



Man's criminal conviction for incestuous relationship with his younger sister did not violate his Convention rights

In today's Chamber judgment in the case [Stübing v. Germany](#) (application no. 43547/08), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

No violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights

The case concerned the applicant's conviction and prison sentence for an incestuous relationship with his younger sister whom he had only met as an adult, having been adopted by his foster family, and with whom he had four children.

The Court held in particular that the German authorities had a wide margin of appreciation in confronting the issue, since there was no consensus between the Council of Europe member States as to whether consensual sexual acts between adult siblings constituted a crime. Furthermore, the German courts had carefully weighed the arguments when convicting the applicant.

Principal facts

The applicant, Patrick Stübing, is a German national who was born in 1976 and lives in Leipzig. At the age of three, he was placed in a children's home and at the age of seven he was adopted by the foster family in whose care he had been placed. From his adoption on he did not have any contact with his family of origin.

When he re-established contact with his family of origin in 2000, Mr Stübing learned that he had a biological sister, who had been born in 1984. Following their mother's death in December 2000, the relationship between the siblings intensified. As from January 2001, they had consensual sexual intercourse and lived together for several years. Between 2001 and 2005, four children were born to the couple.

After he had been convicted of incest under the Criminal Code a few times, the Leipzig District Court convicted Mr Stübing of two counts of incest and sentenced him to one year and two months' imprisonment in November 2005. Relying on an expert opinion, which found that his sister had a timid and withdrawn personality structure and was dependant on Mr Stübing, the court concluded that she was only partially liable for her actions, and did not impose a sentence on her. The judgment was upheld by the Dresden Court of Appeal. Mr Stübing lodged a constitutional complaint against his conviction.

On 26 February 2008, the Federal Constitutional Court, by a majority, rejected his complaint as being unfounded. It held in particular that the relevant provision of the

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

Criminal Code did not infringe the core area of private life. The primary ground for punishment of sexual intercourse between biological siblings was the protection of marriage and the family, as incestuous relationships resulted in overlapping family roles. The prohibition was further justified by the need to protect sexual self-determination and by the risk of significant damage to children born from such a relationship. The criminal provision in question was justified by the sum of the above-mentioned objectives set against the background of a common conviction that incest should be subject to criminal liability.

Complaints, procedure and composition of the Court

Relying on Article 8, Mr Stübing complained that his criminal conviction had violated his private and family life.

The application was lodged with the European Court of Human Rights on 3 September 2008.

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

Karel **Jungwiert** (the Czech Republic), *President*,
Boštjan M. **Zupančič** (Slovenia),
Mark **Villiger** (Liechtenstein),
Ann **Power-Forde** (Ireland),
Ganna **Yudkivska** (Ukraine),
Angelika **Nußberger** (Germany),
André **Potocki** (France), *Judges*,

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

Decision of the Court

The Court did not exclude that Mr Stübing's criminal conviction had had an impact on his family life. In any event, it was common ground between the parties that his conviction interfered with his right to respect for his private life under Article 8, which included his sexual life.

His conviction had been based on the German Criminal Code which prohibited consensual sexual intercourse between adult siblings and which was aimed at the protection of morals and of the rights of others. The conviction therefore pursued a legitimate aim for the purpose of Article 8.

The Court considered that the German authorities had a wide margin of appreciation in determining how to confront incestuous relationships between adult siblings. There was no consensus between the Council of Europe member States as to whether the consensual commitment of sexual acts between adult siblings should be criminally sanctioned. However, a majority of the states reviewed provided for criminal liability. Moreover, all the legal systems reviewed, including those which did not impose criminal liability, prohibited siblings from getting married. There was therefore a broad consensus that sexual relationships between siblings were neither accepted by the legal order nor by society as a whole. Furthermore, there was not sufficient evidence to assume that there was a general trend towards decriminalisation of such acts. Finally, the Court took into consideration that the case concerned a question about the requirement of morals, in which, according to its case-law, States had a wide margin of appreciation if there was no consensus among the States.

The German Federal Constitutional Court had carefully analysed the arguments put forward in favour of and against criminal liability and had concluded that the conviction was justified by a combination of objectives, including the protection of the family, self-determination and public health, set against the background of a common conviction that incest should be subject to criminal liability. It had considered that sexual relationships between siblings could seriously damage family structures and, as a consequence, society as a whole. The careful consideration by the Federal Constitutional Court was further highlighted by the fact that a detailed dissenting opinion by one judge had been attached to its decision.

According to the findings of the German courts, Mr Stübing's sister had first entered into a sexual relationship with him, who was seven years older, at the age of 16, following their mother's death. She suffered from a personality disorder and was considerably dependent on him. The German courts had concluded that she was only partially liable for her actions. The Court considered that, in that light, the aims pursued by the German courts were not unreasonable.

The Court therefore concluded that the German courts had not overstepped their margin of appreciation when convicting Mr Stübing. There had accordingly been no violation of Article 8.

The judgment is available only in English.

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Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Nina Salomon (tel: + 33 3 90 21 49 79)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Denis Lambert (tel: + 33 3 90 21 41 09)

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.