



## BrÃ¼ggemann and Scheuten v. Germany

BrÃ¼ggemann v. F.R.G., App. No . 6959/75, 3 Eur. H.R. Rep. 244 (1977).

**Country:** Germany

**Region:** Europe

**Year:** 1977

**Court:** European Commission on Human Rights European Commission of Human Rights

**Health Topics:** Health care and health services, Health systems and financing, Sexual and reproductive health

**Human Rights:** Freedom from discrimination, Freedom of association, Freedom of religion, Right to family life, Right to life, Right to privacy

### Facts

In 1975, the Constitutional Court of Germany struck down a law that decriminalized abortion in the first trimester of pregnancy. The applicants claimed that the resulting amendment to the German criminal code, which criminalized abortion (except under certain circumstances) in the first trimester of pregnancy violated Article 8 (right to a private life) of the European Convention on Human Rights (ECHR) and that this interference was not justified on any of the grounds enumerated in para. (2) of Article 8. The applicants also argued that their rights had been violated under Article 9 (freedom of religion) because the Constitutional Court's judgement was based on religious grounds. The second applicant further argued that her right to marriage under Article 12 had been interfered with, because women with illegitimate children face reduced marriage prospects.

### Decision and Reasoning

The Commission determined that no violation of the applicants' rights had occurred under the Convention. The Commission found that no issue had been raised under Article 9 (freedom of religion) or Article 12 (right to marriage), and examined the complaint under Article 8 (right to private life). In relation to Article 8, the Commission stated that the termination of an unwanted pregnancy cannot be said to pertain uniquely to the sphere of private life, because a woman's private life becomes closely connected with the developing fetus. The Commission declined to embrace the view that pregnancy and the termination of pregnancy are solely within the private life of the mother. Therefore, the Commission held that there was no breach of Article 8 and found that the domestic court's judgment and domestic law fell within the discretion accorded to the State.

### Decision Excerpts

"60 . The Commission does not find it necessary to decide, in this context, whether the unborn child is to be considered as "life" in the sense of Art. 2 of the Convention, or whether it could be regarded as an entity which under Art .8(2) could justify an interference "for the protection of others" . There can be no doubt that certain interests relating to pregnancy are legally protected, e .g . as shown by a survey of the legal order in 13 High Contracting Parties (1) . This survey reveals that, without exception; certain rights are attributed to the conceived but unborn child, in particular the right to inherit . The Commission also notes that Art . 6(5) of the United Nations Covenant on Civil and Political Rights prohibits the execution of death sentences on pregnant women.

61 . The Commission therefore finds that not every regulation of the termination of unwanted pregnancies constitutes an interference with the right to respect for the private life of the mother. Art . 8(1) cannot be interpreted as meaning that pregnancy and its termination are, as a principle, solely a matter of the private life of the mother. In this respect the Commission notes that there is not one Member State of the Convention which does not, in one way or another, set up legal rules in this matter." Page 19.