German Constitutional Court Strenghtens Right of a Trans Child in Custody Case

2018 kicks off with a positive decision from the German Constitutional Court in a custody case concerning a trans girl. The Court found that the lower instances had not sufficiently taken into account the well-being and best interest of the child and the parental rights of the mother, who supports the trans female identity of the child.

The complainant, the mother of the child, had challenged that the father should receive sole custody. The lower instances found that only he could guarantee an “open and supportive” environment to the child, ignoring an expert statement that had indicated possible negative consequences for the child should she not be able to live according to its gender identity, an injunction the father had invoked to prevent the child wearing female clothes in school, as well as threats of the father to not give the child any Christmas presents shouldn’t it cut its hair short etc. Instead of focusing on the concrete situation for the child, the Courts had focused on the potential persistence of the child’s gender identity in the future, and misinterpreted the legal framework (constitutionally protected parental rights and duties and rights of the child) insofar as to give preference to the assertion of the parental will over the expressed will of the child.

The Constitutional Court returned the case to the lower instance court (OLG Naumburg).

See decision (DE)