

Decision: The Court unanimously ruled partially in favor of the requests made in ADI 4.245 and, by majority vote, ruled partially in favor of the requests made in ADI 7.686, on the following grounds:

- a) To interpret Art. 13(1)(b) of the 1980 Hague Convention in conformity with the Constitution, recognizing that the exception to the immediate return of the child due to grave risk to his or her physical or psychological integrity or intolerable situation applies in cases of domestic violence, even if the child is not a direct victim, provided that objective and concrete indications of the risk situation are demonstrated, in accordance with the principle of the best interests of the child (Art. 227, CF/1988) and under a gender-based perspective (Arts. 1, III, and 226, § 8, CF/1988);
- b) To determine that the National Council of Justice (CNJ) should establish an inter-institutional working group to prepare, within 60 (sixty) days, a proposed resolution aimed at increasing the speed and efficiency of international child abduction return proceedings, ensuring, through adversarial proceedings and full defense, that the final decision on the return of the child is made within a period not exceeding 1 (one) year;
- c) The resolution, which will bring CNJ Resolution No. 449/2022 into line with the terms of this decision, will establish the duty of the respondent to report the existence of any ongoing child custody proceedings in the national territory and will assign the management of such proceedings in the country to the CNJ's National Forum for Children and Youth (Foninj). The requirement for adversarial proceedings and full defense applies both in the cases of Art. 1 and Art. 12 of the Convention. Public and notorious facts and rules of experience (Civil Procedure Code, Arts. 374 and 375) will also serve as elements of conviction;
- d) To determine that the Federal Regional Courts issue normative acts to promote the concentration of jurisdiction to process and judge actions related to the 1980 Hague Convention, with regard to restitution proceedings, in one or more courts in the capital and judging chambers, based on Art. 96, I, "d," CF/1988, aiming at procedural uniformity and celerity;
- e) To determine the establishment of specialized support centers within the Federal Regional Courts to encourage conciliation, the adoption of restorative practices

and methodologies, to qualify and coordinate the performance of psychosocial assessments, and to act as a source of technical and methodological support for judges;

- f) To determine that the bodies of the Judiciary Branch, with the support of the CNJ, adjust the electronic case management systems to enable the inclusion of preferential processing tags for all cases that receive the subject code “10921 Child Restitution, 1980 Hague Convention,” as established in Art. 27 of CNJ Resolution No. 449/2022;
- g) To determine that the Executive Branch adopt structural and administrative measures to strengthen the work of the Federal Central Administrative Authority (ACAF), with the definition of goals, timelines, and performance indicators;
- h) To determine that the Executive Branch evaluates the convenience of Brazil's accession to the 1996 Hague Convention (on jurisdiction, applicable law, recognition, enforcement, and cooperation in matters of parental responsibility and protection measures for children), with the preparation of a technical report to be forwarded to the heads of the three branches of the government;
- i) To determine that the Executive Branch, through the Ministry of Foreign Affairs, shall prepare, within six months, a protocol for assisting women and children who are victims of domestic violence, to be adopted in all Brazilian consular units abroad, taking as a reference the pilot project developed by the Consulate General of Brazil in Rome;
- j) To call on the Legislative Branch, in dialogue with the Executive Branch, to assess the need for specific legislation to regulate the 1980 Hague Convention, particularly with regard to the procedural and evidentiary aspects of its application;
- k) To determine that Federal Regional Courts and Courts of Justice enter into judicial cooperation agreements to establish protocols for coordinated action in cases of international child abduction, including, among other measures, the sharing of information relating to custody actions and actions based on the 1980 Hague Convention and the joint use of multidisciplinary structures and teams, especially for the production of expert reports;

- l) Once it is recognized that the conditions set forth in the Convention for determining return are not met, that the Brazilian courts' jurisdiction, as the forum of the taking parent's domicile, is established to decide on the substantive issues involved in the case, including the custody of the child.

Finally, the following judgment thesis was established:

"1. The 1980 Hague Convention on the Civil Aspects of International Child Abduction is compatible with the Federal Constitution and has supra-legal status in the Brazilian legal system due to its nature as an international treaty for the protection of children's rights.

2. The application of the Convention in Brazil, in light of the principle of the best interests of the child (Art. 227, CF), requires the adoption of structural and procedural measures to ensure the swift and effective processing of actions for the international restitution of children.

3. The exception of grave risk to the child, provided for in Art. 13 (1)(b) of the 1980 Hague Convention, must be interpreted in a manner consistent with the principle of the best interests of the child (Art. 227, CF) and under a gender-based perspective, so as to allow its application when there are objective and concrete indications of domestic violence, even if the child is not a direct victim."

All in accordance with the vote of Justice Luís Roberto Barroso (President and Rapporteur). Justice Dias Toffoli was partially defeated in ADI 7.686, as he considered the action to be entirely well founded. Plenary session, August 27, 2025.