressing his wish to have contact with them, both before and after their birth, and by speedily bringing access proceedings to the courts. Further, although he and Mrs B. had never cohabited, the children had emanated from a relationship which, lasting some two years, was not merely haphazard. Even assuming that his relations with his children fell short of "family life" they concerned an important part of Mr Anayo's identity and thus his "private life" for the purpose of Article 8.

The interference with Mr Anayo's private life had been in accordance with German law. Applying the relevant provisions of the Civil Code, the Court of Appeal had argued that he did not fall within the group of people entitled to claim access to the children. German law, as interpreted by the Court of Appeal in Mr Anayo's case, therefore did not provide for a judicial examination of the question of whether contacts between a biological father

and his children would be in the children's best interest if another man was the children's legal father and if the biological father had not yet borne any responsibility for them, irrespective of the reasons for that omission. The provisions thus also covered cases in which the fact that such a relationship had not yet been established was not attributable to the biological father.

In the Member States of the Council of Europe there was no uniform approach to the question whether, and if so, under what circumstances, a biological father had a right to contact with his child where a different father existed in law. However, in a considerable number of States the domestic courts were in a position to examine whether contact of a biological father with his child, in a situation comparable to Mr Anayo, would be in the child's interest and could grant the father access if that was the case.²

The Court was aware of the fact that the German courts' decision to deny Mr Anayo contact with his children was aimed at complying with the legislator's will to give existing family ties precedence over the relationship between a biological father and a child. The Court accepted that those existing relations equally warranted protection. A fair balance would thus have had to be struck between the competing rights under Article 8 not only of two parents and a child, but of several individuals concerned – the mother, the legal father, the biological father, the married couples' biological children and the children who emanated from the relationship of the mother and the biological father.

The Court was not satisfied that the domestic courts had fairly balanced the competing interests involved. In particular, they had failed to give any consideration to the question whether, in the particular circumstances of the case, contact between the twins and Mr Anayo would be in the children's best interest. There had accordingly been a violation of Article 8 of the Convention.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Germany was to pay Mr Anayo 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,030.76 in respect of costs and expenses.

The judgment is available only in English.

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² In particular Bosnia and Herzegovina, Estonia, France, Ireland, Portugal, Russia, Slovenia, Spain, the United Kingdom and Ukraine, see paragraphs 32-40 of the judgment in the applicant's case.

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.