

RECOGNITION OF RUSSIAN PERSONAL STATUS JUDGMENTS IN GREECE: A CASE LAW SURVEY

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Russia and Greece have strong historical, cultural, social and financial bonds for centuries. In the aftermath of the 2nd World War, many people of Greek origin were forced to leave Greece for political reasons; they moved to the USSR, where they started a new life. Soon after the dissolution of the Soviet Union, and following supporting Greek legislation for their return to the homeland, a significant number of people decided to resettle in Greece. In order to cope with Greek bureaucracy regarding personal status matters, certain documents and court decisions of USSR (meanwhile Russian) origin had to be recognized in Greece. The present article provides a first glance at the bilateral Convention on judicial assistance in civil and criminal matters signed in 1981 between the Hellenic Republic and the ex-USSR. This Convention applies since December 1995 in Greek – Russian civil and criminal matters. The article will focus on Ch. V of the Convention, dealing exclusively with the issue of recognition and enforcement of judgments and authentic instruments in civil matters. At the same time it serves as a survey of reported and unreported Greek case law on the matter.¹

Keywords: recognition of foreign judgments; Greek-Russian bilateral Convention; foreign judgments; Greece; personal status matters.

1. Introduction

The Hellenic Republic and the USSR signed a bilateral Convention on judicial assistance in civil and criminal matters in 1981. This Convention has been ratified

¹ No reference to books and articles in Greek will take place unless necessary. Greek law reviews mentioned thereon are the following: Αρμενόπουλος [Armenopoulos] (Thessaloniki Bar Review); Χρονικά Ιδιωτικού Δικαίου [Chronika Idiotikou Dikaiou] [Chronicles of Private Law]; Ελληνική Δικαιοσύνη [Elliniki Dikaosini] [Hellenic Justice]; Νομικό Βήμα [Nomiko Vima] [Legal Tribune] (Athens Bar Review); Επιθεώρηση Πολιτικής Δικονομίας [Epitheorisi Politikis Dikonomias] [Civil Procedure Law Review]]. Information on some of the above reviews can be found in: Pelayia Yessiou-Faltsi, International Encyclopedia of Laws. Civil Procedure: Hellas 62 ff. (Kluwer Law International 2004).

by Greece in 1982.² Following the 1991 Alma-Ata Declaration,³ and by virtue of the Protocol signed between Greece and Russia in Athens on Dec. 13, 1995,⁴ the Convention applies between the two countries. Very recently, the two countries ratified the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.⁵ It is therefore expected that courts will soon start to apply the multilateral convention.⁶ Hence, the bilateral Convention remains for the moment the most important tool for the circulation of judgments between Russia and Greece.⁷

2. Legal Framework

The bilateral Convention contains eight chapters. Chapter I (Arts. 1–14) deals with general aspects, applicable for both civil and penal matters.⁸ Chapter II (Arts. 15–16) regulates issues related to the recognition and transmission of documents. Chapter III (Arts. 17–20) covers legal aid issues. Chapter IV (Arts. 21–22) contains provisions on specific civil matters, such as succession and the form of wills. Chapter V (Arts. 23–34) is dedicated to the recognition and enforcement of judgments. Chapters VI–VIII deal with penal matters (Arts. 35–50), the exchange of information (Arts. 51–54), and final provisions (Arts. 55–56). The present article will focus exclusively to Ch. V.

Pursuant to Art. 23.2 Nr. 1, under the term 'judgments' belong decisions in civil, commercial and family matters. Judgments capable of recognition are those rendered by adjudicative or other bodies of the contracting states.⁹ Article 24 deals with the

² Law 1242/1982, A 44/6.4.1982 Official Gazette; in force since 1 September 1982 (A 99/24.8.1982 Official Gazette).

³ See Alma-Ata Protocol, 31 ILM 148 (1992).

⁴ Protocol between the Governments of the Hellenic Republic and the Russian Federation regarding the bilateral conventional framework of the two countries (A 4/16.1.1996 Official Gazette).

⁵ For Greece, date of signature – 1 April 2003; date of ratification – 7 February 2012; entry into force – 1 June 2012 (see Law 4020/2011, A 217/30.09.2011 Official Gazette). For Russia, date of ratification – 20 August 2012; entry into force – 1 June 2013.

⁶ In particular, Art. 23 ff. regarding recognition and enforcement. For the time being however, no case has been reported in Greece.

⁷ The convention still applies to ex-Soviet Union countries, which did sign the Alma-Ata Declaration, and did not sign a bilateral convention with Greece (examples: Armenia (2000), Georgia (1999), Ukraine (2004)). In particular the Convention applies in regards to: Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Tajikistan, and Uzbekistan. It does not apply to the Baltic States.

⁸ Among those issues we should underline Arts. 7–9, dealing with the service of documents. Moreover, Greece and Russia are signatory members of the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (in force in Greece since 18 September 1983; in Russia since 1 December 2001).

⁹ Article 23.1 in conjunction with Art. 1.2.

pre-requisites for recognition and enforcement. From the wording of the provision it becomes evident that the applicant is burdened with proving the conditions listed. In particular, the following requirements have to be met, in order for foreign judgments to be recognized and enforced:

1) the finality / enforceability of the judgment pursuant to the legislation of the state of origin;

2) the proper service of process to the defendant who did not appear in the proceedings. For the purposes of the Convention, proper service means that the writ had been served timely and duly, according to the laws of the state where the judgment was rendered. Notification by posting the document to the door of the defendants' premises is not considered to be proper service;

3) that no final decision has been rendered between the same parties and for the same cause of action in the state of destination; and that no action has been filed previously for the same matter in any court of the state of destination;

4) that in accordance with the provisions of the Convention,¹⁰ no organ / body of the state of destination had exclusive jurisdiction to hear the case.

For judgments of a non pecuniary nature, Art. 25.2 extends the application of the Convention even in judgments rendered before its entry into force.¹¹ According to Art. 26.1, judgments of a non pecuniary nature are recognized without any *supplementary examination* in the State of destination. Greek scholars have construed this provision in the following fashion: The meaning of this provision is that a special procedure for recognition before a court of law is not compulsory; consequently, a foreign judgment of the above nature may be recognized incidentally. Still, the examination of the requirements for recognition, provided for under Art. 24 of the Convention, is not affected by Art. 26.1.¹² The remaining provisions of Ch. V are referring to the enforcement of judgments. Thus, their elaboration falls out of the scope of the present paper; they will be considered however in the course of the

¹⁰ As Pelayia Yessiou-Faltsi, 3 Δίκαιο Αναγκαστικής Εκτέλεσεως – Η διεθνής αναγκαστική εκτέλεση [3 *Dikaio Anangastikis Ekteleseos – I diethnis anangastiki ektelesi* [3 Law on Compulsory Enforcement – International Compulsory Enforcement]] 1028, n. 542 (Sakkoulas Publishers 2006) [hereinafter Yessiou-Faltsi, 3 Law on Compulsory Enforcement], correctly points out, the convention does not contain any provisions on jurisdiction; it is not a 'double' convention, regulating both jurisdiction and recognition and enforcement matters. Hence, the reference to the above is devoid of any meaning.

¹¹ In regards to judgments of a pecuniary nature, the convention applies only for those published after its entry into force, so Art. 25.1.

¹² Yessiou-Faltsi, Law on Compulsory Enforcement, *supra* n. 10, at 1023 ff.; Evangelos Vassilakakis & Panayiotis S. Yiannopoulos, *Αναγνώριση και εκτέλεση αποφάσεων κατά τη διμερή Σύμβαση Ελλάδος – Σοβιετικής Ενώσεως για τη δικαστική αρωγή σε αστικές και ποινικές υποθέσεις* [*Anagnorisi kai ektelesi arophaseon katá ti dimeri Simvasi Ellados – Sovietikis Enoseos gia ti dikastiki aroyi se astikes kai pinikes ipothesis* [Recognition and Enforcement of Judgments according to the Bilateral Convention between Greece and the Soviet Union on Judicial Assistance in Civil and Penal Matters]], 2002 *Chronicles of Private Law* 968 [hereinafter Vassilakakis & Yiannopoulos, *Recognition and Enforcement*]. Similarly Thessaloniki 1st Instance Court 15307/2013, unreported; Thessaloniki 1st Instance Court 22579/2013, unreported.

case law analysis. Finally, it should be underlined that the Convention does not apply with regard to arbitral awards.¹³

3. Case Law Analysis

The material collected emanates from the following sources: Decisions reported in Greek law reviews; decisions reproduced in the two prevailing Greek legal data bases;¹⁴ finally, unreported decisions from the Thessaloniki Courts, where I practice the legal profession. The sample is not voluminous;¹⁵ still, it is representative of the constant influx of Russian judgments in Greece.¹⁶ The nature of the judgments is predominantly that of a divorce¹⁷ or an adoption¹⁸ case, with the sole exception being an affiliation judgment.¹⁹

3.1. Exclusive Application of Domestic Provisions

A first category relates to decisions where Greek courts failed to apply the bilateral Convention, focusing exclusively on domestic provisions, *i.e.* Arts. 323, 780 & 905 Code of Civil Procedure²⁰ [hereinafter CCivP]. Usually this omission does not lead to

¹³ The recognition and enforcement of arbitral awards between Greece and Russia is governed by the 1958 New York Convention, which has been ratified by both countries (Russia – 22 November 1960; Greece – 21 May 1969).

¹⁴ 1) ISOCRATES, *i.e.* the database of the Athens Bar, and 2) NOMOS, a privately owned database, which has been the forerunner in the field.

¹⁵ It should be underlined that the author traced a significant number of unreported decisions, which however do not present any particular interest for the reader. The selection of unreported cases in this paper is based on their importance for the proper interpretation of the bilateral convention.

¹⁶ A search on the archives of the Thessaloniki 1st Instance court for the years 2012 & 2013 has proven that approximately 20–30 Russian judgments annually are knocking at the door for their recognition. Due to lack of judicial statistics in the field, I couldn't collect valuable data from other court districts. From a percentage point of view however, I could speculate that more than 100 applications for the recognition of Russian judgments are filed before Greek courts every year. Given that Greece gains momentum as a place for holidays of Russian citizens, the above figure may increase.

¹⁷ Athens 1st Instance Court: 1801/1983, 1983 Hellenic Justice 1097; 5013/2006, ISOCRATES; 7211/2007, ISOCRATES; Thessaloniki 1st Instance Court: 6839/1994, 1995 Armenopoulos 508; 36431/2009, NOMOS; 21981/2012, unreported; 25635/2012, unreported; 15307/2013, unreported; 22579/2013, unreported; Piraeus 1st Instance Court: 169/2013, 2013 Legal Tribune 727.

¹⁸ Athens 1st Instance Court: 939/2007, ISOCRATES; Thessaloniki 1st Instance Court: 20052/2001, 2001 Chronicles of Private Law 532; 7717/2003, 2003 Chronicles of Private Law 818; 39432/2007, 2008 Civil Procedure Law Review 249; 3717/2007, unreported; 7013/2013, 2013 Armenopoulos 1291.

¹⁹ Athens 1st Instance Court 5185/2006, ISOCRATES.

²⁰ There's no official translation in English. The wording of the provisions above is the following.

Article 323

Subject to the provisions of international conventions, a judgment of a foreign civil court is given *res iudicata* effect in Greece without any proceedings, if:

results contrary to the spirit of the Convention.²¹ For instance, no court has dismissed an application for the recognition of a divorce or adoption certificate, in spite of the different approach compared to domestic law, which presupposes the existence of a court decision in similar matters. The courts refer to provisions of Greek private International Law,²² in order to support their position. Things would have been of

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- 1) it is final according to the law of the place of origin;
 - 2) the case was subjected to the jurisdiction of the courts of the state, to which the court which rendered the judgment belongs;
 - 3) the losing party has not been deprived of its right of defense and generally its right to participate in the proceedings, unless it has enjoyed equal opportunities to nationals of the country, whose court rendered the judgment;
 - 4) the foreign judgment is inconsistent to a domestic judgment issued in the same case and being binding for the same parties;
 - 5) the foreign judgment must not be contrary to morality or public policy.

Article 780

Subject to the provisions of international conventions, a judgment of a foreign court is granted without any proceedings the same authority in Greece to that recognized by the law of the state of the court which issued the judgment, if:

- 1) the decision applied the same substantive rules which would have been applicable under Greek conflict of laws rules, and must have been rendered by a court having jurisdiction under the law of the State whose substantive rules were applied;
- 2) it is not contrary to morality and public policy.

Article 905.1

1. Subject to the provisions of international conventions, enforcement of a foreign instrument may be carried out in Greece as from the time such instrument is declared enforceable by a decision of the Single-Member Court of First Instance of the debtor's domicile, or, in its absence, of the debtor's residence, or, in the absence of both, of the country's capital. The Single-Member Court of First Instance shall follow the procedure of Articles 740 to 781.

2. The Single-Member Court of First Instance shall declare the foreign instrument as enforceable on the condition that it is enforceable according to the law of its origin and is not contrary to morality or public policy.

3. If the foreign instrument is a court decision, the conditions laid down under Article 323 Nrs. 2 to 5 must also be met.

4. The provisions of paragraphs 1 to 3 shall also apply for the recognition of the *res iudicata* effect of a decision from a foreign court relating to personal status.

Details for those provisions can be found in: Pelayia Yessiou-Faltsi, *Civil Procedure in Hellas* 434 ff. (Sakkoulas Publishers, Kluwer Law International 1997); Introduction to Greek Law 399 ff. (Konstantinos D. Kerameus & Phaedon J. Kozyris, eds.) (3rd ed., Sakkoulas Publishers, Kluwer Law International 2008).

²¹ See, for instance, Athens 1st Instance Court: 1801/1983, 1983 Hellenic Justice 1097; 939/2007, ISOCRATES (application for recognition of a final adoption decision of the Stavropol' district court); Thessaloniki 1st Instance Court: 6839/1994, 1995 Armenopoulos 508 (applications for recognition of a divorce decree); Thessaloniki 1st Instance Court: 20052/2001, 2001 Chronicles of Private Law 532 (application for recognition of an adoption certificate; application for recognition of a court decision on the annulment of adoption and affiliation); 3717/2007, unreported (application for the recognition of a final adoption decision of the Drohobych Council of People's Deputies).

²² Articles 16 & 23.1 of the Greek Civil Code (for divorce and adoption cases respectively), see Thessaloniki 1st Instance Court: 6839/1994, 1995 Armenopoulos 508; 20052/2001, 2001 Chronicles of Private Law 532; 7717/2003, 2003 Chronicles of Private Law 818.

course much easier, if the courts had applied Art. 23.1 in conjunction with Art. 1.2 of the Convention: Pursuant to the provisions aforementioned, all judgments of the bodies mentioned in the Convention are to be recognized. In one case however, the court interpreted Art. 323 Nr. 2 CCivP in a fashion contrary to the wording of Art. 24.4 of the Convention.²³

Last but not least, the preference of Greek courts to resort to the domestic 'comfort space' relates to the complicated issues caused by the succession of states within the ex-USSR, and the ensuing aspirations of autonomy in some regions.²⁴ A vivid example which demonstrates the above is depicted in a decision from 2012.²⁵ The applicant requested the recognition of a divorce decree rendered by the Regional court of *Bilohirsk / Belogorsk* of the Autonomous Republic of Crimea. He submitted the following documents: A copy of the marriage certificate from the Municipality of *Krimskaya Roza*, issued both in Russian and Ukrainian; a copy of the 2011 divorce decree, rendered in Russian, which contained a note certifying that the decree was final; a copy of the divorce certificate from the registrar's office of *Krimskaya Roza*, issued in Ukrainian, certifying the finality of the decree. All documents were true copies of the originals, translated into Greek. The court applied domestic provisions, *i.e.* Arts. 323 and 905 CCivP, and examined the issues stipulated in the above provisions, *i.e.* the international jurisdiction of the foreign court, the rights of audience of the defendant, and the possible irreconcilability of the foreign decree with a domestic decision. By reading the Greek decision, it seems that the Greek court was somehow puzzled with regard to the nationality of the foreign decree. It received true copies of a number of documents from the Autonomous Republic of Crimea, translated either from Russian, Ukrainian, or both languages. As it is evidenced by the text of the Greek decision, the decree was drafted and published in Russian. To sum up, there is not a single word in the Greek decision giving at least a hint that the foreign divorce decree was rendered by a court of law belonging to the state of Ukraine. The court should have applied the bilateral Agreement between the Hellenic Republic and Ukraine on Judicial Assistance in Civil Matters, which was signed in Kiev on July 2, 2002, ratified in Greece by virtue of Law 3281/2004, and entered into force in Greece on Jan. 27, 2007. Still, it failed to invoke the agreement aforementioned, and preferred to support its ruling on domestic provisions.

²³ Athens 1st Instance Court 5013/2006, ISOCRATES. The court examined the jurisdiction of the Russian court, which is acceptable under domestic law, however not under the convention: Art. 24.4 refers to a possible exclusive jurisdiction of a body in the state of destination.

²⁴ See, for example, Thessaloniki 1st Instance Court 6839/1994, 1995 Armenopoulos 508 (application for recognition of a marriage dissolution certificate issued by an authority in the city of Sukhumi, Abkhazia).

²⁵ Thessaloniki 1st Instance court 18026/2013, unreported.

3.2. Concurrent Application of National and Conventional Provisions

A second category applies both the bilateral Convention and domestic rules of civil procedure. In spite of the undisputable prerogative granted to international conventions,²⁶ this is a standard approach by Greek courts, which again does not necessarily undervalue the importance of the bilateral treaty;²⁷ it only serves as an additional ground in favour of the recognition of the foreign judgment.²⁸ In this respect, mention needs to be made to a decision of the Athens Court of Appeal.²⁹ The court examined the application under Art. 780 CCivP and Art. 23 ff. of the Convention, and dismissed the application on two grounds: First according to the domestic provision, foreign judgments rendered in voluntary proceedings are to be recognized without any further adjudication; second, pursuant to Art. 26.1 of the Convention, non-pecuniary judgments are to be recognized without additional examination by the court of destination. In other words, the Athens court underlined the incidental character of recognition, which is to be exercised by any court or authority handling a similar request by the applicant. This decision is actually the exception to the rule the vast majority of courts is following: Standing to sue (*i.e.* to file the application) is always taken for granted, save the decision of the Athens Court of Appeal.

3.3. Procedural Irregularities of the Application

A third category deals with decisions either dismissing the application as inadmissible, or ordering the reopening of the trial due to non-production of necessary documents for the case at hand. Hence, a court did not get involved with the merits and dismissed the application, because the applicant did not state basic elements of the application.³⁰ An application was also dismissed due to lack

²⁶ As already mentioned, Arts. 323, 780 & 905 CCivP begin with the same sentence: 'Subject to the provisions of international conventions . . .'

²⁷ See however Thessaloniki 1st Instance Court 39432/2007, 2008 Civil Procedure Law Review 249: The court examined the international jurisdiction of the Stavropol' court in accordance with Art. 323.2 CCivP, which stipulates that the foreign court must have the authority to adjudicate the case under the internal rules governing jurisdiction of Greek courts, *i.e.* the so called 'mirror-image principle' (in German – *Spiegelbildtheorie*, see Yessiou-Faltsi, Civil Procedure in Hellas, *supra* n. 20, at 438). The potential dangers of this approach are clearly visible in another decision (Athens 1st Instance Court 5013/2006, ISOCRATES), which examined the matter solely from the domestic point of view, and ordered the stay of proceedings, until the applicant produces evidence that his last common residence with her ex-spouse was in fact the city of Krasnodar, *i.e.* the place where the divorce certificate was issued.

²⁸ In this sense Athens 1st Instance Court 5185/2006, ISOCRATES; Thessaloniki 1st Instance Court 36431/2009, NOMOS; Piraeus 1st Instance Court 169/2013, 2013 Legal Tribune 727.

²⁹ Athens CoA 727/2006, 2007 Hellenic Justice 1708.

³⁰ Athens 1st Instance Court 7211/2007, ISOCRATES: The applicant failed to state in his application and the subsequent pleadings the decision's particulars, *i.e.* the name of the court, and the number and year of the judgment's publication.

of standing to sue by the applicant, because the judgment of the Stavropol' court was already recognized in Greece on the initiative of the applicant's ex-spouse.³¹ On the other hand, courts have ordered a stay of proceedings, so that the applicant produces the required documents to the court.³²

3.4. Examination of the Requirements to Recognition

Finally, the last category deals with the actual examination of the requirements for recognition. Again, courts are systematically applying both Art. 323 CCivP and 24 of the Convention.³³

There are two noteworthy groups of decisions in this respect. The first group was confronted with two issues: The supporting documentation of the applicant was not sufficient enough, in order for the Greek court to verify the finality of a 1950 Armavir court decision and whether due process was granted to the defendant in the foreign proceedings. For this reason the same court stayed proceedings in a previous session.³⁴ In the reopening of the trial, the court followed a more pragmatic approach: In light of the fact that the foreign judgment was published nearly 60 years ago, and that the Armavir court's archives have been destroyed, the court declared itself satisfied with the affidavit of the applicant, that his spouse was duly and timely served in the 1950 hearing before the Armavir court. What is more important is that the Greek court based its findings on Art. 323.3 CCivP, thus avoiding the rigid requirements posed by Art. 28.2 of the bilateral Convention. In particular, in order to evade the wording of the latter provision, which presupposes the production of a certificate, the court referred to the domestic provision, which does not set specific ways for proving proper service of the writ. According to Greek case law, fair hearing and due process may be demonstrated by any means of evidence. Given the circumstances, the Greek court showed a profoundly liberal approach for safeguarding the free circulation of judgments.³⁵

³¹ Thessaloniki 1st Instance Court 25635/2012, unreported. This is a different facet of standing to sue than the one mentioned under 3(2). The issue here was the existing *res iudicata* effect given to the foreign judgment by virtue of a previous Greek decision.

³² Thessaloniki 1st Instance Court: 15307/2013, unreported (the court ordered that the applicant produces a certificate from the Krasnodar court that the divorce decree was final, and that the defendant, *i.e.* the applicant's spouse, was present in the proceedings, or did not appear although duly served); 22579/2013, unreported (the court stayed the proceedings and ordered the applicant to produce a certified and translated copy of the judgment issued by the Sal'sk court, so as to be able verify whether the applicant's spouse was the plaintiff or the defendant in the foreign proceedings, and, in the latter case, to verify whether he was in default due to improper service); 21981/2012, unreported (no certificate proving that no decision has been published between the same parties in Greece was produced by the applicant).

³³ Thessaloniki 1st Instance Court: 36431/2009, NOMOS; 7013/2013, 2013 Armenopoulos 1291.

³⁴ Thessaloniki 1st Instance Court 3652/2009, unreported.

³⁵ Thessaloniki 1st Instance Court 36431/2009, NOMOS.

The same issues were examined in the course of an application for the recognition of an affiliation judgment by a court in the district of Savyolovsky, Moscow. The court considered the production of a certificate from the Consulate Department of the Russian Embassy in Athens as sufficient evidence for the judgment's finality. With regard to the right to be heard, the court held that no violation had taken place, since the father of the applicant passed away nearly 10 years before the filing of the application, and no due process rights had been infringed in regards to potential relatives of the deceased father, as evidenced by the foreign judgment.³⁶

The second decision deserves special reference, because it is the only decision invoking the public policy clause and refusing recognition for this reason.³⁷ The (admittedly peculiar) facts of the case were as follows: The applicant was the grandmother of four children. She was born in 1953. The children were born by placing embryos into the uterus of two surrogate mothers. The semen was taken by the applicant's son, who died sometime in 2010.³⁸ The children were born in January 2011. They were staying at their grandmother's house since the date of their birth. The grandmother filed an application before the Babushkinsky District Court in Moscow, asking for the adoption of her grandchildren. The request was granted in second instance. The Russian judgment was final and conclusive when the applicant filed an application for its recognition before the Thessaloniki Court. The court applied Arts. 23 ff. of the bilateral Convention and Arts. 323 & 905 CCivP. The Thessaloniki 1st Instance Court dismissed the application on three public policy grounds.

1. The court invoked Art. 1544 Greek Civil Code, which sets a twofold limit for the adoption of minors: The adoptive parent has to be at least 18, but no more than 50 years older than the adoptee. In the case at hand the applicant was 58 years older, thus exceeding the limit set by 8 years.

2. The court made reference to Law 3089/2002 on Artificial Human Fertilization and Arts. 1457 & 1458 Civil Code, which set specific requirements for post mortem artificial fertilization. This procedure is permitted under certain conditions (illness of the father, consent of the donor, leave of the court). None of the above requirements were met in the present case.

3. Finally, the court invoked the public policy clause *per se*, and held that the effects of the Russian judgment are contrary to fundamental domestic notions of family law. In particular, the court held that, by accepting the foreign ruling, we were heading towards the following paradox: The biological grandmother of the children is legally recognized as their mother, although national provisions (see

³⁶ Athens 1st Instance Court 5185/2006, ISOCRATES.

³⁷ Thessaloniki 1st Instance Court 7013/2013, 2013 Armenopoulos 1291.

³⁸ Not specified in the Greek decision.

supra, Nrs. 1 & 2) run contrary to such a result. Moreover the court stated, that the solution given by the Russian court clearly emanates from the grandmother's desire to seek relief from the pain she felt as a result of her son's death. Still, this could be achieved through other family law institutions (which are however not mentioned in the text of the decision).

For the reasons above, the court dismissed the application, because it violates domestic public policy principles.

As mentioned earlier, roughly 99% of Russian personal status judgments usually pass the public policy test in Greece. This is the only decision where public policy reservations lead to a refusal of recognition.³⁹ Admittedly it is a case of unique facts, and I wonder whether there has been a similar decision globally. I will therefore refrain from any comments on the substance of the matter.⁴⁰ The Judge based her findings on undisputable facts, enshrined in provisions of the Greek Civil Code. There is no precedent, and I seriously doubt whether there will be a second case with similar facts in the future.

Still, what is indeed interesting from the procedural point of view is the following: Unlike the Brussels Regulations (44/2001, 2201/2003), the Brussels & Lugano Conventions, and a number of bilateral conventions signed by Greece, the 1981 bilateral Convention does not provide for a public policy control! As we saw earlier,⁴¹ Art. 24 regulates the requirements for recognition and enforcement, making reference to the following: *res judicata* according to the state of origin, right of audience, lack of irreconcilability to an earlier decision rendered at the state of destination, and lack of jurisdiction of the courts of the latter state. The question we should be asking is why the court based its ruling on public policy considerations, since it is not included in the wording of Art. 24 of the 1981 Convention. Based on what has been said until now, there are two answers to that, the one given implicitly by the court, and the other explicitly by legal scholars.

1. The court applied the Convention in conjunction with domestic procedural law. Following that, it made reference to Art. 323 Nr. 5 CCivP which regulates the public policy requirement for recognition.

2. The prevailing opinion in theory considers that public policy should be examined by the courts on the basis of Art. 12 of the 1981 Convention, which states,

³⁹ On the application of public policy in Greece, see Apostolos M. Anthimos, *Der prozessuale ordre public bei der Anerkennung und Vollstreckung ausländischer Gerichtsentscheidungen nach deutschem und griechischem Zivilprozeßrecht und nach dem Europäischen Gerichtsstands- und Vollstreckungsübereinkommen*, in Apostolos M. Anthimos et al., *Harmonisierungsprobleme im europäischen Wirtschaftsrecht* 11–153 (Nomos 2000).

⁴⁰ On the other side, courts had no difficulty in recognizing adoptions from the mother's sister (Thessaloniki 1st Instance Court 20052/2001, 2001 Chronicles of Private Law 532).

⁴¹ Under (I).

that judicial assistance may not be granted, if it would result to a violation of the state's sovereignty, security, or public order.⁴²

To be honest, I don't feel comfortable with neither of the answers. Starting from the cumulative application of conventional and domestic law, I have to reiterate the first sentence of Art. 323 CCivP which reads as follows: 'Subject to the provisions of international conventions . . .' In the present case, the international (bilateral) convention does not make reference to public policy. Hence, the court shouldn't apply Art. 323 CCivP axiomatically; it ought to state the reasons for its choice. Secondly, Art. 12 of the 1981 Convention forms part of Ch. I, dealing with 'general matters.' Recognition and enforcement is governed by Ch. V (Arts. 23–34). Usually specific provisions prevail over generic ones. Nevertheless, as things stand today, it is the only way to embed public policy into the bilateral convention. I would therefore accept this approach as an intermediary solution to the problem. The proper way to deal with the matter however would be to admit that we are facing a *lapsus calami*, whose ideal remedy would be an addendum to the Convention.

Finally, the court would have been entitled to invoke the domestic public policy on the basis of the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (Art. 24). This Convention has been signed both by Russia⁴³ and Greece;⁴⁴ still only Greece has ratified the Convention.⁴⁵ Hence, although Russia is a signatory member, it has not taken the steps necessary for its implementation in its territory.

4. Epilogue

Since it has been more than 30 years after the entry of the Convention into force, this is definitely the proper moment to draw some conclusions on its application. This short presentation intended to present the Greek point of view. Its major findings could be summarized as follows:

- 1) the Convention was totally ignored until the late '90s. Almost without exception, courts were applying exclusively domestic law during this period of time;
- 2) during a second stage, courts 'discovered' the bilateral Convention, but opted for a cumulative application with domestic provisions. This stance did not undermine the importance of the Convention, because it was triggered by the prevailing opinion in Greece, *i.e.* to apply domestic provisions favourable to recognition over strict conventional ones;

⁴² Yessiou-Faltsi, *Law on Compulsory Enforcement*, *supra* n. 10, at 1029; *see also* Vassilakakis & Yiannopoulos, *Recognition and Enforcement*, *supra* n. 12, at 974 ff.

⁴³ Date of signature – 7 September 2000.

⁴⁴ Date of signature – 2 September 2009.

⁴⁵ Law 3765/2009, A 101/1.7.2009 Official Gazette. Entry into force – 1 January 2010.

3) only few decisions ordered a stay of proceedings due to the non-production of necessary documents for the consideration of the court;

4) all reported and unreported judgments deal with recognition of personal status issues (divorce, adoption, affiliation). Exequatur is still out of the picture;

5) only one Russian judgment was refused recognition on the grounds of public policy.

In light of the slow pace negotiations and consultations are moving ahead with regard to the Hague 'Judgments Project',⁴⁶ and the lack of willingness to conclude an agreement between the EU and the Russian Federation in the field,⁴⁷ it seems that the bilateral Convention between Greece and Russia will continue to play an important role for a long time in the future.

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⁴⁶ See <http://www.hcch.net/index_en.php?act=text.display&tid=149>.

⁴⁷ See Council Regulation 664/2009, Establishing a Procedure for the Negotiation and Conclusion of Agreements between Member States and Third Countries Concerning Jurisdiction, Recognition and Enforcement of Judgments and Decisions in Matrimonial Matters, Matters of Parental Responsibility and Matters Relating to Maintenance Obligations, and the Law Applicable to Matters Relating to Maintenance Obligations, 2009 O.J. (L 200) 46–51.

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