BGE 20250306_13437_22 vom 6. März 2025

Bundesgericht (BGE), 2025-03-06, FR

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Regeste

Regeste Diese Zusammenfassung existiert nur auf Französisch. SUISSE: Art. 8 CEDH. Refus des autorités d'autoriser l'adoption par la requérante d'un enfant qu'elle a fait venir d'Éthiopie en Suisse en 2017. Se référant à l'art. 8 CEDH, le Tribunal fédéral avait évalué la situation financière de la requérante, son état de santé et le rejet par les autorités de la demande d'adoption et avait conclu que les conditions légales pour une adoption n'étaient pas remplies. Il avait certes reconnu l'existence de liens personnels étroits entre la requérante et l'enfant, mais avait estimé que le refus de prononcer l'adoption n'impliquait pas nécessairement une séparation et que les intéressés pouvaient vivre ensemble soit en Éthiopie, soit en Suisse. La Cour est d'accord avec la conclusion du Tribunal fédéral, qui avait également souligné que le déplacement illégal de l'enfant en Suisse par la requérante, en contournant les procédures légales, ne pouvait être justifié sous prétexte de servir l'intérêt supérieur de l'enfant. L'intérêt public en jeu l'emportait sur le droit de la requérante au respect de sa vie familiale, dans la mesure où celui-ci était affecté. En conséquence, les motifs invoqués pour justifier le refus étaient pertinents et suffisants au regard de l'art. 8 par. 2 CEDH. Eu égard à la marge d'appréciation dont jouissait l'État défendeur, la Cour estime que les conclusions des juridictions suisses, y compris celles du Tribunal fédéral, ont ménagé un juste équilibre entre les intérêts de la requérante et ceux de l'État (ch. 55-63). Conclusion: non-violation de l'art. 8 CEDH. Inhaltsangabe des BJ (1. Quartalsbericht 2025) Recht auf Achtung des Privat- und Familienlebens (Art. 8 EMRK); verweigerte Adoptionsgenehmigung. Die Beschwerdeführerin ist Schweizerin mit äthiopischer Herkunft. Im Jahr 2016 adoptierte sie in Äthiopien ein Kind unbekannter Herkunft und brachte es in die Schweiz, obwohl die Schweizer Behörden ihr die Eignungsbescheinigung für die Adoption, die Bewilligung zur Aufnahme des Kindes und ein Visum für das Kind verweigert hatten. Im April 2017 reichte sie bei der zuständigen kantonalen Behörde ein Adoptionsgesuch ein. Dieses Gesuch wurde abgelehnt, unter anderem weil die gesetzlichen Voraussetzungen in Bezug auf den Altersunterschied zwischen der Beschwerdeführerin und dem Kind nicht erfüllt waren und die äthiopischen Adoptionsentscheide aufgrund verschiedener von einem unabhängigen Sachverständigen festgestellter Verfahrensmängel als unzulässig eingestuft wurden. Im Sinne des Kindeswohls schlugen die kantonalen Behörden der Beschwerdeführerin jedoch vor, ein Gesuch um internationale Aufnahme zu stellen, welches angenommen wurde, und erteilten daraufhin der Beschwerdeführerin und ihrem ältesten Sohn die Vormundschaft über das Kind. Unter Berufung auf Artikel 8 EMRK (Recht auf Achtung des Privat- und Familienlebens) sieht T.A. in der Weigerung der Behörden, die Adoption zu genehmigen, eine Verletzung ihres Rechts auf Achtung des Familienlebens. Ihrer Ansicht nach hätten die Gerichte das übergeordnete Wohl des Kindes nicht berücksichtigt, das seit sieben Jahren mit ihr in einer Eltern-Kind-Beziehung lebt. Angesichts der anhaltenden Beziehung und der emotionalen Bindung, die sich zwischen der Beschwerdeführerin und dem Kind entwickelt hat, stellte der Gerichtshof fest, dass es in

diesem Fall um das Familienleben im Sinne von Artikel 8 EMRK geht. Unter dem Gesichtspunkt der Notwendigkeit des strittigen Eingriffs in einer demokratischen Gesellschaft im Sinne von Artikel 8 Absatz 2 EMRK stellte der Gerichtshof insbesondere fest, dass die Ablehnung des Adoptionsgesuchs der Beschwerdeführerin zu keinem Bruch in ihrer Beziehung zum Kind geführt hat und es angesichts der zugesprochenen Vormundschaft der Beschwerdeführerin und ihres ältesten Sohnes über das Kind keinen Hinweis auf besondere Hindernisse oder Schwierigkeiten in der Ausübung des Familienlebens mit dem Kind gab. Der Gerichtshof teilte auch die Einschätzung des Bundesgerichts, dass, soweit gegen das Recht der Beschwerdeführerin auf Achtung des Familienlebens verstossen wurde, dies mit Blick auf die öffentlichen Interessen gerechtfertigt war. Keine Verletzung von Artikel 8 EMRK (einstimmig).

Regeste SUISSE: Art. 8 CEDH. Refus des autorités d'autoriser l'adoption par la requérante d'un enfant qu'elle a fait venir d'Éthiopie en Suisse en 2017. Se référant à l'art. 8 CEDH, le Tribunal fédéral avait évalué la situation financière de la requérante, son état de santé et le rejet par les autorités de la demande d'adoption et avait conclu que les conditions légales pour une adoption n'étaient pas remplies. Il avait certes reconnu l'existence de liens personnels étroits entre la requérante et l'enfant, mais avait estimé que le refus de prononcer l'adoption n'impliquait pas nécessairement une séparation et que les intéressés pouvaient vivre ensemble soit en Éthiopie, soit en Suisse. La Cour est d'accord avec la conclusion du Tribunal fédéral, qui avait également souligné que le déplacement illégal de l'enfant en Suisse par la requérante, en contournant les procédures légales, ne pouvait être justifié sous prétexte de servir l'intérêt supérieur de l'enfant. L'intérêt public en jeu l'emportait sur le droit de la requérante au respect de sa vie familiale, dans la mesure où celui-ci était affecté. En conséquence, les motifs invoqués pour justifier le refus étaient pertinents et suffisants au regard de l'art. 8 par. 2 CEDH. Eu égard à la marge d'appréciation dont jouissait l'État défendeur, la Cour estime que les conclusions des juridictions suisses, y compris celles du Tribunal fédéral, ont ménagé un juste équilibre entre les intérêts de la requérante et ceux de l'État (ch. 55-63). Conclusion: non-violation de l'art. 8 CEDH. Synthèse de l'OFJ (1er rapport trimestriel 2025) Droit au respect de la vie privée et familiale (art. 8 CEDH) ; refus d'autoriser une adoption. La requérante est une ressortissante suisse d'origine éthiopienne. En 2016, elle a adopté un enfant d'origine inconnue en Ethiopie et l'a emmené en Suisse, malgré le refus des autorités suisses de lui délivrer un agrément en vue d'adoption, l'autorisation d'accueillir l'enfant en vue de son adoption et un visa pour l'enfant. En avril 2017, elle a formé une demande d'adoption auprès de l'autorité cantonale compétente. Cette demande a été rejetée notamment parce que les conditions légales d'une adoption n'étaient pas remplies en ce qui concerne la différence d'âge entre la requérante et l'enfant, et parce que les décisions d'adoption rendues en Ethiopie ont été considérées comme illicites au vu de différents manquements procéduraux relevés par un expert indépendant. Dans l'intérêt de l'enfant, les autorités cantonales ont toutefois suggéré à la requérante de déposer une demande d'accueil international, qui a été autorisée, et ont désigné la requérante et son fils aîné comme tuteurs de l'enfant. Invoquant l'article 8 CEDH (droit au respect de la vie privée et familiale), T.A. voit dans le refus opposé par les autorités de lui accorder l'autorisation d'adoption une atteinte à son droit au respect de la vie familiale. Elle estime que les tribunaux n'ont pas tenu compte de l'intérêt supérieur de l'enfant, qui vivait avec elle dans le cadre d'une relation parent-enfant depuis sept ans. Au vu de la relation ininterrompue et du lien émotionnel qui s'est formé entre la requérante et l'enfant, la Cour a considéré que l'affaire relève de la "vie familiale" au sens de l'article 8 CEDH. Sous l'angle de la nécessité

de l'ingérence litigieuse dans une société démocratique au sens de l'article 8 § 2 CEDH, la Cour a relevé en particulier que le rejet de la demande d'adoption de la requérante n'avait pas conduit à une interruption de la relation de cette dernière avec l'enfant et que, vu que la requérante et son fils aîné ont été désignés comme tuteurs de l'enfant, il n'apparaissait pas que la requérante soit confrontée à des obstacles et difficultés particuliers dans la jouissance de sa vie familiale avec l'enfant. La Cour a également partagé l'appréciation du Tribunal fédéral selon laquelle, dans la mesure où il y a eu atteinte au droit au respect de la vie familiale de la requérante, celle-ci était justifiée au vu des intérêts publics en jeu. Non-violation de l'article 8 CEDH (unanimité).

Regesto Questo riassunto esiste solo in francese. SUISSE: Art. 8 CEDH. Refus des autorités d'autoriser l'adoption par la requérante d'un enfant qu'elle a fait venir d'Éthiopie en Suisse en 2017. Se référant à l'art. 8 CEDH, le Tribunal fédéral avait évalué la situation financière de la requérante, son état de santé et le rejet par les autorités de la demande d'adoption et avait conclu que les conditions légales pour une adoption n'étaient pas remplies. Il avait certes reconnu l'existence de liens personnels étroits entre la requérante et l'enfant, mais avait estimé que le refus de prononcer l'adoption n'impliquait pas nécessairement une séparation et que les intéressés pouvaient vivre ensemble soit en Éthiopie, soit en Suisse. La Cour est d'accord avec la conclusion du Tribunal fédéral, qui avait également souligné que le déplacement illégal de l'enfant en Suisse par la requérante, en contournant les procédures légales, ne pouvait être justifié sous prétexte de servir l'intérêt supérieur de l'enfant. L'intérêt public en jeu l'emportait sur le droit de la requérante au respect de sa vie familiale, dans la mesure où celui-ci était affecté. En conséquence, les motifs invoqués pour justifier le refus étaient pertinents et suffisants au regard de l'art. 8 par. 2 CEDH. Eu égard à la marge d'appréciation dont jouissait l'État défendeur, la Cour estime que les conclusions des juridictions suisses, y compris celles du Tribunal fédéral, ont ménagé un juste équilibre entre les intérêts de la requérante et ceux de l'État (ch. 55-63). Conclusion: non-violation de l'art. 8 CEDH. Sintesi dell'UFG (1° rapporto trimestriale 2025) Diritto al rispetto della vita privata e familiare (art. 8 CEDU); negata autorizzazione all'adozione. La ricorrente è una cittadina svizzera di origine etiope che nel 2016 aveva adottato in Etiopia un minore dalle origini sconosciute e l'aveva condotto in Svizzera, nonostante il rifiuto delle autorità svizzere di rilasciarle un certificato di idoneità in vista di adozione, l'autorizzazione ad accogliere il minore e un visto per quest'ultimo. Nell'aprile del 2017, la donna aveva fatto domanda di adozione presso l'autorità cantonale competente. Tale domanda era stata respinta, in primo luogo, perché la differenza di età tra genitore adottivo e minore fissata per legge non era rispetta e, in secondo luogo, perché le decisioni di adozione emesse in Etiopia erano state considerate illecite alla luce di molteplici vizi procedurali riscontrati da un esperto indipendente. Tuttavia, nell'interesse del minore, le autorità cantonali avevano suggerito alla madre adottiva di presentare una domanda d'ammissione internazionale, che era stata autorizzata, e avevano nominato la madre adottiva e il figlio primogenito tutori del minore. Appellandosi all'articolo 8 CEDU (diritto al rispetto della vita privata e familiare), T.A. sostiene che il rifiuto delle autorità di concederle l'autorizzazione all'adozione violi il diritto al rispetto della vita familiare. Ritiene, inoltre, che i tribunali non abbiano considerato l'interesse superiore del minore che viveva con lei in una relazione genitore-figlio da sette anni. Alla luce della relazione ininterrotta e del legame emozionale instauratosi tra la madre adottiva e il minore, la Corte ha considerato che la questione rientra nell'ambito della «vita familiare» ai sensi dell'articolo 8 CEDU. In merito alla contestata ingerenza, necessaria in una società democratica ai sensi dell'articolo 8 paragrafo

2 CEDU, la Corte ha osservato, in particolare, che il rifiuto della domanda di adozione della ricorrente non abbia comportato un'interruzione del rapporto di quest'ultima con il minore, poiché, essendone stata nominata tutrice insieme al figlio primogenito, T.A. non ha dovuto affrontare particolari ostacoli e difficoltà nel godimento della sua vita familiare insieme al minore. La Corte ha altresì condiviso l'opinione del Tribunale federale secondo cui qualunque ingerenza nel diritto al rispetto della vita familiare della ricorrente era giustificata alla luce degli interessi pubblici in gioco. Nessuna violazione dell'articolo 8 CEDU (unanimità).

Erwägungen

E. 6

According to the applicant, on 23 January 2016 she found a newborn baby boy in Addis Ababa (Oromia, Ethiopia). She reported him to the police, who refused to take him to an orphanage. She then took the baby to a hospital and subsequently to her home.

E. 7

According to the Government, documents provided by the Ethiopian police indicate that locals found the baby and handed him over to the police. The police then took the baby to the Legetafo Court on 11 February 2016. The court named the baby E. and placed him in the applicant's care.

E. 8

In February 2017 the Federal Court of First Instance of Ethiopia approved the applicant's adoption of E. on the basis of the agreement she had entered into on 19 October 2016 with the local authorities, represented by the local administrative office for women and children.

E. 9

On 21 March 2017 (in the documents submitted, the date is also stated as 16 February 2016) the Legetafo authorities issued a birth certificate for the baby. The document indicated that the applicant was his mother. B. Decisions of the Swiss authorities arabic 10. On 28 April 2016 the adoption authority in Geneva, the Service d'autorisation et de surveillance des lieux de placement ("the SASLP"), received a telephone call from the applicant's son, R., informing it that his mother had adopted a child in Ethiopia and that she wished to return to Switzerland with him. In May 2016 discussions took place between the SASLP and R., and then between the SASLP and the applicant.

E. 11

On 29 May 2016 the applicant applied to the SASLP for authorisation to foster a child with a view to adoption. Owing to unclear circumstances regarding the procedure followed by the Ethiopian authorities, the applicant was informed that an investigation would be carried out by an independent expert commissioned by the Swiss diplomatic mission in Addis Ababa. The investigation was to verify the authenticity of the documents, the accuracy of the stated circumstances of the adoption and compliance with Ethiopian procedures.

E. 12

The Ethiopian Ministry of Women, Children and Youth's guidelines for alternative care of children and the Family Code provide, in particular, that a minimum of two months must elapse between the finding of a child and the declaration of abandonment to allow time to

locate the child's biological parents or extended family, and that an adoption may only take place upon the completion of the relevant police investigation. An adoption agreement may then be signed between the child's legal representative (an orphanage) and the prospective adoptive parents and submitted to the court. That court then examines the conditions of placement in the orphanage and the socio-economic situation of the prospective adoptive parents before granting the adoption.

E. 13

The SASLP's investigation revealed numerous discrepancies, showing that the applicant had provided different versions of certain facts to the Ethiopian and Swiss authorities. The following irregularities were found: the applicant did not report the child to the police until a few days after finding him, which led the authorities to refuse to handle the case; the local administrative office for women and children, which signed the adoption agreement with the applicant, admitted to procedural irregularities and confusion; that office was not authorised to draw up an adoption agreement; the court issued a decision on the same day the adoption agreement was submitted, without conducting a detailed investigation; the required two-month investigation period was not respected, since the police issued a report without conducting the necessary investigation; and the applicant falsely identified herself to the local authorities as Ethiopian, despite having lost her Ethiopian nationality upon acquiring Swiss citizenship, with the result that the Ethiopian authorities erroneously treated her case as a domestic adoption.

E. 14

On 14 September 2016 the applicant was invited to comment on the findings of the investigation. On 24 September 2016 she replied, stating that she was not aware of the correct procedures and that she had followed the instructions of the Ethiopian authorities. She had presented herself to the Ethiopian authorities as Swiss, but she had also had a document indicating that she had been born in Ethiopia. She asserted that her actions had been guided by the best interests of the child.

E. 15

On 4 October 2016 the SASLP refused to grant the applicant an adoption authorisation, refused to authorise her to foster E. with a view to adoption and issued a negative decision to the Cantonal Population and Migration Office (Office Cantonal de la Population et des Migrations - "the OCPM") regarding his entry into Switzerland for the purpose of adoption. That decision was mainly based on the applicant's circumstances, namely her inability to work on account of her frail health, her financial dependence on social benefits, and her forty-nine-year age difference with E., which exceeded the maximum legal limit of forty-five years. The SASLP also noted that, under the legislation in force, adoption could only be granted after a minimum probationary period of one year. In the absence of such period, special attention had to be paid to adoptions approved by a foreign authority.

E. 16

The SASLP further noted that E. had been placed for adoption through a very rapid procedure, without any proper investigation, indicating that his adoptability had not been adequately assessed and that the legal requirements had not been met. Furthermore, the Swiss Federal Central Authority for Intercountry Adoption was informed, and its directive of 4 July 2016 stated that no new certificates of suitability for the adoption of Ethiopian children in Switzerland should be issued, because of reports of fraudulent practices. Since

the applicant did not appeal against the refusal of 4 October 2016, the SASLP decision became final. II. Proceedings in Switzerland A. Proceedings before the adoption authorities

E. 17

On 25 March 2017 the applicant returned to Switzerland with E. via France.

E. 18

On 3 April 2017 the applicant went with E. to the SASLP in Geneva. She stated that she had had to return to Switzerland in order to live in the country of her nationality and admitted that by returning to the country with the child she had acted in breach of the law and the authorities' refusal of 4 October 2016 (see paragraphs 15- 16 above).

E. 19

According to the applicant, the SASLP reopened an in-depth examination of her situation. Considering that she had presented it with the fait accompli of a child residing in Geneva without parental authority, on 28 April 2017 the SASLP applied to the Geneva Adult and Child Protection Court (Tribunal de protection de l'adulte et de l'enfant - "the TPAE") for a guardianship measure in respect of E. It also reassessed his foster-care conditions, since adoptions in Switzerland had to be preceded by a placement and a fostering relationship of a certain duration (see paragraph 15 above).

E. 20

In view of the applicant's close relationship with E., the SASLP considered that no further measures should be requested in the meantime, in particular as regards his placement in another foster home. The SASLP found that, in the best interests of the child, it would be preferable for him to remain with the applicant in Geneva, as she had taken care of him since birth and spent fourteen months with him in Ethiopia. On 5 May 2017 the TPAE appointed two members of the SASLP as guardian and deputy guardian of E.

E. 21

On 20 May 2019 the SASLP issued a psycho-social assessment report on the adoption environment, which concluded that the adoption was in the best interests of the child and that the applicant was able to meet E.'s needs. The report stated that the applicant met the conditions set out in the Ordinance of 29 June 2011 on adoption and that an authorisation to foster the child, which was tantamount to a certificate of suitability, could be granted. The SASLP recommended the adoption and requested that the guardianship be lifted. On the same day, the SASLP granted the applicant authorisation to foster E. with a view to adoption. In addition, on 20 May 2019 the guardian applied to the TPAE to obtain its approval for the adoption, to have the guardianship lifted and to have a court order the adoption.

E. 22

By Order of 23 May 2019 the TPAE in Geneva approved the adoption, finding that it was in the best interests of the child owing to his strong emotional bond with the applicant and that the maximum age difference of forty-five years should be waived in the present case (see paragraph 15 above). The TPAE forwarded the file to the Court of Justice of the Canton of Geneva to finalise the adoption proceedings. arabic 23. On 27 September 2019 the SASLP fined the applicant 500 Swiss francs (CHF) for violating Swiss law by bringing a minor into Switzerland without authorisation despite the authorities' refusal (see paragraphs 15 and 18

above). The applicant paid the fine and did not appeal against it. B. Court proceedings

E. 24

On 18 June 2020 the Court of Justice of the Canton of Geneva rejected the applicant's adoption application (see paragraph 22 above). In its ruling, the court specifically made reference to the applicant's financial situation, which did not allow her to care for E. until he reached adulthood, her frail health and the initial lack of authorisation to foster the child. The court concluded that those factors should have prevented the cantonal authorities from waiving the maximum age difference of forty-five years and from granting the authorisation to adopt (see paragraphs 33- 34 below). The applicant appealed against the decision to the court's supervisory division, which upheld it on 4 February 2021.

E. 25

On 18 March 2021 the applicant further appealed to the Federal Supreme Court, which upheld the rejection of the adoption application in its judgment of 27 August 2021, received by the applicant on 16 September 2021. The Federal Supreme Court confirmed that the Swiss authorities had jurisdiction by virtue of the applicant's domicile and that Swiss law governed the adoption. It also found that, since Ethiopia was not a party to the Hague Convention on Intercountry Adoption, Swiss private international law applied, and the Ethiopian adoption order did not comply with Swiss law.

E. 26

Referring to Article 8 of the Convention, the Federal Supreme Court emphasised that the right to respect for private and family life was not absolute and could be subject to limitations, provided that they were necessary in a democratic society and involved a careful balancing of the interests at stake. It emphasised that all relevant circumstances should be examined, weighing in the balance the individual's interest in the adoption against the public interest in refusing or revoking it.

E. 27

In its judgment, the Federal Supreme Court assessed the applicant's financial situation, age and state of health, as well as the authorities' initial refusal to grant authorisation for the adoption (see paragraphs 15- 16 above). It found that those factors precluded approval of the adoption, since adoption required a minimum of one year's care to ensure it was in the child's best interests; the age difference between the adopter and the child could not exceed forty-five years, with exceptions made only in the child's best interests; the applicant's reliance on State social benefits indicated insufficient financial capacity to support the child; and her frail health, combined with her age and financial situation, led to the conclusion that she was unsuitable to adopt.

E. 28

While there were indeed close personal ties between the applicant and the child, which could establish the existence of family life within the meaning of Article 8, the refusal to grant the adoption did not necessarily constitute an interference with that right since it did not result in the forced separation of the applicant and the child. According to the SASLP report, the applicant, who had been born in Ethiopia, returned there for several months each year and maintained family ties there. The cantonal authorities' findings also showed that after taking the child into her care in Ethiopia in April 2016, she had stayed with him in the country for over a year. Those facts suggested that the applicant and the child could

continue to live together in Ethiopia.

E. 29

Assuming that returning to Ethiopia was not feasible, the refusal to grant the adoption could indeed interfere with the right to family life. Such a finding, however, would require balancing two competing interests: the applicant's interest in legitimising a fait accompli she had knowingly created, and the public interest in ensuring compliance with adoption procedures, which were ultimately designed to protect the child and to discourage unlawful situations presented under the guise of being in the child's best interests. The role of the law was to prevent such outcomes. It could not therefore be said that the domestic courts had exceeded their margin of appreciation by prioritising the public interest in the present case.

E. 30

The Federal Supreme Court further stated that the applicant had failed to comply with the legal procedure, since she had brought the child to Switzerland illegally, deliberately circumventing the legal process (see paragraph 23 above). It emphasised that the procedural rules governing adoption had to be followed to prevent illegal actions disguised as efforts to protect the best interests of the child. The court pointed out that priority had to be given to compliance with the law to avoid situations of fait accompli, underscoring the importance of adhering to established legal procedures. The applicant's act of bringing E. to Switzerland without permission, immediately presenting the local authorities with a fait accompli with a view to obtaining authorisation, was manifestly unlawful and could not be justified on the pretext of serving E.'s best interests. The court concluded that while the applicant's arguments regarding her financial capacity, health and the child's best interests had been considered, they did not outweigh the legal requirements and procedural rules for adoption in Switzerland.

E. 31

In March 2022 the Swiss authorities granted E. a permanent residence permit. He would be eligible to apply for Swiss nationality as of the age of twelve.

E. 32

On 2 May 2022 the Geneva cantonal authorities confirmed that the applicant and her son R. were the legal guardians of E. RELEVANT LEGAL FRAMEWORK I. DOMESTIC law and practice

E. 33

The Swiss Civil Code of 10 December 1907 (RS 210), as amended by No. I of the federal law of 17 June 2016 (Adoption), in force since 1 January 2018 (AS 2017 3699; BBl 2015 877), reads, in so far as relevant: Article 264 - General conditions "1. A minor child may be adopted if the prospective adoptive parent(s) have raised and cared for the child for at least one year and if, in the light of all the circumstances, it may be foreseen that establishing a parent-child relationship would be in the child's best interests without being unfair for any other children of the prospective adoptive parent(s). 2. Adoption shall be possible only if the prospective adoptive parent(s) appear able to provide for the child up to the child's majority on the basis of their age and their personal circumstances. ..." Article 264d - Age difference "1. The age difference between the child and the prospective adoptive parent(s) may not be less than sixteen years or more than forty-five years. 2. Exceptions may be made if this is in the best interests of the child. The prospective adoptive parent(s) shall provide

reasons for their exception request."

E. 34

The Ordinance of 29 June 2011 on adoption (RS 211.221.36) reads, in so far as relevant: Article 3 - Best interests of the child "Adoption and fostering with a view to adoption may take place only if, in the light of all the circumstances, it may be foreseen that they are in the best interests of the child." Article 4 - Authorisation requirement "Any person who is habitually resident in Switzerland and who wishes to foster a child with a view to adoption or to adopt a child from abroad shall require authorisation from the cantonal authority." Article 5 - Suitability "1. The cantonal authority shall establish whether the prospective adoptive parents are suitable with regard to the best interests and needs of the child to be placed. 2. Suitability conditions shall be fulfilled where: (a) in the light of all the circumstances, and in particular the motivations of the prospective adoptive parents, it may be foreseen that the adoption will be in the best interests of the child; (b) the welfare of other children in the family is not put at risk; (c) there are no legal obstacles to the adoption; (d) the adoptive parents: (i) offer every guarantee, in terms of their personality, state of health, available time, financial situation and educational suitability as well as their living conditions, for the good care, upbringing and education of the child, (ii) are prepared to accept the child as he or she is, to respect his or her origins and to familiarise the child in a suitable way according to his or her needs with the country where he or she was habitually resident before placement (country of origin), (iii) have not been convicted of an offence that is incompatible with adoption, (iv) have been sufficiently prepared for the adoption, and in particular have attended suitable preparatory or information events recommended by the cantonal authority, (v) have declared in writing that they will take part in the preparation of post-adoption reports for the attention of the country of origin, (vi) have acknowledged their maintenance obligation under Article 20 of the Federal Act on the Hague Adoption Convention and Child Protection Measures in the Event of Intercountry Adoptions. 3. Stricter requirements shall be imposed on the suitability of the prospective adoptive parents when placing a child over 4 years of age, a child with health issues or two or more children at the same time or when there are already two or more children in the family. 4. The prospective adoptive parents shall not be deemed suitable if their age difference with the child to be placed exceeds forty-five years. They may nevertheless be deemed suitable under exceptional circumstances, particularly if they have already developed a close relationship with the child. 5. The cantonal authority shall appoint a social worker or qualified psychologist who has professional experience in child protection or adoption matters to help assess the case. ..." Article 6 - Certificate of suitability "1. If the requirements of Article 5 are fulfilled, the cantonal authority shall certify suitability for adoption by means of a ruling. ..." Article 7 - Authorisation "1. If the requirements of Article 5 are fulfilled, the cantonal authority may grant authorisation for the placement of a given child provided that the prospective adoptive parents have submitted the following documents: (a) a certificate of suitability; (b) a medical report on the child's health and a report on the child's life to date; (c) a statement of consent from the child where permitted by his or her age and abilities; (d) a statement of consent to adoption from the child's parents or a declaration from the competent authority in the child's country of origin that such consent has been validly given or an explanation as to why it cannot be given; (e) a declaration from the competent authority in the child's country of origin that the child may be placed with prospective adoptive parents in Switzerland. ... 4. The authorisation shall contain in particular the name and the date and place of birth of the child. It may be made

subject to requirements and conditions. 5. In the event of an intercountry adoption, the cantonal authority shall decide before the child's entry into Switzerland whether authorisation is to be granted. In justified exceptional cases, it may agree to the child's entry into Switzerland before it decides on whether to grant authorisation, in particular where it is impossible or unreasonable for the prospective parents to submit the documents referred to in paragraph 1 (b)-(e) before such entry. ..." Article 8 - Cantonal migration service "1. The cantonal authority shall submit the certificate of suitability or the authorisation to foster a foreign child to the cantonal migration service. 2. The cantonal migration service shall decide whether to issue a visa or to guarantee a residence permit for the child. It shall notify the cantonal authority of its decision. 3. The cantonal migration service or, with its approval, the Swiss diplomatic mission in the child's country of origin, may issue the visa or the residence permit only after the cantonal authority has received the documents referred to in Article 7 § 1 (b)-(e) and has granted authorisation or, by way of exception, has agreed to the child's entry into Switzerland before making a decision on authorisation."

E. 35

The Federal Act on the Hague Adoption Convention and Child Protection Measures in the Event of Intercountry Adoptions (RS 211.221.31), in so far as relevant, provides: Article 1 - Purpose "1. The present Act governs the procedure for the placement of children in accordance with the Convention. 2. It provides for measures to protect children whose habitual residence was abroad and who are taken in, with a view to adoption, by persons habitually resident in Switzerland. ..." Article 19 - Measures in the event of unauthorised placement "1. When a child habitually resident abroad has been placed in Switzerland with a view to adoption, without the conditions provided for in Article 17 of the [Hague Adoption] Convention and Article 8 of the present Act or in the Ordinance of 19 October 1977 governing the placement of children having been met, the cantonal placement supervisory authority (Article 316 § 1 bis of the Civil Code) shall immediately place the child in a suitable foster family or in an institution. If it is in the child's best interests, it may also leave the child with the family who took him or her in, pending a solution. 2. Any appeal against such decisions shall not have suspensive effect. 3. If it is in the best interests of the child, the placement supervisory authority shall order the child's return to the country of origin. If the child remains in Switzerland, the child protection authority shall take measures to ensure the child's best interests are served."

E. 36

The Directive of the Swiss Federal Central Authority for Intercountry Adoption of 4 July 2016 on certificates of suitability for the placement of children from Ethiopia, in so far as relevant, reads: "The Federal Office of Justice (FOJ) is the Central Authority designated by the Federal Council and, as such, is responsible for ensuring coordination in adoption matters ... in the field of intercountry adoption. Following a mission to Ethiopia in the summer of 2014, during which various problems and shortcomings in the adoption procedure came to light, the FOJ recommended that the cantonal central authorities temporarily refrain from issuing new certificates of suitability for the placement of Ethiopian children in Switzerland. ... In addition, various child-protection players have reported fraudulent practices in the adoption procedure, linked in particular to the absence of consent from the child's biological parents and falsified documents. These considerations have led several Western countries officially to declare a moratorium on adoptions from Ethiopia. Given the lack of information on the content and timetable of the reforms initiated

by Ethiopia, as well as on the circumstances surrounding the fraudulent practices reported in the field of intercountry adoption, no new certificates of suitability should be issued for the placement of Ethiopian children with a view to their adoption in Switzerland until further notice. Applications already containing a certificate of suitability in respect of Ethiopia may continue to be processed. Expired certificates, however, may be renewed only if the applicant(s) have used the services of an accredited intermediary and provided that the other legal requirements have also been met."

E. 37

Federal Supreme Court practice (as described in [arrêts du tribunal fédéral - Federal Supreme Court Judgments] 125 III 161, point 3 (a)) is as follows: "Under Article 264 of the Civil Code, adoption may be granted only if the prospective adoptive parents have raised and cared for the child for at least two years [one year under the current version of the provision in question, which came into force on 1 January 2018]. All adoptions must therefore be preceded by a placement and a fostering relationship of a certain duration. An imperative condition for adoption, this measure serves to justify the subsequent establishment of a parent-child relationship, to allow a probationary period for those concerned, and to provide the opportunity and a means to ensure that the adoption will serve the child's best interests. The child's best interests, which are an essential condition for adoption, are not easy to verify. The authority must ascertain whether the adoption is truly conducive to ensuring the best possible development of the child's personality and improving his or her situation. That question must be examined from all points of view (emotional, intellectual and physical), taking care not to give undue importance to the material factor."

E. 38

According to the established case-law of the Swiss Federal Supreme Court, expert evidence, like any other form of evidence, is subject to the judge's free appraisal. On technical issues, the court may only depart from a judicial expert's opinion on relevant grounds. In the absence of such grounds, it must not substitute its own opinion for that of the expert. In family law, in order to decide children's fate, a judge may call on the child or youth protection services to request a report on the family situation, while a social inquiry report may be useful in the event of conflict and doubt as to the best solution for the children. The judge may, however, depart from the conclusions of a report by such a service, under less strict conditions than those applicable in the case of a judicial expert's opinion (see judgment 5A_381/2020, point 4.1, with references). Moreover, as in the case of a judicial expert's opinion, it is for the court alone to decide what legal conclusions are to be drawn from the findings of the services or organisations consulted (see judgment 5A_373/2018, point 3.2.6). II. Relevant international instruments

E. 39

The relevant provisions of Parliamentary Assembly of the Council of Europe (PACE) Recommendation 1443 (2000) on international adoption: respecting children's rights, read: "2. The Assembly ... fiercely opposes the current transformation of international adoption into nothing short of a market regulated by the capitalist laws of supply and demand, and characterised by a one-way flow of children from poor states or states in transition to developed countries. It roundly condemns all crimes committed in order to facilitate adoption, as well as the commercial tendencies and practices that include the use of

psychological or financial pressure on vulnerable families, the arranging of adoptions directly with families, the conceiving of children for adoption, the falsification of paternity documents and adoption via the Internet. 3. It wishes to alert European public opinion to the fact that, sadly, international adoption can lead to the disregard of children's rights and that it does not necessarily serve their best interests. In many cases, receiving countries perpetuate misleading notions about children's circumstances in their countries of origin and a stubbornly prejudiced belief in the advantages for a foreign child of being adopted and living in a rich country. The present tendencies of international adoption go against the UN Convention on the Rights of the Child, which stipulates that if a child is deprived of his or her family the alternative solutions considered must pay due regard to the desirability of continuity in the child's upbringing and to his or her ethnic, religious, cultural and linguistic background." Erwägungen THE LAW ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION arabic 40. The applicant argued that the domestic authorities' refusal to grant her permission to adopt E. violated her right to respect for her family life under Article 8 of the Convention. That provision reads: "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." A. Admissibility level0 41. In her submissions of 21 April 2023 on admissibility and merits, the applicant mentioned that the application was also being lodged on behalf of her son R. The Government objected, stating that the application in respect of R. had been submitted out of time.

E. 42

The Court reiterates that the period for bringing proceedings under Article 35 § 1 of the Convention is interrupted in respect of the applicants only when the relevant complaints are first submitted to the Court (see Allan v. the United Kingdom (dec.), no. 48539/99, 28 August 2001). In the present case, the final domestic judgment of 27 August 2021 was received by the applicant on 16 September 2021 (see paragraph 25 above). The six-month period for lodging the application therefore expired on 18 March 2022, whereas the application on behalf of R. was lodged on 21 April 2023. The Court therefore upholds the Government's objection and declares the part of the application lodged in respect of R. inadmissible.

E. 43

The Government also challenged the applicant's claim that the SASLP's refusal of 4 October 2016 lacked a sufficient legal basis, and argued that it was inadmissible because the applicant had failed to exhaust domestic remedies. The case file shows that the applicant did not appeal against the contested decision (see paragraph 16 above). The Court therefore upholds the Government's objection concerning the failure to exhaust domestic remedies and declares this part of the application inadmissible.

E. 44

The Court finds that the remainder of the application is neither manifestly ill-founded nor inadmissible on any other grounds set out in Article 35 of the Convention. It must therefore be declared admissible. B. Merits 1. The parties' submissions (a) The applicant

E. 45

The applicant argued that the Swiss authorities, citing the directive of 4 July 2016 (see paragraphs 16 and 36 above), had confronted her with a fait accompli by unexpectedly refusing to grant her permission to adopt an Ethiopian child. She maintained that she had acted in good faith in coming to Switzerland after that refusal. The Government's suggestion that E. could consent to the adoption upon reaching the age of majority was unacceptable, because it would leave him without a legal parent for several years. Referring to the case of Wagner and J.M.W.L. v. Luxembourg (no. 76240/01, 28 June 2007), the applicant stated that during the years she had been living with E., a de facto family life had been established between them, a fact entirely disregarded by the domestic courts.

E. 46

The applicant further argued that the domestic courts' decisions were inadequately reasoned, because they failed to consider the best interests of the child. E. had been living with her for seven years, since he was just two days old, and had been attending school in Switzerland for six of those years. In its judgment, the Federal Supreme Court had suggested that E. could be required to leave Switzerland, and that the applicant would potentially have to follow him to Ethiopia. While acknowledging the possibility of separation, the court had ruled that the public interest in refusing the adoption outweighed the private interest of the applicant and E. in continuing to live together in Switzerland.

E. 47

The applicant asserted that her guardianship of E. was distinct from a traditional parent-child relationship, since it involved oversight by child protection authorities, and E. did not have inheritance rights. Regardless of whether they continued living in Switzerland or moved to Ethiopia, the situation interfered with her right to family life, given her limited parental authority over E.

E. 48

The applicant further submitted that the interference with her right to family life with E. was neither necessary nor proportionate. The Federal Supreme Court had acknowledged that adoption appeared to be in E.'s best interests, given that the applicant had provided him with consistent and appropriate care since infancy. An abrupt separation would likely harm his psychological and emotional development. Despite that, the court had prioritised the public interest, arguing that approving the adoption would legitimise a situation the applicant had unlawfully created under the guise of serving the child's best interests. The applicant contended, however, that the court had failed to adequately balance E.'s best interests with the public interest. E. had a significant interest in continuing to grow up with the applicant, inheriting her property, receiving an orphan's pension in the event of her death and obtaining Swiss nationality - thereby avoiding the need for a visa to travel, particularly to Ethiopia.

E. 49

Lastly, the fine of CHF 500 that the applicant had paid (see paragraph 23 above) should not be construed as evidence that she had failed to comply with Swiss law. (b) The Government

E. 50

The Government stated that the directive issued by the Federal Office of Justice, in its capacity as the Swiss Federal Central Authority for Intercountry Adoption, on 4 July 2016

(see paragraphs 16 and 36 above) was intended to protect children and prevent abuses of the adoption process. It was based on a sufficient legislative delegation, thereby qualifying as "law" within the meaning of Article 8 of the Convention. The directive was publicly accessible online, and the applicant, with appropriate legal counsel, should have been aware of its existence. 51. The Government argued that, under domestic law, a guardian was subject to supervision in managing financial matters and making key decisions regarding a child's welfare, and that such oversight extended to children under guardianship. The applicant had not asserted that E. had financial resources requiring such supervision, nor had she claimed there were restrictions on decisions concerning his care and education. Despite the legal distinctions between guardianship and parental authority, the applicant's relationship with E. was thus, in practical terms, comparable to that of a legal parent. 52. Regarding the applicant's claim that E. would not inherit her assets because he was not her legal heir, the Government clarified that domestic law permitted individuals to bequeath up to half of their estate beyond the mandatory reserved portion. The applicant could, therefore, designate E. as the beneficiary of that portion, effectively treating him as a child in inheritance matters, without any significant disadvantage resulting from his status as a non-statutory heir. 53. Addressing the applicant's concerns about E.'s immigration status, the Government explained that Swiss residence permits were issued on a permanent basis, even though they required renewal every five years as a formality, in a similar way to identity documents. That renewal process did not affect E.'s right to reside in Switzerland, meaning the applicant faced no tangible disadvantage from it. Regarding the applicant's argument that adoption would allow E. to obtain Swiss nationality, eliminating the need for a visa - particularly for travel to Ethiopia - the Government countered that, as an Ethiopian citizen, E. could already travel to Ethiopia without a visa. In response to the applicant's concern about securing E.'s financial future through an orphan's pension in the event of her death, the Government pointed out that both the applicant and her son, R., had been appointed as E.'s legal guardians. If the applicant were to pass away, R. would continue in that role, ensuring continuity of care - something that might not be guaranteed solely through adoption. level0 54. Lastly, the Government emphasised that the domestic courts, in their decisions to refuse to grant the adoption, had given full consideration to the de facto family life established between the applicant and E. Those decisions had been deemed necessary and proportionate and had struck a fair balance between the competing interests, while also taking into account the best interests of the child. The courts' rulings reflected the authorities' margin of appreciation and the priority given to the public interest in this particular case. 2. The Court's assessment (a) Relevant general principles 55. A summary of the relevant general principles can be found in Harroudj v. France, no. 43631/09, §§ 41-42, 4 October 2012, Valdís Fjölnisdóttir and Others v. Iceland (no. 71552/17, §§ 56-57, 18 May 2021) and K.K. and Others v. Denmark (no. 25212/21, §§ 42-47, 6 December 2022). 56. The Court reiterates that its task is not to substitute itself for the competent national authorities in determining the most appropriate policy for regulating the complex and sensitive matter of the relationship between intended parents and a child born abroad (see, for example, Valdís Fjölnisdóttir and Others, cited above, § 67, and K.K. and Others, cited above, § 44). (b) Application of these principles to the present case 57. The Court observes that, in applying the test for the applicability of "family life" under Article 8 of the Convention, the requirements of "family life" have been fulfilled on the particular aspects of the present case (see Valdís Fjölnisdóttir and Others, cited above, § 62). In reaching this conclusion, the Court has taken account of the duration of the uninterrupted relationship

between the applicant and E., the quality of the ties already formed and the close emotional bonds forged between them. These bonds were further reinforced by the foster care and guardianship arrangements established by the domestic authorities, which were not contested by the Government. 58. The Court considers that the refusal to grant the adoption constituted an interference with the applicant's right to respect for her family life, that that interference was in accordance with the law, and that it pursued the legitimate aims of prevention of disorder on crime and of protecting the rights and freedoms of others. In determining whether that interference was "necessary in a democratic society", the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify the measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 (ibid., §§ 66-70). level0 59. The Court notes that in Wagner and J.M.W.L., on which the applicant relied, there was, inter alia, no prohibition on adoption from the country in question (Peru) and no procedural irregularity found in the adoption proceedings. Moreover, the Court found that the Luxembourg courts in that case, unlike the Swiss courts in the present case, had not responded to the applicant's main pleas under Article 8 of the Convention (see Wagner and J.M.W.L., cited above, §§ 97-98). The applicant's reliance on that case is therefore misplaced. 60. Furthermore, it does not appear that the applicant's relationship with E. has been severed by decisions of the national authorities as a result of the refusal in question. Moreover, the applicant has been granted legal guardianship of E. (contrast D.B. and Others v. Switzerland, nos. 58817/15 and 58252/15, § 89, 22 November 2022, in which the Court examined a situation of prolonged non-recognition of the parent-child relationship between a child born from surrogacy abroad and the registered partner of the genetic father, and in which the Court found no violation of the intended father's right to respect for family life and a violation of the child's right to respect for private life) and he could be eligible to apply for Swiss nationality as of the age of twelve (see paragraph 41 above). It does not appear that the applicant has faced any particular obstacles or practical difficulties in enjoying family life with the child (ibid., § 93; see also Valdís Fjölnisdóttir and Others, cited above, § 71). In any event, the applicant's fears as to the difficulties that E. might face in the event of her death or a move to Ethiopia (see paragraphs 46- 48 above) are unfounded and based on mere conjecture. 61. In the domestic proceedings the Federal Supreme Court, referring to Article 8 of the Convention, assessed the applicant's financial situation, her state of health and the authorities' rejection of her application for adoption, and concluded that her circumstances did not meet the legal requirements for adoption (contrast D.B. and Others, cited above, § 87, in which the personal requirements for adoption were met). Although there were close personal ties between the applicant and the child, the court found that the refusal did not result in forced separation and that they could live together either in Ethiopia or in Switzerland. The court also emphasised that the applicant's unlawful removal of the child to Switzerland, circumventing the legal procedures, could not be justified on the pretext of serving E.'s best interests, a conclusion with which the Court agrees. 62. It thus appears that the Federal Supreme Court considered that, with regard to the refusal of her adoption request, the applicant's right to respect for her family life, in so far as it was affected, was outweighed by the public interests at stake. The Court sees no reason to hold otherwise. Accordingly, the reasons given for the contested refusal were relevant and sufficient for the purposes of Article 8 § 2. Having regard to the margin of appreciation afforded to the respondent State, the Court considers that the conclusions of the Swiss courts, including those of the Federal Supreme Court, struck a fair balance between the interests of the applicant and those of the State as regards the applicant's right to respect for

her family life (see K.K. and Others, cited above § 50, and Valdís Fjölnisdóttir and Others, cited above, § 75). 63. Accordingly, there has been no violation of Article 8 of the Convention with regard to the applicant's right to respect for her family life. Entscheid FOR THESE REASONS, THE COURT, UNANIMOUSLY, Declares the applicant's complaint under Article 8 of the Convention about the domestic courts' refusal of her adoption request admissible and the remainder of the application inadmissible; Holds that there has been no violation of Article 8 of the Convention. Done in English, and notified in writing on 6 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court. Victor Soloveytchik Mattias Registrar Guyomar President