

The German Federal Court of Justice on the validity of a proxy marriage concluded in Mexico

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In a recent decision of 29 September 2021 - case XII ZB 309/21, the German Federal Court of Justice (BGH) once again confirmed the validity of proxy marriages concluded abroad under the condition that they met the formal requirements of the applicable foreign law.

The parties, a German woman and a male citizen of Syria, had concluded a proxy marriage in Baja California Sur (Mexico). At the time of the marriage, neither of them was present in Mexico nor had ever met their respective representatives. The declarations of proxy had been prepared by a German notary both in English and Spanish. When the couple applied for a marriage name declaration in Germany, the responsible registry office denied such an entry, invoking the marriage's formal invalidity.

Reviewing this case, the German Federal Court ruled that there were no doubts regarding the marriage's formal validity, hence holding it valid in absence of other issues of concern.

The judges followed the line of argument brought forward by the higher regional court of Jena (Oberlandesgericht Jena), stating that the formal aspects of the marriage in question were ruled by Art. 11(1) of the Introductory Act to the Civil Code (EGBGB). Art. 11(1) EGBGB provides that a legal transaction is formally valid if it either complies with the formal requirements of the law governing the legal relationship forming the subject matter of the legal act (so-called *lex actus*) or with the legal formalities of the state where the transaction takes place (so-called *lex loci*).

The German Federal Court confirmed that, in this case, the proxy was merely a question of the marriage's formal validity: since the parties had already - prior to

the creation of their declaration of proxy - made their decision about the marriage and their respective spouse, the proxy solely served as a matter of representation in making the declarations of intention.

However, the judges acknowledged that, in other cases, proxies may also affect the substantive aspects of a marriage. This would be the case if the representation affected the substance of the partners' decision, i.e. if the future spouses had not decided about the marriage or their spouse themselves but had instead transferred the decision to their respective agent.

Since Mexican law - as the relevant *lex loci* - allows proxy marriages, the German Federal Court concluded that the marriage in question was formally valid. The court added that this result was compatible with German public policy (Art. 6 EGBGB). When drafting Art. 11(1) EGBGB more than 30 years ago, the German legislature recognized and accepted the possibility of marriages concluded abroad according to the rules of the respective *lex loci*. Though there were repeated calls for a revision of this legislation afterwards, especially regarding proxies in the context of forced marriages, the legislature held on to the *lex loci* principle. Against this backdrop, the German Federal Court found no evidence that the marriage in dispute violated fundamental principles of the German legal system.