

Name of Case

Court of Appeal of Dodekanisa (Efeteio Dodekanisou) Decision No. 68/2005

Date of Decision

23 March 2005

Requesting State

SWEDEN

Requested State

GREECE

Name of Court

Efeteio Dodekanisou (Court of Appeal of Dodekanisa)

Status of Case

Final

Level of Court

Appellate Court

Published / where available

Legal Database "Nomos"

Articles considered

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

Articles or provision upon which disposition of case based

13b

Order

The habitual residence of the child is in Greece (Rhodes) where its father lives, therefore return to its mother is refused.

Facts

The child, a girl, was aged 7 at the time of the alleged wrongful removal. The parents were not married, but the father had recognised the paternity of the child both in Sweden and in Greece. The custody was de facto exercised by both parents, despite the fact that according to Greek and Swedish law the right of custody was awarded to the mother. The mother was Swedish, whereas the father was Greek. The parents decided to separate when the child was aged 6. Until that time the habitual residence of the child was in Greece. The child attended the first class of primary school in Rhodes for some months, but then her mother took her to Sweden (where she also had another out of wedlock child) despite her father's objections. In summer of 2003 the child came to Greece for vacation, but decided that it did not want to return to Sweden, because her mother's partner treated her badly. The mother came to Greece and tried to kidnap the child, but was prohibited by the police. Since then the child has been living in Greece with her father in excellent conditions. The child that has been examined by a social worker does not want to leave Greece and her father and wants to live with her mother only if she comes to settle down in Greece.

Ruling

The father has been wrongfully keeping the child in Greece since its vacation in August 2003, since the rights of custody have been awarded to the mother by law. But since the place of habitual residence of the child, namely the place where it has lived most of his life, is Greece, return of the child to Sweden cannot be ordered, as this is against the child's interest.

Cases and authorities referred to

One Member Court of First Instance of Rhodes (Monomeles Protodikeio Rodou) Decision No. 1164/2004; Supreme Court (Areios Pagos) Decision No. 1382/1995; Court of Appeal of Thessaloniki (Efeteio Thessalonikis) Decision No. 3662/1996; Court of Appeal of Western Macedonia (Efeteio Ditikis Makedonias) Decision No. 119/1994; *Voulgaris Ioannis*, The Hague Convention of 1980 on the civil aspects of international child abduction, *NoB* 38, 14-26, *Grammatikaki – Alexiou Anastasia*, *The international child abduction according to the Hague Convention of 1980*

Judges

Konstantinos Apostolopoulos (Chairman), Kalliopi Pirovolaki (rapporteur), Spiridoula Makri

Legal basis for decision

a.13

The Court upheld the decision of the First Instance Court and ruled that the child's removal from its place of habitual residence will expose it to psychological harm due to the need for adaptation to a new, unknown environment. The child has the right to be treated as a separate person with its own needs, and must not be transferred from one place to the other based on the mother's rights of custody.

Procedural Matters

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Comments

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