

## **“Background information**

In making this report I have relied upon information (including documents) which were provided to me as per the above by XX Solicitors and also on the provisions of the Greek Civil Code and the Hague Convention.

Mr XX (Plaintiff) alleges that he is the father of the two minor children XX (DOB 4th June 1999) and XX (DOB 19th January 2003). Both children were born in Greece and are nationals of Greece. Their birth was registered in the register books of the Municipality of XX, with father’s name XX and mother’s name XX (first Defendant). There is no indication in the copies of the two Birth Certificates which were issued on 13/11/2007 by the abovementioned Municipality as to who declared the birth of the two children to the said Municipality. However, it is reasonable to assume that Mr XX declared to the Municipality of XX the birth of both children and that he as the father of the two children dictated the details regarding the birth and the nationality (Greek) of the two children presumably with the consent of their mother Ms XX.

Later, on 8th November 1999 and 2nd December 2003, Mr XX appeared with Ms XX before the Notary of XX and voluntarily acknowledged that he is the father of the two children. Ms XX who co-signed the notarized documents ( with the titles “ recognition of out of wedlock children” ) which were drafted by the Notary : with numbers ..... for XX and ..... for XX, acting as the mother of the two children, stated that the two children emanated from an out of wedlock relationship of her with Mr XX and that she is giving her consent that Mr XX be recognized as the father of the two children with all ensuing legal consequences. Ms XX stated that the two children live with her and Mr XX and that they are supported by them. She also gave her consent that the two children be given the surname of their father : “XX”.

## **Rights of custody in respect of children for the purposes of Articles 3 and 5 of the 1980 Hague Convention**

According to Art. 3 para a’ of the Hague Convention the removal or retention of a child is to be considered wrongful where it is in breach of rights of custody attributed to a person ..... either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention.

Furthermore, Art. 5 para a ‘ of the Hague Convention provides that for the purposes of this Convention “rights of custody” shall include rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence.

## **Rights of custody of fathers for children born out of wedlock according to the Greek Civil Code**

According to Arts. 1475 and 1479 of the Greek Civil Code paternity for children born out of wedlock can be established either by voluntary recognition or by court decree.

The recognition may be made before or after the child's birth by the father or, if he is deceased, by his parents through a last will or a declaration executed before a notary. In all cases the consent of the child's mother is a necessary prerequisite.

If no recognition has taken place, affiliation proceedings may be initiated by the mother (or her legal representative by permission of the court), by the child or his representative or, where the mother refuses her consent, by the natural father himself or his parents.

More specifically Art. 1476 of the Greek Civil Code provides that the recognition by the father or by his parents must be made with a declaration before a Notary. The consent of the mother is also given before a Notary. A revocation of the above declarations shall have no effect.

It should be added here that recognition of paternity for children born out of wedlock cannot be established by merely registering the father's name in the birth records of any Municipality.

According to the provisions of the Greek Civil Code (Chapter 11) "custody rights" of parents for a minor child in general constitute part of the "parental rights" which are awarded as a duty to parents by Art. 1510 of the same Code. Art. 1518 of the Greek Civil Code provides that "custody rights" include the upbringing of the child, the care for the child, its education and the fixing (determination) of its residence.

Art. 1515 of the Civil Code provides further that parental care (which includes the right of custody) of a minor child born out of wedlock belongs to its mother. In case of acknowledgement (recognition) by its father the latter shall also partake in the parental care but can exercise it if the mother's parental care has ceased or if the mother cannot exercise it on legal or factual grounds.

### **The case of Mr XX in light of the provisions of Articles 3 & 5 of the 1980 Hague Convention and of the Greek Civil Code**

As per the above Article 3 of the Hague Convention specifies that in order that the removal or retention of a child is considered to be wrongful, such removal should be in breach of rights of custody which were actually exercised either jointly or alone, or would have been so exercised but for the removal or the retention. Art. 5 of the same Convention includes basically in its wording

under the term “custody rights” the same rights which are specified under the same term by Art. 1518 of the Greek Civil Code.

It becomes obvious from the above review of Arts. 3 and 5 of the Hague Convention that the Hague Convention refers with these Articles to “rights of custody” and not to “parental rights” , which according to Art. 1510 of the Greek Civil Code, include in addition of the rights of custody, the rights for the administration of the child’s property, and the right to represent the child before any and all courts in cases concerning its person and its property.

The use of the term “rights of custody” by the Hague Convention creates a problem in taking a position as to whether Mr XX, being the father of the two children who were born out of wedlock, can exercise or not the rights of custody for his two children even in the case when their mother’s parental care has not ceased and she is actually exercising the rights of paternal care. (Art. 1515 of the Greek Civil Code). The difficulty lies in the fact that the Hague Convention seems to ignore the term “parental care”.

However, an interpretation of the above Article 1515 of the Greek Civil Code , is leading me to the conclusion that Mr XX, being the father out of wedlock of XX and XX was not allowed the right to exercise paternal rights and its subsidiary rights of custody on the day (15-10-2007) of their removal from Greece (Crete) if their mother’s parental rights (which include the rights of custody) on that day had not ceased or she could not exercise these rights on legal or factual grounds.

In any case, one should not overlook the fact that Mr XX had actually by virtue of Art. 1515 of the Greek Civil Code parental rights (and rights of custody) for his two children on the abovementioned date, which, for reasons allegedly out of his will (if that was the case) he could not typically exercise. The answer to this question will become more difficult if Mr XX can prove that he actually exercised rights of custody on the day of the removal of the two children from Greece. ”