

## Supreme Court Overturned Previous Rulings: The Girl will Stay in Israel

Itamar Levin

Israeli couple resided in United States and their two years old daughter was born there • The father claimed that the mother's and daughter's stay in Israel constitutes abduction, but the Supreme Court determined that he had consented to their stay in Israel



*Illustration photo: Flash [90]*

Tags: [Edna Arbel](#)

In a rare decision, the Supreme Court overturned the rulings of Family Court and Regional Court and determined that a two years old girl will remain in Israel with her mother, against her father's request to return her to United States.

The parents were born in Israel and met there, and as of 2006 lived as a couple in New Jersey by force of student's visa. On 2008 they got married in Israel and returned to United States, where their daughter was born on September 2009. On March 2010 they came to visit in Israel, a month later the father returned to United States, the mother was supposed to return on June 2010 but in fact she and the child has stayed in Israel since then.

On April 2010 the mother filed for divorce and custody over the child in the Rabbinical Court. During that month the partners have reached understandings regarding financial and custodial agreement, but eventually they did not sign it. Since the mother and daughter did not return to United States, the father requested to return the child under Hague Convention.

Family Court in Nazareth determined that the mother abducted the child and therefore should return her to United States. The Regional Court adopted this decision, while changing the terms in which the child will be returned. The mother appealed this decision to the Supreme Court, which has accepted (Tuesday, 5.17.11) her appeal.

Judge Edna Arbel determined that the mother indeed wrongfully withheld the child's return to United States. However, in this case one of the defenses allowing to "justify" her actions apply, since the father consented more than once to the child's stay in Israel.

In the consolidated but unsigned agreement, the father consented to transferring to Israel the mother's and child's equipment, and seeing arrangements in case he returns to reside in Israel were determined. "The overall points of agreement in this agreement teach clearly that the parties consented that each of the parties will go their own way – the respondent will return to United States and the plaintiff and the daughter will remain in Israel", says Arbel.

Although the agreement was not signed, continues Arbel, it was actually the mother who refused to sign it, while the father was willing to accept it as is. Under these circumstances, the agreement should be weighed in as evidence to the father's consent to his daughter's stay in Israel – and therefore she should not be returned to United States. It is possible that the father had a change of heart regarding his consent later on, adds Arbel, but it does not overturn his original consent – given before the date in which the mother and daughter were supposed to return to United States.

Arbel adds that the entire nature of the couple's stay in United States teaches of temporariness: their visas are temporary, they've established a business in Israel, maintained their social rights in Israel, they have no permanent housing in United States and their entire extended family lives in Israel.

Arbel adds: "The best interest of the minor obligates discussing the custodial proceedings in her matter in Israel and not in United States. For most of her life the daughter, who is not even two years old, resides with the plaintiff, which is the dominant parental figure in her life, especially considering the respondent's long stay in United States, even to this day, separated from his daughter. Under the circumstances of the couple's separation, the return of the plaintiff and the daughter to United States for the custodial proceedings might place the plaintiff in an unbearable situation, which will ultimately be against the minor's best interest."