

Name of Case

Court of Appeal of Thessaloniki (Efeteio Thessalonikis) Decision No. 998/1997

Date of Decision

1997

Requesting State

CANADA

Requested State

GREECE

Name of Court

Efeteio Thessalonikis (Court of Appeal of Thessaloniki)

Status of Case

Final

Level of Court

Court of Appeal

Published / where available

Armenopoulos 1997, p. 935, Trapeza Nomikon Pliroforion (Electronic database of the Athens Bar Association)

Articles considered

3, 5, 8, 12, 13

Articles or provision upon which disposition of case based

5a

Order

Return of the child to its father in Canada was refused.

Facts

The child, a boy, was aged 5 at the date of the alleged wrongful removal. The parents, who had their habitual residence in Canada, were in separation since 1992. By subsequent decisions of the Courts of Ontario, Canada, the mother was awarded custody of the child and the father was entitled to communication. For the needs of communication of the father, the mother was entitled to move the child from Ontario Canada only for a temporary period (e.g. vacation), but was prohibited from permanently moving the child from Ontario, which was designated as the child's permanent residence, without leave by the Court. In 1993 the mother took the child to Greece. In 1994, the father applied to the Authorities for the return of the child to Canada. The Greek State then initiated legal proceedings against the mother in Greece for the return of the child to Canada. The First Instance Court of Giannitsa accepted the motion filed by the Greek State and ordered the return of the child to Canada. The mother filed an appeal against this decision. The Court of Appeal reversed the First Instance Decision and refused return of the child. The Court considered that, in light of Article 5a of the Convention, since the mother enjoyed custody of the child, she had the right to lawfully move the child to Greece. According to the Court, the restrictions imposed by the

Canadian Court were in violation of Article 5 of the Convention. The Court also found that the right of custody is superior to the right of communication and therefore takes precedent. The Court also took into consideration the in camera testimony of the child, who testified that he is happy with his life in Greece and does not want to return to Canada.

Ruling

Return of the child refused; according to article 5a, the right of custody includes the right to lawfully move the child the right of custody takes precedent to the right of communication.

Cases and authorities referred to

One Member Court of First Instance of Giannitsa (Monomeles Protodikeio Giannitson) Decision No. 274/1995; Supreme Court (Areios Pagos) Decision No. 1382/1995; *I. Voulgaris*, "The Hague Convention of 1980", Decisions dated 25.5.1992 and 26.11.1992 by the Court of Ontario Canada.

Judges

G. Christofilos (President), B. Kokkinidis (Rapporteur)

Legal basis for decision

Article 5

"Rights of custody" include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence.

"Rights of access" include the right to take a child for a limited period of time to a place other than the child's habitual residence.

Procedural Matters

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Comments

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