

APPLICATION No. 6699/74

X.

against

THE FEDERAL REPUBLIC OF GERMANY

—

REPORT OF THE COMMISSION  
(adopted on 11 October 1979)

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INTRODUCTION

This Report relates to Application No. 6699/74 lodged by Mrs. X. against the Federal Republic of Germany on 17 June 1974 under Art. 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The European Commission of Human Rights declared this application admissible on 15 December 1977. For the hearing on the merits of her case the Commission granted legal aid to the applicant. She was represented before the Commission by Mr. Hajo Wandschneider, a lawyer practising in Hamburg. The Government of the Federal Republic of Germany was represented in the proceedings by Mrs. Irene Maier, Ministerialdirigentin at the Federal Ministry of Justice (Agent).

Having declared the application admissible the Commission proceeded to carry out its tasks under Art. 28 of the Convention, which provides that:

"In the event of the Commission accepting a petition referred to it:

(a) it shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission;

(b) it shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in this Convention."

The Commission found that the parties had reached a friendly settlement of the case and, at its session on 11 October 1979 adopted this Report which, in accordance with Art. 30 of the Convention, is confined to a brief statement of the facts and to the solution reached. The following members of the Commission were present when the Report was adopted:

MM. J.E.S. FAWCETT, President  
G. SPERDUTI, 1st Vice-President  
C.A. NØRGAARD, 2nd Vice-President  
F. ERMACORA  
E. BUSUSTIL  
L. KELLBERG  
C.H.F. POLAK

MM. J.A. FROWEIN  
G. JÖRUNDSSON  
G. TENEKIDES  
S. TRECHSEL  
B. KIERNAN  
N. KLECKER

PART I

Statement of the Facts

The applicant, a German citizen, born in 1925, is living in B.

In November 1970 the applicant underwent an operation in Casablanca to have her sex changed from male to female. After this operation she requested the District Office (Bezirksamt) in B. to change her male Christian name "Günther" to the female name "Gunde".

Furthermore she instituted civil proceedings before the competent District Court (Amtsgericht) in B. to have the entry in the birth register corrected to the effect that she was now of female sex.

1. The administrative proceedings concerning the change of first name:

In July 1973 the District Office rejected the applicant's request. It stated that according to prevailing opinion the Christian name had to correspond to the sex entered in the birth register. Therefore as long as the entry in the applicant's birth register, according to which she was of male sex, had not been changed, her Christian name could also not be changed.

The applicant's objection (Widerspruch) against this decision was rejected in April 1974.

The applicant then brought an action before the Administrative Court (Verwaltungsgericht) which in October 1975 gave judgment in the applicant's favour, ordering the authorities to change the applicant's first name according to her request.

Against this judgment the defendant, being the Land ....., lodged an appeal to the Administrative Court of Appeal (Oberverwaltungsgericht) where the matter was still pending when the Commission declared the application admissible on 15 December 1977.

By letter of March 1978 the applicant informed the Commission that the Administrative Court of Appeal had rejected the appeal in March 1978 thus confirming the Administrative Court's judgment according to which the authorities had to grant the applicant's request for a change of her Christian name.

The defendant then lodged a further appeal (Revision) to the Federal Administrative Court (Bundesverwaltungsgericht).

2. The civil court proceedings concerning the entry in the birth register

In a letter dated December 1973 the District Court informed the applicant that in view of the fact of her having been married as a man and having a child her request to correct the entry in the birth register to the effect that she was now of female sex could not be granted. The court referred to a decision of the Federal Court (Bundesgerichtshof) in another case according to which the transformation of sex was not regulated by the law and the courts could not therefore overcome this problem in their decisions. The District Court added that a constitutional appeal was pending against the said Federal Court's decision and therefore advised the applicant to consent to an adjournment of her case. The applicant apparently did so and the proceedings before the District Court were suspended. This was still the situation when the present application was declared admissible by the Commission.

3. The application

Before the Commission, the applicant alleged violations of Arts. 5 (1) and 6 (1) of the Convention. She stated that the refusal of the German authorities to recognise officially her new status as a person of female sex caused her serious difficulties and hardship. She also complained of the length of the proceedings which she had instituted with the view to having her Christian name and the entry in her birth register changed.

The Commission decided on 6 March 1976 in accordance with Rule 40, para. 2a of the Rules of Procedure, to request the respondent Government for information about the effectiveness of remedies available to the applicant, and about the proceedings pending before the Federal Constitutional Court in similar cases. As regards these cases pending before the Federal Constitutional Court the Government replied that it was expected that a decision would be given in the course of 1976. Consequently the Commission decided on 5 July 1976 and 7 October 1976 to adjourn the further examination of the application.

On 13 July 1977 the Commission decided to resume its examination of the admissibility of the application and to invite the respondent Government, under Rule 42, para. 2b of its Rules of Procedure, to submit observations in writing on this question as the expected decision of the Federal Constitutional Court had still not been given.

On 3 October 1977 the Government submitted their written observations on the admissibility of the application. The applicant replied to these observations on 28 October 1977.

On 15 December 1977 the Commission decided to declare the application admissible.

The parties were subsequently requested to submit their observations and conclusions on the merits of the case at a hearing before the Commission which took place on 10 May 1978.

Finally a friendly settlement of the case was reached as described in Part II. In this context the Agent of the respondent Government informed the Commission, inter alia, that the Federal Constitutional Court had given a decision on 11 October 1978 to the effect that in cases of irreversible transsexualism the entry regarding the sex of the person concerned should be corrected in the birth register.

PART II

Solution reached

Following its decision on the admissibility of the application, the Commission, acting in conformity with Art. 28 (b) of the Convention, placed itself at the disposal of the parties with a view to securing a friendly settlement of the matter.

In accordance with the usual practice it instructed its Secretary to contact the parties for this purpose.

Following the Commission's further instructions there was then an exchange of letters and discussions between the Agent and the Secretary on the one hand, and the applicant and the Secretary on the other hand, which resulted in the parties making the following declarations:

On 24 September 1979 the Agent of the respondent Government declared:

"Namens der Regierung der Bundesrepublik Deutschland als Beschwerdegegnerin in der Individualbeschwerde Nr. 6699/74 der Frau X. beehre ich mich, der Europäischen Kommission für Menschenrechte folgendes mitzuteilen:

1. In bezug auf die von der Beschwerdeführerin eingeleiteten Personenstands- und Gerichtsverfahren, welche auch den Gegenstand des bei der Kommission anhängigen Beschwerdeverfahrens Nr. 6699/74 bildeten, sind folgende Entscheidungen ergangen:

a) Aufgrund des Beschlusses des Amtsgerichts B. vom 17. Januar 1979 betreffend den Eintrag Nr. .... im Geburtenbuch des Standesamtes N. in B. is der vorgenommene Eintrag durch Beischreibung folgenden Vermerks berichtigt worden:

'Das nebenbezeichnete Kind ist infolge Geschlechtsumwandlung mit Wirkung vom Zeitpunkt dieser Eintragung weiblichen Geschlechts und führt den Vornamen Gunde'.

Die Beischreibung des Randvermerks durch den das Geburtenbuch führenden Standesbeamten des Standesamtes N. in B. erfolgte am 28. Februar 1979.

Als Folge dieser Eintragung wurde auch der in den Personalpapieren angegebene Vorname der Beschwerdeführerin in "Gunde" abgeändert.

- b) Das Bundesverwaltungsgericht fasste in der Verwaltungsstreitsache des Landes ./. gegen Frau X. (BverwG:Aktz.) am 18. April 1979 folgenden Beschluss:

'Das Verfahren wird eingestellt.

Die Urteile des Oberverwaltungsgerichts B. vom 23. Februar 1978 und des Verwaltungsgerichts B. vom 9. Oktober 1975 sind unwirksam.

Das beklagte Land trägt die Kosten des Verfahrens'.

2. Ferner weise ich darauf hin, dass die Regierung der Bundesrepublik Deutschland am 5. Januar 1979 mit der Vorlage des Entwurfs eines Gesetzes über die Änderung der Vornamen und die Feststellung der Geschlechtszugehörigkeit in besonderen Fällen (Transsexuellengesetz - TSG) den gesetzgebenden Körperschaften vorgeschlagen hat, die rechtlich bisher ungeklärte Materie gesetzlich zu regeln.
3. Ohne Anerkennung einer Rechtspflicht erklärt sich die Bundesrepublik Deutschland aus humanitären Erwägungen und um das Beschwerdeverfahren nunmehr zum Abschluss zu bringen bereit, an die Beschwerdeführerin einen Betrag von DM 2.500,-- (i.W.: zweitausend fünfhundert DeutscheMark) zu zahlen."

/Translation

"On behalf of the Government of the Federal Republic of Germany, being the respondent in the Application No. 6699/74 introduced by Mrs. X. I have the honour to inform the European Commission of Human Rights as follows:

1. In relation to the status and court proceedings introduced by the applicant which also form the subject matter of Application No. 6699/74 before the Commission, the following decisions have been taken:
  - a) By decision of the District Court in B. dated 17 January 1979, concerning entry No. .... in the birth register at the Registrar's Office in B., the relevant entry has been corrected by adding the following remark:



'By reason of a change in sex the child here designated is of female sex with effect from the date of this entry and bears the Christian name Gunde'.

The additional entry in the margin by the registrar in charge of the birth registry at the Registrar's Office in B. was made on 28 February 1979.

As a consequence of this entry the applicant's Christian name was changed to "Gunde" also in the documents relating to her identity.

- b) The Federal Administrative Court took the following decision on 18 April 1979 in the administrative court proceedings brought by the Land . . . against Mrs. X.:

'The proceedings are discontinued.

The judgments of the Administrative Court of Appeal in B. of 23 February 1978 and the Administrative Court in B. of 9 October 1975 are declared nullities.

The respondent Land bears the costs of the proceedings'.

2. I further point out that the Government of the Federal Republic of Germany proposed to the legislature on 5 January 1979, by submitting a Draft Bill concerning the change of Christian names and the determination of the sex in special cases (Transsexuals Act - TSG), to regulate by legislation this matter which is yet legally still unsettled.
3. Without recognising any legal obligation, the Federal Republic of Germany is prepared on humanitarian grounds and in order now to terminate the proceedings before the Commission, to pay an amount of 2500.-- DM (two thousand five hundred Deutsche Marks) to the applicant."/

On 24 September 1979 the applicant declared:

"Im Hinblick auf Artikel 28 (b) der Konvention zum Schutze der Menschenrechte und Grundfreiheiten und auf die Erklärung der Verfahrensbevollmächtigten der Regierung der Bundesrepublik Deutschland erkläre ich meine Beschwerde Nr. 6699/74 gegen die Bundesrepublik Deutschland für erledigt.

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Ick erkläre ferner, dass ich weder vor nationalen noch vor internationalen Instanzen Ansprüche geltend machen werde, die mit dem dieser Beschwerde zugrunde liegenden Sachverhalt zusammenhängen."

/Translation

"With reference to Article 28 (b) of the Convention for the Protection of Human Rights and Fundamental Freedoms and to the declaration of the Agent of the Government of the Federal Republic of Germany, I consider my Application No. 6699/74 against the Federal Republic of Germany to be settled.

I also declare that I will not put forward any claims before national or international authorities based on the facts which gave rise to the said application."

At its session of 11 October 1979 the Commission noted that the above declarations showed that an agreement had been reached between the parties on conditions for settling the case.

Having found that the parties had reached a friendly settlement on the basis of respect for human rights, within the meaning of Art. 28 (b) of the Convention, in this case, the Commission adopted the present Report.

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(J.E.S. FAWCETT)