

pursue OLG Dusseldorf, 18 January 2011, Az: I-25 Wx 28/10, Decision
pursue LG Dusseldorf 25th Civil Chamber, 31 May 2010, Az: 25 T 524/09, Decision
Tenor

The request of the applicant to 1, to recognize the decision of the First Instance Federal Court in Addis Ababa (No. 121090) of 01.08.2008 and to give the child in the light of the proceedings an extra first name, is rejected.

Reasons

1

In their application for recognition of the adoption, the applicants refer to the following documents and statements submitted in English or in German translation. According to these, the police commissioner of the city government of Addis Ababa stated 28.01.2008 (page 13), that in regard to ... about 6 years old, no message of parents or a guardian of the child had been received.

2

In the Ethiopian Social Report on ... from 02.09.2008 (pages 44-48), which is used as reference for details, it was among others stated, that the child named his birthplace, as well as the name of the relative who fed him in Addis Ababa into child labour, and the names of its parents; further ... had stated that he had fled from child labour onto the street, where he was then taken in.

3

After engaging the E V [sic! Evangelischer Verein] for adoption and foster care mediation R eV the parties 1. and the K T Children's Home concluded on 13.06.2008 an adoption contract (translation page 11), which was approved by decision of the First Instance Federal Court of Addis Ababa under No. 121 090 on 01.08.2008 (Translation page 15), without there having been until then any contact between the applicants and the child.

4

The city government of Addis Ababa delivered on 08.08.2008 (page 12) a birth certificate of the child, in which as father of the child, born on 28.01.2002, ... and as a mother ... are listed.

5

On 25.08.2008 (p. 8 ff) the Evangelische Verein for adoption and foster child mediation Rheinland eV, confirms to have reviewed the suitability of the applicants for the adoption of the child ... and to have provided the appropriate documentation to the Ministry in Ethiopia.

6

The Federal Office for Justice [sic! German Bundesamt forJustiz] provided on 09.01.2009 (pages 62 etc) and on 04.27.2009 (pp. 112 ff) their position to the request to recognize the adoption; for details reference is made to the mentioned positions.

7

The decision of the First Instance Federal Court in Addis Ababa from 0108.2008 can according to § 16a FGG [sic! German law – Act on Non Contentious Proceedings] not be accepted.

8

Since the Federal Democratic Republic of Ethiopia is not a party to the Hague Convention of 29 May 1993 on the protection of children and cooperation in the field of international adoption, the legal assessment of the request for recognition needed to be based on § 16a FGG. Under that provision, a foreign decision must be recognised, if none of the in § 16 a No. 1 – 4 FGG listed exclusion criteria exist. The recognition is in accordance with § 14 a 4 FGG particularly excluded if the acceptance of the recognition would lead to a decision, which would be obviously incompatible with the fundamental principles of German law, in particular with the fundamental rights,.

9

These conditions are met in this case.

10

With regard to the relevant fundamental rights it is especially necessary to look at the personal rights of the child under Article 2 paragraph 1 of the Constitution [Grundgesetz]. It should be noted that the adoption as legal act to overthrow the

biological origin deeply affects the individuality and heritage, i.e. in the personality of the child, is related to fundamental rights. The basic idea of adoption is not an exchange of parents for the alleged welfare of a child or even to contribute to the betterment of the child in some areas, but to provide it in case of total loss of his family of origin, protection in a new family. Accordingly, article 21 lit b of the UN Child Rights Convention specifies that a child only then should be transferred for adoption into a foreign country and into another culture, when all avenues have been exhausted for the placement of the child in his own family and in its own country. Ethiopia joined the UN Child Rights Convention.

11

The appointment of new (adoptive) parents further requires that they have factually grown into the role of the failed parents, so in terms of German law that between the child and his new parents and vice versa, a parent-child relationship has been founded or its formation can be expected. This means that because of the scope of the decision, the act of adoption is only done at a time when the relationship between the future parents and the child is already established or the development so far initiated, that it can be assumed with certainty that the development so far will result in such a relationship.

12

Also these conditions are not met in this case

13

In connection with the submitted Ethiopian Social Report it is not apparent that an attempt was made at the home country of the child to locate the parents of the boy (although their names and their hometown were named by the boy) and to bring about their participation in the adoption process. Investigations into this are by German ordre public imperative to grant procedural safeguards.

14

According to the convincing observations of the Federal Department of Justice [Bundesamtes für Justiz] it is not only under the UN Children's Convention, but also under the current family law in Ethiopia needed to examine whether there is no possibility of raising the child in Ethiopia. It is not apparent that respective statements were made, so that the personal right of the child, namely, the respect for its cultural identity, was not considered.

15

Furthermore, the personality right of the child has not sufficiently enough been respected, as far as before the adoption no initiation of a parent-child relationship took place, which for practical reasons (visa handling) should have taken place in Ethiopia.

16

For this, the Evangelical Association for Adoption and foster children mediation Rheinland eV [Evangelische Verein] has held that a prior contact, for reasons of practicability would not be possible, and because of the high expectations of the child to be adopted, the child itself could not even establish a relatively neutral contact. In addition, the Agency indicated that such contact could not be mediated by the German Agency.

17

This argument, which the applicant joined with other arguments, is not convincing . If adoption agencies require from applicants for children from such countries that they accept, without limitation, their assigned child and on the other hand, the child is not given an opportunity to experience a longer period of getting acquainted through different phases of the relationship with the adoption applicants , both sides are deliberately deprived of the under German law essential phase of the initiation of a substantial parent-child relationship . Like the District Court Hamm (IPRax 2007, 326 ff)one rather has to require, to respect the individual rights of the child, who at the time of adoption is 6 years or older, thus aware of the the significant change in his life, that such an initiation on both sites has been made possible. Since it herein in the present case is lacking, also on this ground, the decision of First Instance Federal Court of Addis Ababa on 01/08/2008 is not eligible for recognition.