

Greek court recognizes UK custody order to the non-biological parent in the context of a married same-sex couple

Greece still forms part of the EU Member States group not recognizing same-sex marriage. Same-sex couples do enjoy however some rights. The latest challenging issue concerned custody rights of a same-sex couple married abroad. The Thessaloniki Court of Appeal reversed the first instance ruling, and recognized an English custody order [Thessaloniki CoA, decision published on January 24, 2022, unreported].

FACTS: The appellant (Parent A) is a woman of Greek and American nationality. Her partner was a woman of American national (Parent B). They registered their partnership in the UK on 20 August 2013. Nearly a month later, Parent B gave birth to a child. The partners married in January 2015. Parent A. filed an application for child custody and parenting arrangements order in the UK. The court granted the application, and ordered that the child stays with the psychological (non-biological) mother on the basis of previous decisions concerning parental responsibility rights issued in the same country. In addition, the court ordered that the child reside with Parent A., and it issued an order to remove the child permanently to Greece. Finally, the same court arranged the contact rights of the biological mother. The UK order was issued by the High Court - Family Division in Chelmsford, and it was final. Parent A. filed an application for the recognition and enforcement of the UK order before the Court of First Instance in Thessaloniki.

The Court refused recognition. It entered into an analysis of the public policy defense, culminating in the conclusion, that the forum judge is obliged to defend national public policy, while at the same time demonstrating respect towards the state's international obligations. To that end, a proportionality test of the domestic public policy with Article 8 ECHR standards is imperative. Following the above introduction, the court declared that same-sex marriage, and any subsequent relations emanating thereof are not allowed in Greece. A detailed

presentation of the first instance court reasoning may be found here.

Parent A appealed.

THE DECISION: Unlike the lower instance court, the Thessaloniki CoA primarily underlined the European context of the dispute, citing Articles 21 et seq of the Brussels II bis Regulation. It then referred to a significant number of pertinent provisions, such as: Articles 8, 12 and 14 of the European Convention of Human Rights; articles 23 and 26 of the International Covenant on Civil and Political Rights (ICCPR); articles 7 and 9 of the Charter of Fundamental Rights; the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Greek Civil Union law nr. 4356/2015; article 21 of the Greek Constitution, on the protection of family; directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States; and finally, articles 2 and 3 of the United Nations Convention on the Rights of the Child (UNCRC), ratified in Greece by law nr. 2101/1992.

On the grounds of the above references, the CoA found no violation of the Greek public policy, and reversed the ruling of the first instance court. In particular, the CoA emphasized two points:

- The diversity of views, i.e., the non-recognition of same sex marriage in Greece may not result to the infringement of the child's best interests, reflected in the UK court findings.
- The ruling of the first instance court results to the discrimination of children on the grounds of their parents' sexual orientation.

The battle for full equality is not yet won. A couple of days after the decision of the Thessaloniki CoA was published, the Athens CoA refused recognition to a South African adoption decree issued upon the application of a same-sex (male) couple. Yet again, public policy was the defense hindering recognition. To sum up: Same sex couples may not marry or adopt children in Greece; they may however be appointed as foster parents, and exercise custody rights. Hence, equality evolves in a piecemeal fashion. And last but not least, let us not forget: the Supreme Court has the final word.