

Name of Case

Court of Appeal of Thessaloniki (Efeteio Thessalonikis) Decision No. 1587/1996

Date of Decision

1996

Requesting State

SWEDEN

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 1996, p. 890

Articles considered

2, 3, 4, 11§1, 12, 13, 18

Articles or provision upon which disposition of case based

2, 3, 4, 11§1, 12, 13, 18

Order

Return granted for one of the two children.

Facts

The case involved two children, a boy aged 10 and a girl aged 9 at the time of proceedings. The children were born in Sweden and were dual nationals (Greek and Swedish nationality). The father, a dual national (Greek and Swedish nationality) and the mother, a Swedish national were not married when the two children were born, but were subsequently married in Sweden in 1989. The family lived together in Sweden and the parents had joint rights of custody (according to Swedish family law, which was deemed applicable by the Court, the unmarried parents enjoy joint custody of a child, in contrast to Greek law, according to which the mother has custody of a child born outside of wedlock).

In 1989, six months after their wedding, the parents together with the two minor children moved to Greece with the intention of permanent stay. In 1992 the family moved back to Sweden. In the summer of 1993 the family visited Greece. At that time, the father announced his intention to permanently stay in Greece with the children and withheld their passports. The mother then tried to take the children out of Greece and was stopped by the father.

The mother initiated return proceedings before the Greek courts. The father filed a counter-petition requesting temporary award of custody and an injunction prohibiting the children's exit from Greece.

The Court of First Instance of Grevena (Decision No. 17/1994) dismissed the application of the mother for return, as it considered that the place of habitual residence of the children was Greece, where the family permanently resided. The Court took into consideration the fact that the family had moved to Greece (bought a house, registered the children at a Greek school and the father maintained his own business in Greece), the report by the appointed social worker that the children were happy to live in Greece and the opinion of the children, particularly the option of the boy (aged 8 at that time) who stated that he wished to stay in Greece. Therefore the Court refused return, based primarily on the fact that the Convention is applicable (as the permanent residence of the children is Greece) and, in every occasion on the fact that their return would cause distress on the two children.

The mother filed an appeal against this decision before the Court of Appeal of Western Macedonia. The Court of Appeal (Decision No. 119/1994) reversed the First Instance Court's judgment, as it considered that the place of permanent residence of the two children was in fact Sweden (where the family normally resided) and not Greece. According to the appellate Court judgment, this assumption cannot be overturned by the family's brief and temporary stay in Greece (where it was not proven that the father maintained a business) and by the opinion of the little boy (aged 8,5 at that time), which cannot represent a full opinion of a mature person. The Court also found that the return of the children to Sweden would not in any way jeopardize their psychological health. Therefore, return is granted.

The father filed a cassation (appeal on grounds of law) against the Appellate Court's decision before the Supreme Court of Greece (Areios Pagos). The Supreme Court reversed the Appellate Court's decision for procedural reasons and in particular due to the fact that the Appellate Court based its judgment on probable cause and not on full conviction as required by law in this type of procedure. The Supreme Court therefore remitted the case to the Court of Appeal of Thessaloniki for judgment on the merits.

The Court of Appeal of Thessaloniki (Decision No. 1587/1996) ruled that the father has been retaining the children in Greece wrongfully, as the parents enjoyed joint rights of custody. Nevertheless, it comes to the conclusion that the boy has fully adapted to the new environment and a return to Sweden, where its place of habitual residence used to be, could expose it to grave psychological harm. The minor boy wants to stay in Greece and, according to the Court, it is mature enough to form its own opinion, so its mind should be taken into account. As far as the girl is concerned, the Court recognises that it is more closely related and attached to its mother, who, after the publication of the Decision No.119/1994 of the Court of Appeal of Western Macedonia took the child to Sweden with her. Therefore the Court orders the return of the one child to Sweden with the mother and the stay of the other child in Greece with the father.

Ruling

Return granted for one of the two children.

Cases and authorities referred to

One Member Court of First Instance (Monomeles Protodikeio) of Grevena Decision No. 17/1994; Court of Appeal of Western Macedonia (Efeteio Dytikis Makedonias) Decision No. 119/1994; Supreme Court (Areios Pagos) Decision No. 1382/1995

Judges

Dimitrios Soultanias (Chairman), Ch. Antoniadis (Rapporteur), G. Foskolos

Legal basis for decision**a. 13**

The Court reached its decision based on each child's interest separately. Given that the boy was more closely related to its father and was fully adapted in the Greek environment, whereas the girl was attached to its mother and was not adapted to the Greek environment, the Court came to the conclusion that the two children should be separated.

Procedural Matters

The proceedings for adjudication of an application for return according to the Convention are the Provisional Measures proceedings, according to the Greek Code of Civil Procedure, due to the expeditious character of such proceeding as requested by the Convention (Article 2). However, the decision of the Court is not a decision of Provisional Measures, but a decision of the ordinary procedure, which can be appealed and which must be grounded on full conviction and not probable cause.

Comments

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