

Is Israel a haven for child-abductors?

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Is Israel a haven for child-abductors?

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A FOUR-YEAR-old-girl was recently abducted in England by her father who brought her to Israel. While such cases do not occur often, they are becoming more common. What is Israel's attitude to international child abduction, by one parent from the other? Is this attitude correct?

While such abductions do not happen often, they are becoming a less and less rare phenomenon.

For the child, the abduction is a painful trauma, caused not only by being cut off from his or her familiar environment, but also by the hard and cruel legal fight between the parents. The emotional harm the child suffers is therefore grave and enduring. It is therefore the duty of every state to reduce to a minimum the harm caused, both to children abducted from its territory and to those abducted into its territory.

Such considerations determined the conclusion in 1980 – after the number of child abductions in Europe had tripled since 1975 – of the Hague Convention on the Civil Aspects of International Child Abduction. It has so far been ratified by Australia, Austria, Canada, France, Hungary, Luxembourg, Portugal, Spain, Switzerland, the UK and the U.S. At least four more states are engaged in ratification procedures.

Israel has not yet ratified the Hague Convention, even though it has been requested to do so by other states. Non-governmental organizations such as Defence for Children International are lobbying for its ratification. The reason for non-ratification, according to a statement by a Ministry of Justice official on

March 23, 1990 has been that:

"The State of Israel finds ratifying the Hague Convention difficult, since it emphasizes the rights of each of the parents, while under Israeli law the child's best interest is the decisive and most important consideration in all disputes between parents concerning the place in which the child will be."

It is indeed the case that Israeli family law regards the interests of children as being of paramount importance in matters relating to their custody. On the other hand, with all respect, we do not agree that the Hague Convention takes a different approach.

Under Israeli law, the child's best interest is the decisive consideration in all disputes over where the child should be

AFTER AN abduction two questions need to be answered: which parent should have legal custody of the child? and in which jurisdiction should this custody be decided – the courts of the state from which the child was abducted, or the courts of the state in which he is now? Also, should the abducted child be returned to the state he or she came from until the first question is decided? The Hague Convention confines itself only to the second question.

The central and most important principle established by the Hague Convention is that an abducted child should be returned forthwith to the state from which he was abducted, and that the question of the long-term custody of the child be determined in the same state.

This principle is desirable as it achieves the goal of reducing the harm caused to the child by being

cut off from his or her familiar environment.

In many cases, behind a parent's decision to abduct the child to another state, lurks an assumption that the chances to win custody of the child would be enhanced if the custody question were to be decided in the courts of that state, and not in the courts of the state from which the child was abducted. This assumption is usually based on the fact that the abductor or the child are citizens of that state or belong to its dominant religion.

The abduction referred to of the four-year-old child is an example of

that: as the parents separated, after living for years in France, the mother, a British subject, took the girl with her to England, and there sought and received a judgment awarding her temporary custody, without her child's father being present in court. The father, who is Jewish, brought the girl from Britain to Israel, trying to obtain a judgment giving him custody.

The central principle established by the Hague Convention neutralizes the above assumption; thus, one of the main incentives for snatching children to another state is thereby negated. However, the principle should undoubtedly not be an absolute one. The best interests of a specific abducted child may require that he (or she) not be returned from the state to which the child has been taken, and that the long-term custody dispute be decided in that same state.

The Hague Convention therefore establishes that this principle shall not be binding if more than a year has passed since the abduction and "it is demonstrated that the child is now settled in its new environment" (Art. 12), or if "there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation...[or if] the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views" (Art. 13).

It seems to us that the above principles, together with the qualifications cited, establish a legal construction that best secures the interests of abducted children, and perceive those interests as the decisive consideration, and not the rights of the parents.

The government has recently signed – although not ratified – another convention: the *UN Convention on the Rights of the Child* in which Article 11 obliges the signatories to try to prevent and remedy the kidnapping or retention of children abroad by a parent.

It is still important for Israel to ratify the Hague Convention in order to reduce the number of child abductions to Israel from other states. If Israel does not ratify it, this country will be an increasingly popular destination for potential child-abductors in other states if they or their child are Jews or have Israeli citizenship.

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