

**Name of Case**

One Member Court of First Instance of Kos (Monomeles Protodikeio Ko) Decision No. 1201/2001

**Date of Decision**

2001

**Requesting State**

AUSTRALIA

**Requested State**

GREECE

**Name of Court**

Monomeles Protodikeio Ko (One Member Court of First Instance of Kos)

**Status of Case**

First Instance

**Level of Court**

Court of First Instance

**Published / where available**

Legal Database "Nomos", Armenopoulos 2003, p. 1117, Armenopoulos 2004, p. 360

**Articles considered**

1a, 2, 3, 4, 5a, 7c, 10, 11, 12§§1-2, 13, 14, 15

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

12§§1-2, 13, 20

**Order**

Return of the child to the mother was granted.

**Facts**

The case involved a boy aged 4,5 at the time of the proceedings. The woman, a British national, and the man, a Greek national, got married in Australia in 1995 and acquired a boy. In 1999, when the child was aged two, they divorced with an irrevocable court decision and they agreed that the mother would retain the custody of the child. In their agreement, nevertheless, they made special mention of the contact and access rights of the father. Both parents were remarried. In the summer of 2001 the father took the child on vacation in Greece, but did not return the child to the mother at the end of the vacation.

Since then the child has been living in Greece with its father and his wife, in excellent conditions and is attending a Greek nursery school. However, until the moment the child was transferred to Greece, the mother had been properly exercising her custody rights. The Court reached the decision that the return of the child to its mother would not expose it to any psychological danger. The child claimed that it did not want to return to Australia, but its mind was not taken into consideration, as on the one hand it was too young and immature to form an established judgment and on the other hand this opinion was the result of its father's influence. Furthermore, the Court was not convinced that the

father intended to spend the rest of his life in Greece, since he had great estate, a settled business and close relatives in Australia. The Court came, thus, to the conclusion that the father could follow the child, if it returned to Australia.

### **Ruling**

The Court decided that the mother had been exercising her custody rights properly and that there was no grave risk for the child's psychological health if it returned to its maternal environment. The Court ruled that the child was very young and not mature enough for its opinion to be taken into consideration. Furthermore, it was its age that made indispensable its psychological contact with its mother.

### **Cases and authorities referred to**

Supreme Court (Areios Pagos) Decision No. 1382/95; Court of Appeal of Thessaloniki (Efeteio Thessalonikis) Decision No. 3662/96; Court of Appeal of Western Macedonia (Efeteio Dytikis Makedonias) Decision No. 119/94; *Voulgaris Ioannis*, The Hague Convention of 1980 on the civil aspects of international child abduction, NoB 38, 14-26.

### **Judges**

Vougiouka Eleni

### **Legal basis for decision**

#### **art.12 §§ 1, 2**

Less than a year has elapsed since the wrongful retention of the child from its father. The child's contact with its mother in this age is of major importance.

#### **art.13**

Return of the child is refused only if there is grave risk that it would hurt its psychological health. This provision is not applicable in this case.

The opinion of the child is taken into consideration only if it has reached the necessary age and maturity to form its own view.

### **Procedural Matters**

1) 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.

2) The application for the return of the child included a request for the imposition of a monetary penalty against the father, in case he did not execute the Court's decision. However, this request was rejected, since according to a. 950 of the Greek Code of Civil Procedure, only immediate execution is possible in this case.

### **Comments**

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