

### Short questionnaire

Therefore, States are respectfully requested to provide responses to the following questions which relate to the recognition in one State of a domestic adoption granted in another State:

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| <b>Name of State:</b>                            | Germany  |
| <b><u>Information for follow-up purposes</u></b> |  |
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## A. RECOGNITION IN YOUR STATE OF DOMESTIC ADOPTIONS GRANTED PREVIOUSLY IN OTHER STATES

### *The law and procedure in your State*

1. Please briefly outline the **law** (legislation or other rules) in your State concerning the recognition of a domestic adoption granted previously in another State.

Recognition of a domestic adoption granted previously in another State is ruled in Art. 108, 109 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction. Foreign adoption decisions are - as any foreign judgments - in general recognised by law (without particular proceeding). Nevertheless, persons who have a legal interest may apply for a court decision on the recognition or non recognition of a foreign adoption decision (Art. 108 (2) of the said law). There are four reasons for which recognition of a foreign adoption order can be excluded. These are laid down in Art. 109 (1) No 1 to 4 of the said law.

#### Section 108

##### Recognition of Other Foreign Judgments

(1) With the exclusion of judgments in marital matters, foreign judgments shall be recognized without the requirement of a particular proceeding.

(2) Participants who have a legal interest therein may apply for a decision on the recognition or non-recognition of a foreign judgment that does not involve property law. Section 107 (9) shall apply mutatis mutandis. As to the recognition or non-recognition of the adoption of a child, however, sections 2, 4, and 5 of the Act on the Effect of Adoptions according to Foreign Law (Adoptionswirkungsgesetz; AdWirkG) shall be applicable when the adopted person at the time of the adoption had not yet reached the age of 18.

(3) Local jurisdiction for a decision on an application in accordance with subsection (2) sentence 1 shall lie with the court in the district of which at the time of the filing of the application:

1. the person opposing the application or the person that the decision on the application relates to has his usual place of abode or

2. if there is no local jurisdiction pursuant to no. 1, interest in the establishment became known or the need for care arose.

This jurisdiction shall be exclusive.

#### Section 109

##### Impediments to Recognition

(1) Recognition of a foreign judgment shall be excluded:

1. when the courts of the other state do not have jurisdiction under German law;
2. when a participant, who did not comment on the main action and claims that the document initiating the proceeding was improper or that notification was untimely so that he could not properly exercise his rights;
3. when the judgment is incompatible with a judgment issued or recognized earlier in Germany, or when the proceedings at the basis of such judgment are

incompatible with proceedings that were previously pending here;

4. when recognition of the judgment would lead to a result that is obviously incompatible with significant principles of German law, in particular when recognition is incompatible with fundamental rights.

(2) Section 98 (1) no. 4 shall not proscribe recognition of a foreign judgment in a marital matter when a spouse has his place of usual residence in the state in which its courts decided. If a foreign judgment in a marital matter is recognized by the states of which the spouses are nationals, section 98 shall proscribe recognition of the judgment.

(3) Section 103 shall not proscribe recognition of a foreign decision in a life partnership matter when the country that maintains the register recognizes the judgment.

(4) Recognition of a foreign judgment relating to:

1. matters concerning family disputes;
2. an obligation of care and support in the community of the life partners;
3. governance of the legal relationship as to the joint residence and household objects of the life partners,
4. decisions pursuant to section 6 sentence 2 of the Act on Registered Life Partnerships in conjunction with sections 1382 and 1383 of the Civil Code, or
5. decisions pursuant to section 7 sentence 2 of the Act on Registered Life Partnerships in conjunction with sections 1426, 1430, and 1452 of the Civil Code shall also be excluded when reciprocity is not guaranteed.

(5) An examination of the legitimacy of the foreign judgment shall not take place.

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In case of an adoption of a minor person the procedure for receiving a court decision on the recognition or non-recognition of an adoption decision is ruled in the Act on the Effects of the Adoption According to Foreign Law:

#### Section 1

##### Scope of application

The provisions of this Act shall apply to an adoption which is based on a foreign decision or on foreign factual regulations. They shall not apply, if the adopted person has reached the age of eighteen at the point of adoption.

#### Section 2

##### Recognition and effect ascertainment

(1) Upon application the family court shall determine whether an adoption within the meaning of section 1 has to be recognised or is effectual and whether the parent / child relationship of the child to his previous parents has ceased by the adoption.

In particular, please specify whether your State applies different rules to the recognition of domestic adoptions made in certain States or regions and, if so, why.

No, the same rules are applied to the recognition of domestic adoptions made in every State.

2. Please briefly outline the **procedure** which must be followed in your State by persons seeking the recognition of a domestic adoption granted previously in another State.

In general, adoption decisions are recognised by law without particular proceeding. That means that if a person seeks for example to receive a visa for a child to enter Germany or if this person wants to receive child benefit (a public financial aid for children) the person only has to show the adoption decision to the competent authority (for example a German embassy). In case the addressee who shall do something based on the adoption is unsure whether the adoption can be recognised, or in case the adoptive family itself wishes to receive a court order on this matter (to be certain that a foreign adoption is recognised in Germany) the family can apply for a court order before the competent German family court.

In particular, please specify what legal or administrative steps are required for recognition.

As said above, in general adoptions are recognised by law without particular proceeding.

An application to a family court for a court order on recognition of a foreign adoption can be filed by individuals having a legal interest in the decision privately (without consulting a lawyer) and without a special form. In cases of adoptions of minors the application can only be filed by the adoptive parent(s), the adopted child, a former father/mother or - in special cases - a German registry office. The decisive documents such as adoption decision, birth certificates before and after adoption, proof of necessary consents to the adoption, proof of examination of the case by a competent (youth welfare) authority (if possible) have to be filed with translations and in a form the court expects (which can vary, for example legalisation or apostille).

3. What is the competent authority in your State for such matters?

In case a person applies for a decision on the recognition or non-recognition of a foreign adoption the competent family court has to be addressed. In case the applicant already resides in Germany it is the family court of the town / region the person is residing in. In case of adoptions of minors it is the family court in the district of which the higher regional court is located which is closed to where the applicant lives. In case the applicant is living abroad it is the family court in Berlin Schöneberg.

**Cases which have arisen in your State**

4. Has your State been asked to recognise domestic adoptions granted previously in other States? If so:

(a) How many such cases have arisen in the past year?

The following answers all are about adoptions of minors. The Federal Central Office for Intercountry Adoptions does not participate in court proceedings regarding the adoption of adults.

In 2016 a family court has been addressed in 113 cases to decide on the recognition or non-recognition of a foreign domestic adoption.

Past three years?

In 2014 to 2016 a family court has been addressed in 388 cases to decide on the recognition or non-recognition of a foreign domestic adoption.

(b) In such cases, why was recognition of the domestic adoption sought?

The reasons are not always obvious for the Federal Central office for Intercountry Adoption. We do receive the court files in cases of the adoption of minor children to give a legal opinion, but the reason for which the applicants go through the court procedure are not always laid down in the file. In many cases recognition was sought for that a foreign child received a visa or German passport to enter Germany. But there are also cases in which recognition was sought after the child had immigrated to Germany. In many cases the procedure is done because an adopted child wants to receive the German Citizenship, but it can also happen that "only" a German birth certificate is not issued by the competent registry office without a court order on the recognition of the adoption. Some families also address the court as a precautionary measure because they assume that a court order on the recognition might make many things in the future easier.

(c) What type of document was presented for recognition?

The presented documents vary, depending on what documents the applicants have and on what the court asks them to present. Usually, at least the following documents must be presented:

- adoption order / decision
- birth certificates before / after adoption
- Proof of necessary consents to the adoption (consent of biological parents / guardians)

- Proof of examination of the case by a competent authority regarding the eligibility and suitability of the adoptive parents to adopt and the need of adoption / adoptability of the child (if this has taken place, e.g. adoption body, youth welfare office)
- When no social report can be presented about an examination of the above said facts any documents that prove that it was examined whether the adoption was in the best interest of the child.

The documents must be presented as originals or certified copies and (usually) be translated into German. The court can ask for more documents / interview the parties in case this is needed to decide on the case. Every judge decides himself whether he asks for special forms of documents (e.g. legalisation / apostille).

(d) Was recognition permitted?

Recognition was refused in 5 cases in 2014, in 2 cases in 2015 and in 1 case in 2016. Many cases that were initiated in the past three years are still pending, so that these numbers are not final. Overall it can be said that the most adoptions are recognised.

(e) In cases where recognition was refused, what were the reasons?

The reasons were

- adoption made by concluding a contract (no administrative or court decision)
- no need for adoption
- no or insufficient participation of biological parents / adopted children in the adoption process
- no or insufficient examination of suitability and eligibility of adoptive parents
- parent-child- relation between adopted child and adopter(s) not yet given and not to be expected
- Circumvention of the Hague Convention and one of the reasons above (so that the fundamental principles of the Convention were not respected)

In particular, have there been any cases in which recognition was refused by your State on the basis that jurisdiction had been inappropriately assumed by the foreign authority?

No

(f) Where recognition was refused, what actions, if any, were taken with respect to the status of the child?

The Federal Central Office for Intercountry Adoptions does usually not participate in the cases after a court has decided on the recognition of an adoption. Therefore we are not informed about the actions taken on a regular basis. Only in some cases we learn what happens after recognition of an adoption was refused: In some cases the adoption is repeated in Germany / in the foreign country in a way that can be recognised. In these cases a legal guardianship can be established for the time in which the status of the child is unsure. As far as we know there are unfortunately cases in which the status of a child remains unclear (adopted from the view of country A, not adopted - at least not in a way that can be recognised - from the view of country B).

(g) Has there been any cross-border co-operation / communication between your State and any State(s) which granted the adoption(s) in these cases?

Yes. We do sometimes cooperate with foreign authorities during the process of recognition to ask for more information / documents regarding the foreign adoption or to receive information about the applicable law. In many cases we cooperate with authorities in the state in which a domestic adoption was made that is not recognised in Germany. In case a domestic adoption was made even though it should have been an Intercountry Adoption according to the 1993 Hague Convention we do contact the Central Authority of the other State to inform the Authority about the consequence of the circumvention. In "real" domestic adoption cases we do from time to time cooperate with foreign authorities to find a solution which is in the best interest of the child.

5. In your State's experience, do (some or many) families with an adopted child move to your State without having the child's adoption formally recognised in your State?

Yes. It is not compulsory to have an adoption formally recognised in Germany before moving here with an adopted child.

Does this create any problems for the family?

Not in general. There are families facing problems, for example with authorities competent to issue birth certificates or passports. It can also happen that the right of residence of a child in Germany is questioned by an immigration authority. In case the families do face these problems most of them will apply for a court decision on the recognition of the foreign adoption.

## **B. RECOGNITION IN ANOTHER STATE OF DOMESTIC ADOPTIONS GRANTED PREVIOUSLY IN YOUR STATE**

### ***The law and procedure in your State***

6. In relation to the granting of domestic adoptions in your State:

- (a) Are any special rules or procedures followed when a case involving a domestic adoption has an international element (*e.g.*, it involves a foreign national child and / or foreign national prospective adoptive parents, despite the fact that they are all habitually resident in your State)?

A German national adoption that has an international element will - in general - follow the same procedure as an adoption without such element. But the German private international law contains rules which have to be respected regarding the applicable substantive adoption law. The requirements and consequences of an adoption can be ruled by foreign substantive law, depending on the nationality of the parties. The judge in Germany will have to apply foreign law on the adoption in these cases.

- (b) What type of document is issued for domestic adoptions granted in your State?

A court order (family court)

7. Are there any special rules or procedures which are followed when your State is made aware that another State has been requested to recognise a domestic adoption originating from your State?

No

### ***Cases which have arisen involving your State***

8. Are you aware of situations in which recognition has been sought in other States of domestic adoptions granted in your State?

Yes

If so:

- (a) How many such cases have arisen in the past year of which you are aware?

1

Past three years?

5

- (b) Which competent authorities were addressed in your State? And in the other State(s)?

We only know about the cases in which we (the German Federal Central Office for Inter-country Adoption) were addressed. In the other States different authorities were contacted: Registry offices, diplomatic missions, Central Authorities according to the Hague Convention.

- (c) In such cases, why was recognition of the domestic adoption sought?

To receive birth certificates / passports reflecting the adoption, to have the new name(s) established in the other country.

- (d) Was recognition permitted by the other State(s)?

We do not know the results. We were contacted because of questions regarding the German adoption or because of a refusal of the other State to recognise the German adoption but have not been informed whether the problems could be solved.

- (e) In cases where recognition was refused, what were the reasons?

We only know some minor elements of the cases: In one case we were told that Russia refused to recognise a German adoption because Russian children can, according to Russian law, only be adopted in a Russian court procedure. The Portuguese Authorities had difficulties in one case because they do not know simple and full adoptions and did not understand the consequences of a German adoption. Romania once stated that a consent of a Romanian authority to the adoption of a Romanian child had been missing in the German adoption procedure.

Have you ever had a case where the grounds upon which your State assumed jurisdiction to grant the domestic adoption were challenged by the foreign State?

Yes, Russia.

- (f) Where recognition was refused, what actions, if any, were taken with respect to the status of the child?

We did not learn about the consequences.

- (g) Has there been any cross-border co-operation / communication between your State and any State(s) being asked to recognise the adoption in these cases?

Yes. But we mostly communicated with the persons involved in the adoption that lived in Germany.

### C. PRACTICAL PROBLEMS REQUIRING ACTION

9. In light of the information you have provided in both sections above, overall, are there, in your State's experience, practical problems in this area that need resolving at the international level?

No