

**Name of Case**

Supreme Court (Areios Pagos) Decision No. 809/2000

**Date of Decision**

2000

**Requesting State**

GERMANY

**Requested State**

GREECE

**Name of Court**

Areios Pagos (Supreme Court)

**Status of Case**

Irrevocable

**Level of Court**

Supreme Court

**Published / where available**

Trapeza Nomikon Pliroforion (Electronic database of the Athens Bar Association)

**Articles considered**

1a, 3, 12, 13

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

13 b

**Order**

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

**Facts**

The child, a girl, was aged 8 at the date of the alleged wrongful removal. She was of Romanian ethnicity and was adopted by a married couple residing in Germany. The foster parents were later separated and, pursuant to a decision of the Court of the Justice of the Peace of Mongengladbach, Germany in 1997, custody was removed from the foster parents and was assigned to the Special Social Services of Germany, which designated Mongengladbach, Germany as the child's permanent residence. In 1998 the foster mother took the child to Greece. The foster father applied to the Court of the Justice of the Peace of Mongengladbach for custody of the child and was awarded such custody. He then initiated legal proceedings against the mother in Greece for the return of the child. At the first instance hearing in the First Instance Court of Alexandroupolis, the child testified in camera before the judge that she did not want to return to Germany as she recalled terrible memories of her life there. The Court of First Instance, on the grounds of the child's testimony dismissed the foster father's application for return of the child. This decision was upheld by the Court of Appeal of Thrace and by the Supreme Court, following respective appeal and cassation filed by the foster father.

**Ruling**

Return refused; in accordance with article 13 b there was a grave risk that her return would expose the child to psychological harm.

The Court upheld the decision rendered by the Court of Appeal and by the First Instance Court.

**Cases and authorities referred to**

One Member Court of First Instance of Alexandroupolis (Monomeles Protodikeio Alexandroupolis) Decision No. 316/1998; Court of Appeal of Thrace (Efeteio Thrakis) Decision No. 223/1999; Court of the Justice of the Peace of Mongengladbach, Germany Decision No.30 F. 909/1997.

**Judges**

Charalambos Myrsinias, Grigorios Filippatos, Damianos Papathanassis, Theodoros Bakas, Eleftherios Tsakopoulos

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

The Court of the requested state is not obliged to order the return of the child, if it can be proved that there is a risk to expose the child to physical or psychological harm or place it in an intolerable situation by ordering its return. The information offered by the social services of the state of habitual residence on the social status of the child has to be taken into consideration.

In this case it is highly possible that psychological harm will be caused to the child if it returns to Germany, where it used to live.

**Procedural Matters**

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**Comments**

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