

**Name of Case**

One Member Court of First Instance of Corfu (Monomeles Protodikeio Kerkyras)  
Decision No. 1087/2004

**Date of Decision**

2004

**Requesting State**

ITALY

**Requested State**

GREECE

**Name of Court**

Monomeles Protodikeio Kerkyras (One Member Court of First Instance of Corfu)

**Status of Case**

N/A

**Level of Court**

First Instance Court (Provisional Measures)

**Published / where available**

Ionios Epitheorisi Dikaiou 2004, p. 211

**Articles considered**

13 b

**Articles or provision upon which disposition of case based**

13 b

**Order**

Return refused.

**Facts**

The case involved a girl aged 3 at the date of the alleged wrongful removal. The parents were in separation and enjoyed joint rights of custody. They resided with the child in Italy. During the period of their marriage the father had repeatedly abused and threatened the mother. As this behaviour continued, in March 2004, the mother, fearing for her and her child's life, took the child and fled to Greece. The father initiated return proceedings. Before the Greek Courts the mother filed a counter-petition for award of temporary custody of the child.

**Ruling**

Return refused. The Court held that given the father's abusive and dangerous behaviour, return would be dangerous for the child's physical and psychological integrity. The Court also dismissed the plaintiff's (father's) argument that it lacked jurisdiction over the counter-petition of the mother for custody and awarded temporary custody of the child to the mother. The plaintiff's (father's) argument for stay of proceedings due to existing proceedings for custody before the Italian Courts (*lis pendens*) was also dismissed.

**Cases and authorities referred to**

Supreme Court (Areios Pagos) Decision No. 386/2001 (published in Elliniki Dikaiosisini 2002, p. 116) (on the matter of *lis pendens*).

**Judge**

N. Skiadas

**Legal basis for decision****Article 13 b****Procedural Matters**

A counter-petition for custody may be filed by a defendant in return proceedings.

The Court has jurisdiction for this counter-petition based on Articles 12 and 14 of Regulation 1347/2001 (in combination with Articles 3 and 16 of the Hague Convention on Child Abduction) and on Greek Civil Procedure Law.

In procedural matters Greek Law (as the *lex fori*) applies.

In matters of stay of proceedings due to *lis pendens* involving a foreign jurisdiction, priority is to be given to the national courts.

**Comments**

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