

New Jersey Supreme Court Vs. Jerusalem Supreme Court

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A Court in New Jersey ordered the return of an Israeli couple's daughter to her father in United States, in opposition to the Israeli Supreme Court's decision supporting her stay in Israel • The Judge: I cannot afford comity when the Israeli decision is fundamentally incorrect.



Photography: [AP]

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Tags: [Hanan Melcer](#), [Edna Arbel](#), [Uzi Vogelmann](#)

The New Jersey Supreme Court has overturned (08.25.11) a decision made by the Israeli Supreme Court and ordered the mother to return her daughter to her father in United States. Judge Bonnie Mizdol determined that she cannot afford comity accorded between courts to a decision that in her opinion is completely incorrect.

The couple, Israelis who have immigrated to New Jersey, got married in Israel and their daughter was born in New Jersey. While vacationing in Israel on 2010, the wife filed for divorce. Later the husband returned to United States, but as opposed to what they had agreed upon – the wife and daughter remained in Israel. The Rabbinical Court granted temporary custody over the child to the mother, but Mizdol ruled that foreign religious courts' decisions are not valid in New Jersey. The Family Court and Regional Court in Nazareth ordered the child's return to United States. However, the Supreme Court – by majority opinion of **Edna Arbel** and **Hanan Melcer**, against the minority opinion of **Uzi Vogelmann** – determined that in this case the defenses against Hague Convention regarding children apply, and ordered her to stay in Israel.

The father requested the New Jersey Supreme Court to make the opposite ruling, and in a rare move Mizdol accepted his request. First she determined that the custody decisions should be made in the child's habitual residence – that is, in this case, New Jersey. It was further determined that the mother has abducted the child by not returning with her to United States on the agreed-upon date, and no defense allowing her to continue the child's retention in Israel applies.

"I cannot afford comity to the decisions made by the Israeli court", says Mizdol. "Full faith and credit is to be accorded to participants of the Hague Convention provided that the underlying decision was properly made. The rule of comity is grounded in the policy of avoiding conflicts. However, it is only afforded if the underlying issue was decided correctly."

"I cannot agree with the final determination of the Israeli court. I find that the Hague applies. I find, as did every other judge who has entertained this application, found that New Jersey is the habitual residence of the child. And I find that the child must be returned to New Jersey. The Israeli court failed to follow the provisions established within the Hague. I find that the decisions were not based in the facts and that they have exceeded their boundaries."