

Name of Case

Court of Appeal of Athens (Efeteio Athinon) Decision No. 10107/2005

Date of Decision

2005

Requesting State

GREECE

Requested State

FRANCE

Name of Court

Efeteio Athinon (Court of Appeal of Athens)

Status of Case

Final

Level of Court

Appellate Court

Published / where available

Elliniki Dikaiosisini 2006, p. 847

Articles considered

16, 17, 18, 19

Articles or provision upon which disposition of case based

13b

Order

Application for custody rights filed by the father is dismissed.

Facts

The child was aged 4 at the date of the alleged wrongful removal. Two decisions were issued by the French courts (first instance and appellate) ordering return of the minor child to the father in Greece. Execution of neither decision became possible and whereas the mother was convicted to imprisonment for her inobedience, the child has been living in France since 1998.

Ruling

The grant of custody to the father is refused. The return of a child is irrelevant to the issue of custody. The child is adapted to the French environment and the mother has offered a calm and normal environment for the infant. Its entrance into a new environment would be hard and negative for its psychological and mental development.

Cases and authorities referred to

Court of Appeal of Thessaloniki (Efeteio Thessalonikis) Decision No. 3662/1986, Vathrakokylis, *Interpretation of Greek Civil Code*, art. 1518 § 38 ff., 2004 edition

Judges

Karapeti – Leontaridou Giannoula (Rapporteur)

Legal basis for decision**a. 13b**

The stay of the child in France for such a long period of time and its adaptation in that environment leads to the conclusion that it is to the child's best interest to remain in France with its mother. Its adaptation to a new environment would be difficult and would expose it to psychological harm.

Procedural Matters

Proceedings regarding the return of the child after its alleged wrongful removal based on the Hague Convention are independent of subsequent custody proceedings.

Comments

The case raises the issue of non execution of decisions rendered under the Hague Convention.