

Name of Case

Supreme Court (Areios Pagos) Decision No. 1003/1998

Date of Decision

9 June 1998

Requesting State

USA

Requested State

GREECE

Name of Court

Areios Pagos (Supreme Court)

Status of Case

Irrevocable

Level of Court

Supreme Court

Published / where available

Legal Database "Nomos", Trapeza Nomikon Pliroforion (Electronic database of the Athens Bar Association).

Articles considered

3, 4, 5 a, 12 §§ 1-2, 13

Articles or provision upon which disposition of case based

3, 4, 5 a, 12 §§ 1-2, 13

Order

Refused return of the two children to the father.

Facts

The case involved two children, a boy aged 5 and a girl aged 4 at the time of the proceedings. The parents after their marriage settled down in New York, where the father, an American citizen, worked. The parents enjoyed joint rights of custody. In 1995 they decided to visit Greece both on vacation and because the husband wanted to attend a conference in Greece.

During that period the mother stayed with the children, who were American citizens, in her parents' house in Thessaloniki, whereas the father stayed in his mother's house in Athens.

The couple decided to divorce and return with the children back to the US until divorce was granted. According to their agreement, the mother would afterwards take the children and move to Greece.

Despite the abovementioned agreement, after the end of their stay in Greece, the father cancelled their flight reservations and returned to NY alone. When the mother found out about it, she flew to NY, as well, but it was impossible for her to take the children with her. Serious incidents occurred in NY that led to Court decisions against the husband.

Given the fact that the couple could not reach a settlement, the wife left and came to Greece, where she has been living with her children since then.

The First Instance Court of Athens granted temporary custody rights to the mother. The Court of Appeal recognised that the mother had no intention of illegally retaining the children to Greece, but this was a consequence of the denial of her husband to take the children with them in the US until divorce was granted. The Court notes that the father had agreed to their transfer in Greece at the first place. The Court ruled that the father was not in fact exercising his rights of custody to the children and was rather indifferent, this is why the children were very strongly connected to their mother and alienated from their father.

Ruling

The Court decided that the return of the children to their father in the US would expose them to grave risk of psychological harm and place them in an intolerable situation.

Cases and authorities referred to

One Member Court of First Instance (Monomeles Protodikeio) of Thessaloniki Decision No. 21841/1996; Court of Appeal of Thessaloniki (Efeteio Thessalonikis) Decision No. 1957/1997 (published in Armenopoulos, 1997, p. 1490); One Member Court of First Instance (Monomeles Protodikeio) of Athens Decision No. 32163/1995; One Member Court of First Instance (Monomeles Protodikeio) of Thessaloniki Decision No. 4728/1999.

Judges

Dionisios Katsireas (Vice Chairman of the Supreme Court), Emmanouil Charitakis, Theodoros Prasoulidis, Georgios Brettas, Georgios Krassas (Members of the Supreme Court)

Legal basis for decision

a.13b

The strong connection of the children with their mother, who did not remove or retain them illegally, and their alienation from their father, who did not in fact exercise his custody rights, made it necessary for the children to remain with their mother in Greece, or else their psychological stability could be injured.

Procedural Matters

The Supreme Court upheld the decision of the Appellate Court (Decision No. 1957/1997), which was in line with the decision of the One Member Court of First Instance of Thessaloniki (Decision No. 21841/1996) and ruled that the Appellate Court in its decision had respected the rules of the Hague Convention and had not made any procedural mistakes according to Greek Civil Procedure.

Comments

This case should be read together with One Member Court of First Instance (Monomeles Protodikeio) of Thessaloniki Decision No. 4728/1999.