

NEW JERSEY AND 'TEXAS' HAGUE CASES
DISMISSED ON SUPPRESION OF EVIDENCE, FRAUD,
AND FOR CONFLICTING WITH THE HAGUE CONVENTION.

UNITED STATES DISTRICT COURT
CARRASCOSA V. MCGUIRE
CASE 2:07-CV-00355-DRD-ES
DOCUMENT 25 FILED 02/08/2007; PAGES 16, 18 & 19

“The glaring departure of the Spanish Court from the mandate of the Hague Convention, recognized by it, **was its total failure to determine Innes’s rights of custody under New Jersey law - the law of the state in which Victoria Solenne was habitually resident immediately before her removal.** The Court never mentioned the applicable New Jersey Child Custody Jurisdiction and Enforcement Act [UCCJEA]...”

“Despite the fact that a court has the power to decide wrongly, a decision such as this can[not] stand because, on its very face and applying the facts found by the Spanish Court, the decision is outside of the terms of the Hague Convention. This is not simply judicial error to be corrected by appeal. It is a departure from jurisdiction conferred by the Hague Convention. The Spanish Courts, not the New Jersey courts, **violated the principals of international comity by failing even to attempt to apply New Jersey law** and the order of the New Jersey courts and by applying Spanish law where the Convention mandated that it apply New Jersey law.” “Comity prevails if [a] foreign judgment ‘does not prejudice the rights of United States citizens or violate domestic public policy.’” Id. (citing *Victrix S.S. Co, S.A. v. Salen Dry Cargo A.B.*, 82 F.2d 709 (2 Cir. 1987).”

In Third Circuit in Carrascosa, declined to extend comity to a Spanish court's Hague order. 520 F.3d at 263. On appeal, the Third Circuit affirmed the District Courts reasoning that the Spanish court "ignored the mandates of the Hague Convention by impermissibly making custody determinations and failing to address and apply New Jersey law," even though it should have been undisputed that the child's habitual residence was New Jersey. *Id.* at 258, 260. The Third Circuit, refused to extend comity to the Spanish court, concluded the Spanish court's decision "departed from the fundamental premise of the Hague Convention and violated principles of international comity by not applying New Jersey law." *Id.* at 263.

TEXAS HAGUE CASE in the TX COURT OF APPEAL; 8 DIST:
No. 08-01-00246-CV in *Velez v Mitzak (the last para)*:

“Velez was entitled to the opportunity to establish the defenses she had pled and to challenge the Italian judgment on the ground that it was procured by fraud. It was surely not contemplated by the drafters of the Convention that the provision requiring contracting states to use the most expeditious procedures available to implement the objectives of the Convention would override a party's right to present evidence on possible defenses as provided in the articles or on considerations of whether a foreign judgment was obtained by fraud.”

ASVESTA V. PETROUTSAS, 580 F. 3D 1000 –
COURT OF APPEALS, 9TH CIRCUIT

In *Asvesta v. Petroutsas*, (A Hague Case) the US Court of Appeals, Ninth Circuit, overruled the District Court and refused to extend comity to Greece. Citing commentary in the Restatement of Foreign Relations, which states "[a] particular case may disclose such defects as to make the particular judgment [not] entitled to

recognition." *Id.* (quoting Restatement (Third) of Foreign Relations 1012*1012 § 428 cmt) (internal quotation marks omitted).

It concluded that the District Court was wrong to extend comity to the Greek Court in this instance, as the Greek Court did not extend comity to U.S. Laws obliged by Articles 3 & 5.

It decided it may properly decline to extend comity to the Greek court's determination if it clearly misinterprets the Hague Convention and/or contravenes the Convention's fundamental premises or objectives [Arts. 1 and 3], or "fails to meet a minimum standard of reasonableness."

ALL OF THESE FOREIGN JUDGMENTS WERE VOID

Duty to Protect

FOURTEENTH AMMENDMENT

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

42 U.S.C. § 1983. CIVIL ACTION FOR DEPRIVATION OF RIGHTS

'[E]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any

citizen of the United States or other person within the jurisdiction thereof to the deprivation of [a]ny rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Where such paramount considerations are involved, Alessia's father passionately argues that the failure of a 'foreign' body's *extraterritorial* view of the *lex fori* (The State of Texas & the United States); and its subsequent failure to properly utilize the Articles of The Hague Convention, can [not] preclude the Texas court from correcting the error just as they would in a court of these United States. *United States District Court, S.D. Texas: No. 01-CV-2139 Mayo v. Hartford Life Ins. Co.*, 220 F. Supp. 2d 714.; August 7, 2002; and (*Brasfield v. United States*, [272 U.S. 448, 450](#), 47 S. Ct. 135 (71 L. Ed. 345)).