

Name of Case

Court of Appeal of Patras (Efeteio Patron) Decision No. 206/2005

Date of Decision

2005

Requesting State

GERMANY

Requested State

GREECE

Name of Court

Efeteio Patron (Court of Appeal of Patras)

Status of Case

Final

Level of Court

Court of Appeal

Published / where available

Achaiki Nomologia 2006, p. 208, Trapeza Nomikon Pliroforion (Electronic database of the Athens Bar Association)

Articles considered

2, 3, 5, 7, 10, 11, 12, 13, 16, 17

Articles or provision upon which disposition of case based

13b

Order

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

Facts

The child, a boy, was aged 5 at the date of the alleged wrongful removal. The mother is of Bulgarian nationality and the father of Greek nationality. The parents married in Bulgaria in 1996 and moved to Greece, where the child was born in 1997. At first, the parents had their habitual residence in Greece and enjoyed joint custody of the child. Due to financial problems in the family, in 2000 the father moved to Germany. The mother followed, with the child and moved to Germany in 2001. Germany then became the new permanent residence of the family and the parents continued to enjoy joint custody of the child. Soon after, the parents' relationship became problematic, mainly due to the father's behaviour, who would spend the family savings on gambling. In 2002 the father took the child and moved back to the original family home in Greece. The mother demanded the return of the child and, after the father's refusal, officially applied for the return of the child to Germany and initiated legal proceedings. The Court of First Instance of Aegio refused return on the grounds that a return to Germany would harm the child's well-being, as the child is adapted to his life in Greece. This decision was upheld by the Court of Appeal of Patras, after taking into consideration the in camera testimony of the child, who strongly refuses his return to Germany. The Court also took

into consideration that Greece was the place of the child's first family home, after his birth.

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 First Instance.

Cases and authorities referred to

One Member Court of First Instance of Aegio (Monomeles Protodikeio Aegiou) Decision No. 764/2003; Court of Appeal of Thessaloniki (Efeteio Thessalonikis) Decision No. 998/1997; Court of Appeal of Thessaloniki (Efeteio Thessalonikis) Decision No. 1957/1997; Supreme Court Plenary Session (Olomeleia Areiou Pagou) Decision No. 754/1986; *I. Doubis*, "Issues of substantive and procedural law from the enforcement of The Hague Convention on the civil aspects of international child abduction".

Judges

Charalambos Dimadis (President), Pavlos Zavalianis (Rapporteur)

Legal basis for decision

Article 13b

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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