The Adoption of Children from Sri Lanka in the Canton of St Gallen 1973-2002

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Abstract[1]

On behalf of the Canton of St Gallen's Department of the Interior (*Departements des Innern, Kanton St. Gallen*) the research team analyzed the legality of all 85 available cases in which children from Sri Lanka were initially accepted for fostering by married couples living in the canton between 1973 and 2002, and subsequently adopted after two years. For this purpose, a digital dossier was created for each adopted child using sources provided by municipal and cantonal authorities. In addition to the dossiers a catalogue was set-up containing all legal regulations applicable at the time, on the basis of which each case was verified.

The evaluation shows that throughout the entire period of the study the involved municipal and cantonal authorities largely failed to implement the legal provisions in force at the time. Not a single analyzed procedure has been handed over where all of the prevailing legal provisions were complied with. Not only did the authorities involved, in numerous cases, ignore obvious features of commercial adoption processes in Sri Lanka (which had already been made public at the time via media reports and information from the federal authorities), they also violated their duty of care in numerous proceedings. This violation is documented in detail, with the help of various case studies at different levels; for example by not providing the children with legal representation, inadequately monitoring the foster relationship or awarding children to married couples without first sufficiently clarifying the existing conditions.

Various issues were also identified at the structural level, many of which were of an extremely problematic nature. It was highly questionable, for example, that private adoption agencies - whose entire livelihood was based on the placement of children - approved the suitability of future adoptive parents. The work of the adoption agent Alice Honegger was already criticized by many at the time, however her involvement was only suspended for a short time. Based on sources that have been made accessible for the first time, this report is able to show that Alice Honegger must have been aware that she was involved in commercial adoptions. At the same time, it becomes clear that even those placements that took place without her were very often inadequate or flawed. The study also includes postcolonial approaches and points out, for example, that colonial views influenced the perception of those "South-North" adoptions and were therefore one of the reasons why the cases were not examined with the necessary care.

This study proves that the errors and shortcomings presented not 'only' arose from events in Sri Lanka, but – particularly when it comes to the many cases of poorly implemented supervision – essentially also go back to procedural errors on the part of the involved municipal and cantonal authorities. The disclosed grievances are an expression of the fact that the "welfare of the child" (*Kindeswohl*) was often quoted, but in concrete cases it often amounted to an empty phrase.

The files consulted as part of this study reflect the perspective of the authorities involved, and to a lesser extent that of the foster or adoptive parents. Oral surveys using an oral historical approach in Switzerland and Sri Lanka would be urgently needed to make the voices of the adoptees and birth parents heard. It would also be appropriate to conduct a further study of all adoptions of foreign children in Switzerland and a comparative study of domestic and foreign adoptions.

[1] This abstract as well as the following report have been translated by Keith Cann-Guthauser.

Abstract

Im Auftrag des Departements des Innern, Kanton St. Gallen, analysierte das Forschungsteam für die vorliegende Studie sämtliche 85 Verfahren, in denen Kinder aus Sri Lanka von im genannten Kanton wohnhaften Ehepaaren zwischen 1973 und 2002 zuerst als Pflegekinder aufgenommen und nach zwei Jahren Pflegezeit adoptiert wurden, auf ihre Rechtmässigkeit. Dazu wurde mittels Quellen aus kommunaler und kantonaler Provenienz für jedes adoptierte Kind ein digitales Dossier erstellt. Weiter wurde ein Katalog mit sämtlichen damals geltenden gesetzlichen Vorschriften erarbeitet, anhand dessen jedes Verfahren überprüft wurde.

Die Auswertung zeigt, dass die involvierten kommunalen und kantonalen Behörden über den gesamten Untersuchungszeitraum hinweg damals geltende gesetzliche Vorschriften in hohem Mass nicht umsetzten. So ist bei keinem einzigen analysierten Verfahren überliefert, dass sämtliche damals geltenden Gesetzesvorschriften eingehalten worden wären. Nicht nur ignorierten die beteiligten Behörden in zahlreichen Fällen offensichtliche Kennzeichen kommerzieller Adoptionsvorgänge in Sri Lanka, obwohl diese schon damals via Medienberichte und Hinweise der Bundesbehörden publik gemacht worden waren. Wie im Detail und anhand verschiedener Fallbeispiele dokumentiert wird, verletzten sie auch in zahlreichen Verfahren auf verschiedenen Ebenen ihre Aufsichtspflicht, indem sie etwa den Kindern keine gesetzliche Vertretung zur Seite stellten, das Pflegeverhältnis mangelhaft beaufsichtigten oder aber Kinder Ehepaaren zusprachen, ohne vorgängig die dort vorherrschenden Verhältnisse ausreichend abzuklären.

Auch auf struktureller Ebene liessen sich verschiedene äusserst problematische Sachverhalte ausmachen. Höchst fragwürdig war etwa, dass private Adoptionsvermittlungsagenturen, deren Existenzgrundlage ja gerade die Vermittlung von Kindern darstellte, die Eignung der zukünftigen Adoptiveltern prüfen konnten. Hinzu kommt, dass die Tätigkeit der Adoptionsvermittlerin Alice Honegger zwar schon damals von einigen Seiten kritisiert, aber nur während kurzer Zeit unterbunden wurde. Anhand erstmals zugänglicher Quellen vermag der vorliegende Bericht zudem aufzuzeigen, dass es Alice Honegger bewusst gewesen sein musste, in kommerzielle Adoptionen verwickelt zu sein. Zugleich wird deutlich, dass auch jene Vermittlungen, die ohne sie abliefen, sehr häufig mangel- bzw. fehlerhaft abliefen. Weiter bezieht die Studie postkoloniale Ansätze mit ein und weist etwa darauf hin, dass kolonial geprägte Ansichten die Wahrnehmung jener «Süd-Nord»-Adoptionen beeinflussten und so mit ein Grund dafür waren, dass die Verfahren nicht mit der nötigen Sorgfalt geprüft wurden.

Die vorliegende Studie zeigt auf, dass die dargestellten Fehler und Mängel nicht «nur» den Vorgängen in Sri Lanka entsprangen, sondern – gerade was die vielfach mangelhaft vollzogene Aufsicht anbelangt – im Wesentlichen auch auf Verfahrensfehler der involvierten kommunalen und kantonalen Behörden zurückgehen. Die offengelegten Missstände sind Ausdruck dafür, dass das «Kindeswohl» zwar oft zitiert wurde, im konkreten Fall aber häufig einer Worthülse gleichkam.

Die im Rahmen dieser Untersuchung konsultierten Akten geben die Perspektive der beteiligten Behörden wieder, in geringerem Ausmass und bloss punktuell jene der Pflege- respektive Adoptiveltern. Um auch die Stimmen der betroffenen Adoptierten sowie der leiblichen Eltern hörbar zu machen, wären mündliche Befragungen mittels eines Oral History-Ansatzes in der Schweiz und in Sri Lanka dringend notwendig. Gleichermassen angezeigt wären eine weiterführende Untersuchung aller Adoptionen ausländischer Kinder in die Schweiz sowie eine vergleichende Studie von In- und Auslandadoptionen.

Résumé[2]

Sur mandat du Département de l'intérieur du canton de Saint-Gall, l'équipe de recherche a analysé pour la présente étude la légalité des 85 procédures par lesquelles des enfants originaires du Sri Lanka ont d'abord été accueillis par des couples mariés domiciliés dans ce canton en tant qu'enfants placés entre 1973 et 2002, puis adoptés après deux ans de placement. Pour ce faire, un dossier numérique a été établi pour chaque enfant adopté à l'aide de sources communales et cantonales. En outre, un catalogue de toutes les dispositions légales en vigueur à l'époque a été élaboré, à l'aide duquel chaque procédure a été examinée.

Les résultats montrent que les autorités communales et cantonales impliquées n'ont, dans une large mesure, pas mis en œuvre les dispositions légales en vigueur à l'époque, et ce sur l'ensemble de la période examinée. Ainsi, l'ensemble des procédures transmises et analysées montre qu'aucune d'entre elles n'aurait respecté les dispositions légales en vigueur à l'époque. Dans de nombreux cas, les autorités concernées n'ont pas seulement ignoré les signes évidents que les procédures d'adoption se faisaient sur une base lucrative au Sri Lanka, alors même que des enquêtes journalistiques et des indications des autorités fédérales avaient déjà alerté sur ces signes. Comme l'étude le montre en détail et sur la base de différents cas, les autorités concernées ont également violé leur devoir de surveillance dans de nombreuses procédures à différents niveaux, par exemple en n'octroyant pas de représentant·e légal·e aux enfants, en ne surveillant pas suffisamment le lien nourricier, ou encore en confiant des enfants à des couples mariés sans clarifier suffisamment au préalable les conditions d'accueil.

Au niveau structurel également, l'étude identifie différents faits extrêmement problématiques. Il était, par exemple, très discutable que des agences d'adoption privées dont la condition d'existence est justement le placement d'enfants puissent vérifier l'aptitude des futurs parents adoptifs. En outre, l'intermédiaire en adoption, Alice Honegger, faisait déjà l'objet de différentes critiques, mais elle n'a été empêchée d'agir que pendant une courte période. Grâce à des sources accessibles pour la première fois, le présent rapport montre qu'Alice Honegger devait être consciente qu'elle était impliquée dans des adoptions commerciales. Parallèlement, il apparaît clairement que les médiations aussi, qui se sont déroulées sans elle ont été marquées très souvent par des manquements et/ou des erreurs. L'étude intègre en outre des approches postcoloniales et indique par exemple que des visions du monde imprégnées par le colonialisme ont influencé la perception de ces adoptions « Sud-Nord » et ont ainsi contribué à ce que les procédures ne soient pas examinées avec le soin nécessaire.

La présente étude démontre que les erreurs et les manquements présentés ne sont pas « seulement » dus à des processus au Sri Lanka, mais aussi - particulièrement en ce qui concerne la surveillance souvent défaillante – en grande partie à des erreurs de procédure des autorités communales et cantonales impliquées. Les dysfonctionnements mis au jour montrent que le « bien de l'enfant », certes souvent mentionné, restait souvent, en pratique, un mot creux.

Les dossiers consultés dans le cadre de cette enquête reflètent le point de vue des autorités impliquées et, dans une moindre mesure, celui des parents nourriciers respectivement des parents adoptifs. Afin de faire entendre la voix des personnes adoptées concernées et de leurs parents biologiques, il serait urgent de procéder à des entretiens oraux en Suisse et au Sri Lanka au moyen d'une approche d'histoire orale. Une étude plus approfondie de toutes les adoptions d'enfants étrangers en Suisse ainsi qu'une étude comparative des adoptions en Suisse et à l'étranger seraient tout aussi indiquées.

[2] Translated by Zoé Kergomard and Magali Delaloye.

1. Introduction

In her study of 2018[3] and subsequently her study of 2020,[4] – along with her colleagues Annika Bangerter and Nadja Ramsauer – the historian Sabine Bitter documented systematic deficiencies and mistakes in the Swiss adoption procedures of children from Sri Lanka, which included some cases in the canton of St Gallen. Thereupon the local Department of the Interior (*Departement des Innern*) commissioned an investigation of all procedures between 1973 and 2002 in which married couples resident in the canton of St Gallen adopted a child from Sri Lanka. The beginning and end of the period of research are marked on the one hand by the revision of the adoption law of 30th June 1972 (in force as of 1st April 1973), and on the other hand by the entry into force of the Hague Adoption Convention (*Haager Adoptionsübereinkommens*, the *HAÜ*) in Switzerland in 2003. This investigation was entrusted to historian Dr Francesca Falk of the University of Bern in the summer of 2020. Subsequently, her and her research assistant Danielle Berthet MA, (also a historian), analysed all 85 adoption procedures that had been processed in the canton of St Gallen during the period stated. For the first time it was possible to analyse the corresponding dossiers from the inventory of the St Gallen State Archive on the House Seewarte (*Haus Seewarte*) and later the Adoptio Foundation (*Stiftung Adoptio*). This intermediary agency[5] under the leadership of Alice Honegger was involved in far more than half of those adoptions. Following the conclusion of source analysis the present research report was supplemented by contributions from established researchers in various fields of study, namely (in alphabetical order) Dr Andrea Abraham, Dr Urs Germann[6], Dr iur. Liliane Minder and Dr iur. Lena Rutishauser.[7] Their statements are presented in each case as a text box. The two Sri Lanki academics Surangika Jayarathne MA und Dr Thamali Kithsiri supported the research team at various points in decoding Singhalese data sources. Furthermore Joséphine Métraux (métraux&) MA, historian, and Simon Bretscher MA, graphic designer and illustrator, developed the graphics below in the report on the model process of the fostering period and adoption of a Sri Lankan child in the canton of St Gallen during the period investigated here.

The following questions[8] by the sponsor stood at the centre of the investigation and are considered in individual chapters in the order below:

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[3] Bitter, Sabine: *Die Vermittlerin. Die Kinder-Adoptionen aus Sri Lanka von Alice Honegger und die Aufsicht der Behörden (1979 bis 1997)*, 2018.
[4] Bitter, Sabine/Bangerter, Annika/Ramsauer, Nadja: *Adoptionen von Kindern aus Sri Lanka in der Schweiz 1973-1997. Zur Praxis der privaten Vermittlungsstellen und der Behörden*, Januar 2020.
[5] In order to underline the private and in the case of Alice Honegger's organisation commercial character, we use the term "intermediary agency» (*Vermittlungsagentur*). However, in the sources the term "placement office" (*Vermittlungsstelle*) is used frequently. Since this term can evoke the notion of a government/public office, this terminology already indicates the problematic status of these organisations.
[6] In contrast to the other experts Urs German was given access to available dossiers in order to build an accurate picture of the record keeping.
[7] Short portraits of the experts can be found at the end of the report.
[8] A further question whose investigation had been commissioned concerned the number of all foreign adoptions between 1973 and 2002 which had been completed in the canton of St Gallen and can therefore be found in the the St Gallen State Archive. Accordingly we compiled a list of all international adoptions, recording information on the adoptee (name before and after adoption, date of birth, country of origin), on the adoptive parents (names, domicile), on the year of adoption and on the district registry responsible. This list covers the years 1973 to 1978. For the period of 1979 to 1989, in consultation with the sponsor and with the exception of Sri Lanka, we only recorded rudimentary data on all international adoptions (child's name after adoption, country of origin and year of adoption). This is because such a compilation is available from the Federal Statistical Office for the years after 1979. We did not include the adoption of step-children and adoptions according to the previous laws (aka those granted before 1973). However, we did keep a record of the latter, including the year of completion, as well as the country of origin, in a separate list.

- How many children from Sri Lanka were adopted in the canton of St Gallen between 1973 and 2002?
- Are there shortcomings or mistakes in the legal procedures within the context of the legal provisions in force at the time? If so, which ones?
- How is the record management and archiving to be assessed, considering the professional standards valid at the time?
- Are there any concrete clues as to commercial adoptions to be found in the dossiers?

The last chapter contains a summary of the findings, as well as presenting points that remain open and some further perspectives.

The questions raised had to be answered using cantonal and communal sources. The focus, set by the canton St Gallen, on the legal examination of the adoption procedures meant that the action or inaction of the cantonal and communal authorities involved are at the forefront of our investigation. A systematic and comparative analysis of the Sri Lankan documents lay beyond our expertise or purview. In a few instances we could also delineate the motives, actions and experiences of the foster and adoptive parents according to the sources. However, the (past and present) perspective of the adoptees on the events recounted, as well as that of their biological parents, is missing entirely. Again, they are thereby accorded the state of an object. We would like to address this shortcoming via a research project which would continue the work of the present study and would be based on oral history. A corresponding research proposal has been submitted to the Swiss National Science Foundation.

2. Adopted children from Sri Lanka in the canton of St Gallen (1973-2002): facts and figures

During the period 1973 to 2002 a total of 86 children[9] from Sri Lanka were adopted by married couples resident in the canton of St Gallen. 50 married couples were involved; 29 of them adopted two or more children from Sri Lanka and 21 of them one child each. Of the adopted children 73 were girls and 13 were boys. In the Sri Lankan adoption procedure children take the foster parents name as their own. Twelve children kept their Sri Lankan first names. All the others were given new first names, whereas 50 of them kept their Sri Lankan first name as a middle name.

As the charts on page 7 illustrate, the first adoption of a child from Sri Lanka during our period of research was finalised by a St Gallen district registry in 1982[10], the last in 1996.[11]

[9] Of the 86 procedures one was not investigated, as the foster family concerned lived in the canton of Zurich when they received the child. Although they moved to a municipality in St Gallen 13 months later, the foster care and adoption procedure continued to be processed by the canton of Zurich, as well as the child's guardianship remaining there, therefore not falling under the St Gallen legislation. Correspondingly, we decided not to proceed with an analysis of this procedure.

[10] Since the adoptions from Sri Lanka to the canton of St Gallen only started at that point in time, we cannot make any statements on possible immediate effects of the introduction of complete adoption (*Volladoption*) in 1973, nor to the federal Ordinance on the Placement of Foster Children (*Verordnung über die Aufnahme von Pflegekindern (PAVO)*) of 1977, nor to the revised rights of children (*revidiertes Kinderrecht*) which came into effect on 1st January 1978.

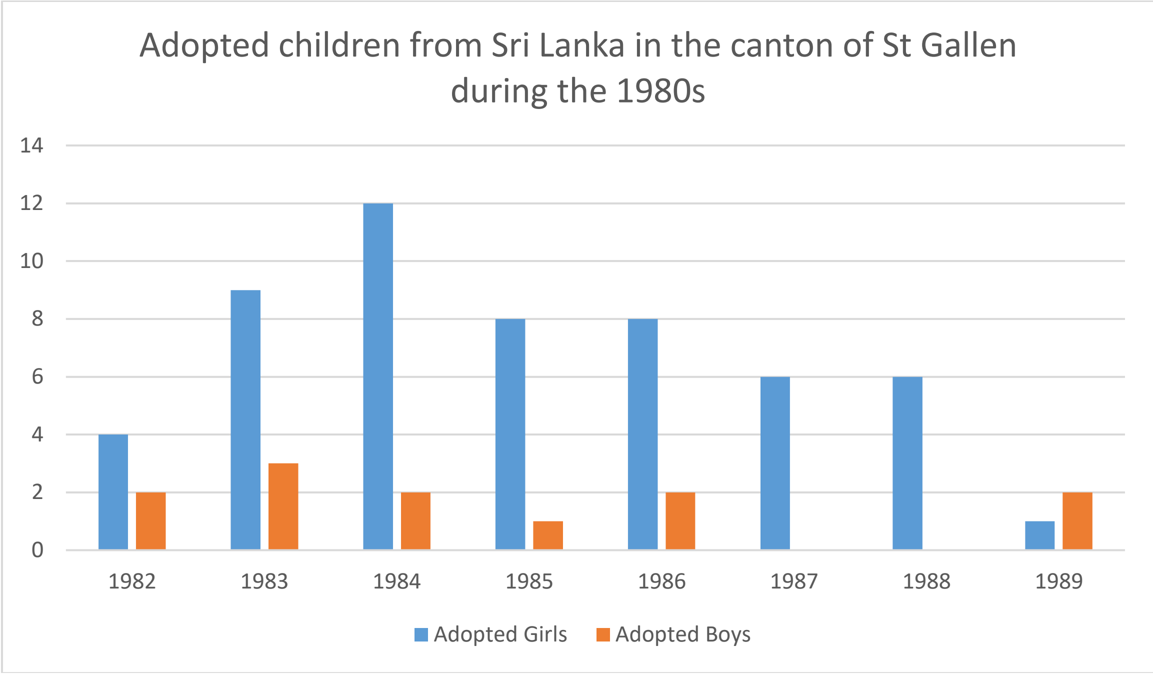
[11] The federal statistics record a total of 87 adoptions of children from Sri Lanka in the canton of St Gallen from 1979 to 2002 and indicates that the last two such adoptions in the period stated were finalised in 1998. As those last two cases, however, concerned the adoption of step-children, they were not included in our sample.

1983 to 1986 were the peak years in terms of the numbers of adoptions executed, with the highest amount in 1984 (14 adopted children).[12]

The files investigated within the scope of the present report can be contextualised into a period of change in the Swiss adoption system. With the decrease of domestic adoptions (due, for instance, to the shrinking stigmatisation of single mothers and the increasing possibilities available to manage one's own reproduction) and the continuing wish of childless couples for a child, adoptions from the 1960/70s began to shift towards children from abroad. The present report shows how societal expectations for a life script (such as starting a family) in Switzerland and the social hardships of women and/or couples in Sri Lanka encouraged brisk adoption activities in an entangled manner.

Andrea Abraham

[12] It should be noted that children who had entered Switzerland from Sri Lanka, but then were not adopted according to Swiss law do not appear in our investigation. The affected children remained in a legally precarious state: they were denied Swiss citizenship, but had lost their Sri Lankan citizenship through the adoption decision (*Adoptionsentscheid*) in their country of origin, and even their leave to remain was not secured, cf. Lücker-Babel, Marie-Françoise: *Auslandsadoption und Kinderrechte: Was geschieht mit den Verstossenen? Untersuchung von gescheiterten internationalen Adoptionsfällen in der Schweiz, durchgeführt im Auftrag von «Die Rechte des Kindes – International», Schweizer Sektion*, Freiburg 1991. Due to our methodology and sources we are unable to indicate whether and in what numbers the canton of St Gallen was affected by this issue.


Adopted children from Sri Lanka in the canton of St Gallen during the 1980s
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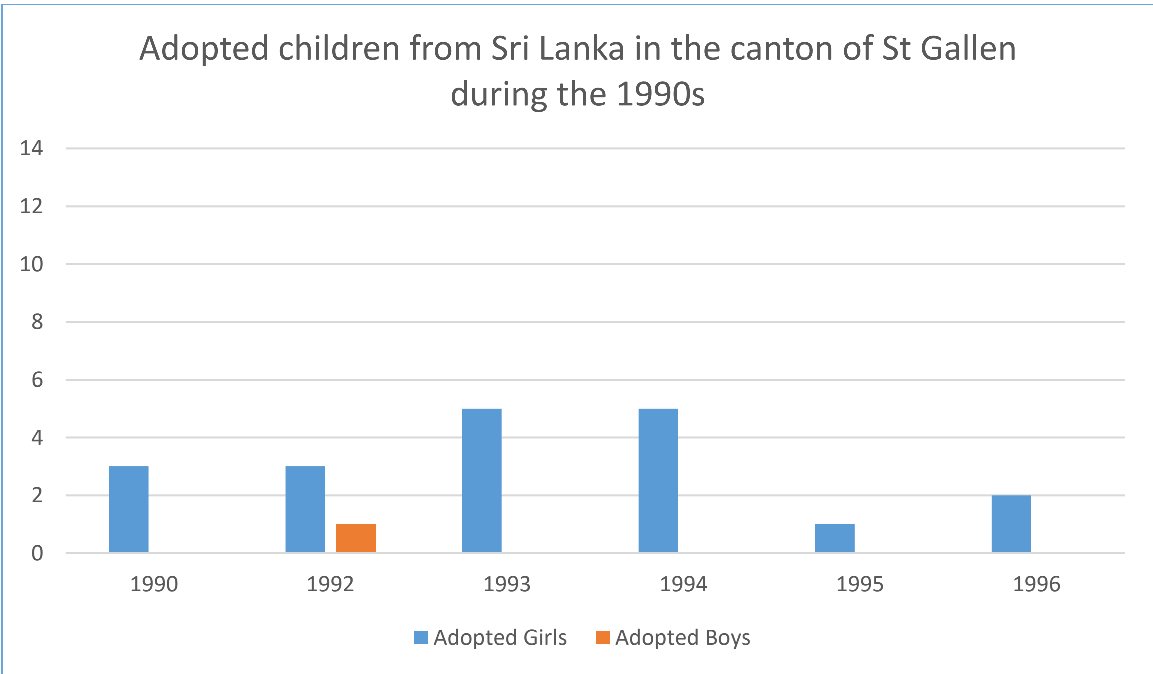
Adopted Girls
Adopted Boys


Adopted children from Sri Lanka in the canton of St Gallen during the 1990s
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Adopted Girls
Adopted Boys

3. Shortcomings and errors in the legal proceedings within the context of the legal regulations applicable at the time

a) Methodology

In order to be able to answer the question as to possible shortcomings and errors in the legal proceedings within the context of the legal regulations applicable at the time, a digital dossier, containing all the files available in cantonal and municipal archives,[13] was compiled and subsequently evaluated for each child. On the advice of Martin Jäger, Head of Archival Education (*Überlieferungsbildung*) at the St Gallen State Archive, we began with the adoption notifications of the cantonal citizenship and registry office, which are kept at the St Gallen State Archive. These contain a short note on each adoption with information on the adoptive parents and child as well as the justification for the positive adoption decision by the district office concerned.
Using the information obtained, Patric Schnitzer, Head of User Services (*Benutzungsdienst*) of the St Gallen State Archive, researched the St Gallen State Archive's inventory for further documents on each adoption. Hereby, the inventory of the former district offices and the former cantonal guardianship service proved particularly extensive and enlightening. They contain various documents on the respective fostering and adoption procedures. We also consulted the cantonal inventory of the Office for Social Affairs (*Amt für Soziales*). As this was only instituted in 1996, the year of the last two adoptions from Sri Lanka during the period of research, only a few documents from this source were relevant for our research project.

However, the inventories held on the House Seewarte, and the later Adoptio Foundation, proved particularly fruitful. Their longstanding Head Alice Honegger was known as a leading intermediary (*Vermittlerin*) of adoptive children, also from Sri Lanka. As mentioned previously, Sabine Bitter described her role in her 2018 work *The Intermediary* (*Die Vermittlerin*). Our research shows that Alice Honegger was involved in over 50 of the 85 adoptions analysed[14]. The dossiers kept at the St Gallen State Archive contain detailed information on the activities of Alice Honegger and her contacts in Sri Lanka, as well as the form of contact between Alice Honegger and the Swiss authorities involved at municipal, cantonal and federal level.

[13] Due to a lack of time, files from the Swiss Federal Archives (*Bundesarchiv*) were not consulted. However, any research there would not change any of our findings on the execution of procedures in the canton of St Gallen, including at municipal level, as the present files of cantonal and municipal origin document the procedures to be investigated adequately and clearly. It could, however, deliver answers to the question whether there was a visa issued for each child entering Switzerland and whether authorisations to enter (*Einreisebewilligung*) or leave to remain was granted or assured, as demanded by the federal Ordinance on the Placement of Foster Children (*Verordnung über die Aufnahme von Pflegekindern (PAVO)*) of 1977 in Article 6, para. 2a until its revision in 1988; from 1989 the authorities could issue a permanent permission of acceptance (*Aufnahmeerlaubnis*) also without a visa issued by the immigration authorities (*fremdenpolizeiliches Visum*) or an assured leave to remain (§8b *PAVO* 1988). The dossiers available to us contain only a few authorisations to enter (*Einreisebewilligung*) or leave to remain. The inventory of the St Gallen State Archive regarding the immigration authorities' control of issued children's passports was not consulted, as research in the federal documents would be more productive here.

[14] In those proceedings that took place without Alice Honegger's mediation, the sources consulted give no indication of how the Sri Lankan children concerned ended up in the canton of St Gallen. As in the table below can be seen, the Sri Lankan lawyers who are named below were involved in a total of 65 procedures – for the other 20 analyzed procedures it is not clear whether the mediation was organized privately or whether other Sri Lankan and/or Swiss intermediaries were involved.

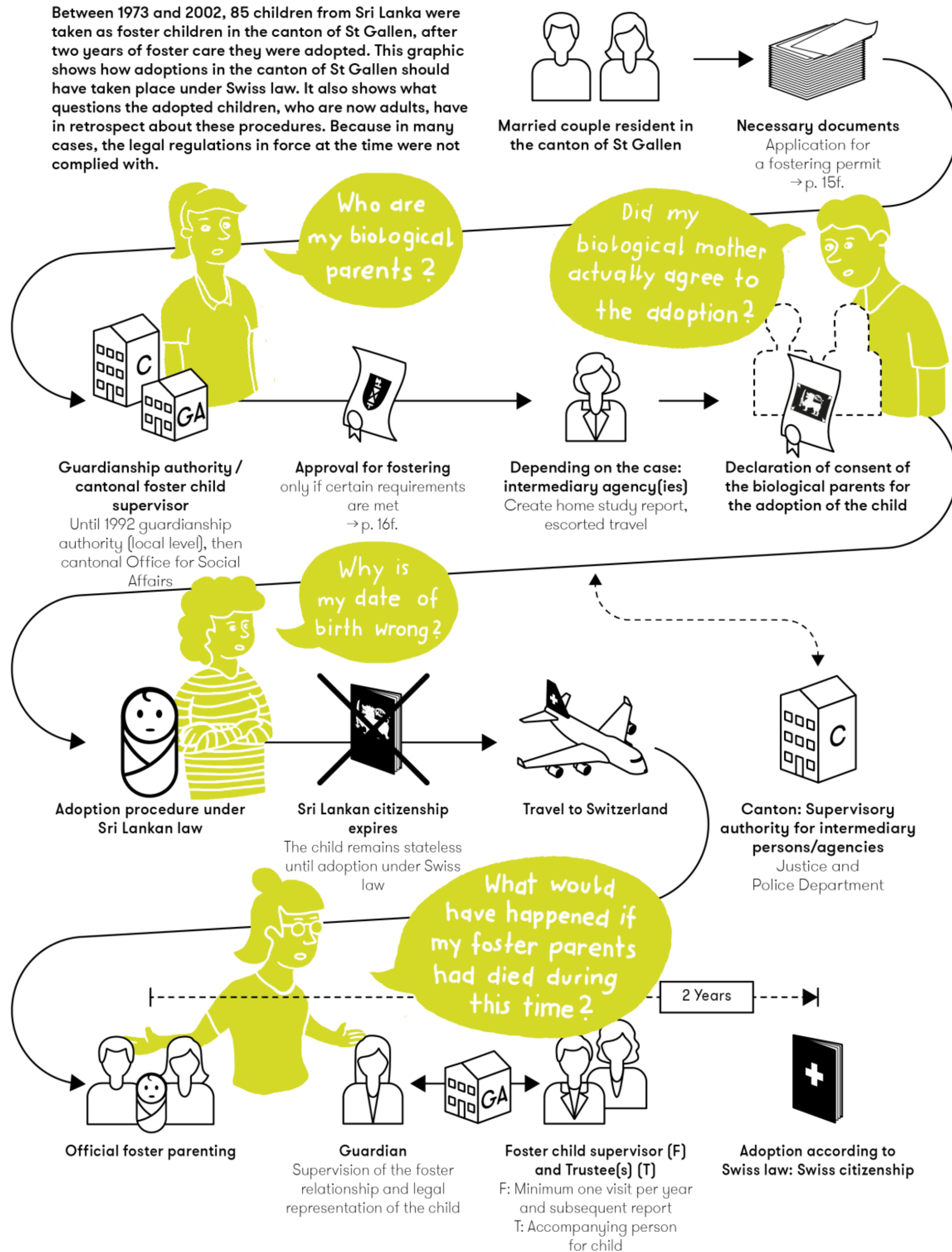
Until 1992 in the canton of St Gallen the respective orphanage office (*Waisenamt*)[15] situated in the place of residence of the foster parents decided on the granting of foster child permits of foreign children. After 1992 the cantonal fostering supervisor (*Pflegekinderaufsicht*)/the Cantonal Office for Social Affairs was the deciding authority on the granting of fostering permits, research at the communal level was therefore necessary. Altogether around 30 municipalities in St Gallen were asked to search for files on those procedure(s), which had been processed by each authority concerned. With the exception of one municipality they were all exceedingly cooperative, delving into their own archives for files on each procedure. The municipality mentioned above also assured our sponsor that they would compare their files against the conclusion of this report. However, there were no documents from this source at our disposal when the original report (in German) was completed.[16] In most cases, at least the minutes of the guardianship authority were found, which concerned itself with the individual fostering and later adoption processes. On a few procedures, especially if the fostering and/or adoptive parents lived in the city of St Gallen the files concerned were archived at the local City Archive (*Stadtarchiv*), extensive dossiers also exist on individual procedures at the municipal level. More detail on the subject of archiving and record keeping follows in chapter 4.

Using these sources a digital dossier was compiled for each child adopted from Sri Lanka that the person concerned will be able to review at the St Gallen State Archive. The dossiers contain between 50 and 400 pages depending on the individual archiving situation (*Überlieferungssituation*), but which may contain some duplications in places due to the filing structure.

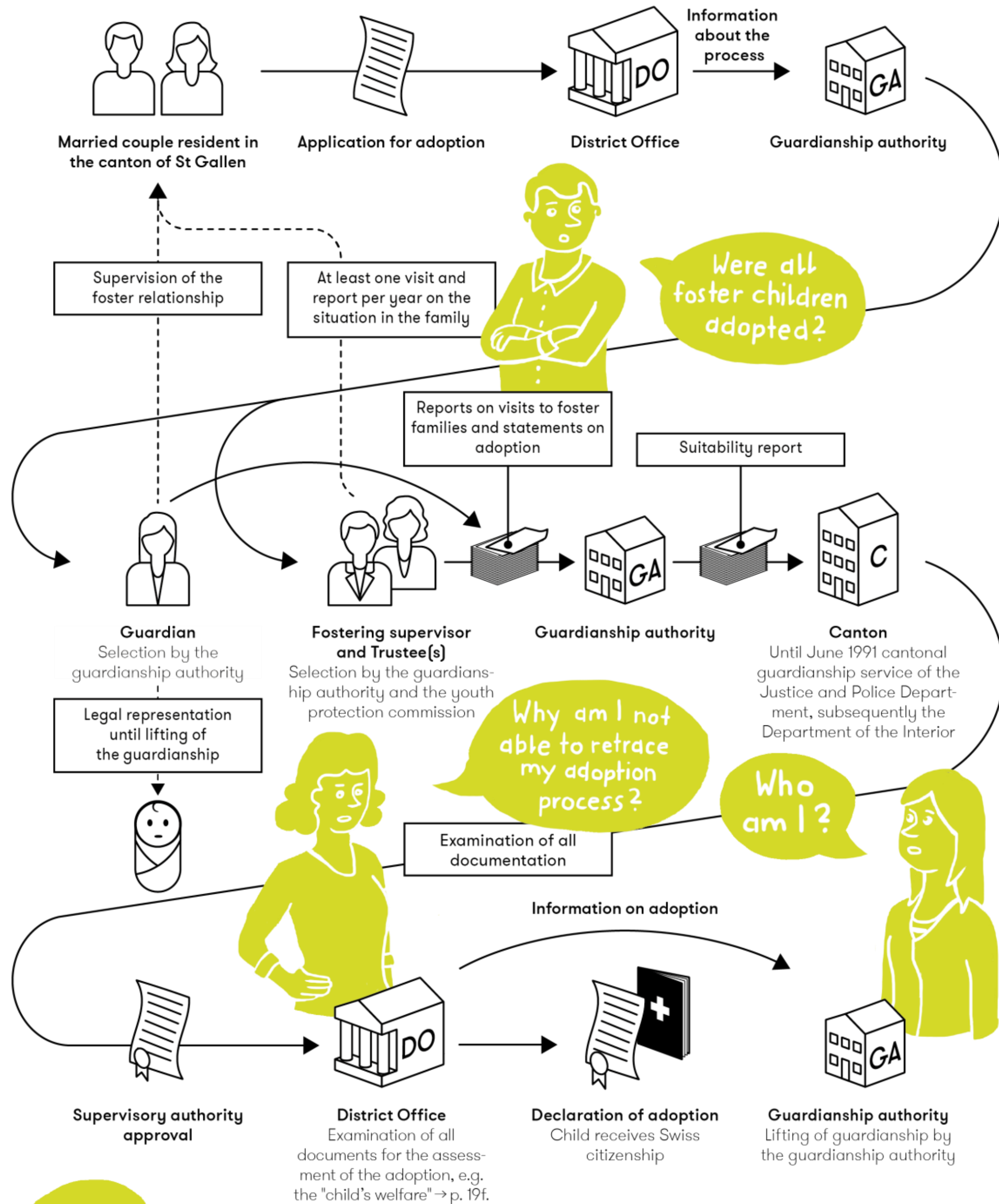
[15] During the research period the *Waisenamt* was elected by the municipal council concerned. It consisted of at least three members, whereby at least two were to be elected from the ranks of the elected authority. If it consisted of less than five members, there were two replacement members to be elected. Cf. Article 62 *Nachtragsgesetz zum EG-ZGB* from 8. Januar 1981, n-GS 16-12.

[16] During the English and French translations of this report, we received the files from the relevant communal archives. Since their contents, however, did not change our findings, the English version is based on the originally submitted German version.

b) Process of procedures and legal criteria



2. After at least two years: Process of adoption in the canton of St Gallen



The questions in the speech bubbles were created in cooperation with Back to the Roots (Swiss association for adopted people from Sri Lanka). Since 2022, Back to the Roots has been offering support for adopted people from Sri Lanka, financed by the federal government and the cantons: www.backtotheroots.net

The illustration does not show the changes resulting from legal revisions with regard to the requirements and procedure (see report Chapter 3b) as well as the procedural steps at federal level, such as the issuance of visas.

Illustration: Joséphine Métraux & Simon Bretscher

Following the compilation of the dossiers we analysed each procedure as to its legality. To this purpose we compiled a list containing all legal regulations applicable at the time, the compliance with which was to be reviewed.[17] At federal level, firstly, they are rooted in the Swiss Civil Code (*Schweizerisches Zivilgesetzbuch (ZGB)*) of 1904[18] (in force as of 1st January 1912) and its revision of 1972[19] (in force as of 1st April 1973) which was relevant to the focus of our research. Secondly, there is the federal Ordinance on the Placement of Foster Children (*Verordnung über die Aufnahme von Pflegekindern (PAVO)*) of 19th October 1977[20] (in force as of 1st January 1978), as well as its revision of 1989[21] which was in force as of 1st January 1989. The revision of *PAVO* was prompted by the fact that in those years around 500 to 600 foreign children were taken in by foster families throughout Switzerland for the purpose of a subsequent adoption.[22] "Since the assessment for a placement often either did not or only insufficiently take place, occasionally significant problems arose, which necessitated relocations that were detrimental to the child's wellbeing",[23] the St Gallen governing council (*Regierungsrat*) stated in March 1991. In the next chapter we will demonstrate in detail that those insufficient assessments also concerned a great number of the procedures in our research. In order to put things right, the revised *PAVO* decreed regulations on the fostering of foreign children, such as the additional option to assess an interested married couple's circumstances by a social worker in advance.[24]
On a cantonal level, we had to consider the Ordinance on Foster Children (*Pflegekinderverordnung (PKV)*) of 28th February 1978[25] as well as its revision of 26th March 1991[26] (in force as of 1st July 1991), developed as a result of the supplements to *PAVO* described above.

In order to assess Alice Honegger's activities we consulted the federal Ordinance on Adoption Mediation (*Verordnung über die Adoptionsvermittlung*) of 28th March 1973[27] (in force as of 16th April 1973), including its amendments of 19th October 1977[28] (in force as of 1st January 1978). The points most relevant for our research project are that Alice Honegger should have provided a comprehensive assessment of the fostering family's circumstances.[29] Furthermore she had to be confident in the assumption that the later adoption happened for the child's wellbeing. [30] For her activities, training in youth social care was necessary;[31] also, she

[17] According to this list every shortcoming and error can be traced back to the corresponding source.
[18] *Schweizerisches Bundesblatt*, 59. Jg., No. 54 from 21. December 1907.
[19] AS 1972 2819.
[20] AS 1977 1931.
[21] AS 1989 01.
[22] Minutes of the Canton of St Gallen's governing council: Addendum on the Ordinance on Foster Children (*Nachtrag zur Pflegekinderverordnung*); decree 26th March 1991, p 1.
[23] Minutes of the governing council: Addendum on the Ordinance on Foster Children (*Nachtrag zur Pflegekinderverordnung*), p 1f.
[24] Article 7, Para. 2, *PAVO* 1988.
[25] StASG ARR B 2-1978-0237.
[26] StASG ARR B 2-1991-0512.
[27] AS 1973 15.
[28] AS 1977 1929.
[29] Article 9, Para 1, Ordinance on Adoption Mediation (*Verordnung über die Adoptionsvermittlung*) of 28th March 1973. It remains an open question what the term "comprehensive" means and what form a "comprehensive" assessment should have taken in practice. Sabine Bitter and her colleagues conclude that Alice Honegger's assessments fell short, providing more information on the material circumstances and furnishings of a married couple willing to adopt than their motives or ideas about parenting (p 170). In our sample, however, we found that the majority of assessments carried out by someone other than Alice Honegger were even less detailed or wide-ranging as to the subjects covered. Exceptions form those cases in which professional social workers were consulted, also see our qualitative analysis in chapter 3d.
[30] Article 3, Ordinance on Adoption Mediation (*Verordnung über die Adoptionsvermittlung*) of 28th March 1973.

required a special permit for the placement of children from Sri Lanka.[32] Furthermore, herself and her colleagues needed an impeccable reputation (*einwandfreier Leumund*).[33] Sabine Bitter, Annika Bangerter and Nadja Ramsauer state further important points on the placement activities in their report on the adoptions of children from Sri Lanka of January 2020, in which they researched the activities of the federal authorities and examined the procedures in the three cantons Bern, Geneva and St Gallen between 1973 and 1997 on behalf of the Federal Office of Justice (*Bundesamt für Justiz*): "All permits issued were temporary, but could be extended after the expiration date. After the intermediary began their activities, they regularly needed to present their working methods, their financial plan and their agency fees as well as having their tariffs authorised. Should they be acting in the name of an association, its statutes were also to be included. A systematic filing system and an annual report of activities for the attention of the authorities were legally required. […] Legally required was the consent of the biological parents. The financial aspects were also regulated in law. The intermediary could ask for reimbursement of their expenses, however they were only allowed to claim for a moderate compensation for their efforts. hey must not accept any remuneration by the foster parents. Furthermore, any remuneration of the biological parents was prohibited."[34]

We supplemented the criteria identified with further ones intended to assist in the search for origins. These were determined mainly in conversation with Sarah Ramani Ineichen, president of the *Back to the Roots* association, and Celin Sithy Fässler, an assistant in that same association. In order to support a potential search for origins of the persons concerned as much as possible, we recorded various personal data such as the adoptive children's names, gender, date and place of birth as well as that of their biological parents, and we paid particular attention as to whether this data was listed consistently in all archived documents.

Adoption procedure in Sri Lanka

As for the procedure in Sri Lanka, various regulations applied.. A dossier[35] in Seewarte/Adoptio's inventory contains a letter from the Department of Probation & Child Care services in Colombo, dated 20th January 1978 detailing this point.[36] Accordingly, a child from Sri Lanka was only allocated to a foreign married couple, if both spouses were at least 25 years old and at least 21 years older than the child to be adopted. An interested couple had

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[31] Article 5, Para 1c, Ordinance on Adoption Mediation (*Verordnung über die Adoptionsvermittlung*) of 28th March 1973.

[32] Article 6, Paras 1, 2a and 3, Ordinance on Adoption Mediation (*Verordnung über die Adoptionsvermittlung*) of 28th March 1973. Alice Honegger's special permit was revoked for a period of about six months in May 1982, cf. Bitter et al.: *Adoptionen*, p 69ff. According to a source in the inventory of Seewarte/Adoptio, Alice Honegger wrote to the friends and benefactors of her association in her "Holiday Message" *(«Festtagsbrief»)* of 1982 that she had given up her activities in Sri Lanka voluntarily, due to the deplorable state of affairs that had come to light there – a statement which did not correspond to the facts in any way, the more so as she resolutely and, in the end, successfully asked for the permit to be returned, as Sabine Bitter et al. document in detail in the pages listed of their report.

[33] Artcle 5, Para 1b 3, Ordinance on Adoption Mediation (*Verordnung über die Adoptionsvermittlung*) of 28th March 1973.

[34] Bitter et al.: *Adoptionen*, p 36f. The subject of remuneration was only addressed in a single one of the dossiers studied by us: in the case concerned, the biological mother stated in her declaration of consent to the adoption in writing that she had received no present or money at all with view to the adoption. Cf. Dossier No. 68, StASG A 328, p 29.

[35] Dossier No. 62, StASG W 354/2.2, p 47ff. In order to preserve the anonymity of the persons concerned by the adoptions as well as their adoptive parents, proof of sources are provided by dossier number in this report. The list of all dossiers analysed, according to which the source is traceable, has been transferred to the St Gallen State Archive and is subject to its regulations on the access to personal data deserving particular protection (*besonders schützenswerte Personendaten*) as well as corresponding periods of restriction.

[36] However, this does not state how this procedure was handled in reality.

to send its application for the adoption of a child to the commissioner of the Sri Lankan institution named. Various documents had to be included:

- a Home Study Report, compiled by an approved/recognised institution and attested by a representative accredited by Sri Lanka (here usually Alice Honegger or civil servants of the adoptive parents' place of residence). This report was intended to provide information about the applicants' mental health as well as their social, religious and financial background
- photographs of the spouses as well as a covering letter stating any preference as to the age and sex of the child or children, in case several were applied for
- copies of birth and marriage certificates, medical certificates and work references of the married couple willing to adopt, including translations

As soon as the commissioner had approved the Home Study Report and found a "suitable" child, he confirmed this in writing to the married couple concerned. They thereupon organised travel to Sri Lanka. After their arrival in Colombo the spouses from Switzerland had to appear for an "interview" at the relevant department. Subsequently they received permission by the commissioner to visit the designated child at the children's home[37] where they lived. Thereby they were allowed to perform a medical examination on the child (or let it be performed). For the court proceedings the married couple should avail themselves of the services of an advocate. The spouses had to appear before court together. Exemptions were only possible in cases of illness certified by a doctor. The commissioner previously wrote a report about the social and psychological aspects of the adoption and filed it at court together with the Home Study Report.

After the successful adoption procedure at court the married couple received the adoption decision and was able to apply for a passport for the child at the *Department of Immigration & Emigration* in Colombo. In countries such as Switzerland, which did not immediately recognize the Sri Lankan adoption decision,[38] the spouses should put everything in place for the child to be adopted as quickly as possible according to the laws of their new domicile. During the fostering period the Sri Lankan Department of Probation & Child Care Services requested a quarterly report on the child's development, the frequency of which was reduced to biannually three years after the completed adoption in Switzerland.[39]

Procedure for the fostering of a Sri Lankan child in the canton of St Gallen

From the legal sources quoted above we extracted various pre-requisites which had to be considered according to Swiss law for the fostering of a child from Sri Lanka. As mentioned in the section above, the Swiss authorities did not immediately recognise the Sri Lankan adoption decision. This is why, during the period covered by this report, the Sri Lankan children arrived first as foster children in Switzerland and were only able to be adopted according to local law after a period of two years. For the fostering of a Sri Lankan child in the canton of St Gallen various regulations were in place. First of all, it was imperative for the

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[37] In the cases analysed, however, there is usually no mention of where the child was staying right before the adoption.

[38] On 1st January 1989 the Federal Act on Private International Law (PILA) (*Bundesgesetz vom 18. Dezember 1987 über das Internationale Privatrecht (IPRG)*) came into force, whereby adoptions made legal in Sri Lanka were only recognised in Switzerland if the adoptive parents were Sri Lankan citizens or residents (Sect 75-78), which was not the case in any of the procedures analysed. However, this regulation had already been in force since 1973 due to the Federal Act on the Civil Relationships of Permanent and Temporary Residents (*Bundesgesetz vom 25. Juni 1891 betreffend die zivilrechtlichen Verhältnisse der Niedergelassenen und Aufenthalter (NAG)*); SR 211.435.1; which was repealed on 1st January 1989 by the PILA (*IPRG*). Cf. *Illegale Adoptionen von Kindern aus Sri Lanka: historische Aufarbeitung, Herkunftssuche, Perspektiven. Bericht des Bundesrates in Erfüllung des Postulats 17.4181 Ruiz Rebecca vom 14.12.2017*, Bern, 11.12.2020, p 13.

[39] None of the sources consulted contain such reports; research in Sri Lankan archives would be advisable here.

written or oral consent of the biological parents to be recorded. [40] It could only be disregarded, if the biological parents were unknown, were staying in an unknown location or did not take care of the child. [41] In case the biological parents' assent to the adoption was missing, from 1989 onwards a declaration of the Sri Lankan authority which had originally approved the adoption was required, this declaration should include a statement as to the reasons why the biological parent's assent was missing. [42] Furthermore, from 1989, it was necessary for the Sri Lankan authority to assent in writing to the fostering of a child in Switzerland. [43] In Switzerland the release of children for adoption was subject to a six week embargo period[44] and an additional six week revocation period.[45] Sri Lankan adoption law did not stipulate any details on this point. Bitter et al., in the report mentioned above, state that the question of whether the period of six weeks was also a legal pre-requisite could not be settled conclusively, due to a lack of case law on the matter.[46]
Furthermore, in order for permission on the fostering of a child from Sri Lanka to be granted the following was required; consent and declaration of the Sri Lankan authorities on the reason for the child's placement in Switzerland, [47] a birth certificate/extract from the birth register or passport, [48] a medical report on the child and – as of 1989, and when possible – a biography to date of the child to be adopted.[49]

Swiss law, above all through the federal *PAVO*, prescribed various prerequisites for the permit to foster a foreign child. Accordingly, interested married couples needed to obtain that permit before the child entered the country.[50] It was issued for a specific child[51] and granted only

[40] Article 265a, Paras 1 and 2, *ZGB* 1973. Even if the declaration of consent was issued orally, this had to be documented in writing. Those declarations of consent (mostly by the biological mothers) can be found in the sources as so-called "affidavits" ("*Affidavits*"). They listed the date, the biological mother's (and sometimes the biological father's) name, address/domicile and religious denomination, as well as the child's name, sex, date of birth and in some cases place of birth. Therein, the biological mother/father or both together declare that he/she/they give up the child for adoption by a particular married couple from Switzerland, also listed by name and domicile. Most biological mothers from our sample declare themselves as unmarried. There are no reasons given for the acceptance of adoption in this type of document. They were signed in Sinhalese, rarely in the cases analysed also in Tamil script or by fingerprint. For the purpose of notarisation one can also find a Sri Lankan advocate's name and seal.
[41] Article 265c, Paras 1 and 2, *ZGB* 1973.
[42] Article 6, Para 2c, *PAVO* 1988.
[43] Article 6, Para 2d ,*PAVO* 1988.
[44] Article 265b, Para 1, *ZGB* 1973.
[45] Article 265b, Para 2, *ZGB* 1973.
[46] Bitter et al.: *Adoptionen*, p 222. In our sample only a single district office addressed the issue of not adhering to this restriction period. It argued in its 1993 adoption decision by which as many as two Sri Lankan children were awarded to a married couple that observing the restriction period was neither practicable nor reason to object to an adoption; for a return of the children to their homeland would be impossible anyway. It argued that it would be „objectionable (*stossend*) to refuse the adoptions with reference to these formal regulations. Above all, this would not be in the children's objective interests (*im wohlverstandenen Interesse der Kinder*). Furthermore, on the basis of the files submitted from Sri Lanka there can be no doubt that both mothers knew that their children were travelling to Switzerland with their future adoptive parents and would definitely live there/here." (Dossier No 65, StASG A 167/1.1993, p 9).
[47] Article 6, Para 2, Clause C, *PAVO* 1978.
[48] Cf. Bitter et al.: *Adoptionen*, p 215, fn 1249: „The permission for the fostering of a foreign child with view to an adoption was granted for a specific child to be identified (*zu identifizierendes Kind*)." in: CH-BAR#E4300C-01#1998/299#608*, Guidelines of the Association of St Gallen Municipal Council Clerks, Land Registry Administrators and Guardianship Secretaries and the Expert Committee for Guardianship concerning "Adoption of foreign-born children", May 1983.
[49] Article 6, Para 2, *PAVO* 1988, cf. also Bitter et al.: *Adoptionen*, p 215, fn 1253.
[50] Article 8, Para 1, *PAVO* 1977. It was not possible to investigate this conclusively, since in many cases, despite there being a definite fostering permit amongst the documents archive, we could not find any evidence when the application for it was submitted by the foster parents. Only a few applications for a fostering permit have been

subject to various general pre-requisites. They included that the foster parents had to provide good parenting, care and education for the child to be fostered by means of their personalities, health – attested by medical certificates[52] –, parenting suitability and housing conditions.[53] Furthermore, in order to be granted a fostering permit, they had to confirm in writing their willingness to bear the costs of raising that child (*Übernahme der Unterhaltskosten*).[54] As far as possible they should be able to meet „the challenges related to their origin“[55] of the child to be fostered and, if possible, belong to the same denomination as the child[56] – the latter point was left disregarded in every one of the procedures analysed.[57] Should other children already live in the family, the fostering arrangement was not to endanger their wellbeing.[58] The foster parents had to ensure the child (against illness, accidents and liability (*Haftpflicht*))[59] and there were to be no impediments to a future adoption. [60] As Bitter et al. reiterate it was the respective guardianship office's (or rather, from 1992, the cantonal fostering supervisor's/the cantonal Department for Social Affairs') responsibility to clarify whether this was the case or whether mandatory prerequisites had been ignored, such as the presence of a declaration of renunciation (*Verzichtserklärung*) by the biological parents.[61] Subsequently, this authority sent the application for a fostering permit together with their report as to the couple's suitability, which had potentially been delegated to a placement agency or a professional social worker, to the cantonal immigration authorities, who themselves issued an immigration permit, or at least assured this in writing, and simultaneously applied for permission to enter the country with the federal immigration authorities. Only then the guardianship office (or rather, from 1992, the cantonal fostering supervisor/the cantonal Department for Social Affairs) issued a fostering permit, which authorised the married couple to collect a child from Sri Lanka.[62]

From 1989 foster parents had to inform the guardianship authority immediately of the child's arrival in Switzerland – in most cases, we were unable to substantiate whether this requirement was adhered to in the sources consulted. It is conceivable that this addendum was subsequently added to the legislation because some foster parents did not follow the

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preserved. From 1989 the future foster parents needed to indicate on it also the child's country of origin and the intermediary agency. (Sect 8a Para 2a und 2b *PAVO* 1988).

[51] Sect 8 Para 2 *PAVO* 1977. From 1989 the fostering of a child could be granted provisionally without identifying the child, as long as the foster parents were deemed suitable and would support it, Article 8a, Para 1, *PAVO* 1988. The immigration authorities (*Fremdenpolizei*) could convert a provisional into a definite permit, if all documents necessary (medical report, child's biography, consent of the biological parents or declaration by the Sri Lankan authority that Swiss foster parents were allowed to take in the child) were present, Article 8b, Para 3a and 3c, *PAVO* 1988.

[52] Article 268a, Para 1 and 2, *ZGB* 1973. The health of the child to be fostered also needed to be attested by medical certificate.

[53] Article 5, *PAVO* 1977.

[54] Article 6, Para 2d, *PAVO* 1977. The revision of *PAVO* of 1988 again drew attention to the fact that the confirmation of bearing the maintenance costs must be attached to the application for a fostering permit (Article 6, Para 4, *PAVO 1988*). We presume that this renewed request was added to the revision because this had not been handled consistently in practice. This thesis is supported by our analysis of the procedures, cf. p 29f. Where *Affidavits of Supports* have been archived, they have been filed as independent documents. However, it is also conceivable that future foster parents integrated the bearing of maintenance costs into another document such as their application for a fostering permit.

[55] Article 6, Para 2, *PAVO* 1977 and Article 5, Para 3, *PAVO* 1988.

[56] Article 8, *PKV* 1978.

[57] In a few dossiers, however, the children's Christian upbringing by the foster parents was emphasised as a positive case in point, and was considered beneficial to the adoption.

[58] Article 5, *PAVO* 1977.

[59] In the sources available to us, this point could only be investigated in a few of the cases.

[60] Article 5, *PAVO* 1977.

[61] Bitter et al.: *Adoptionen*, p 46.

[62] Bitter et al.: *Adoptionen*, p 53.

procedure correctly. This would also explain why many fostering permits or guardianships were only issued or instituted weeks or months after the child's arrival (see Chapter 3c).

As mentioned above, it was the guardianship office's (or rather, from 1992, the cantonal fostering supervisor/the cantonal Department for Social Affairs') responsibility to issue the permit for the fostering of a foreign child and to supervise the fostering. [63] The revised cantonal Ordinance on Foster Children (*Pflegekinderverordnung, PKV*) aimed at centralising this procedure in order to achieve „a consistent permitting practice with uniform procedures for all cases of assessing a foster placement"[64]. According to the St Gallen governing council in its 1991 report on the matter, so called "third world intakes" ("*Drittweltaufnahmen*"),[65] necessitate "particular assessment" ("*besondere Abklärungen*"),[66] as they fundamentally differ from other procedures: „Whereas in regular fostering, generally, a suitable family is sought for a (particular) child",[67] in these cases parents look "themselves for a suitable child".[68]

As the biological parents could not legally represent their children any more, each child from Sri Lanka should be assigned a guardian in Switzerland who took on this responsibility.[69] According to the revised *PAVO* of 1988, this guardian had to be independent.[70] Assessing the foster parent's current circumstances could be delegated to a recognized adoption intermediary agency (*Adoptionsvermittlungsagentur*),[71] or, optionally, from 1989, to a social worker.[72] In case the assessor's social report (also referred to as a 'Home Study Report' in the sources) proved positive, the foster parents could apply for the child's residence permit with the cantonal immigration authorities (*Fremdenpolizei*). All further procedures for entry and visa were processed by the federal authorities and the Swiss embassy in Sri Lanka – hence, as mentioned at the beginning, those documents being archived in the Swiss Federal Archives.

Once the child lived with its foster parents in Switzerland, according to *PAVO* of 1977, in addition to the guardian's supervision, one further person should visit the family at least once a year. [73] The Canton of St Gallen's Ordinance on Foster Children of 1978 detailed this prescription. Accordingly, the orphan office (*Waisenamt*) concerned as guardianship authority, together with the youth protection commission,[74] were to select one or more

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[63] From July 1991 the Department for Interior Affairs of the Canton St Gallen (*Departement des Innern des Kantons St. Gallen*) approved the fostering of foreign children, Sect 2, Para 2 *PKV* 1991. Furthermore, from this moment in time, said department's home supervisors (*Organe der Heimaufsicht*) were tasked with visiting the foster families, assessing the families' circumstances and delivering their opinion before the award of a fostering permit. In individual cases they were able to hand over one or several of these tasks to a social worker.
(Sect 4 and 5 *PKV* 1991).

[64] Minutes of the Canton St Gallen governing council: Addendum on the Ordinance on Foster Children (*Nachtrag zur Pflegekinderverordnung*); decree 26th March 1991, p 2.

[65] Ibid.

[66] Ibid.

[67] Ibid.

[68] Ibid.

[69] Sect 368 *ZGB* 1907 and Sect 64 *EG-ZGB* of 3.7.1911/2.6.1942, sGS 911.1.

[70] Sect 10 Para 4 *PAVO* 1988 as well as *Kreisschreiben vom 21.12.1988 des Bundesrates an die Vormundschaftsbehörden*, with the instruction to nominate an independent guardian.

[71] Article 7, Para 2, *PAVO* 1977.

[72] Article 7, Para 2, *PAVO* 1988.

[73] Article 10, Para 1, *PAVO* 1977.

[74] During the research period a youth protection commission was established in each district of the Canton of St Gallen. These consisted of at least three members, among them at least one woman, who were elected by the executive council after being nominated by the head of the district council (*Bezirksammann*), the district's school president (*Bezirksschulpräsident*) as well as private youth safeguarding associations. Hereby, where possible, doctors, clergy, teachers, lawyers and child guidance councillors (*Erziehungsberater* – in the sources, only the male gender is referred to) should participate. If a member of the youth safeguarding commission felt it was necessary to intervene in a child safeguarding matter, they applied to the guardianship authority. Furthermore,

trustee(s) (*Vertrauensperson(en)*) who visited the foster family at least annually and subsequently reported to the orphan office.[75] If the foster child had been assigned a guardian – which, as mentioned above, should have been the case by law for every Sri Lankan child – the trustee ensured that the legal representation had sufficiently supervised the fostering relationship.[76] If this was the case, they applied to the orphan office to suspend their visits.[77] The guardianship authority was tasked to keep orderly files on the start, end and results of the visits by the named supervising person(s), in order that the fostering process (*Verlauf des Pflegeverhältnisses*) was documented.[78] Foreign documents were also to be translated.[79]

Procedure for the adoption of a Sri Lankan foster child in the Canton of St Gallen

There were additional various legal prerequisites for the adoption procedure and its decision, among them that the adoptive parents had to be at least 35 years of age or married for at least five years[80] and be able to prove that they were of "good repute" ("*guten Leumund*").[81] The adoption could be finalised at the earliest after a fostering period of two years. [82] To this end the foster parents applied for adoption to the district office concerned, which then instigated the adoption process and informed the foster family's municipality of residence.[83] The guardianship authority then compiled a report of suitability (*Eignungsbericht*) on the foster parents and, for this purpose, also obtained statements by the guardian, fostering supervision and/or trustee. Hereby, *PAVO* of 1988 explicitly instructed the authority to ensure "that the child's legal representation has been duly settled"[84] – again, we assume that this point was previously not handled correctly in every case, as our analysis shows (see Chapter 3c), and therefore, this had to be clarified by means of ordinance. In case the evaluation by the guardianship authority yielded a positive result, its agreement to the adoption was forwarded to the cantonal supervisory guardianship authority (*kantonale vormundschaftliche Aufsichtsbehörde*) (until June 1991 the cantonal Guardianship Office of the Department of

the commission was able to apply to the guardianship authority for intervention by the authorities. Cf. Sect 49 and 51 *EG-ZGB* of 3rd July 1911/2nd June 1942.

[75] Articles 4 and 5, *PKV* 1978.

[76] In the legal sources consulted, with the exception of the annual visits required by the guardian and/or person of trust, no precise specifications are listed on the number of visits and reports for a fostering relationship to be seen as supervised.

[77] Article 6, *PKV* 1978. The guardianship authority's annual report also needed to list those foster families who had not been visited. Para 6 *PKV* 1978.

[78] Article 21, Para 1 and Para 1a, *PAVO* 1977.

[79] Article 6 Para 3 *PAVO* 1988.

[80] Article 264a, Para 2, *ZGB* 1973.

[81] Sabine Bitter, Annika Bangerter and Nadja Ramsauer note on the subject of the "good repute" («*guten Leumund*») that this was meant to be documented by means of a certificate of good standing (*Leumundszeugnis*). However, it has never been defined in federal law which format this was to take. The authors then state that it was based "as a rule on a criminal record check and a certificate by the debt enforcement office (*Bescheinigung des Betreibungsamtes*) which discloses whether the person concerned was in debt", cf. Bitter et al.: *Adoptionen*, p 215, footnote 1257. A directive by the Federal Office of Justice (*Bundesamt für Justiz*) of 15th September 1986 supported the authorities' considerable scope in the interpretation of the term by allocating the discretionary authority of "defining the prerequisites for a [certificate of] good standing" to the cantonal authorities, cf. VPB 51.46. However, as Sect 5 of *PAVO* prescribed that foster parents needed to be able to provide "by their personality, health, parenting suitability and housing situation, good care, parenting and education of a foster child" we assume that criminal record checks and extracts from the debt enforcement register alone did not suffice in proving a sound repute for the purpose of fostering a foreign child. Rather those documents had to be supplemented by official certificates of sound repute issued by the municipality, or letters of reference by the holder of a public office (*Behördenmitglied*), an employer or a public person such as clergy.

[82] Article 264, *ZGB* 1973.

[83] Article 7, *EG-ZGB* of 3rd July 1911/22nd June 1942.

[84] Article 10, Para 4, *PAVO* 1988.

Justice and Police, afterwards the Department of the Interior of the Canton St Gallen).[85] This authority thoroughly examined the application. It checked whether the documents the foster parents had deposited with the district office were all present as required (fostering permit, declaration of consent by the biological parents, birth certificate of the child, Sri Lankan adoption decision, guardian's report and approval, medical certificates for the foster parents and child as well as certificates of good repute (*Leumundszeugnisse*) for the foster parents). On the basis of these documents the supervisory authority assessed the child's development and their relationship to the foster parents. If they arrived at a positive conclusion and, therefore, deemed an adoption to be in the interest of the child, they sent a so-called "permit by the supervising authority" (*aufsichtsbehördliche Genehmigung*) to the district office concerned.[86] The office then checked all the received documents for the assessment of the adoption and decided whether the legal requirements were fulfilled, whether the adoptive parents were suitable for receiving a child and whether this was for the benefit of the child (*Kindeswohl*) – on this, see the following paragraph.[87] If all these conditions were met the district office finalised the adoption, whereby the fostering parents became adoptive parents and legal representatives of the children. The children, in turn, received Swiss citizenship on being adopted and were able to exercise the same rights as biological children.[88]

The subject of the child's wellbeing could only be addressed from the point of view of the authorities involved, but not of the children involved, since the sources archived do not express their voices. Because the term "child's wellbeing" (*Kindeswohl*) (in the sources also referred to as "the child's interest" (*Kindesinteresse*), as a vague legal term, has not been defined more precisely, we paid close attention in our analysis of the dossiers as to whether and how the authorities concerned made reference to it. We were particularly interested in the lines of argument whereby they saw the child's wellbeing (*Kindeswohl*) as benefitting from an adoption. Thus, positive observations about the child or their development were put on record in the various authorities' adoption decisions; for instance, that by now they "spoke dialect"[89] and were mentally as well as physically in excellent shape ("healthy"[90], "joyful"[91], "vivacious"[92], "happy"[93] etc.) These developments were attributed to the "good care, parenting and mentoring"[94] of the foster parents; they were attested suitability in all points and an "affectionate relationship"[95] to each other, but also to the child. Often the authorities emphasised that the foster parents treated the child like their "own child"[96] and that he or she was able to grow up – also financially – "secure"[97]. In case their own biological children also lived in the family, "harmonious"[98] relationships between them and the foster children were mentioned, in order to show the complete integration of the foster children in the family. The authorities concluded from all this that the child was "exceptionally cared for"[99] even after the

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[85] Article 265, Para 3, *ZGB* 1973 as well as Sect 63 Para 2 *EG-ZGB* of 3rd July 1911/22nd June 1942.
[86] Article 268a, Para 1 and 2, *ZGB* 1973.
[87] Article 5, Para 2, *PAVO* 1988 as well as Hegnauer, Cyril: *Grundriss des Kindesrechts und des übrigen Verwandtschaftsrechts*. Vierte, überarbeitete Auflage, Bern 1994, p 93f., which refers to Articles 264 and 268a Para 2, *ZGB* 1973.
[88] Bitter et al.: *Adoptionen*, p 215f.
[89] For instance, see Dossiers Nos. 1, 12 und 18.
[90] For instance, see Dossiers Nos. 12, 52 und 53.
[91] For instance, see Dossiers Nos. 52, 59 und 71.
[92] For instance, see Dossiers Nos. 7, 12 und 29.
[93] For instance, see Dossiers Nos. 8, 11 and 48.
[94] For instance, see Dossiers Nos. 29, 52 and 63.
[95] For instance, see Dossiers Nos. 6, 8 and 78.
[96] For instance, see Dossiers Nos. 2, 4 and 48.
[97] For instance, see Dossiers Nos. 7, 22 and 41.
[98] For instance, see Dossiers Nos. 1, 46 and 74.
[99] For instance, see Dossiers Nos 3, 4 and 12.

adoption and that, therefore, it happened “in the interest of the child”[100]. One does need to take into account that the vast majority of these findings were made on the basis of only a few visits.

We compiled all of the necessary legal requirements in a list, which finally contained around 30 criteria. In the following chapter we show – by means of a table – which legal requirements were not fulfilled and to what extent. Criteria from ordinances and revisions of law, which were not in force for the entire research period, were only investigated in those procedures where they applied. For reasons of intelligibility the mistakes and shortcomings detected are correlated to the type of document (declaration of consent, birth certificate, medical report) and to the procedural step (fostering period, guardianship, supervision and investigation by municipal and cantonal authority). One does need to take into account that our analysis is based on potentially incomplete sources. We were also unable to identify in a systematic manner any potential errors of translation in notarised documents, since we were only able to perform a selective assessment of the Sinhalese documents. Also, since we received copies or scans by the municipalities, we were unable to check which documents are archived as originals or merely as copies.

[100] For instance, see Dossiers Nos 13, 20 and 50.

c) Quantitative analysis of procedures

Criterion	Shortcoming[101]	Number of cases concerned (n=85)
Declaration of consent by the supposed[102] biological parents	is not archived for either biological mother or biological father	12 cases[103]
	is not archived for biological father despite being known according to child's birth certificate[104]	11 cases
	has not been signed (by signature or fingerprint)	3 cases
	has been signed by the biological mother (Tamil according to her birth certificate) in Sinhalese script, the birth certificate by her in Tamil script. It is unclear whether she knew both languages or another person signed in her place[105]	1 case
	was notarised by Arumugam Thavanesan or Rukmani Thavanesan-Fernando[106]	56 cases
	was notarised by Subramaniam Parameshwaran[107]	8 cases
	was not notarised	1 case
	is dated three weeks before the birth of the child	1 case
	is dated after the adoption process in Sri Lanka	2 cases
	does not show a complete date (missing month)	1 case
	date of issue has been changed	2 cases
	child's gender is listed inconsistently	1 case
	child's gender was altered by hand	1 case
	child's birth date is listed inconsistently (2 affidavits present)	1 case
	domicile of biological mother has been struck through, replaced by a new one (in typescript) and St Gallen guardianship authority lists	1 case

[101] The document or procedural step could show several of the shortcomings listed.
[102] It remains an open question whether they were in reality the biological parents. See also our remarks on "acting mothers" in Chapter 5.
[103] In addition there were two cases where both parents were declared unknown ("foundlings" – *Findelkinder*), hence there are no corresponding declarations of consent.
[104] See our remarks on p. 30f.
[105] Surangika Jayarathne deciphered this contradiction for us – it would have only been conspicuous to a member of a St Gallen authority, if he/she had known both languages.
[106] These Sri Lankan lawyers, a married couple, had already attracted the attention of the Sri Lankan authorities back in 1982 due to their being suspected of commercial adoptions, see Chapter 5.
[107] This Sri Lankan lawyer was also involved in numerous international adoptions, which featured potential commercial adoptions; see Bitter et al.: *Adoptionen*, p 113.

	completely different domicile	
	biological mother’s religion is listed inconsistently	3 cases
	according to the birth certificate the biological parents are married; however, in the affidavit the biological mother states that the man referred to in the birth certificate is neither her husband nor the child’s father	8 cases[108]
Agreement to the adoption by the Sri Lankan authorities	is missing among the documents archived	2 cases[109]
	is unclear: the foster father states in the application for adoption to the district office concerned, that the Sri Lankan adoption decision is enclosed. However, the document cannot be found amongst any of the files consulted.	3 cases
	has not been signed by the judge (stamped only)	3 cases
Child’s birth certificate[110]	is missing in the documents archived	4 cases
	is unclear: the foster father states in the application for adoption to the district office concerned, that the Sri Lankan birth certificate is enclosed. However, the document cannot be found amongst any of the files consulted.	3 cases
	is missing, but declaration by a Colombo official is present that the child’s birth had never been registered	1 case
	has not been signed	7 cases[111]
	is illegible or it is unknown who signed it	5 cases

[108] In two of those cases the inconsistency is explained by reference to social discrimination; the biological mother is said not to have wanted to declare that her child was illegitimate in order to avoid being discriminated against.
[109] In one of those two cases a search for municipal files was only instigated after the compilation of this report in German. However, a copy of the decision by the Sri Lankan court is also missing in all other sources, in particular in the inventory of the local district office, which has been archived in the St Gallen state archive.
[110] In a few cases both the Sinhalese birth certificate has been archived as well as its English translation, in many cases only the latter. In those cases where only the translation has been kept, there is no possibility for a comparative examination of the data, especially of the signature(s). In contrast in one case no English/German translation has been filed, so the information could not be reconciled with its translation.
[111] As we were able to determine with the assistance of Surangika Jayarathne, there are an additional five cases where the biological mother acted as an informant for the birth certificate, but did not sign it. Instead, in the Sin(g)halese version, the relevant field contains the note that the document was registered according to “rule no. 16”. Rule No. 16 of the Sri Lankan *Births and Deaths Registration Act* of 1st August 1954 stipulated the circumstances and method of making a written declaration of a birth. Accordingly, a person acting as an informant for the birth certificate could submit information in writing, if they could not comfortably reach the registrar’s office or if they lived in a different area (*Division*) than where the child was born. However, the registrar could subsequently demand in writing for the informant to appear in the office within a week to confirm and potentially to complete the information given. Available as a pdf document at https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=94470 [18.05.2022]. In all five cases this was erroneously translated into English: hence, the English version of the birth certificate declares that the Sinhalese birth certificate was signed by the biological mother as an informant. This erroneous translation was notarised in three cases by Rukmani Thavanesan-Fernando, in one case by D.E.B. Perera. In one case the notarisation is missing entirely. In a further case the biological mother acted also as an informant for the data on the birth certificate, but did not sign it and, instead, one can find the note as to Rule No. 16 referenced above. In this case, the English translation – notarised by Rukmani Thavanesan-Fernando – is correct. In four additional cases an employee of the hospital where the birth took place acted as an informant for the birth certificate; they did not sign it, but, instead, we find a reference to Rule No. 16. The English translations of these four cases are correct.

	was not signed by the biological parent(s) but by an employee of the hospital where the birth took place	19 cases[112]
	English version was not notarised	4 cases
	English version was notarised by Rukmani Thavanesan-Fernando	58 cases
	English version was notarised by Subramaniam Parameshwaran	7 cases
	was altered: biological mother's year of birth corrected by hand (aged by 20 years)	1 case
	child's place of birth does not correspond with the information on other documents archived	2 cases
	shows several inconsistencies: the English version as well as the German translation list data on the biological mother, but none on the father; however, on the adoption decision by the Sri Lankan court the data belongs to the biological father (the first name is indeed male) and the child concerned is that man's and his wife's (without any further data on her). However, according to the birth certificate the biological father (erroneously registered as the mother) was single.	1 case
	has been cut: signature/stamp/notarisation is not visible	1 case
Medical report on the child	has not been archived	57 cases
	child's name is inconsistent with that on the other documents archived	1 case
	child's name is missing	1 case
	biological mother's name is inconsistent with that on the other documents archived	1 case
	biological mother's age is inconsistent with that on the other documents archived	1 case
	is unclear whether it exists (there is reference to it in other documents, but report itself has not been archived)	1 case

[112] With the exception of one case, where the declaration of consent was not signed at all, the biological mothers and/or fathers signed the declaration of relinquishment for adoption themselves, or rather, signatures with their names can be found on these documents.

Fostering permit	no fostering permit archived		7 cases[113]
	is unclear: no fostering permit on file, but a. supervisor for foster child(ren) appointed b. foster parents recommended for fostering in advance by the guardianship authority or c. the guardianship authority concerned states in a document that has been archived about the issuing of a fostering permit, but this is missing in the files → archiving error (*Überlieferungslücke*) or procedural error?		17 cases[114]
	definite fostering permit issued – after the child's entry to Switzerland[115]	1 week	2 cases
		2 weeks	2 cases
		3 weeks	8 cases
		4 weeks	4 cases
		ca. 2 months	10 cases
		ca. 3 months	9 cases
		ca. 4 months	2 cases
		ca. 5 months	5 cases
		ca. 6 months	1 case
		ca. 10 months	1 case
	fostering permit issued despite:	no written declaration on file by the foster parents on their willingness to bear the costs of raising the child	38 cases[116]
		report on child's previous life not on file	10 cases
		country of origin missing	4 cases
		foreign documents not or not completely translated	6 cases

[113] Six of these cases concern procedures where the foster parents had already taken in a child from Sri Lanka. However, there are no corresponding fostering permits for the procedures of their older foster siblings on file, merely letters of recommendation for the married couples concerned for the purpose of fostering foreign children.

[114] In two of these cases it is unclear whether a fostering permit had been issued, as the municipal files were missing at the time of completing this report in German and the documents of cantonal origin did not offer any conclusive answer to the question.

[115] The guardianship authorities often issued a fostering permit at the same time as putting a guardianship in place for the child. In one procedure the exact time of issuing the fostering permit cannot be determined from the sources available.

[116] One further case is unclear, as an affidavit of support is mentioned but not on file.

Guardianship and supervision of fostering			
	no guardianship in place		12 cases[117]
	guardianship only put in place for the Swiss adoption process, around two years after the child entering Switzerland		14 cases[118]
	guardianship put into place … after the child entering Switzerland[119]	ca. 1 week	4 cases
		ca. 2 weeks	3 cases
		ca. 3 weeks	2 cases
		ca. 4 weeks	9 cases
		ca. 2 months	13 cases
		ca. 3 months	7 cases
		ca. 4 months	2 cases[120]
		ca. 5 months	4 cases
		ca. 7 months	1 case
		ca. 10 months	1 case
		ca. 1 year	1 case
		ca. 1.5 year	2 cases
	no supervision by the guardianship authority (which also did not expect an annual report by the guardian)		31 cases[121]
	no evidence of annual visits by the guardian, fostering supervisor or trustee(s), of which without evidence of any visits of any kind		48 cases[122] 42 cases
	no trustee(s) nominated, of which potentially fostering supervisor understood and nominated as trustee		43 cases 23 cases

[117] In three of these cases a fostering supervision was in place with annual visits.

[118] In two of these cases a fostering supervisor or trustee visited the foster family annually during the fostering period. In two cases the foster family was only visited once. In three cases the fostering supervisor declared to have visited the foster family several times; however, there is no evidence whatsoever for this actually having taken place. In the other seven cases there is no evidence of a supervision of the fostering relationship by another institution. In one additional case, power of attorney (*Beistandschaft*) was put in place instead of a guardianship. On this fostering relationship there is a report by the fostering supervisor on file. In those 17 families who fostered several children from Sri Lanka the same guardian was appointed for all of a family's foster children.

[119] In two procedures the exact time of putting the guardianship in place cannot be determined from the sources available.

[120] In one of these cases the foster family moved to a different municipality four months after the child entered Switzerland. A guardianship was only put in place at their new domicile.

[121] In one case the guardianship authority instructed the foster parents to inform the guardian on their rights and obligations and, in particular, draw their attention to the reporting required. Hence, it illegally delegated this task to the foster parents. Additionally, in this case there are no reports by the guardian on file, with the exception of their statement on the adoption, and there existed no further supervision of the fostering by the fostering supervisor and/or person(s) of trust.

[122] In nine of these cases the guardianship explicitly demanded at least annual visits, but there is no evidence on file that these actually took place.

Assessment by municipal or cantonal authorities	Failure to investigate "good repute" (*Leumund*) at all or completely	23 cases[123]
	from amendment to *PAVO* (in force from 1st January 1989): foster family's circumstances not assessed/investigated by social worker or adoption intermediary agency	2 cases unclear
	no comprehensive investigation of an interested couple's circumstances for the fostering and later adoption of a child (assessment of the personality and health of the foster parents and foster child as well as their relationship)	23 cases[124]

Only two of the legally binding criteria identified can be shown to have been adhered to in all 85 fostering or adoption processes investigated: firstly, all adoptive parents were at least 35 years old or had been married for a minimum of five years at the time of the adoption and, secondly, each adoption was preceded by a fostering period of at least two years – indeed, some foster parents submitted their application for adoption before that deadline, only for the district office concerned to react by cancelling the process until the two years from the start of the fostering period had expired. Furthermore, with one exception, in every adoption process where a guardianship had been put in place, the adoption permit by the supervisory guardianship office (*vormundschaftliche Aufsichtsbehörde*) (until June 1991 the Justice and Police Department, afterwards the Department of the Interior) was on hand.

In four cases only files of cantonal but not municipal origin could be analysed, since in one case no communal documents had been archived, and in the other three cases no files from the relevant municipality were available to us at the time of completing this report in German. These four procedures were analysed nonetheless and appear in the table above, in each case with reference to ambiguities resulting from the incomplete archiving.

The placement activities of Alice Honegger

Sabine Bitter, Annika Bangerter and Nadja Ramsauer's study contains evidence on the problematic nature of Alice Honegger's placement activity. This also concerns the present investigation, since Alice Honegger and her Sri Lankan partner Rukmani Thavanesan-Fernando were involved in over 50 of the 85 child placements investigated. For instance, four children placed by Alice Honegger travelled from Sri Lanka to the Canton of St Gallen despite her not possessing a special permit for her activity in Sri Lanka at the time (May to December 1982). In one case there is no evidence on file that she assessed the foster family before placing a child there.[125] This is to be considered a grave error, for by placing the child from Sri Lanka with foster parents in Switzerland, "facts were created" (*Fakten geschaffen*) that were almost impossible to reverse, simply due to the geographical distance to the child's

[123] There are an additional nine procedures where explicit certificates of good repute (*explizite Leumunds-zeugnisse*) are missing, but the other evidence is on file, including recommendations by other people. Two further cases are unclear: the child's placement was handled by Alice Honegger according to the relevant adoption notice, but there are no individual dossiers in the Seewarte/Adoptio inventory of the St Gallen state archive. Potentially, Alice Honegger investigated the couples' good repute; it is not possible to exclude an archiving error. In the cases of the 17 couples who fostered several Sri Lankan children, their good repute was only investigated before the placement of the first child. In five of those cases current tax statements were obtained for the fostering of the second, third or fourth child. As Liliane Minder states, the good repute should have been assessed again before each additional placement. She considers simply trusting in a family's circumstances not having changed to be to the disadvantage of a further foreign child.

[124] In most cases the medical certificates are missing which attest to the good health of the married couple. In two procedures this point is unclear, since Alice Honegger demonstrably acted as agent, the corresponding dossiers, however, have not been kept at the St Gallen State Archive.

[125] Dossier No 80. Two further cases are unclear, as the relevant Seewarte/Adoptio dossier has not been found in the holdings of the St Gallen State Archives.

country of origin, as well as the fact that, according to Sri Lankan law, he or she was considered to be already adopted and thus had neither an actual nor legal connection to his or her biological parents. In probably three[126] adoptions Alice Honegger did not compile a Home Study Report, as the Ordinance on Adoption Placement of 28th March 1973 demanded. In addition to these shortcomings, in numerous cases, she compiled such a report before the municipality had issued a fostering permit to the future foster parents. Although this did not contravene current legislation, we found a source showing that at least one other swiss placement agency disapproved of such a course of action, and did not practice accordingly. Thus, in 1987 a married couple approached the Bern charity *Child Welfare – Adoption International*, which was also involved in international adoptions.[127] They asked for a Home Study Report in order to be able to apply to their municipality for a fostering permit. The psychologist and head of that consultancy and placement agency informed the couple as follows: "I'm afraid to have to tell you that we never compile a home study before a fostering permit is issued. If we compile a positive assessment, this is of no use to the family, should the municipality say no. However, the reverse happens more frequently: the fostering permit arrives and Ad. Int. [Adoption International – author's note] declines, because for us the question of coloured adoption and the third world (*Frage der farbigen Adoption und der 3. Welt*) becomes central more often than with the municipalities. In addition, we consider it important that the assessments happen independently. This means that we hand over the report only in reciprocity and, actually, only when there is a real prospect of cooperation."[128] As stated above, Alice Honegger compiled a number of Home Study Reports even before the fostering permit had been issued and, evidently, did not consider this approach to be problematic.

However, it would be wrong to ascribe the mistakes and shortcomings listed in the subsection below "solely" to Alice Honegger's insufficient placement activity. Our analysis yields that those procedures where she was not involved were no less inadequate. Consequently, many grave injustices (*Missstände*) originated in the inadequate work of the Sri Lankan as well as St Gallen authorities involved.

d) Analysis of Procedures

In none of the 85 procedures analysed total compliance with all legal requirements has been documented. The mistakes and shortcomings refer to different areas and are presented in detail below.

Assessment and Supervision

The lack of foster placement assessment and supervision of foster relationships by the St Gallen authorities is one matter, in which numerous cases were not dealt with according to the legal regulations. In a total of 24 cases it is unclear whether a fostering permit has simply not been archived or had never been issued. A further grave shortcoming consists in 23 children being placed with foster parents without the circumstances there having been comprehensively assessed in advance of the placement and later adoption. The fact that there were no or only partial records of the foster parents' so-called "good repute" and/or health was one aspect of this; a further one consists of the lack of declarations on file of the

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[126] Of these cases one occurred during the period in which Alice Honegger did not possess a permit for the placement of children from Sri Lanka. In a second case it is unclear whether she compiled a Home Study Report, as there are no dossiers archived on these two cases among the Seewarte/Adoptio files at the St Gallen State Archives. However, it is evident from the cantonal documents archived that Alice Honegger placed those two children from Sri Lanka.
[127] Dossier No. 83, municipal archive, p. 14.
[128] Ibid.

prospective parents ability to bear the costs of raising the child. Furthermore, the fact that for two thirds of the children there is no medical report on file is noteable, despite this being necessary according to the Civil Code (*ZGB*) of 1973. This report assumed a central significance, for, depending on a child's state of health, very different consequential costs had to be expected for the foster/adoptive parents, health insurance companies and, ultimately, also the municipalities. Furthermore, only this document facilitated an assessment of potential treatment and costs thereof for the child. Therefore, it would have been beneficial to the married couples interested in adoption as well as all the Swiss authorities involved to obtain a medical report for each child. As stated above, the revised *PAVO* of 1988 again drew attention to the fact that this document should be present when placing a foreign foster child. We assume here that this passage had to be clarified in law because, previously, it had not always been handled as such in practice. However, our analysis shows that also in numerous procedures after 1989 there is no medical report on the child concerned on file.

It is no less surprising that twelve children never received legal representation by means of a guardianship.[129] A further 14 children did not receive a guardian until shortly before the adoption,[130] in other words, only "pro forma".[131] This means that a total of 26 – or nearly a third – of all children were without legal representation during (almost) the entire fostering period. This is a particularly grave shortcoming, since in case of familial difficulties no person outwith the family could have advocated for them or made necessary decisions for them. Furthermore, the lack of a guardianship also meant that no legal representation of the child assented to the adoption according to Swiss law, but which by that same law would have been mandatory.

In addition, there are numerous cases where, despite a guardianship and/or fostering supervision having been put in place, there is no evidence on file of the fostering actually being supervised and that the guardianship authority or, respectively, the fostering supervisory authority (*Pflegekinderaufsichtsbehörde*), were informed annually on the foster family's situation. This shortcoming affected 48 of 85 Sri Lankan children. In 42 of these procedures, meaning, in the case of every second child, there is no evidence at all of any visits by a supervising person on file. In 31 of these cases the municipal guardianship authority did not even demand annual visits and reports by the guardian and there is no evidence on file that a suitably qualified person ever visited the foster family concerned.[132] However, suspending the annual visits, according to federal *PAVO* of 1977, would have only been permissible, if the appointed trustee could prove to the guardianship authority that the legal representative sufficiently supervised the fostering or any endangerment could be excluded on other grounds. In none of these 31 procedures is there any reference to one of these two exemptions or an explanation on file for waiving any supervision in the form of annual visits and reports.

As referred to above, from 1989, the guardian appointed was to be an independent person. Yet, after this important specification came into law, two children were nonetheless appointed a guardian who was related to the foster parents and, therefore, could hardly be considered

[129] One St Gallen municipality decided in the autumn of 1982 to appoint a guardian subsequently for each of the foster children resident there, as required by the Civil Code (*ZGB*) – until then it had only arranged for fostering supervision. At this time two foster children from Sri Lanka were living there.
[130] Among these we counted those cases where the guardian was only appointed at least eighteen months after the child entered Switzerland.
[131] On this see also Bitter et al., *Adoptionen*, p 220.
[132] The demands made in this respect to guardians diverged widely. As stated above, while some guardianship authorities only asked for a single report (statement on adoption – *Stellungnahme zur Adoption*) towards the end of the fostering period, some asked for annual reports, and others for a first report within three months and then a further one towards the end of the fostering period for the purpose of a statement on adoption.

independent. In two further cases we suspect a family relationship due to the guardian and adoptive mother bearing identical last names.

Additionally, every second child did not have a trustee. In a further 23 cases we suspect that the fostering supervisor was also understood to be the trustee. The cantonal *PKV* did not stipulate a minimum age for the trustee's charges (*Schützlinge*); despite the children from Sri Lanka mostly being new-borns, who, due to their lack of speech development, would have been unable to communicate with them during their first weeks and months, in such cases a trustee should have been appointed. As we see it, especially in the case of placing a foreign foster child, it would have been of the utmost importance to give them a further (or, in many cases, someone in the first place) external chaperon, especially considering the oftentimes lacking or inadequate supervision of fostering relationships addressed above. A trustee could potentially have chaperoned a child even beyond the adoption as a point of contact (*Ansprechperson*) for various matters which growing up as a 'foreign' adoptive child could have raised. This opinion is supported by the statement of the St Gallen governing council (*St Galler Regierungsrat*) in their Supplement to the revised Ordinance on Foster Children (*Nachtrag zur geänderten Pflegekinderverordnung*) of March 1991, according to which a trustee had, "empirically, a decisive significance for the fostering relationship."[133]

Furthermore, in almost every second procedure there is no written confirmation on file that the foster parents were willing to bear the maintenance costs for their Sri Lankan foster child. This is by no means an insignificant formality, as the lawyer Lena Rutishauser's assessment clarifies below.

The foster parents' obligation to pay maintenance costs was a requirement for the authorisation to foster a child. On the one hand, it served to protect the children and, on the other hand, it was intended to protect the community from having to pay for these children.

The obligation to pay the maintenance costs expired with the adoption, as the child thereby acquired a new legal claim to maintenance. The obligation also lapsed if the child left Switzerland but not if the foster relationship was terminated for another reason.

If a child was placed with foster parents without the provision that the child's costs would be covered and the adoption subsequently did not take place, the authority that nevertheless granted the authorisation was liable to pay the resulting costs for the child. The child or the community that had paid for the maintenance payments after the assignment of the claim could claim these costs back from the relevant authority.[134]

Lena Rutishauser

The question of costs formed a central basis of the decision-making process for the so-called "administrative care" instrument, which was repealed in 1981.[135] In view of this, it is surprising that the files available to us do not document the assumption of costs by the foster parents in almost half of the proceedings. If the question of costs was not clarified before the child entered the country, as required by law, this subsequently formed an obstacle to rejecting the adoption in question. As Lena Rutishauser has shown, the authority that nevertheless granted the approval would then have had to bear the financial costs incurred – which would hardly have been in their interest.

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[133] *Nachtrag zur Pflegekinderverordnung*, p 2.
[134] See Häfeli, Christoph: *Verordnung über die Aufnahme von Pflegekindern (from 19. Oktober 1977), Exposé zuhanden des Obergerichts des Kantons Aargau (Kammer für Vormundschaftswesen)*, September 1978.
[135] See also Unabhängige Expertenkommission Administrative Versorgungen (Hg.): *Organisierte Willkür. Administrative Versorgungen in der Schweiz 1930-1981*, Zürich 2019, p. 44ff.

Treatment of errors or deficiencies in Sri Lankan documents

In addition to the aforementioned lack of or inadequate supervision, the St Gallen authorities systematically ignored inconsistencies that appeared in the Sri Lankan adoption proceedings or their record-keeping. In twelve of the 85 proceedings, the children were adopted in Sri Lanka – and later also in Switzerland – although there was no written declaration of consent from at least one natural parent. This was despite the fact that in all twelve cases the biological mother would have been identifiable via the child's birth certificate.

In eleven cases, the consent to the adoption of the biological father is also not available, although he is listed by name[136] in the respective birth certificate of the child. His consent could only have been waived if he had been incapable of judgement or if there had been no legal parent-child relationship between him and the child – in all these cases, however, no documents exist to prove that any of these criteria applied. His consent would have lapsed if he could not be located. But then the authorities would have had to make efforts to locate his whereabouts. There is no evidence of such efforts by the Sri Lankan authorities, nor is there any evidence that the responsible St Gallen district office tried to make enquiries about the biological father. In three other cases, the biological father was identified on the birth certificate and married to the biological mother, but the latter refuted this information in her declaration of consent to the adoption. It is not possible to verify now which statement actually corresponds to the truth. In most cases, the information on the biological father from the birth certificate of the respective child was simply ignored; he would be noted in the Swiss documents as "unknown", thus rendering his consent to the adoption invalid. In a few procedures, the responsible district office addressed the missing declaration of consent on the father's side and argued that this had already been missing in the Sri Lankan court proceedings. Since the adoption had nevertheless been carried out there, it could therefore also be waived in the Swiss proceedings. The responsibility for verifying the conditions for adoption, in this case the existence of a central document, was thus improperly delegated to Sri Lanka alone. According to the lawyer Robert Zuegg, who wrote a paper on *Adopted Children from Distant Countries* in 1996 and had submitted a dissertation on the same subject ten years earlier, Swiss law should not in fact "impose on the biological parents any further protection than that granted by the country of origin. The consent provided under Article 265a of the Swiss Civil Code *(ZGB)* does not only affect the biological parents. The adopted child and the adoptive parents as well as the Swiss public also have an interest in strict standards being applied in this respect. Swiss law should therefore apply cumulatively, at least within the framework of the preliminary examination to be carried out by the Swiss representation abroad."[137] Therefore, according to Zuegg, it was not permissible to hand over the responsibility for obtaining the declarations of consent, if possible from both parents, to the Sri Lankan authority alone, provided that the above-mentioned points were complied with.

A further eight declarations of consent should have been considered invalid because they were not signed (three cases) or not notarised (one case), dated before the birth of the child (one case) or after the Sri Lankan adoption procedure (two cases) or did not contain a complete date (one case). In addition, the 56 declarations of consent certified by the Sri Lankan lawyer Rukmani Thavanesan-Fernando or her husband Arumugam Thavanesan, also a lawyer, have to be scrutinised. As Sabine Bitter and her colleagues have pointed out, Rukmani Thavanesan-Fernando's "integrity must be doubted"[138] because of the accusation of involvement in

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[136] In some cases, the date of birth and the profession and/or religious affiliation of the biological father are also recorded.

[137] Zuegg, Robert: *Adoptivkinder aus fernen Ländern. Studie zum präventiven Kinderschutz in der Schweiz*, Aachen 1996, p. 175.

[138] Bitter et al.: *Adoptionen*, p. 224.

commercial adoptions made against her as early as 1982. The St Gallen JPD, as the supervisory authority over the mediation agency, had therefore instructed Alice Honegger in the same year, just as the first children from Sri Lanka were being adopted in the canton of St Gallen, not to continue working with the Sri Lankan lawyer. The documents from the Seewarte/Adoptio holdings show that Alice Honegger disregarded this order. At the same time, there is no evidence that the JPD subsequently monitored whether Alice Honegger actually ended this undesired cooperation – in any case, there is no evidence in the surviving files that the supervisory authority issued a warning despite the long-standing continued cooperation. Apart from the certification by the Sri Lankan lawyers, 17 declarations of consent show considerable discrepancies that can be seen at a glance:

- The date of issue of the affidavit (two cases) or the sex of the child was changed by hand (one case)
- The indication of the child's sex does not match other surviving documents, such as the Sri Lankan birth certificate (one case)
- The date of birth of the child (one case) or the religious affiliation of the biological mother (three cases) is not consistent with other surviving documents
- The place of residence of the biological mother has been corrected (one case)
- The marital status of the biological mother does not match the corresponding information on the child's birth certificate; according to the latter she was married, according to the former she was single (eight cases).

In addition, the corresponding adoption decisions of the Sri Lankan court are missing in two proceedings. This is particularly significant because it is unclear and no longer possible to find out when, where and by whom the two children were awarded to the couple from Switzerland in Sri Lanka. This makes it almost impossible to search for the origin of the children. Research in the federal files would be advisable here in order to exclude the possibility of an archiving error.

The review of the birth certificates, which, as mentioned above, should have been available for the execution of an adoption, also revealed a considerable number of errors and deficiencies. Such a document was completely missing in four cases. In another three cases – the same ones mentioned in the previous section – it was mentioned but missing from the surviving files. Another adoption was carried out with the statement of a Sri Lankan Registrar (from Colombo) that the birth of the child had never been registered and therefore a birth certificate was missing. 58 of the available excerpts from the birth register were also authenticated by Rukmani Thavanesan-Fernando – as shown above, a St Gallen district Registrar should have been 'alarmed' at the mention of this name at that time. In addition, a total of 40, i.e. almost half of the birth certificates analysed, show remarkable inconsistencies or conspicuous features:

- Signature of person designated as informant missing entirely (seven cases) or illegible/by unknown person[139] (five cases)
- The birth certificate was not signed by a biological parent, but by an employee of the child's documented maternity hospital (19 Cases)[140]
- The English translation of the birth certificate was not authenticated (four cases)
- The birth year of the biological mother was corrected by 20 years (one case)
- The child's place of birth does not match the place of birth on other Sri Lankan documents (two cases)

[139] In this respect, 'unknown' meant that it was not possible to determine in what capacity the person signed the document from the available sources.
[140] For a conclusive interpretation of these figures, Sri Lankan experts would have to be consulted.

- The birth certificate is not complete, neither a signature nor a certification or a stamp of the responsible lawyer's office is recognisable (one case)
- The English version as well as the German translation of the birth certificate record information on the biological mother, none on the biological father, vs. the adoption decision of the Sri Lankan court, according to which the information on the birth certificate belongs to the biological father (first name is also male) and it is the child of this man and his wife (without further information on her). According to the birth certificate, the biological father (falsely registered as the mother) was unmarried (one case).

All these contradictions and anomalies were not commented on by any St Gallen authority. Only the lack of a declaration of consent was addressed by a few guardianship authorities and district offices (see the following case studies). It appears important to mention that among all the cases analysed, we were able to identify four that were affected by significantly fewer deficiencies compared to the other procedures.[141] All four adoptions under Swiss law were pronounced at the beginning of the 1990s and thus towards the end of our research period, when the revisions of the *PAVO* and *PKV* were already in force and thus a higher degree of supervision and professionalisation was in place than at the beginning of our research period. The four children in question were taken in as adoptive siblings by two married couples. In two of these cases, medical reports on the health of the children are missing. What has survived, however, are reports by Mallika Somaratne, the sister of Rukmani Thavanesan-Fernando, which contain information on the children's family of origin and the biological mothers' motives for releasing them for adoption. These documents can be considered as accounts of the children's lives so far. Apart from that, there is no reference to an explicit trustee in either case, but the representative of the foster child supervisors could have been understood as such.

In the third case, all the central documents have been preserved and almost all the procedural steps were carried out correctly and in good time. However, the ‘repute’ of the foster parents was not re-examined before this second placement of the children – the children arrived in Switzerland two years apart. Only a current tax statement has been provided, but the integrity of the foster parents had been comprehensively clarified prior to the first admission of the children, as required by law. The Sri Lankan documents also show an abnormality. The English declaration of consent of the biological mother is signed with a thumbprint. She is also listed as the informant for the birth certificate, but there is no thumbprint in the corresponding field with her signature. Instead, the original contains various Sinhalese words and an 'X', whereas the English translation, certified by Subramaniam Parameshwaran, incorrectly states that the thumbprint of the biological mother can be found there. So that we could clarify the matter, we consulted with Martin Jäger (State Archives, St Gallen) and asked Surangika Jayarathne and Thamali Kithsiri, both of whom speak Sinhalese, for advice and presented them with the two passages in question. Surangika Jayarathne translated the text in the Sinhalese version of the birth certificate by saying that the ‘X’ was the signature of the biological mother. We therefore assume that the biological mother was illiterate and used her thumbprint for the English consent form and an ‘X’ as her signature for the Sinhalese birth certificate. The described error in the certified translation therefore indicates a negligent method of working.

In the fourth case, a medical report on the child's health, a report on his/her life so far (if known) as well as the nomination of a trustee are also missing, although here too, the assigned fostering supervisor caseworker may have been understood as such. During our review of the

[141] cf. dossiers Nos. 56, 57, 60 and 61.

biological mother's declaration of renunciation and the child's birth certificates, we discovered that according to the English translations, both documents were supposed to be signed by the biological mother, but that the (supposed) signatures in question were in no way identical. We again asked Surangika Jayarathne and Thamali Kithsiri for an assessment and presented them with the two passages as clippings. They informed us together that the Sri Lankan birth certificate was not signed by the biological mother, but that in the corresponding field the translated words "signature is unclear" were written. The English translation of the passage, according to which there was a signature on the Sri Lankan document, is therefore incorrect. The translation was certified by Subramaniam Parameshwaran, who has already been mentioned several times.

We cannot assess the significance and scope of these anomalies in the Sri Lankan documents. However, our findings indicate that there are likely to be discrepancies between the Sinhala documents and the English translations. It does not seem unreasonable to conclude that a systematic review of all Sri Lankan documents would reveal further discrepancies. At the same time, this underlines the importance of systematic and correct translations of all Sri Lankan documents central to the procedures, as the revision of the PAVO from 1989 onwards had also required.

It should be pointed out once again that, in addition to the discrepancies mentioned above, there may be other fundamental inconsistencies in the above-mentioned four procedures, which we are not in a position to verify, such as incorrect information about the identity of the biological parents and the children. It should also be emphasised that the vast majority of the procedures analysed were affected by serious errors and deficiencies, as the following case studies illustrate.

Case studies

The most frequent deficiencies in the procedures were, as described above, the failure to observe missing and/or obviously incorrect declarations of consent by either or both of the biological parents, the failure to examine missing or incorrect birth certificates, the unlawful refusal to establish a guardianship, the lack of or inadequate assessment of the foster placement and parents, as well as the complete lack of or inadequate supervision of the foster relationship according to the existing files. In the following, we will show how this manifested itself in specific cases using various anonymised examples. It should be noted that the case studies presented are a selection, but by no means exceptions: They may differ in detail, but in their basic features they represent a considerable number of similar analysed cases of child adoptions in the period studied. Firstly, the examples were selected to cover the entire period under study. This reflects our observation that the procedures were managed badly over a considerable period of time. Secondly, that they represent the errors and deficiencies observed in the analysis of all procedures. Accordingly, two case studies were selected for each topic as mentioned at the beginning of this section. So even though they are assigned to certain errors/deficiencies for the purpose of overview, they show another characteristic that we encountered very frequently: In one and the same procedure, not only one of the errors/deficiencies mentioned occurred, but several at the same time. The subject areas cannot therefore be easily separated from each other.

In each case presented, it must be considered that it is based on information that we could not verify – for example, whether a child was actually born at the place and on the day mentioned in the birth certificate, or whether the persons described as his or her biological parents were in fact those parents. Every single statement about the child's earlier life history would therefore have to be accompanied by a question mark.

Handling of missing or inadequate Sri Lankan adoption documents by the St Gallen authorities

Example 1 (Dossier No. 4 & 5): In 1980, one of the first children during the period investigated arrived in the canton of St Gallen from Sri Lanka. Her foster parents had previously contacted Alice Honegger in order to find a 'foreign' adopted child. The orphanage office in their municipality of residence informed Ms. Honegger that it was impossible for the couple to take in a child from Switzerland as they already had two biological children. They would therefore have to look for a child abroad. The couple themselves sent a letter to Mrs Honegger in which they asked for a boy and a girl to be taken in. The cantonal immigration police then issued them with two entry permits; one for an Indian girl, one for an Indian boy. It indicated that these entry permits replaced those for a girl from Kenya. This shows that a child suitable for the couple was being sought in various countries. For the purpose of clarifying the foster placement, the St Gallen Department for Foster Child Supervision then paid a visit to the couple and confirmed in a detailed report that they fulfilled all the requirements for taking in a foster child. A foster child permit has not been located, but comprehensive documents attesting to the couple's impeccable repute can be found. A member of the St Gallen city council also recommended to Alice Honegger that the couple take in a foreign foster child. In 1980, as mentioned above, the couple brought a girl from Sri Lanka to Switzerland – why they did not take in a child from India is not documented. The couple had adopted the girl at the Colombo District Court, the city where according to the Sinhalese birth certificate, she was born. The English translation of the birth certificate, which was not authenticated, does not mention a place of birth. This document is flawed with regard to a second aspect that we have encountered several times whilst analysing the procedures: it states that the Sinhalese original was signed by the biological mother who also served as the informant. But this is not the case; the Sinhalese birth certificate was not signed, but states in the relevant box that the document in question was registered in accordance with Law No. 16.[142] It is unclear when the birth mother made her declaration of consent; the date of issue was deleted and changed by hand, the number originally listed there is no longer legible. No St Gallen authority, which inevitably came into contact with these documents for the purpose of checking the requirements for adoption, commented on these anomalies in writing. About two months after her arrival, the girl was assigned a guardian – the city councillor who had previously recommended the couple for foster care. He reported annually on the development of the foster relationship. A trustee or fostering supervisor representative, on the other hand, was not appointed. After the expiry of the two-year foster care period, the adoption was executed in accordance with Swiss law. The respective adoption decision of the district office is questionable in three aspects. Firstly, it notes two different dates of the adoption in Sri Lanka, five months apart. One date corresponds to the information given by the court in Colombo; it is not comprehensible what the second date is based on. Secondly, the child's place of birth, which is typed in, has been struck out and replaced by another by hand. Thirdly, the district office records two different dates, 14 months apart, for the biological mother's declaration of consent. One of them matches the documents available from Sri Lanka; the origin of the second one cannot be traced from the surviving sources. Despite all the inconsistencies described, the district office considered all the requirements for an adoption to be met and approved it.

A few months after the arrival of this child, the couple started looking for a second foreign child. In 1981, this desire was fulfilled and another girl from Sri Lanka joined the family. According to the English translation – the Sinhalese version is incomplete; the second page with the corresponding passage has not survived – his birth certificate was not signed by the

[142] See also Footnote No. 111.

biological mother, but by an employee of the maternity hospital. When the child was about four weeks old, the birth mother signed a declaration of consent to the adoption. In the English version of this document, she stated that she was the mother of the boy in question – someone (who exactly is not known) corrected the English "male" to "female" by hand, since the child, which was finally awarded to the couple from Switzerland by the family court in Colombo two weeks later, was as mentioned above a girl. In the relevant adoption decision of the court in Colombo, the biological father was declared as unknown, whereas on the birth certificate of the child, a name and date of birth are entered in the field for father. The biological mother did not make any statements on the biological father of the child in her affidavit for the release for adoption, but only stated that she was not married. No surviving document mentions whether the man named on the birth certificate was the father of the child and if so, whether his whereabouts were known and whether he cared for or attempted to care for the child. No cantonal or communal authority that subsequently came into contact with this case raised these discrepancies and ambiguities. Three months after the child's entry into Switzerland, the couple was granted the corresponding foster child permit – when the application for it was received cannot be traced from the surviving sources – and a guardianship was established. The guardian of the child was the foster parents' family doctor of many years. No annual visit reports are available, neither from him nor from the representative of the foster child supervisor who was evidently appointed. Moreover as no trustee was appointed, there are no documented indications that the foster relationship was supervised. The guardian as well as the guardianship authority unanimously supported the adoption of the child, whereupon the competent district office pronounced the adoption with the approval of the JPD in 1983.

Example 2 (Dossier No. 42): In 1983, a girl was born in Sri Lanka. Around six months later, she was adopted by a married couple and taken to Switzerland. The guardianship authority at the girl's new place of residence had granted the couple a foster child permit about one and a half years earlier, based on a visit report, and had fully confirmed their suitability to take in a child. The girl was assigned a representative of the fostering supervisor, from whom, however, no reports or references to visits appear to have survived. The guardianship was established about a week after the child's arrival in Switzerland. The secretary of the resident guardianship authority acted as guardian. It is not possible to determine exactly when the birth mother gave her consent to the adoption on the basis of the surviving files, since the document in question does not record a month, but only the day and year as the date of issue. In addition, the signature of the biological mother is missing on the affidavit. It was authenticated by Arumugam Thavanesan, the husband of Rukmani Thavanesan-Fernando. In the documents of the St Gallen authorities involved, a specific month appears as the date of issue of the affidavit, but no written documents from Sri Lanka have survived to support this information. About five months before the adoption was finalised under Swiss law, the guardianship authority at the foster family's place of residence decided that the biological parents' consent to the adoption could be waived. It is not clear whether the birth mother's incomplete or flawed affidavit was available to them at that time. If so, it is conceivable that they wanted to deal with the lack of a flawless affidavit with this arbitrary decision. In any case, they justified their decision by saying that they could decide themselves whether to refrain from a declaration of consent. This opinion contradicted the legal regulations. Since they had supported the couple in taking in the child, the authority continued, it was logical to dispense with the consent of the natural parents. "This approval would also be virtually impossible to obtain, since the father of (name of child) is unknown and the mother is currently of unknown residence. Since (name of the child) was placed with family (name of foster family) for subsequent adoption, the natural parents cannot reacquire the previously

forfeited right of consent by subsequently expressing affection. The consent of both parents is therefore renounced",[143] according to the guardianship authority in its argumentation. Actual consent to the adoption is therefore missing from this decision. Six weeks later, the girl's guardian wrote to the responsible district office that the decision to dispense with the consent of the natural parents had in the meantime become legally binding and that all requirements for adoption had thus been fulfilled, which meant that he was applying for adoption. A few months later, the JPD noticed the lack of consent to the adoption on the part of the guardianship authority and consequently made enquiries. The guardianship authority replied that it had indeed given its consent to the adoption in its decree, but that it had not explicitly stated this by mistake. They asked the JPD to take note of this consent and referred to the positive report of the guardian. Neither the above-described circumstance that the declaration of consent of the biological parents did not have a signature, nor the arbitrary and incorrect decision of the guardianship authority not to require a declaration of renunciation from the biological parents, disturbed the guardianship supervisory authority; it did not address either of these issues in any surviving document and subsequently approved the adoption. The competent district office only wrote in its adoption decision that the biological mother had consented to the adoption and that the biological father did not have to do so because he was unknown. It did not address the absence of the month in the mother's declaration of renunciation, but considered all requirements for adoption to be met and subsequently pronounced it.

Inadequate clarification of the foster placement and/or the foster parents

Example 3 (Dossier No 13): In 1982, a boy from Sri Lanka arrived in Switzerland with his adoptive parents, who according to Swiss law were still foster parents. It is not known how they found the child, as far as we can tell Alice Honegger was not involved in this procedure. The boy was about three months old when he arrived in Switzerland. His birth certificate was not signed by his biological parents, but instead by the nurse on duty at the maternity hospital. The birth certificate shows the name, date of birth, place of birth, ‘race’ and profession of the biological father, who, according to the document, was married to the child's biological mother. In all the other documents from Sri Lanka and Switzerland, the biological father is not mentioned or is simply declared as ‘unknown’. The biological mother gave a declaration of consent to the adoption about six weeks after the birth of the boy – but for a female child. This sole surviving, demonstrably incorrect affidavit, certified by Rukmani Thavanesan-Fernando, was used without comment by the Sri Lankan court for the adoption by the couple from the canton of St Gallen. No declaration of consent is found from the biological father; according to the affidavit of the biological mother, they were not married. The foster parents received a permit for foster children from the competent guardianship authority before the child's arrival in Switzerland. The guardianship was only established for the Swiss adoption procedure, about 22 months after the child's arrival, and only after the responsible district office had pointed out that this procedural step was mandatory. The guardian who had previously been responsible for the family as a fostering supervisor had also recommended the couple for the granting of a foster child permit. According to her own statements, she visited the family "several times"[144] during the two-year foster care period, but there is no evidence of this. Since the only evidence available is a statement by the guardian on the intention to adopt, there is no evidence of supervision of the foster relationship in the sources consulted. A letter from the guardianship authority also shows that it had little knowledge of what was going on in the foster family, as it attributed Colombian nationality to the foster

[143] Dossier No. 42, StASG A 359/2.1986-04, p. 15.
[144] Dossier No. 13, Gemeindearchiv, p. 16.

child shortly before the adoption. Furthermore, it failed to clarify the character of the couple, nor was their state of health documented. Also missing was a written assurance from the foster parents to pay for the child's maintenance costs. Despite the lack of these essential documents, the guardianship authority still issued a foster child permit. The responsible district office and the JPD also considered the requirements for an adoption to be fulfilled. The responsible district office clerk merely drew attention to the alleged "clerical error"[145] regarding the contradictorily stated gender of the child. This was sufficient to grant the adoption.

Example 4 (Dossier No. 49): In 1986, the foster child supervisor of a St Gallen municipality certified that a married couple enjoyed "favourable"[146] conditions for taking in a foreign foster child and correspondingly granted them a provisional permit. Due to the comparatively sparse files available on this procedure, it is not understandable under what basis the foster child supervisor had arrived at this assessment. A short time later, the couple brought a five-week-old girl from Sri Lanka to Switzerland. This child was also taken in without Alice Honegger's involvement. The birth certificate of the girl had not been signed by her biological parents, but by a person who worked at the maternity hospital. The biological mother, according to the records received, lived with her baby in a '*Good Shepherd'* home in Sri Lanka after the birth. She was single and only 17 years old when she signed the declaration of consent for the release for adoption. The biological father is described as unknown in all surviving documents and the responsible St Gallen district office recorded that no steps had been taken to establish paternity. In Switzerland, the girl was placed under guardianship about two months after her arrival in Switzerland and at the same time the definitive foster child permit was granted. The fostering relationship was placed under foster child control, but no supervisor was appointed as part of this process. The guardian was the father of the foster father and at the same time acted as a municipal official. The guardianship authority only demanded a statement from him on the adoption after the two-year foster care period had expired. This statement, however, has not emerged. Accordingly, there is no evidence whatsoever of oversight of the fostering relationship. Evidence of the foster parents' good repute and health, their obligation to pay the child's maintenance costs and a medical report on the child are all missing from the files we consulted, which we had received from cantonal and communal sources.

In other analysed procedures, comprehensive clarifications of the foster placement and the foster parents were made before a Sri Lankan child was allowed to enter the canton of St Gallen. During the analysis, we noticed two individual cases in which the social workers involved expressed doubts about the foster placement or the suitability of the couple in question to take in a foreign foster child. These two procedures and the handling of the concerns expressed by the authorities involved will be described in the next section.

Dealing with doubts about the future foster placement

Example 5 (Dossiers No. 62 & 63): In 1989, a married couple in the canton of St Gallen, who had remained childless until then, approached the guardianship authority of their town of residence with an application for a foster child permit. Two social workers – independently of each other – then clarified the couple's relationship. Based on several discussions with the couple, the first social worker came to the conclusion that the admission procedure should be suspended for two years because the couple had not yet "worked through the process of saying goodbye to their own desire to have children"[147] enough. They would search too

[145] Dossier No. 13, StASG A 325, p. 23.
[146] Dossier No. 49, Stadtarchiv, p. 1.
[147] Dossier No. 62, Gemeindearchiv, PDF No. 11, p. 2.

quickly for a "replacement"»[148], but an adopted child should never "fill a gap".[149] The first social worker’s colleague came to a similar conclusion. He recommended that the couple should not be given a foster child at this stage. They should first "come to terms with their own childlessness as well as with adoptive parenthood".[150] The guardianship authority followed this line of argument: the two specialists had expressed reservations about the "inner maturity"[151] of the couple and had requested that the application be refused. Since the couple did not rule out taking in a "child of a different race"[152] but since in the case of such a child "the demands on the foster parents are higher"[153] than "in the case of children from their own culture"[154], the guardianship authority rejected the application for a foster child permit. The couple then appealed with the help of a lawyer. They were also supported by Alice Honegger, whom the couple had contacted for the purpose of searching for and mediating the procurement of a foreign child. Alice Honegger advised them not to give up, as the municipality was only allowed to refuse a foster child permit to "serious criminals"[155]. However, the guardianship authority rejected the appeal and informed the couple that their original decision was still valid for about a year and a half. In its justification, it again referred to the special situation arising from taking in a foreign foster child: "For the guardianship authority (name of the municipality), the consideration of the best interests of the child takes precedence over the complainants' understandable wish for 'their own' children. A child of a different race brought to Switzerland for the purpose of adoption can hardly be returned to the home country if the adoption does not take place. It has been proven that children from other cultures or with a different skin colour are met with scepticism and aversion in rural communities. This double burden must also be taken into account in the present case. (...) In the case of foster child permits for foreign children for the purpose of later adoption, (...) a higher standard is to be applied. We find that in the spirit of the UN Declaration on Adoption and Foster Children of 3 December 1986, restraint should be exercised in adoptions across national borders."[156]. This statement by the guardianship authority seems to us noteworthy in two respects. The terminology used in it, especially that of ‘different race’ attributed to Sri Lankan children, is shocking from today's perspective. At the same time, within the framework of our sample, it proved a rarely documented awareness of possible racist experiences of Sri Lankan children in their new homeland, as well as an awareness of the UN declaration mentioned, which did not often seem to be present in other cases.

Because the couple still did not accept the decision of the guardianship authority, the cantonal council subsequently had to deal with the matter. It commissioned a psychological assessment of the couple's personal and educational suitability to take in a foster child for the purpose of later adoption. This was carried out by the Child and Youth Psychiatric Service. Based on interviews and home visits by a psychologist and a social worker, the expert assessment certified the couple's educational and personal abilities to take in a child. The only condition was that the child to be taken in was a healthy infant. The guardianship authority then agreed to review the situation again. This time they came to a different conclusion and granted the couple a provisional foster child permit. About ten months later, the couple adopted a girl in adoption proceedings before the District Court in Colombo. She was barely one month old at

[148] Ibid.
[149] Ibid.
[150] Dossier No. 62, Gemeindearchiv, PDF No. 12, p. 1.
[151] Dossier No. 62, Gemeindearchiv, PDF No. 12, p. 2.
[152] Ibid.
[153] Ibid.
[154] Ibid.
[155] Dossier No. 62, StASG W 354/2.2, p. 200.
[156] Dossier No. 62, Gemeindearchiv, PDF No. 22, p. 3.

the time. Her biological mother gave her consent on the day of the Sri Lankan adoption proceedings, certified by Rukmani Thavanesan-Fernando. Her sister Mallika Somaratne has provided an account of the girl's previous life and background. According to this report, the biological mother was single, had no work and no income. She lived with her mother and her eight older children. As part of a poverty alleviation programme, she received a small donation of monies and food from the Sri Lankan government every month. The biological father of the girl, who was adopted in Switzerland, had suffered a leg injury in an accident, which made him disabled and unable to work. Previously, he had been a painter without regular work. He lived with relatives in Colombo and had nine children with the girl's biological mother. The mother had given the child up for adoption because she could not support her. Only this document mentions the name of the biological father; in the other surviving documents he is described as unknown. He is also not listed on the girl's birth certificate. In the birth mother's declaration of renunciation, there is no information about him, only that she was not married. According to the English translation of the birth certificate, the Sinhalese original was not signed by her, but by one of her brothers. Rukmani Thavanesan-Fernando authenticated the English version.

The girl was placed under guardianship about two and a half months after her arrival in Switzerland, and at the same time the couple was granted a definitive foster child permit. The guardianship authority stated that it had carried out a thorough preliminary examination before granting the permit. The couple's good reputation was also comprehensively established. An affidavit of support regarding maintenance costs and an insurance certificate for the child were also provided. There is also a medical report on the child from a Swiss doctor, which refers to a positive medical report from Colombo. The latter, however, is not found in the files consulted. The guardian was asked to submit a report every two years. The first and only surviving report from him is dated 22 months after the child's arrival in Switzerland. Since neither a fostering supervisor nor a trustee was appointed, there is no evidence that the foster relationship was supervised in this case either. This seems to us to be extremely remarkable in view of the fundamental doubts expressed by two specialists and, at least initially, also by the guardianship authority in the period leading to the grant of the provisional foster child permit. The adoption was unconditionally approved by the competent agencies and granted in 1993.

During the same period, the couple was granted another preliminary foster child permit, based on a comprehensive social report that was positive in all respects. As a result, the couple adopted a second girl in Colombo in 1994, again through the mediation of Alice Honegger. Her biological mother stated in her declaration of renunciation that the child's father had abandoned her and the child and that she had no means to provide for the child. These circumstances had led her to place the child in a reception home. Her birth certificate had not been signed by her, but by a doctor from the maternity hospital. Both documents and their English translations were authenticated by Rukmani Thavanesan-Fernando. A medical report from Sri Lanka certified the girl's good health and development. A report on the girl's life before her adoption is missing; according to a statement by the foster father, he had asked for it, but was told that no information on her life history existed. About one and a half months after the girl's arrival in Switzerland, a guardianship was established over her and a definitive foster child permit was issued. As the guardianship authority again only required reporting every two years, only one report from the guardian in the form of a statement on the adoption is available. As with the older adoptive sister, no foster child supervisor or trustee was

appointed. There is therefore no evidence of supervision during the foster care period. The adoption was declared in 1996.

The example that has just been presented is the second most recent case analysed in our sample. Although the legal basis had theoretically improved with the revisions of the *PAVO* and the *PKV*, this case nevertheless shows that even in the mid-1990s there were major deficiencies in the procedures. The following example also substantiates this finding.

Example 6 (Dossier No. 70): In 1991, a previously childless couple approached Alice Honegger with the desire to adopt a child from Sri Lanka. The mediator then prepared a positive social report on the couple for the attention of the Sri Lankan authorities. As permitted by the amended federal PAVO from 1989, a further social report was prepared by a social worker from the Maternity Counselling and Adoption Placement Service. This report, after detailed observations on the couple, their partnership and living conditions, concluded that it would be necessary to get to know the couple even better. The report for the attention of the Sri Lankan authorities was translated and the responsible social service confirmed that it corresponded to the wording – however, in this translated version the rather negative statement that they did not know the couple well enough was omitted out of hand, which is why the statement that the wording corresponded to the original report was also incorrect. The social worker's recommendation was thus disregarded. Instead, the couple received a provisional foster child permit and soon after received a notification from Colombo that a suitable child had been found. The couple then adopted a four-week-old girl in Colombo. Three declarations of renunciation are available from her biological mother. All of them show contradictory information about the child's date of birth and were authenticated by Rukmani Thavanesan. She also authenticated the English translation of the birth certificate, stating that the Sinhalese original had been signed illegibly. This statement is not correct, as the signature of the birth mother, who is also listed as the informant for the birth certificate, is clearly legible. A report on the child's origin has also been preserved from Rukmani Thavanesan's sister Mallika Somaratne. In contrast to all other documents, this report also contains the name and other information about the biological father. He had served as a soldier in the Sri Lankan army and had a secret love affair with the child's mother. Since then he left the woman and his whereabouts are unknown. The child's biological mother lived with her parents and siblings. They all led a ‘spartan’ lifestyle on the pay of the father of the family, who was also a member of the Sri Lankan army. Because the biological mother could not support the child, she had agreed for the child to be adopted. It was impossible to get in touch with her at that time or in the future.

The girl did not receive a guardian until ten months after her arrival in Switzerland. The guardian was the person who had clarified the couple's situation at the outset of the proceedings. At the same time, the definitive foster child permit was granted and a fostering supervisor was established. The appointment of a trustee was waived, possibly because the person supervising the foster child was understood as such. Although the foster parents' ‘repute’ had not been comprehensively clarified and the birth mother's declarations of renunciation contained contradictory information, the adoption under Swiss law was approved by all the authorities involved and finally pronounced by the competent district office.

Lack of legal representation of the child and lack of and/or insufficient supervision of the foster care relationship

Example 7 (Dossier No. 20): In 1980 in a municipality of St Gallen: A married couple, who had remained childless until then, had been looking for some time for a possibility to adopt a

child. At best, they wanted a child from Switzerland. However, they were informed by the local adoption agencies that there was a waiting period of about seven years for a Swiss child. This seemed to be too long, so the couple turned to Alice Honegger for help in finding a foreign child. Alice Honegger obtained a recommendation for the admission of a foreign foster child from the guardianship authority of the municipality in which the couple lived. A Swiss doctor also confirmed that because of medical grounds the wife was unable to have children of her own. Alice Honegger attached a Home Study Report – which she had written herself and which was entirely positive – to these documents and sent them to Colombo. A girl was born there at the end of 1980 and her biological mother gave her up for adoption about six weeks later by means of a fingerprint. It is not known who the child's biological father is. Two weeks later she was adopted in Colombo and then brought to Switzerland. It was not until four and a half months later that the couple received the corresponding foster child permit. At the same time, the communal guardianship authority appointed a Nun to act as a trustee for the girl from Sri Lanka, to visit the family at least once a year and to compile a report. Only one report from her for the entire period of care has survived. The girl only received legal representation through a guardianship for the adoption procedure, about two years after her arrival in Switzerland. A letter from the guardian, in which he supported the adoption of the girl by the couple, shows however that he hardly knew the foster family. Thus, after no suitable domestic child could be found, the foster father "returned home with the two-month-old Indian (sic) child (the child's first name)".[157] The first name of the child referred to here did not correspond to that of the foster daughter from Sri Lanka, which is why it was deleted and replaced by the correct name – by whom, is unclear. The guardian went on to say that conditions in the foster family were in perfect order and were also regularly checked by the maternity advisory service (*Mütterberatungsstelle*). Thus ends the rudimentary report with very short arguments in favour of adoption. There is no evidence of regular visits to the foster family in the sources consulted; it is possible that the trustee was erroneously placed with the maternity advisory service.

In its statement on the adoption, the guardianship authority referred to the aforementioned guardian's report. However, it quoted statements from it that were not in the report; for example, that the guardian had determined that the child was being raised by the foster parents impeccably. The JPD also based its approval of the adoption on statements made by the guardian that do not appear in the guardian's report, instead these statements do appear in numerous adoption cases we have investigated, namely that the foster parents had a good relationship with the child and had shown that they were willing and able to care for the child and provide a good upbringing. The adoption was therefore in the best interests of the child. In the absence of reliable statements by the guardian, the authorities thus resorted to standard formulations that were regularly used to approve an adoption, but these were not based on any evidence in the specific case.

The adoption under Swiss law was declared two years after the child's entry into the country. In the records of the municipal archives in question, there is a letter from the mayor of the municipality to Alice Honegger, dated about one year after the adoption was completed. According to this letter, Mrs Honegger had asked the municipality to investigate the care of the adopted child "after it had been established that this child was not being treated well in the family (...)"[158]. Since the family was now living in another municipality in St Gallen, the head of the local council (*Gemeindeammann*) advised Alice Honegger to contact the other municipality. In the corresponding dossiers of the Seewarte/Adoptio, there are no documents on this ever happening. An inquiry and search in the archives of the municipality where the

[157] Dossier No. 20, StASG A 393/5.1983-06, p. 21.
[158] Dossier No. 20, Gemeindearchiv, p. 2.

child moved to was also unsuccessful; no files on the adoptive family in question can be found. It therefore remains completely unclear on what Alice Honegger based her accusation and what the fate of the adopted girl was. There is only one other letter from the municipality where the family had first lived, dated five years after the correspondence with Alice Honegger mentioned above. In it, the president of the guardianship authority confirmed to the adoptive mother that his authority had not dealt with any complaints about the care of the children. When the girl was adopted, it had been stated "that the child would be well looked after and lovingly cared for by you".[159] Why the adoptive mother needed this confirmation is not clear based on the surviving sources. However, it is clear from them that the treatment of the child was still a subject of discussion years after the adoption had been completed. It also seems remarkable to us that neither the archives of the municipality where the child moved to, nor the corresponding case file of the Seewarte/Adoptio collection in the State Archives of St Gallen contain any documents on these subsequent events.

Example 8 (Dossier No. 64 & 65): In 1990, a woman in Sri Lanka put her thumbprint on a document and thus gave her daughter – whom she had given birth to about a week earlier – up for adoption. On the same day, her girl was adopted by a Swiss couple at the District Court in Colombo. The couple had collected the child themselves from an orphanage for this purpose, and met the biological mother in the process. The biological mother's statement of renunciation is available in triplicate. All versions were authenticated by Rukmani Thavanesan. From her sister, Mallika Somaratne, there is also an English account of the life of the mother and child to date. In it, she states that the biological mother was Muslim, which corresponds to the information in the Sinhalese birth certificate – the affidavit, on the other hand, states Buddhism as her religious affiliation. Ms Somaratne also wrote that the child's birth mother was illiterate, unemployed and had no source of income, and that she lived with her parents and her three siblings. Her father and one brother earned a small income, but the family lived from hand to mouth. She also mentions the name of the child's biological father, whereas he is declared unknown in all other Sri Lankan and Swiss documents that we have seen. According to Ms Somaratne, he was also a Muslim, a peddler of textiles and had no income. He had died in an accident when the biological mother was pregnant with the child. The birth mother had given the child up for adoption because she could not take care of it due to her poverty and wished to have no contact with it.

The information on the child's origin was therefore available to the foster parents and the involved St Gallen authorities. A psychologist from the regional counselling centre had clarified the future foster placement about two months before the child's arrival and assessed it positively. This assessment was not based on a personal visit, but only on telephone conversations with the couple. According to her own statement, the counselling centre psychologist chose not to make a home visit because the guardianship authority had already clarified the foster placement and granted a foster child permit. In fact, a provisional foster child permit for the couple exists, but it was issued for a child from Peru. The couple received the definitive foster child permit, issued in the name of the child in question, three months after the child's arrival in Switzerland. At the same time, the fostering relationship was made subject to foster child control and a responsible supervisor was appointed.

A guardianship was not established, although the guardianship authority had stated in its explanations for the granting of the provisional foster child permit that the child needed legal representation in Switzerland and that they themselves, i.e. the guardianship authority, had to ensure that this was properly determined: "As a rule, the appointment of a guardianship should be sought"[160]. This statement is incorrect because, as shown, a guardianship was

[159] Dossier No. 20, Gemeindearchiv, p. 1.
[160] Dossier No. 64, StASG A 321/2/93.207, p. 55.

obligatory according to the ZGB. The reason why this was not done is not clear from the files that have been made available. Since no reports were found from the foster child supervisor and no documents for the use of a trustee, there is no evidence that the foster relationship was supervised in this case either.

About half a year after the child's arrival in Switzerland, the family received a new member, a second girl from Sri Lanka – the couple had received the corresponding foster child permit about two and a half months earlier, again on the recommendation of a psychologist from a regional advisory centre. The girl was born in 1991. When she was one month old, her biological mother gave her up for adoption, whereupon she was adopted by the couple from Switzerland on the same day in accordance with Sri Lankan law. There are also three versions of the declaration of consent from the birth mother for this procedure, but none of them are signed, but all of them were certified by Rukmani Thavanesan. The biological mother also did not sign the birth certificate of her daughter. The Sinhalese and English versions name an employee of the maternity hospital as the Informant for the birth certificate, who, however, did not sign the document. Instead, there is a reference in the relevant field to Regulation No. 16, according to which the document had been registered. There is also an English report by Mallika Somaratne concerning this girl and her biological parents. According to this report, the biological mother was unemployed and had no income. She lived with her parents and siblings in a self-built two-room house. Her father and two brothers worked irregular jobs; the family was destitute. Contrary to all other documents, the name of the biological father is also mentioned in this report. He worked as a peddler of textiles and had promised the natural mother to marry her, but then left when she became pregnant. The birth mother decided to give the child up for adoption because she and her family could not support her due to poverty. This report also ends with a statement that the birth mother wished never to be contacted again.

Nor is there any evidence of supervision for this foster relationship. A guardianship was not established, nor was a fostering supervisor or trustee appointed. The definitive fostering authorisation is also not to be found in the consulted records. It is interesting to note that these two adoptions are the only procedures we examined in which the competent district office commented on the relatively early declarations of consent by the biological mothers. In Switzerland, as mentioned, there was an embargo period of at least six weeks plus a right of revocation of the same duration. The district office dealt with the two adoptions in a single procedure. In its adoption decision, it held that all requirements for an adoption had been met, although the birth mothers' declarations of renunciation had been made less than six weeks after the birth of the children. In both cases, the district office found it "objectionable"[161] to deny the adoptions based solely on this formal requirement. The birth mothers had undoubtedly been informed that their children would travel to Switzerland and live there. Rejecting the application solely on this point would not be in the children's interest. The favourable situation in the foster families also spoke in favour of the adoptions. Despite the above-mentioned shortcomings in the declarations of consent of the biological mothers, or the lack of legal representation via guardianship, or the waiver of the monitoring of the foster relationships by a foster child supervisor/trustee, neither the district office nor the Department of Home Affairs (as guardianship supervisory authority) addressed the issue. So the district office declared the child adoptions in 1993.

Change of foster care and/or adoption placement

As previously stated, we were only able to inspect files on foster care and adoption proceedings. Since the municipalities, in view of the effort involved, only searched their

[161] Dossier No. 64, StASG A 321/2/93.207, p. 10.

records up to the point of the completed adoption, we do not have any information on the subsequent events. There is only one exception, in which records were kept because there was a change of foster and/or adoption placement due to family difficulties. It is conceivable that other children from Sri Lanka who were adopted in the canton of St Gallen changed families after full adoption. If a child had moved from the canton of St Gallen, the corresponding files would in any case not be found in the records we accessed. Furthermore, it cannot be ruled out that children may have left the adoptive family, i.e. lived in another place, but were not subsequently adopted; we did not have access to such possible cases either, as we based our investigation on the adoption notifications. Therefore the following case seems all the more significant, considering its unique archiving situation in our sample, where we were able to include extensive files on the subsequent events.

The girl in question was born in Sri Lanka in 1981. Her birth certificate was not signed by her biological mother, but by an employee of the maternity hospital. When the child was about three weeks old, her biological mother signed a statement of renunciation, stating that the man named on the birth certificate (which included information such as full name, date of birth and occupation) was not the child's father, and that she had only given his name to the hospital staff in order not to become a victim of social discrimination. In the Swiss adoption decision, the competent district office did not address this, but declared that the biological father was "unknown"[162] and therefore his consent could be waived. As the foster parents stated in their application for placement under Swiss law, the girl was the birth mother's seventh illegitimate child, which is why she had been willing to place her in care immediately after her birth. Two weeks after the statement of consent was made, a judge in Sri Lanka awarded the child to the couple from Switzerland, whereupon she travelled to her new home a few days later.

At the time of the completion of the report in German, we did not have any documents on this adoption procedure from communal records. However, the files from cantonal sources as well as those from the archives of the municipality to which the girl had later moved provide detailed information about the foster care period. According to the available sources, an employee of the fostering supervisory auhority visited the foster parents for the purpose of clarifying the placement about one and a half months before the child's entry into Switzerland. During this visit, she rated the living conditions as consistently positive. She raised doubts as to whether the couple equally shared the desire for a foreign foster child or later an adopted child, and she believed that it was more the desire of the wife than that of the husband. She also stated that the couple could offer a foster child "the right kind of support"[163], but that the "soulful, sensitive"[164] aspects could be neglected due to shortcoming in the characters of the spouses. The couple also had little experience in dealing with small children. The long duration of their marriage, on the other hand, was seen as a positive by the foster child supervisor, who saw that the couple's age represented life experience and maturity. Conversely, she expressed concerns, that a greater generational gap often resulted in additional conflicts during the child's adolescence. She therefore questioned whether the couple's ‘vigour’ would still be sufficient during the child's adolescence. It was incumbent on the intermediary agency to take into account the problems raised and to consider "first and foremost the many younger, suitable married couples"[165]. The "foreign nature"[166] of the child was also said to pose a particular challenge. The couple believed that they would be able to manage these difficulties themselves. Nevertheless, the intermediary agency would have to provide future foster or adoptive parents with clearer information about possible difficulties

[162] Dossier No. 51, StASG A 359/2/1984.02, p. 4.
[163] Dossier No. 51, StASG A 359/2/1984.02, p. 22.
[164] Ibid.
[165] Ibid.
[166] Ibid.

and discuss these issues with them in more detail. In spite of all the reservations, the representative of the foster care supervisor came to the conclusion that the couple fulfilled all the requirements for taking in a foster child and that they could be granted permission to do so.

We were unable to locate a corresponding foster child permit, but this may be in the respective municipal archives, which, as noted, did not conduct a file search until after the final editing of the report in German. On the other hand, there is an extensive dossier in the Seewarte/Adoptio holdings, on the basis of which Alice Honegger's mediation activities can be traced. She had completed her Home Study Report for the attention of the High Commissioner in Sri Lanka shortly before the representative of the foster care supervisor. In her report Honegger did not express any doubts about the couple's suitability for housing a child, and only reported positive observations, such as the fact that the desire for a foster child was shared equally by both spouses. They were both reliable and had thought through the "problems",[167] that adoption entailed. Alice Honegger's observations were thus different from those of the representative of the foster care supervisor, and the two women's impressions diverged relatively widely. As with each of her Home Study Reports, Alice Honegger concluded this one with a promise that the local guardianship authority would monitor the placement until the adoption was finalized according to Swiss law. In this instance – and as shown in many others – this promise was not kept: A guardianship was not established over the child.

An officer of the guardianship authority visiting the home of the foster parents commented on the intended adoption towards the end of the foster care period: The family lived in a child-friendly environment and the child "made a healthy, alert impression".[168] There was "a very close relationship"[169] between the foster father and the child. The adoption of the child was also welcomed by the grandparents. The couple had "always wanted children"[170] and were now delighted, to "have found a healthy little daughter."[171] The foster mother "is a tender, nervous woman,"[172], and the child seems to "make great demands on her and sometimes tire her out."[173] The officer of the guardianship authority nevertheless recommended the adoption because it was in the child's best interest and the requisite economic conditions were met. The character of the couple was comprehensively clarified and documented, and the responsible district office granted the adoption in 1984.

However as the files show, at the time of the adoption decision the child was no longer living with this family, but "due to the unfavorable development of the marriage"[174] in weekly foster care with the sister of her foster mother, her husband and their two children. These ‘second’ foster parents did not receive a foster child authorisation until one and a half years later. The adoptive parents divorced six months later. According to the decree of divorce, the adoptive mother suffered from an addictive disorder and underwent various hospitalisations. The guardianship authority therefore ordered a preventive custodial measure and instituted an incapacitation action, although both measures were lifted again as a result of the adoptive mother relocating. As a result of this and the marital difficulties that arose, the child had "not received the necessary care and attention"[175] and had "suffered in particular with regard to

[167] Dossier No. 51, StASG W 354/2.122, p. 3.
[168] Dossier No. 51, StASG A 359/2/1984.02, p. 25.
[169] Ibid.
[170] Ibid.
[171] Ibid.
[172] Ibid.
[173] Ibid.
[174] Dossier No. 51, StASG A 167/1/1990, p. 5.
[175] Dossier No. 51, StASG A 343/2/2, p. 41.

nutrition."[176] The adoptive mother had "covered up and hidden her addiction to addictive substances"[177] – if the adoptive father, according to his own testimony, "had been fully aware of the situation, he could hardly have been responsible in 1981 for taking in the child (name of child) for care and later adoption."[178]. Due to the addictive disorder of the adoptive mother, the child was placed under the sole parental authority of the adoptive father. However, as mentioned the child was already living with its new foster parents (except on weekends).

Those foster parents applied in 1989 to adopt the girl. In their application, they stated that "some problems that had arisen at the very beginning of the foster relationship which had long since been overcome (...) were connected with the divorce situation or the incapacity of the adoptive mother".[179] The adoptive mother had not visited the child for a long time and had not inquired about her. Nonetheless, it was "not impossible"[180] that she would raise objections to the adoption. The foster parents' fear was apparently justified; the adoption proceedings were delayed because the adoptive mother did not initially give her consent. She considered the timing of the adoption "premature",[181] moreover, her sister had not discussed it with her. It was "not to be discounted that sooner or later"[182] the child would return to her. The matter should then be discussed with the child, however the received files do not reveal whether this happened. A few weeks later, the adoptive mother consented to the adoption after all, which was pronounced in 1990. An officer of the guardianship authority, department of foster children, had previously assessed the family situation and had come to the conclusion that "neither the personal nor the family situation"[183] spoke against the adoption. There was a warm, close relationship between all family members and the child was deeply rooted in the family. Because of her " affiliation with a different race of people with a different skin colour,"[184] she was "particularly in view of puberty, perhaps more dependent than other children on a place where she belonged, with all its consequences." [185] An adoption was therefore in the best interest of the child.

About one and a half years after this second adoption, the second adoptive mother died. The child then lived in residential care and was placed under juvenile protection measures including having a custodian appointed. These measures were lifted after three and a half years and instead a guardianship, executed by the previous custodian, was established. At the same time, the girl was transferred to a youth home. Only when she reached adulthood was she released from her guardianship. As in all the other cases analyzed, we do not know how this extremely eventful childhood affected her later life. As already emphasized, we feel it would be necessary through extended research of the files, including the period after the pronounced adoption, and an investigation using oral history, to deepen our knowledge of what happened to these children after their adoption.

Interim conclusion

On the basis of the quantitative and qualitative analysis presented, we must conclude that errors and deficiencies in the procedures were the rule rather than the exception, especially with regard to the duty of supervision. In many cases, this duty was not performed by several

[176] Dossier No. 51, StASG A 343/2/2, p. 44.
[177] Dossier No. 51, StASG A 343/2/2, p. 46.
[178] Ibid.
[179] Dossier No. 51, StASG A 343/2/2, p. 16.
[180] Ibid.
[181] Dossier No. 51, StASG A 343/2/2, p. 33.
[182] Ibid.
[183] Dossier No. 51, StASG A 343/2/2, p. 71.
[184] Ibid.
[185] Ibid.

authorities. Firstly, many children were taken in although no corresponding foster child permits have survived. Secondly, in the case of every second child, there is no evidence of supervision of the foster care period by the guardianship authority or by the fostering supervisory authority – this seems downright staggering in view of the fact that these were babies and toddlers with a double vulnerability (age and separation from their birth environment), who should therefore have been afforded a high level of protection and special care. Various orphanage offices and, from 1992 onwards, the cantonal foster child supervision/the Cantonal Office for Social Affairs, which were responsible for the supervision of foreign foster children, thus violated their duty to supervise foster relationships. Thirdly, the guardianship supervisory authority (JPD until June 1991, thereafter the DI) failed in its duty to supervise the orphanage offices as communal guardianship authorities in all proceedings; it approved all the adoptions investigated despite all the deficiencies and errors described. Fourthly, various district offices granted adoptions although serious deficiencies in the Sri Lankan documents as well as the Swiss procedures were obvious and not all legal requirements were met. In our view, it would be absolutely essential to investigate what effect, in particular, the inadequate supervision of foster care relationships had; whether, for example, there were detrimental placements for the children, or whether there were other resulting factors that made the children's lives more difficult after adoption.

The report shows that during foster child approvals and adoptions from Sri Lanka there were numerous substantial and systematic errors and shortcomings in the proceedings. Such errors could thus form the basis of a defect within the proceedings (so-called procedural defects) and could be challenged by the parties involved in the proceedings. However, the foster or adoptive parents were unlikely to challenge the proceedings, as they were either unaware of these procedural defects or had no interest in a complaint procedure. It was also not possible for the adopted child to initiate a complaint procedure either due to their age or lack of proper procedural representation. Considering these circumstances, the Department of Justice and Police of the Canton of St Gallen, as the supervisory authority for adoption mediations, should have intervened in a supervisory capacity. But other parties, such as persons of trust, foster child supervisors or, in more recent proceedings, social workers, could also have approached the supervisory authority with a complaint if they became aware that an authority was acting either in breach of duty or was simply inactive.

Liliane Minder

4. Assessment of dossier management and archiving with regard to the professional standards applicable at the time

Before the 2011 Act on Record Keeping and Archiving (*Gesetz über Aktenführung und Archivierung,* GAA), there was no cantonal archiving law in the canton of St Gallen; there were simply ordinances and regulations on the archiving of individual categories of records.[186] For example, the Ordinance on the Archives of District Offices, Municipalities and Corporations under Public Law (*Verordnung über die Archive der Bezirksämter, Gemeinden und öffentlich-rechtlichen Korporationen*) of 5 May 1948 required, among other things, that district offices, the municipal councils and the administrative councils of the local municipalities should retain their documents, minutes and other files "insofar as they were not

[186] Gemperli, Stefan: *Gesetz über Aktenführung und Archivierung des Kantons St. Gallen*, St Gallen 2011.

allowed to be disposed of".[187] The archivists had to take "special care" in the preservation of minutes and documents, for example, and if the destruction of a collection was "not explicitly permissible", it was only allowed with the permission of the state archivist.[188] He and the head of the district council were responsible for the supervision of the archives mentioned at the beginning.[189] The St Gallen Ordinance on the Cantonal Library and the State Archives (*Verordnung über die Kantonsbibliothek und das Staatsarchiv*) of 31 January 1952 subsequently defined that the state archives had to receive "all documents submitted to the cantonal authorities or produced by them whose legal, political, statistical, cultural-historical or other significance justifies their permanent preservation".[190] The district authorities had to hand over the files "in an orderly manner and with an index". [191] In agreement with the state archivist, the archives of the authorities were to be reviewed every ten years.[192] Further regulations on record keeping and archiving that were relevant to the sources consulted do not appear in this ordinance.
However, these rules changed on the 1st September 1984 when the cantonal Ordinance on the State Archives (*Verordnung über das Staatsarchiv*) came into effect. The ordinance regulated the storage of records in the State Archives as well as in other archives of government authorities and public administration.[193] According to this ordinance, the State Archives were responsible for storing the files of the departments and their administrative offices, including the district offices, which required storage.[194] These agencies were only allowed to dispose of files after the State Archives had decided whether they were worthy of preservation.[195] The authorities, agencies and institutions whose files were kept in the State Archives were obliged to deliver them.[196] From January 1985, a new Ordinance on Municipal Archives (*Verordnung über die Gemeindearchive*) also applied. Accordingly a municipality had to store "minutes and important files" in its archives. [197] It was the task of the municipal archivist to archive the files appropriately, to safeguard them and to create an index.[198] While the State Archives continued to be responsible for the "specialist supervision"[199] of the municipal archives and advised the archivists, from 1985 until the end of our study period it was the responsibility of the Department of the Interior to designate those records that did not have to be preserved.[200] Appended to this ordinance was a list of timelines for the preservation of the archival records of the political communes, school communes, local communes, local civic and local corporations in the canton of St Gallen (*Fristen für die Aufbewahrung der Archivalien der politischen Gemeinden, Schulgemeinden, Ortsgemeinden, ortsbürgerlichen und örtlichen Korporationen im Kanton St. Gallen*)[201]. In the accompanying preliminary remarks it was expressly stated that in principle only those documents should be kept "whose observance is in the interest of the administration or which are of importance for the political, social,

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[187] Article 1 *Verordnung über die Archive der Bezirksämter, Gemeinden und öffentlich-rechtlichen Korporationen* from 5. Mai 1948.
[188] Article 4 *Verordnung über die Archive der Bezirksämter*.
[189] Article 8 *Verordnung über die Archive der Bezirksämter*.
[190] Article 6 *Verordnung über die Kantonsbibliothek und das Staatsarchiv* from 31. Januar 1952.
[191] Ibid.
[192] Ibid.
[193] Article 1 *Verordnung über das Staatsarchiv* from 26. Juni 1984.
[194] Article 3 *Verordnung über das Staatsarchiv* from 26. Juni 1984.
[195] Article 4 *Verordnung über das Staatsarchiv* from 26. Juni 1984.
[196] Article 6 *Verordnung über das Staatsarchiv* from 26. Juni 1984.
[197] Article 1 *Verordnung über die Gemeindearchive* from 26. Juni 1984.
[198] Article 7 *Verordnung über die Gemeindearchive* from 26. Juni 1984.
[199] Article 8 *Verordnung über die Gemeindearchive* from 26. Juni 1984.
[200] Article 9 *Verordnung über die Gemeindearchive* from 26. Juni 1984.
[201] *Fristen für die Aufbewahrung der Archivalien der politischen Gemeinden, Schulgemeinden, Ortsgemeinden, ortsbürgerlichen und örtlichen Korporationen im Kanton St. Gallen*, p. 1.

economic and cultural history" of the institutions concerned [202]. It was "forbidden to dispose of archival documents if this was not expressly permitted by the ordinance"[203]; "restraint is better than extensive destruction. In case of doubt, permission must be obtained from the State Archives."[204] According to this list, files of the guardianship authority were to be kept for 50 years. Accordingly, files on the procedures from 1985 onwards should still be in all municipal archives today, assuming that any had been opened in the first place.

Two municipalities did not provide us with the minutes of the guardianship authority issued at the time. Seven municipalities provided us only with the decisions of the guardianship authority at the time (excerpts from the minutes); there were no social reports. Such reports are available from eleven communes. Three other communes also did not send us any social reports, but apart from that, they sent us extensive documents on each of the procedures concerned. We received official records, such as those for the appointment of a guardian, only from a few municipalities.

It seems remarkable to us that record keeping and archiving do not necessarily correlate with the degree of supervision exercised; there are cases in which guardianships existed, but nevertheless hardly any records are archived, and others in which guardianships are lacking (and the communal guardianship authority was therefore less involved and thus potentially kept fewer records), but nevertheless a comparatively large number of records (on the foster care period and/or the Sri Lankan adoption procedure) have been passed on. It should be pointed out once again that the municipalities only searched for files up to and including the completed adoption; it is possible that documents exist from the years after the adoption, but we did not search for them within the framework of this study. As mentioned above, we are therefore unable to assess whether difficulties arose within the families after the adoption. The record keeping and archiving could only be conclusively assessed in comparison with other samples, i.e. with other domestic and foreign adoptions, but we lacked access to these. Moreover, it would be interesting to systematically compare the documents of cantonal and municipality origin with private documentation, since it cannot be excluded that the adoptive parents in particular have (had) further documents that were not available to us. In spite of possible gaps in the records, the records that have been passed on clearly show numerous gross deficiencies and errors, as described above.

This report is largely based on the evaluation of files and proceedings of the various authorities responsible for guardianship and adoption in the canton of St Gallen between 1973 and 2002. Case files from the private Seewarte House and the Adoptio Foundation were also evaluated. When interpreting the results, the reliability of the records and the practice of record keeping at the time must therefore be taken into account.

The handover situation differs depending on the files creator. The records at the cantonal level, and in particular those of the district offices, can generally be described as reliable. The adoption procedures are consistently documented at district office level with case files. However, the investigation did not reveal any indications that files for certain children were missing. The impression given by the records at the level of the municipalities and the orphanage offices is much more varied. There are considerable differences here, whereby it must be taken into account that the documents evaluated were searched and compiled by the municipal administrations or archivists. As stated in the main text, the majority of the

[202] Ibid.
[203] Ibid.
[204] Ibid.

orphanage offices have extensive (case) files on foster child relationships and guardianships, while other orphanage offices have at least kept the proceedings. Two municipalities did not find any written records on the corresponding procedures. Another municipality did not complete its archive search until after the report in German had been completed. The records of the Sri Lankan adoptions of the Seewarte House and the later Adoptio Foundation, which are now in the State Archives of St Gallen, appear to be mostly complete. However, there are individual gaps here as well. It is also not possible to ascertain whether the documents were handed over to the State Archives in their entirety.

It is more difficult to assess the process of record management. The evaluation here refers to the documentation of daily operations and the filing of the resulting documents (but not the formal and factual correctness and completeness of the information contained). There are two reasons for such difficulties: On the one hand, there were only rudimentary specifications for the keeping of files during the period under investigation. According to Article 21 of the *PAVO*, the guardianship authorities (orphanage offices) had to keep records of foster child relationships. More extensive requirements at the cantonal level did not exist based on the present evidence. On the other hand, it is hardly possible to make reliable statements without contemporary comparative examples. For this, as is noted in the main text, comparisons would have to be made with other file samples, for example with documents on domestic adoptions or files from other provenances.

Nevertheless, some observations may be made. The case files of the district offices as a rule contain the adoption decision as well as the documents that were part of the adoption application. Depending on the procedure, there should also be correspondence with the departments involved. On the basis of remarks in file notes or copies of consignments, it can be assumed that files were also exchanged between the agencies involved. Thus, district offices may have sent certain documents back to other offices after the decisions were made. Measured against the realistic expectations of administrative records from the 1970s and 1980s, the record keeping of the district offices leaves a relatively consistent and systematic impression.

In this respect, too, the records of the orphanage offices present a much more disparate picture. Many documents are not arranged chronologically. In some cases, the documents also concern several adoption procedures of a parental couple. Important procedural steps such as the granting of permission to take in a foster child or the supervision of the fostering relationship are often documented in an unsystematic manner, so that the traceability of the sequences is not provided. It is hardly possible to say in individual cases whether documents that, contrary to expectations, do not exist in the dossiers have not been filed correctly, or were never created or were simply not requested. In contrast, the documents of the Office for Social Affairs from the period after July 1991 give a much more systematic impression.

The documents of the Seewarte House and the Adoptio Foundation consist entirely of case files, each of which is assigned to a specific pair of parents (and thus may also concern several adoption proceedings). The dossiers are likely to have served primarily as a means of compiling the application documents that the adoptive parents had to submit to the Sri Lankan authorities. Only a few meeting notes or items of correspondence have survived. Alice Honegger's mediation activities can therefore only be reconstructed to a very limited extent in individual cases. However, scattered references in several dossiers allow one to draw conclusions about her activities and her network of contacts in Sri Lanka.

To summarise, it can be stated that the procedural deficiencies identified in the report are adequately documented in the documents handed down – despite various gaps. The deficiencies identified may primarily be an expression of real omissions on the part of the

authorities involved (e.g. foregoing assessments or failing to establish a guardianship). However, unsystematic or negligent documentation practices and gaps in the tradition make it more difficult to search for origins and offer certainty for the adoptees, and the research possibilities of the birth parents is made more difficult.

Urs Germann

5. References to commercial adoptions in the dossiers

As Sabine Bitter, Annika Bangerter and Nadja Ramsauer state in their oft-cited study, "the fact that there was an illegal practice in connection with Sri Lanka adoptions could no longer be overlooked by the authorities in Switzerland in late 1981 and early 1982" [205]. In May 1982, Gerardo Zanetti reported in the Swiss magazine *Schweizer Illustrierte* that Sri Lankan children from so-called "baby farms" [206] were arriving in Switzerland "like a commodity"[207] from intermediaries like Alice Honegger.[208] He accused Alice Honegger of "baby"[209] and "human trafficking"[210] and quoted the Swiss ambassador to Sri Lanka at the time, Claude Ochsenbein, according to whom there were about 15 lawyers operating in Colombo, "each of whom maintained a team of agents who constantly searched for pregnant girls and single mothers"[211] in order to be able to "peddle"[212] their (future) children to foreign adoptive parents. One month after the publication of this article, the topic also found its way into the parliamentary debate on the occasion of the summer session.[213] The Federal Department of Justice and Police (Eidgenössischen Justiz- und Polizeidepartements, EJPD) placated the Free Democratic Party (Freisinnig-Demokratische Partei, FDP) National Councillor Alma Bacciarini after she asked whether a Swiss woman – meaning Alice Honegger – was involved in illegal adoptions of children from Sri Lanka, stating that the adoptions were carried out in accordance with the law, and that no babies were 'smuggled' into the country. At the same time, it considered the activities of the Sri Lankan intermediaries to be potentially "questionable"[214] and thus delegated responsibility for the lawful execution of the adoptions in Sri Lanka. It also informed the councillors that Alice Honegger's licence to place Sri Lankan children had been suspended by the competent cantonal authorities until further investigations had been completed.[215]

A year later, the Association of St Gallen Municipal Council Clerks, Land Registry Administrators and Guardianship Secretaries and the Professional Committee for Guardianship addressed the issue and made its members explicitly aware in a guideline "that in the case of international adoptions, not only the consent of the child's legal representative in the child's home country is required, but that a guardian must be appointed to assist the child in Switzerland".[216] This is particularly appropriate "if the authorisation for adoption has been purchased in the country of origin".[217] This quotation proves that there was an awareness of illegal practices in international adoptions at the level of the associations among those actors

[205] Bitter et al.: *Adoptionen*, p. 197.
[206] Zanetti, Gerardo: «Babys zu verkaufen», in *Schweizer Illustrierte* from 24.5.1982, p. 19.
[207] Ibid.
[208] cf. Zanetti: «Babys», p. 16-23.
[209] Zanetti: «Babys», p. 19.
[210] Ibid.
[211] Zanetti: «Babys», p. 21.
[212] Zanetti: «Babys», p. 19.
[213] cf. Bitter et al.: *Adoptionen*, p. 72.
[214] Ibid.
[215] Ibid.
[216] Quoted from Bitter et al.: *Adoptionen*, p. 199.
[217] Ibid.

who were closely involved in the procedures investigated. However, our analysis revealed that the requirement to appoint a legal representative for the children and to ensure that a consent form was present in the files was very often not followed.

From the end of 1985, the Federal Office for Foreigners' Affairs (*Bundesamt für Ausländerfragen*) and the Federal Office of Justice (*Bundesamt für Justiz*) were also aware - from an article in the English newsaper *The Sun* – that women were "falsely posing as mothers in Sri Lankan courts in order to hand over babies to foreigners".[218] The Federal Department of Foreign Affairs (*Eidgenössische Departement für auswärtige Angelegenheiten*) was also informed. A newspaper article to this effect was sent to the Swiss representation in Colombo in December 1986. Sabine Bitter and her colleagues have concluded that the reports of commercial adoptions received by the federal authorities were continuous and already came from various sources in the 1980s [219]. As they have recounted, a couple asked the St Gallen government council as early as the end of 1981, and after unsuccessful follow-up with the responsible official guardianship, to check Alice Honegger's placement activities. The couple had the impression that this "primarily (...) revolved around money."[220] The St Gallen authorities also had various indications during the entire period analyzed that children who were taken in from Sri Lanka were possibly victims of commercial adoptions.

In mid-1987, a Sri Lankan commission of enquiry published a critical report on the abuses in the practice of adoption.[221] The commission examined all international adoptions from Sri Lanka in 1986, 1,670 in total, and came to the conclusion that only 37 had been conducted through official channels and that most of them had been illegal.[222] As a consequence, Sri Lanka banned adoptions by foreign couples between June 1987 and September 1988. Subsequently, children from Sri Lanka were once again allowed to be adopted by foreign couples, however, the law became more restrictive: only children living in state-run institutions could be adopted and it was now the responsibility of the Sri Lankan Child Protection Agency to allocate a child. These provisions were incorporated into stricter regulations in March 1992,[223] which manifested itself in the sharp decline in the number of adopted children from Sri Lanka in the canton of St Gallen.

As Sabine Bitter, Annika Bangerter and Nadja Ramsauer have shown in detail, Sri Lankan lawyers were key figures in the illegal activities in Sri Lanka.[224] Three of these, namely Rukmani Thavanesan-Fernando and her husband Arumugam Thavanesan as well as Subramaniam Parameshwaran, appear frequently in the analysed dossiers. As shown in the table on p. 21ff, the three of them can be seen to be involved in a total of 65 of the 85 adoptions by the analysis of certified consent declarations of the birth parents (64 cases) and/or English translations of birth certificates (65 cases). Alice Honegger cooperated with Rukmani Thavanesan throughout the whole period studied. The couples from Switzerland benefited from this relationship by being able to fulfil their wish, which was often expressed in the sources, to have a baby as young as possible. Because unlike other countries, the children from Sri Lanka who entered the canton of St Gallen were, with only one exception, babies younger than six months. Mostly they were only a few weeks old, the oldest child was one and a half years old. As can be seen from a letter by Alice Honegger that has been

[218] Quoted from Bitter et al.: *Adoptionen*, p. 201.
[219] Ibid.
[220] Quoted from Bitter et al.: *Adoptionen*, p. 66.
[221] Quoted from Committee investigating intercountry adoption (*Commissie onderzoek interlandelijke adoptie*): *Rapport*, Februar 2021, p. 96.
[222] Ibid.
[223] Ibid.
[224] Bitter et al.: *Adoptionen*, p. 73ff und 110ff.

preserved in the St Gallen State Archives, Rukmani Thavanesan had "very few"[225] larger (i.e. older) children, "mostly she then gives a very small one."[226] This was in part because she "operated homes herself for mothers who had given birth to a child out of wedlock and were faced with the question of giving it up for adoption."[227] Comparatively wealthy married couples from Switzerland were able to profit from this "offer".

The adoption of children from Sri Lanka to St Gallen was thus affected to a large extent by networks involved in commercial adoptions. In addition, there are various other clues that indicate illegal adoption mediation.[228] These include all practices that disguise the origin of the birth mothers and children or falsify their identity. This was done, for example, by not issuing a birth certificate or by issuing one with false information. As we have presented in the table and in the qualitative analysis, five children from Sri Lanka arrived in St Gallen, although no birth certificates had been issued. In three other cases, the birth certificates are mentioned, but are also not available in the sources consulted. And a total of 40 birth certificates show conspicuous inconsistencies in comparison with other documents in the corresponding dossier – not counting the authentication by the couple Thavanesan and Subramaniam Parameshwaran.

Regarding the question of possible indications of commercial adoptions, we also examined the 85 procedures to see whether several adoption procedures in Sri Lanka took place on the same day. This was the case in 29 cases, or in other words: on twelve days not just one, but two or three child adoptions by St Gallen couples took place. Particularly striking are three dates on which three children each were adopted by couples from St Gallen at the District Court of Colombo, in all nine corresponding adoption rulings the name of the judge is illegible. The majority (61) of Sri Lankan adoption proceedings were handled at the District & Family Court of Colombo. 19 adoptions were pronounced by the same judge (H. S. Agalawatte) who seems to have worked at various courts, but no further information could be found about him based on existing research. On the basis of the existing evidence, we cannot determine the significance of the fact that almost one in four of the adoptions we investigated was pronounced on by this judge. To determine the influence of this individual further research in Sri Lankan archives would be necessary. Comparative data from other cantons and countries would also be of great importance, which could be used to analyze how many children from Sri Lanka were given to foreign couples on which days and in which courts and by which judges. Here, it would be beneficial to conduct international research and, in particular, to obtain the opinions of Sri Lankan lawyers. This also applies to the further questions of whether the children in question may not have been born at the place named on the birth certificate but came from so-called "baby farms" and what forms of commercial adoptions may have occurred in the procedures investigated in Sri Lanka prior to the adoptions–- for example, whether babies had been taken away from their birth parents under duress or on the basis of false information. All these questions cannot be answered on the basis of the available sources.

Another aspect of commercial adoptions concerns who earned how much from them. Birth parents were not allowed to be paid for the release of the child. In the available cases, there is no evidence that biological parents (or even "acting mothers") received money – however this is not surprising, given that such evidence coud result in prosecution. On the other hand, an

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[225] Dossier Nr. 42, StASG W 354/2.129, p. 86.
[226] Ibid.
[227] Bitter et al.: *Adoptionen*, p. 110f.
[228] See in the following, Bitter et al.: *Adoptionen*, p. 197.

affidavit from a biological mother has survived in which she declares that she did not receive any gift/money with regard to the adoption. This statement does not appear in any other dossier. In contrast, the financial dimension is frequently discussed in the surviving dossiers of the Seewarte/Adoptio holdings, both by Alice Honegger and between her and Rukmani Thavanesan-Fernando. As the sources show, their disputes increased when Sri Lanka's regulations for foreign adoptions became stricter and at the same time the local lawyer charged more and more for her services. In June 1991, Alice Honegger asked a Swiss couple who were traveling to Sri Lanka to adopt a child to look for a children's home that would continue to place children abroad. She suggested different homes and wrote: "It is possible that Mrs. Thavanesan will continue to mediate through Child Care Service, because the officials are also interested in getting money. The new judge seems to be feared, it would be very good if one could (also via other married couples) talk to him personally. If one could find a lawyer who operates on the same reasonable terms as Ms. Thavanesan."[229] Insight into the prices of Rukmani Thavanesan-Fernando is provided by other letters from Alice Honegger that have survived in the Seewarte/Adoptio holdings. One is from the spring of 1993, in which she asked Rukmani Thavanesan-Fernando to charge a maximum of $5,000 per child. This correspondence demonstrates that Alice Honegger must have been aware of being involved in commercial transactions. As other documents show, Rukmani Thavanesan-Fernando did not respond to this request: In the fall of 1993, she asked for $15,000 for the placement of a child.[230] The couple in question was troubled by the amount and asked if it could be lowered.[231] The lawyer's response to this has not survived, but the files show that the adoption occurred – but at what price is unclear. In the same period, Alice Honegger complained in writing to Rukmani Thavanesan-Fernando that she was apparently placing children in Switzerland without her input.[232] Honegger claimed that she had never placed a child without Thavanesan-Fernando's services – which shows how closely the two worked together – and that until last year she had earned 1,000 francs a month by placing a single child, but now she was hardly receiving any money in because the high price demanded by the Sri Lankan lawyer was discouraging couples interested in adoption. Rukmani Thavanesan-Fernando was apparently still officially allowed to mediate (as mentioned above, in 1992 the adoption regulations in Sri Lanka had changed) and she should therefore name a fair price.[233] Simultaneously Alice Honegger wrote to a couple from the canton of St Gallen, who were willing to adopt, informing them to be careful in case Mrs. Thavanesan-Fernando was no longer allowed to act as an intermediary.[234] Her foundation might also encounter difficulties if there was written evidence that she had negotiated with the Sri Lankan lawyer: "She was apparently already involved with prisons, but was able to squirm out of it thanks to enormous sums of money. If it turns out that she continues to act illegally, the authorities can recall a child from Switzerland after it has been placed, as happened with Mexico or from South America".[235]

All this shows that numerous indications of illegal procedures are visible, that these were also identified by Alice Honegger, and that a large part of the analyzed procedures involved persons who were already suspected of commercial adoptions at the time itself. In our

[229] Dossier No. 67, StASG W 354/2.078, p. 89.
[230] Dossier No. 62, StASG W 354/2.002, p. 112.
[231] Dossier No. 62, StASG W 354/2.002, p. 113 & 115.
[232] Dossier No. 62, StASG W 354/2.002, p. 112.
[233] Ibid.
[234] Dossier No. 67, StASG W 354/2.078, p. 69.
[235] Ibid.

opinion, it would be indispensable to systematically check all of the surviving dossiers from the Seewarte/Adoptio holdings of the State Archives of St Gallen for further indications of commercial activity surrounding the adoptions in and from Sri Lanka – as we only evaluated those dossiers in which St Gallen couples were involved, i.e. about one fifth of all existing dossiers. It would then be possible to determine whether, in what way, and to what extent Alice Honegger assisted the families beyond the adoption procedure, as we were able to trace in the seventh case study. Furthermore, it would be necessary to search in Sri Lankan archives for additional information about the cooperation between the St Gallen mediator and Rukmani Thavanesan-Fernando in order to be able to assess this topic conclusively. In this respect cooperation with researchers from Sri Lanka would be very profitable.

The term "child trafficking" and/or "human trafficking" was not defined in the old Criminal Code (*alten Strafgesetzbuch, aStGB*) from 1942, however, today it is explicitly defined in Article 182 StGB. Under the regulations in force today, this element of the crime is only met if the adoptive parents intend to exploit the child (e.g. through sexual exploitation, or forced labour). However, it is clear that the children from Sri Lanka were turned into a "tradable commodity" by the parties involved as a result of the events described. The Criminal Code in force at that time stipulated various criminal offenses to deal with the abuses described. For example, the criminal enforcement authorities (police, public prosecutor's office) or supervisory authorities and other persons (e.g. persons of trust, social workers) could have initiated proceedings against the detention and removal of minors from Sri Lanka under Article 220 *aStGB*[236]. For the manipulated documents, the possible perpetrators in Switzerland could have been held accountable under, for example, Art. 252 *aStGB*[237] for forging ID cards or under Art. 253 *aStGB*[238] for fraudulently obtaining a false certification.

Liliane Minder

6. Conclusion, open questions and further perspectives

„Adoption is a very easy matter in Switzerland“,[239] assured Alice Honegger, the facilitator of the adoption of numerous children from Sri Lanka to married couples in Switzerland, in writing to the Commissioner responsible for foreign adoptions in Colombo. As this report shows, the legal requirements for the protection of the foster or adopted child and its biological parents were actually not implemented in numerous cases, with an astonishing "ease".

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[236] “Any person who deprives or withholds a minor from the holder of parental or guardianship authority, shall be liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.”

[237] “Any person who with the intention of furthering his own position or that of another, forges or falsifies identity documents, references, or certificates, uses such a document in order to deceive another, or uses a genuine document of this nature but which does not apply to him in order to deceive another, shall be punished by imprisonment or a fine. Any person who commercially forges or falsifies such writings or engages in trade in such writings shall be punished by imprisonment for not less than one month.”

[238] “Any person who by fraudulent means causes a public official or a person acting in an official capacity to certify an untrue fact of substantial legal significance, and in particular to certify a false signature or an incorrect copy as genuine, or any person who makes use of a document obtained by fraud in this way in order to deceive another as to the fact certified therein, shall be liable to penal servitude of up to five years or imprisonment.”

[239] See for example Dossier No. 17, StASG W 354/2, p. 4.

As already emphasised several times, our investigation is based exclusively on documents from the administration of the canton of St Gallen and the holdings of the House Seewarte and the later Adoptio Foundation. Therefore, we can only make limited statements about the events that took place in Sri Lanka. Further research in Sri Lankan archives would therefore be extremely important. It would be equally important to investigate how the foster and adoption procedures of Sri Lankan children were conducted in the canton after 2002, in order to be able to determine the influence of more recent regulations such as the Hague Adoption Convention, and how St Gallen's adoption practice compares to that of other cantons and other countries. It is therefore very welcome that the cantons of Zurich and Thurgau are commissioning another study, including one on other regions of origin. In view of the considerable extent of errors and deficiencies discovered in the procedures, it would also be interesting to conduct a study that looks at the conditions of work and the rationale of the officials involved. It would certainly also be productive to systematically compare how foreign and domestic adoptions were handled at the time, for example in the canton of St Gallen. Last but not least, all the surviving dossiers from the Seewarte/Adoptio holdings would have to be analysed in order to be able to comprehensively trace Alice Honegger's activities.

Since the structural conditions of adoptions from Sri Lanka to Switzerland and the associated approaches were also shaped by postcolonial conditions, it would also be important to conduct studies that systematically investigate such aspects. The economic inequality regimes caused by colonialism were a reason for the formation of global infrastructures for the placement of children and the emergence of market dynamics for adoptions. In addition, there are indications that colonial attitudes influenced the perception of these "South-North" adoptions and were thus one of the reasons why these adoptions were not examined with the necessary care. Thus, in the dossiers we analysed, there is often the Topos that the adoptive parents had saved a child from poverty, perhaps even from death. Such "rescue narratives" led to insufficient control of these adoption processes in Switzerland, because those involved often assumed that a child would in any case fare better in "affluent Switzerland" than in "poor Sri Lanka". At the same time such views distracted from the evolving adoption market and the associated tendency to treat a child as a commodity. Two examples seem particularly striking in this context, where the adopted children were described as war orphans and parentless, although in both cases, at least according to the surviving documents, the birth mother was known and the children had also been adopted before the outbreak of the civil war in Sri Lanka.[240]

[240] Dossier No. 71, Gemeindearchiv, p. 1 und Dossier No. 72, Gemeindearchiv, p. 1. It is noteworthy that in the proceedings we examined, only in these two cases were children referred to as "war orphans" (*Kriegswaisen*) and in the documents from Sri Lanka there is little mention of the war in general. Sabine Bitter and her colleagues mention in their study the statement of the Sri Lankan adoption mediator Dawn de Silva that the "Liberation Tigers of Tamil Eelam" had forbidden Tamil parents to give up children for adoption – however, in our sample a total of seven birth mothers were Tamil. The authors further state that for their report it could not be fundamentally assessed whether there was a direct link between the adoptions and the civil war in Sri Lanka. However, the boom in the adoption of children abroad began in Sri Lanka as early as 1980, several years before the civil war began in 1983. In addition, according to the surviving files, the children who were placed in Switzerland came from the southwestern part of the island and thus precisely not from the civil war zone in the northeast. They conclude therefore that the civil war and foreign adoptions were probably not connected (Bitter et al.: *Adoptionen*, p. 218 also 139-140). In our view, this statement would have to be subjected to closer scrutiny. For example, the civil war could have led to a general increase in corruption due to the prevalent conditions and, at the same time, to a decrease in the control of intercountry adoptions. The war may also have worsened the economic situation of the birthparents and thus led to an increase in intercountry adoptions. Whether the location information on the surviving files is correct is another open question.

How "rescue narratives" were used as a means of exerting pressure on the authorities was revealed in the report by Sabine Bitter, Annika Bangerter and Nadja Ramsauer: when in 1983 Alice Honegger petitioned the Federal Office for Immigration Affairs to allow prospective adoptive parents to continue to receive entry permits for children from Sri Lanka by wire instead of in writing in order to speed up the process, this was rejected with reference to „the great danger that, due to the lack of time, people would try to get a child from somewhere with illegal sums of money“[241]. As a result, the then president of Alice Honegger's association Children's Welfare House Seewarte (*Kinder-Fürsorge Haus Seewarte*) intervened. In his letter to the St Gallen JPD, he argued that a delay in the procedure could have fatal consequences for malnourished children, because a delay of two to three weeks could already mean death for a child. Subsequently, when Edgar Oehler, a member of the National Council from St Gallen, and Alice Honegger advocated for a change in practice at a meeting with the then director of the Federal Office for Foreigners' Affairs in August 1984, this demand was finally granted.[242] Edgar Oehler himself had already adopted two children from Sri Lanka at that time, and two more were granted to him and his wife by the responsible district office in the following years. It is remarkable that in the sources we consulted for all four proceedings, no documents from Sri Lanka have survived; although such documents are mentioned and requested by Edgar Oehler from the responsible district office, no copies of them can be found. Even apart from this factor, which is unique to our sample, all four Swiss adoption procedures are affected by serious deficiencies.

> The findings of this report show that a basic postcolonial awareness of these international adoptions was mostly absent and this framed or even justified the patchy or even false representations of the adoption processes. As a result, conditions were created that potentially ran counter to the social processes of becoming a family and understanding one's own adoption history. It can therefore also be regarded as another unprocessed post-colonial legacy of Switzerland[243], that for a considerable time no research was established parallel to the adoptions that took place, which focused on postcolonial modes of representation and legitimation in connection with international adoptions.[244]
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> Andrea Abraham

The Dutch historian Marlou Schrover has explained how intermediary agencies went in search of countries where foreign adoptions were possible.[245] When successful, the first adoptions were followed by "rescue narratives" in the media, which led to an increase in the requests for adoptions. Over time, reports of child abductions, baby farms and commercial adoptions, such as those in Indonesia or Korea, increased. This led to either a ban or stricter regulation of foreign adoptions in the country concerned. Intermediary agencies and interested couples subsequently changed the countries they targeted in order to circumvent such restrictions. Marlou Schrover saw such a dynamic in relation to Sri Lanka. Adoptions originating from Sri Lanka rose rapidly when Indonesia banned foreign adoptions in 1983 – and when Sri Lanka, as mentioned, no longer allowed foreign adoptions for a certain time in 1987, the Dutch intermediary agencies “opened up” Hungary. The Dutch study cited earlier also describes the creation of an adoption market and the resulting transformation of children

[241] Bitter et al.: *Adoptionen*, p. 180.
[242] Bitter et al.: *Adoptionen*, p. 179ff.
[243] cf. Purtschert, P., Lüthi, B. & Falk, F. (Eds.): *Postkoloniale Schweiz. Formen und Folgen eines Kolonialismus ohne Kolonien*, 2. Auflage, Bielefeld 2013.
[244] cf. Abraham, Andrea et al.: *Forschungs- und Quellenstand zu Fürsorge und Zwang im Adoptions- und Pflegekinderwesen. Wissenschaftlicher Bericht im Rahmen des NFP76*, Bern 2020.
[245] See in following Schrover, Marlou: "Parenting, citizenship and belonging in Dutch adoption debates 1900-1995", in*: Identities: Global Studies in Culture and Power*, Vol. 28, No. 1, 2021, p. 93-110.

into "tradable commodities".[246] Through a kind of "child laundering", children who had been given up for adoption under suspicious circumstances were transformed into legitimately adopted children. Since such child adoptions were identified with "doing something good", the Dutch government at the time ignored reports that pointed to abuses. The structural and systematic abuses identified were thereby said to be caused by a combination of several factors, both in the countries of origin and in the Netherlands itself. These findings can also be extended to Switzerland with regard to adoptions from Sri Lanka in the 1980s and 1990s.

As already explained, the letters from Alice Honegger to Rukmani Thavanesan-Fernando that have survived in the Seewarte/Adoptio holdings reveal how sharply the price for the placement of the children could vary and was thus subject to market dynamics. As shown, in spring 1993 Alice Honegger asked the Sri Lankan lawyer to demand a maximum of $5,000 per child. The lawyer did not agree to this request and in autumn 1993 even demanded three times this amount for the placement of a child.[247] This reveals that Alice Honegger must have been aware of being involved in illegal activities. At the same time, Alice Honegger complained in writing to Rukmani Thavanesan-Fernando that she was placing children in Switzerland without her help, whereas she herself had never placed a child without her. services.[248] Until the previous year, Alice Honegger, had earned 1,000 Swiss francs a month from the placement of a single child. But now there is hardly any money coming in because of the high price of the Sri Lankan partner.[249] Concurrently, she urged an interested couple to be cautious: in the event that Ms Thavanesan-Fernando was no longer authorised to place children, her foundation could also get into trouble if there was written evidence that she had negotiated with Ms Thavanesan-Fernando: "If it turns out that she continues to act illegally, the authorities can recall a child from Switzerland after it has been placed, just as happened with Mexico or from South America."[250] However, as we have seen, this was never the case with the adoptions examined here, despite numerous indications of illegal procedures. Also, in contrast to *Terre des hommes*, Alice Honegger never refrained from placing children from Sri Lanka on her own initiative. This organisation had gradually disengaged from Sri Lanka after gaining experience of the local situation.[251] Furthermore, Alice Honegger never ended the cooperation with the Sri Lankan lawyer of her own accord and ignored the JPD's instruction from 1982 to not cooperate with Ms Thavanesan-Fernando for over ten years. The fact that the supervisory authority did not intervene here is quite remarkable in view of the abuses surrounding adoptions from Sri Lanka that had already become public at that time.

Our analysis further illustrates that numerous legal requirements were very often not implemented by the municipal, communal and cantonal authorities involved. In twelve of the 85 proceedings, the child was adopted in Sri Lanka – and later also in Switzerland – even though there was no written declaration of consent from at least one biological parent and at least the biological mother would have been known. In addition, numerous declarations of consent show considerable inconsistencies. In numerous cases, the St Gallen authorities did not clarify the foster placement and supervise the fostering relationship in accordance with the legal requirements. In 24 of the procedures examined, a foster child permit was missing; it is

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[246] Commissie onderzoek interlandelijke adoptie: *Rapport*, February 2021. On the phenomenon of "child laundering" (*Kinderwäscherei*) see also Smolin, David M.: "Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children", in: *The Wayne Law Review*, No. 52, 2006, p. 113-200.
[247] Dossier No. 62, StASG W 354/2.002, p. 112.
[248] Ibid.
[249] Ibid.
[250] Dossier No. 67, StASG W 354/2.078, p. 69.
[251] Bitter et al.: *Adoptionen*, p. 135. *Terre des hommes*, itself has an extremely problematic history with respect to adoption placement. See in this regard Macedo, Fábio: "Action humanitaire et adoption d’enfants étrangers en Suisse. Le cas de Terre des hommes (1960-1969) ", in: *Relations internationales 2*, 161, 2015, p. 81-94.

unclear whether the corresponding document was simply not transferred or was never issued at all. In half of the procedures analysed, the sources consulted give no indication whatsoever of supervision of the fostering relationships. Also, as explained above, almost one in three children were without legal representation for all or almost all of the time they were in foster care. Through the Sri Lankan adoption decision, the resulting statelessness of the children and their entry into Switzerland, effectively irreversible facts were created. Consequently, a termination of the proceedings or a rejection of the adoption application due to the described deficiencies and errors after the foster relationship had progressed would hardly have been practicable, and in many cases would probably not have served the best interests of the child. It would therefore have been crucial that the Swiss procedure upon the children's arrival in the foster family had already been conducted in accordance with the requirements of the PAVO, i.e. the circumstances had been sufficiently examined, and an – at least provisional – authorisation to take in the foster child had been granted and the establishment of a guardianship had been prepared.

Ultimately, none of the 85 cases examined documented that all legal requirements were met. Errors and deficiencies in the procedures were therefore the rule rather than the exception, especially with regard to the organisation of the duty of supervision. In numerous cases, this duty was not fulfilled by several bodies, as is summarised again here:

1. for many children, a foster child permit has not been issued.
2. many children spent their foster period without legal representation.
3. even where guardians were appointed, in numerous cases there is no evidence that they actually supervised the foster relationship. Various orphanage offices, and from 1992 the cantonal foster child supervisor/cantonal Office of Social Affairs, therefore violated their duty to supervise the foster care arrangements. All the more important would have been the deployment of foster child supervisors/trustees who would have visited and accompanied the foster families as required by law. However, this has also not been handed down in numerous proceedings.
4. the guardianship supervisory authority (the JPD until June 1991, then the DI) also failed in numerous proceedings to fulfil its supervisory duty towards the communal guardianship authorities; it approved all the adoptions under investigation despite all the deficiencies and errors outlined.
5. many district offices granted adoptions although gross deficiencies in the Sri Lankan documents and in the Swiss procedures were obvious.

Various extremely problematic circumstances can also be identified at the structural level. For example, before 1989 it was not necessary for guardianship to be performed by an independent person. However, if, for example, close confidants or relatives of the foster parents took over this task, the question arises as to whose rights were protected by such a guardianship. It was also highly questionable that the adoption intermediary agencies, whose livelihood was precisely the placement of children, were able to clarify the suitability of the future adoptive parents. There was also no template for these social reports with detailed questionnaires in the canton of St Gallen, as there were for example in the canton of Bern.[252] No less problematic appears to be the fact that the six-week waiting period for adoptions after birth that applies to Switzerland, as well as an additional six-week revocation time limit for adoptions in Sri Lanka, did not have to be observed. In their report on the state of research and sources on care and coercion in the adoption and foster children system, Andrea Abraham et al. state that, according to experts, two thirds to half of all domestic adoptions in

[252] Bitter et al.: *Adoptionen*, p. 170.

Switzerland are currently terminated by the birth parents within the relevant period.[253] In contrast, biological parents in Sri Lanka were not granted such protections, in practice at least, during our study period.

Another structural aspect we wish to address here concerns the introduction of the full adoption in Switzerland. With the revision of the adoption law of 30 June 1972 (in force from 1.4.1973), the previously accepted 'weak' adoption had been abolished and full adoption introduced. In a weak adoption, the legal child relationship remains with the natural parents; at the same time, a new child relationship is established with the adoptive parents. In the case of full adoption, on the other hand, the relationship between the biological parents and the child expires; the adopted child is incorporated into the adoptive family like a biological child. As a consequence of full adoption, the confidentiality of adoption was also introduced. This was intended to reinforce the child's detachment from the original family and its integration into the new one.[254] Even though the introduction of full adoption was formative for the perception of adoptions – not only for Switzerland – at this time and evoked the idea that each person can only be a member of one family[255] this circumstance is, however, inadmissible as an explanation for the errors and deficiencies pointed out in this report, for example in the clarification of the foster placement, or the supervision of the foster relationship.

Ultimately, this report clearly reveals that the errors and deficiencies identified in the adoption procedures examined here did not 'only' result from events in Sri Lanka, but – particularly with regard to the inadequate supervision – were largely due to procedural errors on the part of the municipal, communal and cantonal authorities involved. As the questions that remain unanswered also show, this study is not able to draw a line under the circumstances examined here. In view of the consequences of the report on foreign adoptions from the Netherlands, which has already been quoted several times, this seems highly unacceptable, because the appointed commission had also randomly examined adoptions of foreign children after 1989.[256] The result of their analysis showed an abundance of abuses and it was considered so shocking that the Netherlands suspended all foreign adoptions shortly after the report was published. As of March 2022, the existing regulations for the protection of the persons concerned have been scheduled to be reformed.[257] A review of current adoptions of foreign children in Switzerland therefore seems urgent to us, also in order to be able to assess the influence of newly created legal frameworks such as the Hague Adoption Convention (HAÜ) and newly created institutions such as the Child and Adult Protection Agency (*Kindes- und Erwachsenenschutzbehörde, KESB*) and the Foster and adopted children Switzerland (*Pflege- und Adoptivkinder Schweiz, PACH*). This was already called for by the National Councillor Barbara Gysi (Social Democratic Party of Switzerland), (*Sozialdemokratische Partei der Schweiz, SP*) in her postulate in June 2020.[258] The Federal Council's report on the Ruiz postulate at the end of 2020 also came to the conclusion that legislation and practice in foreign adoptions had improved in principle, but that scandalous incidents continued to occur,

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[253] Abraham, Andrea et al.: *Forschungs- und Quellenstand zu Fürsorge und Zwang im Adoptions- und Pflegekinderwesen. Wissenschaftlicher Bericht im Rahmen des NFP76*, Bern 2020, p. 101.
[254] Cottier, Michelle: "Neue Balance von Informations- und Geheimhaltungsinteressen im Adoptionsdreieck. Zur Revision der Bestimmungen des Schweizerischen Zivilgesetzbuches zum Adoptionsgeheimnis", in: Schwander, I., Reusser, R. & Fankhauser, R. (Eds.): *Brennpunkt Familienrecht. Festschrift für Thomas Geiser zum 65. Geburtstag*, Zürich 2017, p. 151-168.
[255] Schwenzer, Ingeborg: "Familienbilder im Adoptionsrecht", in: Schwenzer, Ingeborg: *Internationale Adoption*, Bern 2009, p. 77-98.
[256] Commissie onderzoek interlandelijke adoptie: *Rapport*, Februar 2021, p. 111ff.
[257] cf. about Kazmierczak, Ludger: "Nach Kommissionsbericht: Niederlande stoppen vorerst Auslands-Adoptionen", 08.02.2021, https://www.tagesschau.de/ausland/europa/niederlande-auslandsadoptionen-101.html [01.02.2022].
[258] Postulate Nr. 20.3722 from Gysi, Barbara: *Umfassende Aufarbeitung von Auslandsadoptionen*, 18.06.2020.

similar to those in Sri Lanka in the 1980s.[259] The system in Switzerland had reached its limits, in particular due to federalism. According to the report, the Federal Council does not consider a complete suspension of international adoptions to be the "only and conclusive solution to the exploitation of children in need",[260] but it does state that there is a clear need for action. It calls for Switzerland's international adoption policy to be precisely defined in order to guarantee the legality and ethics of child adoptions and to safeguard the best interests of the child. This could be done, for example, through the use of quotas and restrictions on the countries of origin. Consequently, the FDJP was instructed to set up a group of experts to analyse and develop proposals for solutions, including legislative reforms.[261]

If the origin (and its context) is presented systematically in a rudimentary or even falsified manner in the adoptees records, then significant biographical information is withheld from adoptees that they would *potentially* need to develop their identity and to understand their adoption biography. How these voids *actually* affected the lives of those affected is not the subject of this report and remains a research desideratum.

Andrea Abraham

Current Legal Situation Regarding Awareness of one's own Ancestry

Today, every child has the right to know their ancesty and thus (if possible) their biological parents. This right is derived from Article 8 of the *European Convention on Human Rights* (*ECHR*; in force in Switzerland since 1974). This right is also enshrined in Article 7, Paragraph 1 of the UN Convention on the Rights of the Child (UN-CRC) which has been in force in Switzerland since 1997. Also Article 30 of the Hague Convention (in force since 2003 in Switzerland) provides that the authorities must arrchive and make accessible information about the ancestry of the child. At the national level the right to know one's own ancestry is derived from the Federal Constitution (*Bundesverfassung*) along with the fundamental right to personal freedom and the right to informational self-determination (Article 10 Paragraph 2 and Article 13 Paragraph 2 *Bundesverfassung*). Since the federal law implementing the Hague Adoption Convention of 2002, adoptees who are of legal age may, pursuant to Article 268c of the Swiss Civil Code (*Zivilgesetzbuch ZGB*), request the authorities at any time to provide them with the personal details of their biological parents and further information about them. [262] Since the adoption law was revised in 2018, they can also request that they are provided with information about direct descendants of their biological parents, if the descendants are of legal age and have consented to disclosure.[263] In the case of adoption, it is important that the authorities assist those affected in their search, provide them with financial and psychological support and facilitate the administrative procedures.

Liliane Minder

As already mentioned, the files consulted reflect in particular the perspective of the authorities involved, and to a lesser extent also that of the foster or adoptive parents. In order to make the voices of all family members audible, oral interviews using an oral history approach in Switzerland and Sri Lanka would be urgently needed. For this reason, an application for a

[259] *Postulat Ruiz*, p. 64.
[260] *Illegale Adoptionen*, p. 64.
[261] *Illegale Adoptionen*, p. 64-67.
[262] cf. AS 2002 3988, *Bundesgesetz zum Haager Adoptionsübereinkommen und über Massnahmen zum Schutz des Kindes bei internationalen Adoptionen (BG-HAÜ)* and *Einführung des Art. 268c ZGB*.
[263] Revision of Article 368c ZGB.

study was submitted to the Swiss National Science Foundation, in which oral history interviews with adoptees, adoptive parents in Switzerland and biological parents in Sri Lanka should be carried out and evaluated. Family members interested in participating in such a study are invited to contact Francesca Falk (francesca.falk@unibe.ch).

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