

Abducted children to stay

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NICHOLLES
Family Lawyers

A MELBOURNE woman who abducted her two young children from Greece and brought them to Australia has been told by the Family Court that she does not have to return them to her Greek husband.

The woman had been living in Greece with her husband and children and had come to Australia for medical treatment after being injured through repeated domestic violence. She decided to stay permanently, feeling it was unsafe to return.

Although the woman acted unlawfully, the Family Court in a rare ruling found that she did not have to return the children to Greece on the grounds that there was a "grave risk" they would be exposed to harm.

The woman was born in Australia and moved to Greece as an adult. She married a Greek man 10 years ago, and their two children were born and raised in Greece. No one involved in the case can be identified for legal reasons.

A Family Court spokeswoman has confirmed that the ruling was very rare.

The woman's lawyer, Sally Nicholes, told The Age her client had been seriously injured by her husband's repeated violence. He denies ever being violent to her or the children.

She returned to Australia with the children for a temporary visit in late 2007 and says that she told her husband of her intentions, but he claims no knowledge of the plan.

A few weeks after they arrived in Australia, he lodged an application under the Hague Convention for the children to be returned to Greece. The convention aims to stop parents moving children from one country to another without the other parent's consent, and to ensure those wrongfully retained are returned home.

Usually the Family Court would have ordered that the children be returned to Greece, as required by the Hague Convention. But the court exercised its discretion against making the order after being presented with evidence from a Greek legal expert that police in Greece did not adequately protect domestic violence victims.

The court also took into account that the woman may have been imprisoned for breaching Greek laws if she returned.

An Australian doctor said she had developed "positional vertigo" as a result of repeated beatings to her head — a medical condition characterised by sudden episodes of vertigo and nausea.

"We argued that if she got one more blow to the head of the same force, she would die," Ms Nicholes said. "The doctor's evidence was that her injuries were consistent with being beaten to the back of the head, which is what she alleged."

What makes the woman's case rare — and where other women in similar circumstances claiming domestic violence have failed in court — is that she successfully argued that in Greece she would not be adequately protected against domestic violence.

Ms Nicholes said the woman claimed that she had gone to Greek police for help, but they said they could do nothing to help apart from speak to her husband. "She went to the police, and each time they didn't actually assist her," she said.

The Family Court made the order before Christmas, but it had not been publicised because of the prospect of an appeal. But that appeal has not been lodged.

Former Family Court chief justice Alastair Nicholson said the case was rare because it was difficult to argue that countries with similar legal systems could not protect people from domestic violence.

"The assumption is usually that the country will deal with what's complained of," he said. "However, where you have direct evidence that that's not the case, then the interpretation of the convention is certainly open."

Mr Nicholson said the Hague Convention did have discretion when it came to "grave risk", but the question was how that risk was interpreted. "It's a very unusual case and I think in most cases that wouldn't apply, but by the sound of it, it seems like a proper result," he said.

The woman and her children are now living in Melbourne.

