

Name of Case

One Member Court of First Instance of Athens (Monomeles Protodikeio Athinon)
Decision No. 3413/2000

Date of Decision

2000

Requesting State

SWITZERLAND

Requested State

GREECE

Name of Court

Monomeles Protodikeio Athinon (One Member Court of First Instance of Athens)

Status of Case

First Instance

Level of Court

Court of First Instance

Published / where available

Legal Database "Nomos", Nomiko Bima 2001, p. 415

Articles considered

1a, 3, 5a, 12§§1,2, 13, 14, 16

Articles or provision upon which disposition of case based

12§§1,2, 13, 14, 16

Order

Return of the child to the mother was granted.

Facts

The case involved a girl aged 4 at the time of the proceedings. The parents were married in 1990 and the child was born in 1996 in Zurich, Switzerland, where a few months after its birth the parents moved permanently. In 1998 the couple applied for divorce in the Swiss courts with the agreement that rights of custody would be reserved to the mother. In the meantime the husband (a Greek national) decided to abstain from the proceedings regarding the divorce and when his wife announced that she was determined to go on with the proceedings, he flew to Greece taking the minor child with him.

The Court in Switzerland recognised their right to live separately and attributed rights of custody to the mother, while at the same time it made provision for the rights of access of the father.

The Court rules that retention of the child by the father is illegal, since it conflicts with an irrevocable court decision. The retention of the child by the father goes against the custody rights of the mother that have been recognised by the country of the child's habitual residence. The mother had not agreed on the transfer of the child to Greece.

The Court concludes that the return of the child to Switzerland causes no serious danger to its physical or psychological health.

Ruling

The Court orders the return of the child to Switzerland with its mother, who should legally exercise the custody rights that have been attributed to her.

Cases and authorities referred to

Voulgaris Ioannis, The Hague Convention of 1980 on the civil aspects of international child abduction, *NoB* 38, 14-26

Judges

G. Micholias (Chairman), N. Kalogyrou (Rapporteur)

Legal basis for decision

art.3

The removal and retention of a child is illegal if it is in breach of rights of custody attributed to a person by under the law of the State in which the child was habitually resident immediately before the removal or retention.

art. 13

No grave risk occurs for the physical or psychological health of the child if it returns to Switzerland with its mother, especially given the age of the child.

Procedural Matters

1) The defendant claimed that there was a *lis pendens* in this case, since an application was pending before the One Member Court of First Instance (*Monomeles Protodikeio*) of Syros regarding the custody of the child. The Court decided that the two Courts had to deal with different issues, given that in this case the issue is the return of the minor in its place of residence in Switzerland, whereas the First Instance Court of Syros had to decide on the rights of custody. Furthermore, the Court ruled that a.16 of the Convention was applicable in this case and there was no issue of a *lis pendens*.

2) According to a.14 of the Convention judicial decisions rendered in the State of habitual residence of the child are to be given direct effect, without recourse to the specific procedures for the recognition of foreign decisions that would otherwise be applicable. Hence, the decision of the Swiss Court that attributed custody rights to the mother is to be directly applied with no need for recognition procedures.

Comments

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