

Name of Case

Court of Appeal of Thessaloniki (Efeteio Thessalonikis) Decision No. 3662/1996

Date of Decision

1996

Requesting State

UNITED STATES OF AMERICA

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

Elliniki Dikaiosi 1997, p.854

Articles considered

1a, 2, 3, 5a, 7c, 10, 11, 12 §§ 1-2, 13, 16, 17

Articles or provision upon which disposition of case based

13 a, b

Order

Return of the two children to their father in the USA was refused.

Facts

The case involved three children, 2 girls and a boy (aged 15, 6 and 12 respectively) at the time of the proceedings. All children were born in the USA. In 1994 their parents divorced, but the couple was in separation since 1990. After the couple's separation and before its divorce, American courts had already ruled that the 2 minor girls should live with their mother in her house in Philadelphia.

The mother, after her separation, got related to a Greek national who was at that time living in the USA and they acquired a daughter. In 1995 the mother left with her spouse and her three daughters (two from her first marriage and one from her new relationship) and came to Greece with her partner. Since then, they have been living in Greece, in her partner's house in excellent living conditions. The children have fully adapted to the new environment and have an excellent relationship with their mother's partner and his relatives. The two girls from her first marriage do not want to return to the USA.

The Court decided that the children's opinion should be taken into consideration, as it is the result of mature thinking and of their bad memories from their father and their stay in the United States.

The Court came to the conclusion that, since the mother is planning to marry her partner, she intends to stay in Greece permanently.

The Court recognised that the two girls' father had not in fact been exercising his custody rights in America and did not have contact with his daughters. Furthermore, the Greek Court of Appeal concludes that the decision of the Court of Philadelphia that attributed custody rights of the two girls to their father, was rendered after the removal of the mother with her daughters in Greece.

Ruling

The Court decided that the return of the children to their father in the USA would expose them to grave psychological harm and could place them in an intolerable situation. An alienation from their mother could injure them, since they are very closely related to her. The father was not in fact exercising his custody rights, even when the children were living in the United States.

The two girls have the maturity to form their own opinion; hence their mind should be taken into consideration.

Cases and authorities referred to

One Member Court of First Instance of Kilkis (Monomeles Protodikeio Kilkis) Decision No. 43/1996; *Voulgaris Ioannis*, The Hague Convention of 1980 on the civil aspects of international child abduction, *NoB* 38, 14-26

Judges

Charalampos Antoniadis (Chairman), Stavros Gavalas (Rapporteur)

Legal basis for decision

a. 13 a, b

The return of the children to their father must not be ordered, since their father has not been exercising any custody rights.

The adaptation of the children to their new environment, their good relationship with their mother's partner, their excellent living conditions and their bad memories from their father lead to the conclusion that their return to the USA would expose them to grave psychological harm and would place them in an intolerable situation.

Procedural Matters

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Comments

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