

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

FIFTH SECTION

CASE OF MITZINGER v. GERMANY

(Application no. 29762/10)

JUDGMENT
(Just satisfaction – striking out)

STRASBOURG

25 January 2018

FINAL

25/04/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Mitzinger v. Germany,

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

Erik Møse, *President,*
Angelika Nußberger,
Nona Tsotsoria,
André Potocki,
Síofra O'Leary,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 19 December 2017,

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

PROCEDURE

1. The case originated in an application (no. 29762/10) 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 Gertraud Mitzinger ("the applicant"), on 20 May 2010.

2. In a judgment delivered on 9 February 2017 ("the principal judgment"), the Court held that there had been a violation of Article 14 of the Convention taken in conjunction with Article 8 on account of the fact that the applicant, who was born outside marriage before 1 July 1949, had been unable to assert her inheritance rights, unlike, in particular, persons born outside marriage after that date and persons born within marriage. The Court found that the difference in treatment of the applicant in this respect had not been a proportionate means to pursue the legitimate aims underlying the applicable legislation (see *Mitzinger v. Germany*, no. 29762/10, §§ 30 *et seq.*, 9 February 2017).

3. Under Article 41 of the Convention the applicant sought just satisfaction. She claimed 6,000 euros (EUR) in respect of pecuniary damage, corresponding to the estimated minimum value of her share of the estate had she been a statutory heir. She also claimed compensation for non-pecuniary damage, leaving the amount to be awarded to the discretion of the Court. She further claimed EUR 1,700 in respect of costs and expenses. The Government contested the applicant's claims in respect of pecuniary and non-pecuniary damage and part of the claims in respect of 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 from the date on which the judgment became final according to Article 44 § 2 of the Convention, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (ibid., § 53, and point 3 of the operative provisions).

THE LAW

5. In September 2017 the applicant informed the Court in reply to its said request that the parties had not reached an agreement and that she upheld her claims as previously submitted.

6. By a letter of 14 September 2017 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the question of the application of Article 41 of the Convention. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

7. The declaration provided as follows:

> "1. A friendly settlement has failed.
>
> 2. Due to the particular circumstances of this individual case, the Federal Government is prepared to pay compensation in the amount of EUR 6,100.00 to the Applicant, if the Court, on condition of payment of the amount, strikes the Application out of its list of cases pursuant to Article 37 para. 1 (c) of the Convention. This would satisfy any and all claims, costs and expenses on the part of the Applicant against the Federal Republic of Germany (i.e. against the Federation and/or the *Länder*).
>
> 3. The amount shall be payable within three months of the Court's decision to strike the case out of its list becoming final."

8. The Government explained that it had taken the following elements into account in calculating the compensation offered. As for the applicant's claims in respect of pecuniary damage, the Government found that having regard to the information given by the applicant in her previous submissions to the Court, she would have had a claim to one quarter of the value of her father's estate if she had been treated in the same manner as a child born within marriage. On the basis of the value of the estate as estimated by the applicant herself in her previous submissions, the applicant could therefore claim EUR 4,500 under this head. The Government further argued that the applicant had not suffered any non-pecuniary damage as a result of her discriminatory treatment. In particular, even if she had been treated in the same way as a legitimate child, she would only have had a claim for monetary compensation against the heir (her father's wife) and would not

have inherited any personal objects. Moreover, the applicant herself had submitted that she had received EUR 5,000 from her father in compensation prior to his death in view of the fact that she would not be a heir. The Government further calculated the costs and expenses incurred by the applicant in the proceedings before the domestic courts and before this Court as having amounted to EUR 1,600.

9. By a letter of 18 October 2017, the applicant indicated that she was not satisfied with the terms of the unilateral declaration. She stressed that she was still unable under domestic law to obtain information on the value of her deceased father's estate and thus to substantiate her claims for pecuniary damage. She agreed that, had she been treated in the same manner as a child born within marriage, she could have claimed from the heir one quarter of the value of her father's estate as a compulsory portion (*Pflichtteilsanspruch*); she estimated that portion at EUR 12,225. She further confirmed that she had received EUR 5,000 from her father prior to his death in view of the fact that she would not be a heir, but stressed that her father had given her that sum of his own free will.

10. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

11. The Court also reiterates that in certain circumstances, it may strike out an application, or part thereof, under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued. Moreover, there is nothing to prevent a respondent Government from submitting a unilateral declaration relating, as in the instant case, to the reserved Article 41 procedure (see *Racu v. Moldova* (just satisfaction – striking out), no. 13136/07, § 17, 20 April 2010; *Megadat.com SRL v. Moldova* (just satisfaction – striking out), no. 21151/04, § 10, ECHR 2011; and *Althoff and Others v. Germany* (just satisfaction – striking out), no. 5631/05, § 17, 27 September 2012). To this end, the Court will examine the Government's declaration carefully in the light of the general principles applicable in respect of Article 41 of the Convention (see, for example, *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, §§ 19-20, ECHR 2001-I; *Mullai and Others v. Albania* (just satisfaction – striking out), no. 9074/07, § 12, 18 October 2011; and *Bushati and Others v. Albania* (just satisfaction – striking out), no. 6397/04, § 10, 14 February 2012).

12. The Court observes that the Government based its calculation of the pecuniary damage suffered by the applicant on the estimation of the value of the estate made by the applicant herself in her previous submissions (compare paragraph 3 above). It further notes that the parties agreed that the applicant could have claimed from the heir one quarter of the value of her father's estate as a compulsory portion had she been treated in the same manner as a child born within marriage.

13. As for the Government's assessment of the non-pecuniary damage suffered by the applicant, the Court, having regard to its practice (see, for instance, *Di Trizio v. Switzerland*, no. 7186/09, § 121, 2 February 2016; *Biao v. Denmark* [GC], no. 38590/10, § 147, ECHR 2016; and *Carvalho Pinto de Sousa Morais v. Portugal*, no. 17484/15, § 60, ECHR 2017), finds that awards in this respect are made following the finding of a breach of Article 14 taken in conjunction with Article 8.

14. The Court has noted that in their calculation of the sum proposed in respect of the damage suffered by the applicant the Government expressed the view that the applicant had not suffered any non-pecuniary damage (see paragraph 8 above). However, the Court considers that it should take into account in its assessment whether the sum proposed by the Government as a whole is compatible with its practice under Article 41 of the Convention, that the applicant had received EUR 5,000 from her father prior to his death as she would not be an heir and that the Government had not deducted that amount from the award offered by them.

15. Furthermore, as regards the Government's calculation of the costs and expenses incurred by the applicant, the Court observes that the Government now essentially accepts the claims made by the applicant in her initial submissions under Article 41 to the Court prior to the adoption of the principal judgment (see paragraph 3 above).

16. The Court has regard to the above considerations and finds reasonable the total amount of compensation proposed by the Government – on which simple interest shall be payable at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points in the event of failure to settle within the three-month period specified in the Government's declaration (see paragraph 7 above). It concludes that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the case as regards the reserved Article 41 procedure. Accordingly, the remainder of the application should be struck out of the list (Article 37 § 1 (c)).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Takes note* of the terms of the respondent Government's declaration and of the modalities for ensuring compliance with the undertakings referred to in paragraph 16 above and *directs* in consequence;
   (a) that the respondent State is to pay the applicant EUR 6,100 (six thousand one hundred euros), within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, in respect of pecuniary and non-pecuniary damage, costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. *Decides* to strike the remainder of the application regarding the reserved Article 41 procedure out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English, and notified in writing on 25 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Erik Møse
Registrar	President