



Excluding children from inheritance rights if they were born out of wedlock before a certain cut-off point was discriminatory

In today's **Chamber judgment**¹ in the case of [Mitzinger v. Germany](#) (application no. 29762/10) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned inheritance rights of children born outside marriage. Ms Mitzinger, the applicant, complained that she could not assert her inheritance rights after her father's death in 2009, as she had been born out of wedlock and before a cut-off point provided for by legislation in force at the time. Notably, children born outside marriage before 1 July 1949 were excluded from any statutory entitlement to inherit and from the right to financial compensation.

The Court found that the aims pursued by Ms Mitzinger's difference in treatment, namely the preservation of legal certainty and the protection of the deceased and his family, had been legitimate. However, it was not satisfied that excluding children born out of wedlock before a certain cut-off point provided for by legislation had been a proportionate means to achieving the aims sought to be achieved. Decisive for that conclusion was the fact that Ms Mitzinger's father had recognised her. Furthermore, she had regularly visited him and his wife. The latter's awareness of Ms Mitzinger's existence, as well as of the fact that the legislation allowed children born inside marriage and outside marriage after the cut-off date to inherit, had therefore to have had a bearing on her expectations to her husband's estate. In any case, European case-law and national legislative reforms had shown a clear tendency towards eliminating all discrimination regarding the inheritance rights of children born outside marriage.

Principal facts

The applicant, Gertraud Mitzinger, was born in 1940 and lives in Bayreuth (Germany).

Ms Mitzinger is the natural and only daughter of her father, who recognised paternity in 1951. She lived in the former German Democratic Republic until 1984, while her father lived in the Federal Republic of Germany with his wife. Ms Mitzinger and her father corresponded regularly during that period and she visited him and his wife every year between 1954 and 1959. After moving to Bavaria in 1984 with her husband and daughter, she visited her father regularly until 2007. He died in 2009.

In January 2009, directly after her father's death, Ms Mitzinger applied to the Memmingen District Court for the right to administer her father's estate. She asserted that she needed this power as her father's wife had dementia, and that she was a statutory heir. The court dismissed her application. As Ms Mitzinger had been born before 1 July 1949, she was excluded under section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act from any statutory entitlement to her father's estate and from the right to financial compensation. Nor was she entitled to receive any copies of documents about the estate.

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.

On appeal, the Memmingen Regional Court refused to grant her the power to administer her father's estate. The court referred to the relevant provision of the Children Born outside Marriage (Legal Status) Act and case-law of the Federal Constitutional Court finding that provision in conformity with the German constitution. The Munich Court of Appeal dismissed Ms Mitzinger's appeal in May 2009 on the grounds that it was bound by the decisions of the Federal Constitutional Court which had found this provision to be valid.

Ms Mitzinger was also unsuccessful in her constitutional appeal to the Federal Constitutional Court. The court declared her complaint inadmissible for lack of substantiation, holding that Ms Mitzinger should have given further reasons to contest the validity of the relevant provision, but that she had failed to do so.

Complaints, procedure and composition of the Court

Relying on Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life), Ms Mitzinger complained that section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act had resulted in her having been unable to assert her inheritance rights and had been discriminatory.

The application was lodged with the European Court of Human Rights on 20 May 2010.

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

Erik **Møse** (Norway), *President*,
Angelika **Nußberger** (Germany),
Faris **Vehabović** (Bosnia and Herzegovina),
Yonko **Grozev** (Bulgaria),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
Lətif **Hüseynov** (Azerbaijan),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

The Court noted that the Government had not disputed the fact that there had been a difference in treatment in Ms Mitzinger's case. Furthermore, it found that the aims pursued by the legislature for that difference in treatment, namely the preservation of legal certainty and the protection of the deceased and his family, had arguably been legitimate.

However, it was not satisfied that the means employed, namely excluding children born out of wedlock before a certain cut-off point provided for by legislation, had been proportionate to the aims sought to be achieved.

Firstly, Ms Mitzinger had not been a descendant whose existence had been unknown to her father's wife. Ms Mitzinger's father had recognised her and she had regularly visited him and his wife.

Furthermore, the expectations of a sole heir, such as Ms Mitzinger's father's wife, were not protected in all circumstances. A will such as the one in question did not exclude the right of children born inside marriage and of children born outside marriage after the cut-off date to a share of a deceased's estate. That had to have had a bearing on the expectations of the father's wife about establishing rights to her deceased husband's estate.

Lastly, the Court referred to one of its previous judgments [Brauer v. Germany](#) (application no. [3545/04](#)), a case comparable to that of Ms Mitzinger, in which it had found that inequality of inheritance rights on the grounds of birth outside marriage was incompatible with the European

Convention on Human Rights. Moreover, European case-law and the national legislative reforms had also shown a clear tendency towards eliminating all discrimination regarding the inheritance rights of children born outside marriage.

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

Just satisfaction (Article 41)

The Court held that the question of the application of Article 41 was not ready for decision and reserved it for a later date.

The judgment is available only in English.

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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.