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## GREECE

## HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

**Introduction**

On October 25, 1980, Greece was among the first four countries which signed the Final Act of the 14<sup>th</sup> Session of the Hague Conference on Private International Law. The Final Act contained the text of Hague Convention on the Civil Aspects of International Child Abduction (hereinafter the Convention) and a recommendation for the applications to be used to request the return of children who fell under the scope of the Convention. Greece ratified the Convention more than 10 years later on December 2, 1992. The Convention entered into force between United States and Greece on June 1, 1993.

The Convention's central purpose is to protect children under the age of 16 from wrongful international removal or retention. Greece is required by article 2 of the Convention, as a contracting state, to take all appropriate steps to implement the Convention's objectives, as established in article 1: a) to ensure the prompt return of children who have been wrongfully removed or retained; and b) to ensure that rights of custody and access under the law of other contracting states are respected.

**I. Domestic Laws and Regulations Implementing the Hague Convention**

On December 2, 1992, Greece enacted Law No. 2102/1992 on Ratification of the Convention on the Civil Aspects of International Child Abduction.<sup>1</sup> Pursuant to article 28, paragraph 1, of the Greek Constitution of 1975, upon its ratification the Convention constitutes an integral part of the domestic legal system and prevails over any contrary provision of domestic law. The ratifying law, which comprises the entire Convention, in English and Greek, entered into force as of its publication in the Official Gazette of Greece on December 2, 1992.

**II. Domestic Laws Regarding Child Abduction and Parental Visitation****A. Child Abduction**

The Hague Convention does not deal with the criminal aspects of child abduction. Under the Greek Criminal Code, child abduction by a parent is a criminal offense as well. The Criminal Code contains a specific article on abduction of minors which is also applicable in case the child is removed by a parent.

Art. 324:<sup>2</sup> A person who abducts a minor from his parents, guardians, or anyone who has custody of the child by law, or one who assists the voluntary escape from the authority of such persons, will be punished by imprisonment for not more than 3 years. If the life of the minor or his physical health, because of lack of care, was endangered, the perpetrator will be punished by imprisonment of at least 1 year.

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<sup>1</sup> EPHEMERES TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [Government Gazette of the Hellenic Republic], part. A. No. 193, Dec. 2, 1992.

<sup>2</sup> 4 Kodikes: POINIKOS KODIKAS [4 Codes: Criminal Code] (Nomike Vivliotheke, 1995) at 741.

If the minor has not completed 14 years of age, the perpetrator will be punished by imprisonment up to 10 years, unless the act was committed by parents, in which case the previous paragraph is applicable. If the perpetrator committed the act for profit or with the intent to engage the minor in immoral activities or to alter the family unity of the minor, he will be punished by imprisonment up to 10 years.

If the perpetrator intended to ask for ransom or to compel one to act or not take some action, he will be punished by imprisonment. The perpetrator will be punished by jailing if he frees and returns the child safe and sound voluntarily and before any of his requests were fulfilled.

## **B. Parental Visitation**

Relations between parents and children during marriage and in case of divorce, separation, or annulment of marriage, are dealt with in chapter 11 of the Family Law of the Civil Code.<sup>3</sup> Articles 1510 and 1511 provide for parental care of a minor child, which is a right and obligation of the parents and is exercised jointly. Parental care includes the care of the child, administration of his property, and representation of the child in any legal act or before the court. Under Greek family law and on the principle of equality of sexes, both parents have the right and obligation jointly to care for the child during marriage.

Article 1518 defines child care as nurturing, supervision, education, and guidance, as well as determination of the child's place of residence. Parents may request the appropriate judicial authority for assistance and support in the exercising of their right to parental care. The latter are obliged to conform.<sup>4</sup>

In case of a divorce, separation, or annulment of a marriage, if both parents are alive, the exercise of parental care is decided by the court. Custody may be assigned to one parent. Custody may also be assigned to both parents, if they both agree and if the parents mutually decide upon the child's place of residence. The court may opt to decide otherwise, especially to divide custody between the parents, or to assign custody to a third person.<sup>5</sup>

Every decision of the parents that relates to the child must be in the best interests of the child. The court must also apply the same standard when it decides custody issues, including who will be assigned custody and how it will be exercised. Every court decision must be based on the equality of the sexes, without discriminating on the basis of ethnicity, race, sex, political, religious beliefs, or social status.<sup>6</sup> A non-residential parent has the right of personal access to a child.<sup>7</sup> Parents cannot bar contact between the child and the child's grandparents unless there are serious reasons to do so. The right to access is determined by the appropriate court in a detailed manner.<sup>8</sup>

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<sup>3</sup> 4 KODIKES, ASTIKOS KODIKAS [Civil Code] art. 1505-1541 (Nomike Vivliotheke, 1995).

<sup>4</sup> *Id.* art. 1519.

<sup>5</sup> *Id.* art. 1513 and 1514.

<sup>6</sup> *Id.* art. 1511.

<sup>7</sup> *Id.* art. 1520.

<sup>8</sup> *Id.*

The care of minor children born out of wedlock belongs to the mother. If the child is subsequently recognized by his father, then the father has the right to care for the child in the following two instances: if the mother ceases to care for the child or if the mother is unable to exercise such care due to legal or factual reasons. The father may request that he be assigned total or partial custody of the child by the court, if the mother agrees to it.<sup>9</sup>

### III. Court System and Structure – Courts Handling the Hague Convention

#### A. Right to Seek Return

When a parent's custody rights have been violated by another's wrongful removal or retention of the child, that parent may request the return of the child based on the Convention. There are two means to do so. One is through application to the designated Central Authority, and the other is through direct application to the appropriate court where the child is located.

As required by article 6 of the Convention, Greece established the Ministry of Justice as the Central Authority.<sup>10</sup> Thus, in Greece, the aggrieved person may file a request with the Ministry of Justice, which has a website where applications forms can be obtained.<sup>11</sup> Greece further designated the local offices of the Legal Counsel or the Judicial Offices of the Legal Council of the State to perform judicial acts on behalf of the Central Authority. Where such offices do not exist, this responsibility will be assigned to a government attorney by the President of the Legal Council of the State.

The application and all attached documentation must be translated into Greek. Pursuant to the Convention, translations need no authentication. After the application is examined for accuracy and completeness, it is forwarded to the Public Prosecutor through the local office of the Ministry of Justice where the child is presumed to be. Police assistance is sought if the child is not found. At this point, the non-custodial parent is notified and negotiations are arranged for the child's voluntary return. If the child is not returned voluntarily, the Public Prosecutor will file an application with the district court.<sup>12</sup> An interim order may be also requested to ensure that the child remains in Greece.<sup>13</sup>

Since the Hague Convention requires that abduction cases be expedited, such cases in Greece are handled pursuant to articles 682-703 on provisional remedies (safety measures), as provided by the Code of the Greek Civil Procedure.<sup>14</sup> Provisional remedies are ordered by the courts in emergency situations or in order to avert imminent danger, to sustain a right, or to regulate a situation. Provisional remedies can be ordered by the court where the main litigation is pending.<sup>15</sup>

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<sup>9</sup> *Id.* art. 1515.

<sup>10</sup> *Supra* note 1.

<sup>11</sup> See <http://www.ministryofjustice.gr/eu2003/pj-pdf/kef10.pdf>.

<sup>12</sup> INTERNATIONAL PARENTAL ABDUCTION, "Greece," 104-108 (1998).

<sup>13</sup> See arts. 731 and 735 of the Code of Civil Procedure. Under the latter, the competent court has the authority to decide who has the temporary custody of children, to remove the custody of the child from his parents, and to arrange visitation rights.

<sup>14</sup> *Supra* note 2, KODIKAS POLITIKES DIKONOMIAS [Code of Civil Procedure] at 520.

<sup>15</sup> Code of Civil Procedure, art. 682.

The courts that are competent to handle child abductions are one-member first instance courts (*Monomele Protodikeia*), since they are able to order provisional remedies.<sup>16</sup> Provisional remedies may also be ordered by the court nearest to the place where the provisional measures will be enforced, provided that the court has subject matter jurisdiction.<sup>17</sup>

Article 16 of the Convention prohibits domestic courts, upon receiving notice of wrongful removal and retention, from passing a judgment on the merits of the custody issue. This is contrary to Greek Civil Procedure, which provides that a decision on provisional measures does not prevent the adjudication on the merits.<sup>18</sup>

## B. Implementation of the Convention

Since the initial report was prepared in 2000, there have not been any major changes, substantive or procedural, in the implementation of the Convention. Courts continue to apply the Convention, as cases arise. The Central Authority has released some preliminary statistics that indicate that most of the child abduction cases involve countries, such as Australia, Germany, Sweden, the United Kingdom, and the United States. Statistical data also suggests that Greek courts tend to render judgements in accordance with the primary objective of the Convention, that is the prompt return of the child who was wrongfully removed or retained to the rightful custodial parent. However, it is claimed that foreign courts are more likely to use the exceptions provided for by the Convention and dismiss applications submitted by the Greek Central Authority for the return of children in Greece.<sup>19</sup>

Other sources note that Greek judges, especially those in provinces, are more prone to nationalistic views than those in the cities and tend to favor “forum litigants.” Consequently, they decide that it is in a child’s best interest to remain in Greece. The Convention also aims to safeguard the best interests of children in general, as it states in its preamble that the “interests of children are of paramount importance in matters relating to their custody.” However, this is a secondary aspect of the Convention, since its primary objective remains the prompt return of the child that was abducted to its country of habitual residence. Judges also take into account the concept of the “welfare of the child.”<sup>20</sup>

The most significant problem that the Greek courts have faced in applying the Convention has been procedural. In Greece, civil disputes involving international child abduction are handled pursuant to the procedure provided by the Code of Civil Procedure on provisional measures. The burden of proof required by law under an application for provisional measures is based on probability,<sup>21</sup> rather than on the more substantial standard required by the Convention. Another question is whether or not a decision on provisional measures is subject to appeal. Pursuant to article 699, decisions that allow or deny provisional

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<sup>16</sup> *Id.* art. 683, ¶ 1.

<sup>17</sup> *Id.* ¶ 3.

<sup>18</sup> *See id.* arts. 693 and 695. However, art. 16, because of the superior force of the Convention in the legal system of Greece, will apply. *See* the analysis of the Convention and its effect on the Greek legal system in I. Voulgares, *The Hague Convention of 1980 on Civil Aspects of International Abduction of Children* [in Greek] HARMENOPOULOS 23 (1990).

<sup>19</sup> *See* <http://www.constantinidou.gr/article4.en.html>.

<sup>20</sup> International Child Abduction News, Report of Meetings with Representatives of the Greek Central Authority (June/July 2001), available at <http://www.law.gov.au/childabduction>.

<sup>21</sup> *Supra* note 14, art. 690.

measures are not subject to appeal, unless provided otherwise. The Supreme Court of Greece (*Areios Pagos*) has held that such decisions are subject to appeal, whereas the Appeals Court of Corfu has held otherwise.<sup>22</sup>

### C. Court Decisions

As stated previously, Greek courts, when deciding custody issues, are prohibited from discriminating on the basis of the ethnicity, race, sex, or social status of the parents. The following cases illustrate of how Greek courts apply the provisions of the Convention to the facts of the case under consideration.

In 1996, the Court of First Instance in Thessaloniki passed judgment (No. 13601)<sup>23</sup> concerning the following abduction case. The mother, a resident of Alaska, was awarded custody of two children ages 7 and 9, by virtue of a divorce decree, while the father, a Greek citizen, was granted visitation rights. In 1994, the father brought the children to Greece without the required authorization. Two years after the children were removed, the mother filed an application on wrongful removal and retention through the appropriate office of the Central Authority in Greece. The competent court of Thessaloniki established its international jurisdiction to decide the case, since one party was a Greek citizen. The court, for purposes of expediency, decided the case based on article 682 of the Code of Civil Procedure and subsequent articles on provisional measures. The court then made a determination as to the wrongfulness of the conduct within article 3 of the Convention. Taking into consideration article 1511 of the Civil Code, which mandates the application of the principle of the best interest of the child in custody issues, the court held that parental custody must be granted to the father for the following reasons: pursuant to article 12 of the Convention, if the petition is filed within 1 year from the unlawful removal, the court is compelled to return the child immediately. If the petition is filed after 1 year, the court is obliged to return the child, unless it is proven that the child has adjusted to his new environment. Thus, the court in applying the exception in article 12, paragraph 2 of the Convention, held that the children "were well adjusted in the new environment, happily living with their father and grandmother and doing extremely well in school." In deciding whether to send the children back to Alaska to live with their mother, the court noted that such a dramatic change would have a severe psychological impact upon the children. Therefore, the court temporarily awarded the custody of both children to their father.

The second case involved a Greek father and a Swedish mother with two children who resided in Greece. This case is noteworthy, because it reached the Supreme Court of Greece (*Areios Pagos*), which took the following actions: annulled the decision of the Court of Appeals on the grounds of insufficient standard of proof, as required by the Convention; answered the question of whether or not civil disputes arising from the Convention which are handled pursuant to the provisional measures of the Greek Civil Procedure are subject to appeal; and remanded the case to the Court of Appeals of Thessaloniki.

The Thessaloniki Court of Appeals in its Decision No. 1587/1996 partially upheld the decision of the lower court and stated that the civil dispute that arose due to the international abduction, as provided by the 1980 Hague Convention, is not a provisional measure as provided for in article 682 of the Code of Civil Procedure, nor is it a measure regulating a situation. It is adjudicated on the basis of article 2 and 11, paragraph 1, of the Convention only for purposes of expediency. Thus, in Greece such expedient procedure is provided by article 682 of the Civil Procedure. Therefore, the Court, following the Supreme

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<sup>22</sup> 7 HARMENOPOULOS 895 (1996).

<sup>23</sup> See <http://www.hiltonhouse.com/cases/Meredith-grc.txt>.

Court Decision 1382/1995, held that the decision which adjudicates the case arising from the Convention is subject to appeal, irrespective of article 699 of the Code of Civil Procedure, which holds otherwise. The Court of Appeals in applying article 13, ordered that the boy stay in Grevena with his father after taking into consideration the stated wishes of the boy and his level of maturity. His return to Sweden would endanger his physical and mental well being. Moreover, the court ordered that only the girl should be returned to her mother in Sweden, because it could not establish any of the exceptions that allow a court not to order the return of a child.

As stated above, the concept of the “best interest of a child” has often been used by the Greek courts in deciding cases involving children. In 1996, the Supreme Court of Greece, in examining the meaning of this phrase, held that it is a legal term and as such is subject to review by the Court. In a case decided in 2001, the Supreme Court again considered the best interest of the child in an abduction case.<sup>24</sup> The Court applied the exceptions provided for in article 13, paragraph b, of the Convention, that stipulate that a child should not be returned when there is a grave risk of exposure to either physical or psychological harm; or the child otherwise would be placed in an intolerable situation. Under these circumstances, the court has the discretion not to return the child. Consequently, the Supreme Court affirmed the decision of the Court of Appeals and ordered that the child be kept in Greece rather than be sent back to the United Kingdom.

#### **D. A Case Involving United States and Greece**

This case, which was heard on appeal and decided on January 9, 2001, by the New York Court of Appeals, is rather complex, because of conflicting custody awards issued by the courts of Greece and New York. It is also noteworthy, because the U.S. District Court affirmed the decision of the Greek Supreme Court, based not on grounds of comity, but by extending the full faith and credit principle, which is reserved for judgments issued among U.S. Courts. In brief, the facts of the case involve the father, a citizen of the United States; the mother, a citizen of Greece; and two children, dual citizens of United States and Greece. During a family vacation to Greece in 1995, the parents separated. The father returned to the United States, while the mother remained in Greece with the children. In 1995, the mother was awarded temporary custody of the children through the appropriate court in Greece. Soon after, the father filed for divorce and child custody in New York. He was awarded temporary custody in July 1997 and permanent custody in November 1997. The father also proceeded to file a petition with the Greek Central Authority requesting that the children be returned to New York. He appealed his case up to the Supreme Court in Greece, which affirmed the appeal court’s decision in favor of the mother. The mother was granted primary custody of the children and the father, visitation rights. In October 2000, the father brought the children to the United States without the mother’s consent. The mother filed an International Child Abduction Remedies Act (ICARA) proceeding in the District Court requesting the return of the two children to Greece. The issue under consideration before the district court was to decide whether Greece or the United States was the habitual residence of children. The Court held that the children’s habitual residence was Greece, since they were there from 1995 to 2000, unless the mother’s retention of the children in Greece was wrongful. It ordered that the children be returned to their mother in Greece. It also held, based on the ICARA’s provision which states that “full faith and credit will be accorded by the courts of the states and the courts of the United States to the judgment of any other such court ordering or denying the return of the child,” that the Greek Supreme Courts’ decision be given full faith and credit. The father appealed the decision. In 2001, the New York Court of Appeals accepted the facts as applied by the Greek Supreme Court. It affirmed the decision of the District Court, which deferred to the Hague

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<sup>24</sup> 8 Nomikon Vema [Legal Tribune] at 1313 (Sept. 2001).

Convention decision issued by the court in Greece, in favor of the mother on international comity grounds, rather than the full faith and credit principle.<sup>25</sup>

#### IV. Law Enforcement System

Greece has designated the Ministry of Health, Welfare, and Social Insurance, through its appropriate offices and based on a prior authorization by the local public prosecutor, to be responsible for the temporary safeguarding of a child until the latter is returned to the rightful parent.

Following a court order, the return of the child to the rightful parent can be effected under the power of the bailiff. In the Greek legal system the bailiff (*dikastikos epimeletes*) is authorized to enforce court orders pertaining to custody issues.<sup>26</sup>

Even when Greek courts order the return of a child to the rightful custodial parent, enforcement of the court order is still problematic. This is illustrated in a case that received much publicity and was raised with the Ministry of Justice in Greece by officials of the United Kingdom. The case was appended to a document drafted by the Parliamentary Assembly of the Council of Europe<sup>27</sup> and involved the abduction of a child from the United Kingdom by his Greek father in 1999. It was used by the Parliamentary Assembly as an example to highlight the problems that often arise in international abduction cases, the psychological trauma of the custodial parent, and the trauma of the children involved who are often caught in between two countries and two diverse cultures. In this case, an application under the Hague Convention was forwarded to the Ministry of Justice in Greece by the Child Abduction Unit of the United Kingdom. The Court of First Instance ordered the father to return the child, otherwise he would be imprisoned for up to 8 months and subjected to a fine. The court order was not effected because, meanwhile, father and child disappeared.<sup>28</sup>

In 2000, the mother traveled to Greece with a television documentary team to locate the child. The Child Abduction Unit stated that Greece was not very cooperative. The Greek police were unable to find the child or the father. In June 2000, the father was arrested and was later released. In November 2000, the father filed for appeal. The Child Abduction Unit was informed that the court order for return remains enforceable irrespective of pending appeal and was also assured that return would be enforced immediately if the appeal failed. During the appeal, the father did not attend the court. As of June 2002, a decision had not been issued yet.

Pursuant to article 19 of the Convention, a decision of a Greek court regarding the return of a child is not a final determination on the merits of the custody issue. Thus, remaining issues involving visitation rights by the non-custodial parent and determinations of the custody of children will be decided pursuant to articles 681B, paragraph b, and 681, paragraph 2, of the Code of Civil Procedure. In accordance with these articles, disputes concerning parental custody of children, the joint exercise of parental care, and parental and grant-parental access (during marriage, in cases of divorce, or for children born out of

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<sup>25</sup> The U.S. Department of State filed a brief in this case with the 2nd Circuit Court in New York, on Jan. 5, 2001, arguing that the district court erroneously affirmed the decision of the Greek Supreme Court by granting it full faith and credit and should be affirmed based on international comity grounds.

<sup>26</sup> Pursuant to art. 950 of the Code of Civil Procedure.

<sup>27</sup> Council of Europe, Parliamentary Assembly, *International Abduction of Children by one of the Parents*, Doc. 9476 (June 3, 2002).

<sup>28</sup> See <http://www.state.gov/s/l/16142.htm>.

wedlock), are dealt with by a one judge district court or by an appointed judge of a three member court. The judge has the discretion to contact the child, if it is deemed necessary, before passing a judgment.<sup>29</sup>

## V. Legal Assistance Programs

It appears that the Ministry of Justice will provide free legal assistance only for proceedings under the Hague Convention before the appropriate court in Greece.<sup>30</sup> That means that no *pro bono* legal advice will be given for court proceedings related to divorce or custody issues, unless the applicant meets the requirements of legal aid, as provided by the judicial system of Greece. This is in accordance with a reservation made by the Greek government pursuant to article 42 of the Convention. Under this article, Greece reserved its right not to be bound to assume any expenses provided for in paragraph 2 of article 26 pertaining to the participation of legal counsel or advisers or court proceedings except to the extent that these expenses concern instances of free legal or judicial aid, as provided by the Greek judicial system. In addition, Greece is a signatory to the 1977 European Agreement on the Transmission of Applications for Legal Aid.

In general, the domestic rules on legal aid are provided by articles 194-204 of the Code of Civil Procedure.<sup>31</sup> There have been some changes in legal aid on criminal cases. The terms of its provision are detailed and cumbersome. Legal aid is granted upon furnishing proof that one may not cover legal expenses without jeopardizing his own and his family's support. Legal aid also is provided to foreigners, if they meet the requirement of need and under the clause of reciprocity.

Legal aid is given based on application to the one member court of first instance or the president of the court where the case is pending. The judge who decides on this issue has the discretion to request additional proof, and may examine witnesses including the applicant, with or without requiring them to take an oath.<sup>32</sup>

The application to receive legal aid must be supported by documentation. One must submit a certificate from the mayor from his place of residence, certifying his professional, financial, and family status, along with a certificate from the tax authorities pertaining to his tax return. If the applicant is a foreigner, he must also submit a certificate from the Minister of Justice verifying the reciprocity clause.<sup>33</sup>

## VI. Conclusion

Since 1999, there have been a few additional cases involving international abduction of children. The overall number of cases remains relatively small. Nevertheless, cases do arise. However, the Greek legal system provides the necessary judicial remedies in order to facilitate and ensure a speedy return of wrongfully removed or retained children. The system also provides for an aggrieved person to enforce his right to seek the return of a child, either through an application to the Minister of Justice, as the designated authority or through the appropriate court. Greek judges have the necessary knowledge and

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<sup>29</sup> *Supra* note 13, at 519.

<sup>30</sup> See <http://travel.state.gov/abduction-greece.html>.

<sup>31</sup> *Supra* note 13, at 388-391.

<sup>32</sup> *Id.* art. 196.

<sup>33</sup> *Id.*

skills and seem to apply the provisions of the Convention effectively. As stated above, enforcement of court orders is a problem at times. However, this is an issue that could be ameliorated through heightening public awareness of the dire consequences on the abducted child, rather than through legal means.

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