



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

Information Note on the Court's case-law 55

July 2003

***Sahin v. Germany* [GC] - 30943/96**

Judgment 8.7.2003 [GC]

Article 8

Article 8-1

Respect for family life

Refusal to grant father access to child born out of wedlock: *no violation*

Article 14

Discrimination

Different treatment of fathers of children born out of wedlock and divorced fathers:
violation

Facts: The applicant is the father of a child born out of wedlock in 1988. He acknowledged paternity and visited the child until October 1990. Thereafter, the mother prohibited any contact. The applicant's request for a right of access was dismissed by the District Court, with reference to section 1711 of the Civil Code, which at the material time provided that the person having custody of a child born out of wedlock could determine the father's right of access and that a court could only grant the father a right of access if it was in the child's interests. The court considered that while the applicant's request was motivated by a genuine affection for the child, access was not in the child's best interests, on account of the mother's strong opposition. The applicant appealed to the Regional Court, which ordered a psychologist's opinion on whether access was in the child's interests. The expert, after interviewing the applicant, the child and the mother on several occasions, concluded that access was not in the child's interests. She further considered that it would not be advisable for the child, who was then about 5 years old, to be heard in court. The Regional Court, referring to the tensions between the parents and the risk that visits would interfere with the child's development, dismissed the applicant's appeal. The applicant's constitutional complaint was rejected.

Law: Article 8 – The refusal of access constituted an interference which had a basis in domestic law and pursued the legitimate aims of protecting the "health or morals" and "rights and freedoms" of the child. With regard to the necessity of the interference, the courts had adduced relevant reasons for their decisions to refuse access. As to whether the reasons were also sufficient, the Court could not satisfactorily assess this without determining whether the decision-making process as a whole had provided the applicant with the requisite protection of his interests, which depended on the particular circumstances of the case. The applicant had been able to present his arguments in favour of a right of access and had had access to all relevant information relied on by the courts. The District Court had based its decision on the parents' submissions and witness statements and the Regional Court had in addition obtained an expert report. It would be

going too far to say that domestic courts were always required to hear a child in court on the issue of access. This depended on the specific circumstances, having due regard to the age and maturity of the child concerned. In the present case, the child was about 5 years old when the Regional Court gave its decision and, considering the methods applied by the expert and her cautious approach in analysing the child's attitude, the court had not overstepped its margin of appreciation when relying on her findings. There was no cause to doubt the expert's professional competence or the manner in which she had conducted her interviews. The Court was therefore satisfied that the procedural approach of the domestic courts was reasonable in the circumstances and had provided sufficient material to reach a reasoned decision in the particular case. The procedural requirements of Article 8 had therefore been complied with.

Conclusion: no violation (12 votes to 5).

Article 14 in conjunction with Article 8 – The facts fell within the scope of Article 8 and Article 14 was therefore applicable. At the material time, the relevant provisions of domestic law concerning, respectively, parents not having custody of children born in wedlock and fathers of children born out of wedlock contained different standards: the former had a legal right of access which could be restricted or suspended, while the latter's personal contact depended on the agreement of the child's mother or a court decision that access was in the child's interest. It was not necessary to consider whether the former legislation as such had made an unjustifiable distinction; the question was whether its application in the present case had led to an unjustified difference in treatment. In that respect, there were elements distinguishing the case from the *Elsholz* judgment (ECHR 2000-VIII), in which the Court had noted that it could not be said on the facts of the case that a divorced father would have been treated more favourably. In the present case, the courts had found that only special circumstances could justify the assumption that access would have beneficial effects on the child's well-being and, having regard to the fact that the courts were convinced of the genuineness of the applicant's motives, they placed a burden on him which was heavier than the one on divorced fathers. Very weighty reasons have to exist for a difference in treatment between the father of a child born out of wedlock and the father of a child born in wedlock and no such reasons could be discerned in the present case.

Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant 20,000 € in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.