

## **Germany - High Regional Court Schleswig-Holsteinisches, judgment 2 W 54/13**

The applicant was born in 2011 in Germany to a German father and a stateless mother. Her birth certificate contained the disclaimer that the mother's identity is "unconfirmed", which the applicant and the parents appealed against, as the stateless mother was extensively documented among others with a travel document for stateless persons issued by Germany. The Court upheld the appeal, and ordered the civil registry to issue a new birth certificate without disclaimers as to the mother's identity.

**Case name (in original language) :** Personenstandsverfahren: Identitätsnachweis der staatenlosen Mutter bei Beurkundung einer Geburt; Beweiskraft der für Flüchtlinge bzw. Staatenlose ausgestellten Reiseausweise

**Case status:** Decided

**Case number:** 2 W 54/13

**Citation:** ECLI:DE:OLGSH:2013:0820.2W54.13.0A

**Date of decision:** 20/08/2013

**State:** Germany

**Court / UN Treaty Body:** Schleswig-Holsteinisches High Regional Court

**Language(s) the decision is available in:** German

**Applicant's country of birth:** Azerbaijan

**Applicant's country of residence:** Germany

**Legal instruments:** 1954 Statelessness Convention

**Key aspects:** Birth registration, Burden of proof, Standard of proof, Stateless status and documentation, Statelessness and asylum

### **Facts**

The applicant was born on 22 May 2011 in Germany, and her birth was registered on 29 September 2011. Her parents were married on 29 April in Denmark. The father is a German citizen, and the mother is stateless, born in Azerbaijan and of Armenian

ethnicity, and holds a statelessness travel document issued to her by the German immigration authorities in 2012. The applicant and her parents complained against the fact that the registry office was only willing to include personal details about the applicant's mother, in particular that she was born on 29 May 1977 in Baku (Azerbaijan), if a disclaimer "Identity not verified" was added. The birth of the older sibling of the applicant was registered without such a disclaimer, on the basis of the Danish marriage certificate of the parents, but since new regulations that came into force on January 2009 stricter rules applied, and in order to register information about the parents without such a disclaimer identity documents needed to be shown.

The mother does not have a passport from Azerbaijan. She merely presented a Soviet birth certificate, which has not been legalised in Germany, but has been confirmed as genuine by the German Embassy in Baku. Her birth certificate is consistent with the information on the birth certificates of her brothers and her mother, as well as on her marriage certificate.

### **Legal arguments by the applicant**

The applicant and his parents (all three being applicants in this case) request a birth certificate without a disclaimer "identity not proven" about the mother. They believe that the the mothers identity has sufficiently been proven, en that the civil registry authorities were being unnecessarily formalistic. The applicants believe that the list of possible means to resolve doubts about an identity cannot be limited tp a national passport or a legalised birth certificate. In the present case they believe that the the travel document for stateless persons and the birth certificates of the mother and her family members, the Danish marriage certificate, and judgments of courts that have investigated the authenticity of the relevant documents provide sufficient proof of identity of the mother. The applicant also submitted witness statements of family members and long-term acquaintances confirming her identity. The applicants argued that the identification of stateless persons is an atypical exceptional case, since no state is responsible to issue them a passport. Stateless persons can only obtain a travel document for stateless persons after going through a thorough procedure. Such document has a function of an identity document, in accordance with the international conventions that Germany acceded to.

### **Legal arguments by the opposing party**

The state authorities argued that in order to maintain the high evidentiary value of civil status documents the documents required in the process of birth registration have to adhere to a stricter standard than what is applied by administrative courts when issuing travel documents and residence permits. In this case, there is also no atypical individual case that justifies the acceptance of a non-standard identification paper, such as a letter of identification, than would waive the requirement to submit a passport, in deviation from the instructions of § 33 PStV. B. It is not uncommon for asylum seekers or refugees to experience great difficulties in obtaining identity documents from their home countries, or in proving their nationality. That is why civil status law allows for a standard disclaimer, which does not result in any particular hardship for the individuals concerned.

Since the mother of the applicant could not obtain the necessary documents that adhere to high evidentiary standard of the civil registry, the disclaimer on unconfirmed identity must remain. The high evidential value of civil status registers and documents should not be compromised by taking by incorporating uncertain identity information. The impossibility to provide evidence, even if it is not the fault of the applicant's mother, should not lead to a situation where the unproven is treated as if it was proven. The birth certificate of the applicant is as accurate as possible in accordance with the available documents.

### **Decision & Reasoning**

The Court reasoned as follows:

"20. The child's parents are entitled to a birth certificate to be issued to their daughter in accordance with the law."

"26. In principle, the district court also rightly assumes that the evidential value of the civil status registers and documents forbids viewing unproven facts as proven solely because the applicant may not be able to access relevant evidence through no fault of their own."

"30. In general, it should be noted that Section 33 PStV is only an instructive provision. It does not exclude the possibility of proving identity through other means than a valid or a recently expired passport (KG, StAZ 2006, p. 13 f .; decision of March 7, 2013, 1 W 160/12, at juris)."

"31. Evidence from questioning relatives and acquaintances of the person concerned as witnesses is generally not sufficiently reliable to remove all doubts regarding identity (cf. Senate, StAZ 2008, p. 287 ff.)."

"32. In the present case, however, this does not matter because the documents presented by the mother of the child, namely the Soviet birth certificate (1) and the travel document of July 2, 2012 (2), meet the standards of § 33 PStV."

"33. However, the district court initially rightly assumes that the authenticity of a foreign birth certificate must be proven. However, the proof cannot be considered as having failed in this case merely because the Soviet birth certificate presented does not have an apostille or legalisation. In her childhood, when the Soviet Union still existed, the mother of the applicant obviously had no reason to have such legalisations created. Proof of authenticity through apostille or legalisation is no longer an option."

"34. In 1991 the Republic of Azerbaijan became independent, after the dissolution of the Soviet Union. An apostille would not be issued for a document of the former Soviet Union (that is aside from the act that the Hague Convention of October 5, 1961 does not apply between the Republic of Azerbaijan and the Federal Republic of Germany). Legalisation in accordance with Section 13 of the Consular Act is also not possible here. The Embassy of the Federal Republic of Germany in Baku discontinued the legalisation of public documents from the Republic of Azerbaijan in January 2001."

"35. Therefore, the option to confirm the authenticity is verification of documents by the embassy by way of legal or administrative assistance. Such a review has taken place here. As already mentioned, the birth certificates the mother of the applicant, as well as her mother and brothers, as the applicant's parents marriage certificate have been verified as authentic.

"39. Since the authenticity of the birth certificate of the applicant's mother is thus certain, the requirements in § 33 sentence 1 no. 1 PStV are satisfied."

"40. The identity of the applicant's mother is also confirmed in accordance with § 33 sentence 1 no. 3 PStV. According to the wording of § 33 PStV, it is not absolutely necessary to submit a (national) passport from the country of origin. Another document within the meaning of section 33 sentence 1 no. 3 PStV may also be sufficient. In this respect, the applicant's mother submitted her travel document

for stateless persons, which is a recognised alternative to a national passport."

"43. [A statelessness travel document] is not just a passport substitute that merely enables a foreigner to comply with immigration rules. Rather, travel documents that are issued on the basis of Article 28 of the Convention of July 28, 1951 on the Legal Status of Refugees or the corresponding provision in Article 28 of the Convention on the Legal Status of Stateless Persons have more extensive evidential value with regard to the identity details contained therein than other documents issued by the immigration office. Stateless persons can identify themselves in civil status procedures with a German travel document for stateless persons."

"44. The travel documents for stateless persons and for refugees have, among other things, an identification function. They have the aim of certifying the identity of their holder as an alternative to a national passport, and to a large extent replace a national passport [...]. A travel document according to Art. 28 of the aforementioned agreements, just like a national passport, constitutes (refutable) evidence that its holder is the person named, described and depicted in it, and that the information contained therein corresponds to the factual and legal circumstances of the holder."

"46. The identification function of the travel document can be diminished by adding a disclaimer that the information given is solely based on the accounts of the person concerned [...] Section 4, Paragraph 6, Sentence 2 of the Residence Ordinance specifies that such a note can be included in travel documents for refugees and stateless persons if there are serious doubts about the applicant's identity details[...]. If the issuing authority does not guarantee the correctness of the identity information by means of such a disclaimer, another authority cannot rely on the correctness of the information as even refutable evidence."

"47. However, the travel document of the mother of the applicant does not contain such a disclaimer. Even if the information in her travel document was solely based on her own account, if the travel document does not contain a relevant disclaimer it does not conflict with the legitimization function of the civil status procedure [...]. Incidentally, in the present case, the travel document was actually not issued solely on the basis of the applicant's mother own account, but instead on the basis of the administrative court's careful examination of her identity and statelessness [...]"

"48. [...] It is highly relevant that not just one birth certificate has been assessed, but a total of four for the whole family, the ages and genders of the people match. In

other respects, too, the accounts of the applicant's mother and her family are consistent and plausible in the context of the historical background of persecution of people of Armenian ethnicity in Azerbaijan, and at no point was there reason for mistrust, for example due to earlier incorrect or contradicting information."

"49. Accordingly, the travel document dated July 2, 2012 is a document within the meaning of § 33 sentence 1 no. 3 PStV, so that the disclaimer in the birth certificate of the applicant has to be deleted and a new birth certificate has to be issued."

### **Decision documents**

[Regional Court Schleswig-Holsteinisches, judgment 2 W 54/13](#)

### **Outcome**

The court sided with the applicant and instructed the relevant registry office to issue a birth certificate to the applicant without a disclaimer "identity not confirmed" about the mother.