

PARENTAL ALIENATION AND INTERNATIONAL CHILD ABDUCTION: INTERNATIONAL LEGAL COOPERATION FOR SAFEGUARD THE RIGHTS OF CHILDREN¹

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1. Initial considerations

The process of post-modern globalization, structured from technological advances, enabled the relative shortening of distances between countries and, consequently, encouraged greater contact between people. There was, on the face of it, the increase in the number of transnational relationships between individuals, so that larger numbers of multinational families began to emerge, in which the parents came from distinct states, so they shared different cultural understandings and sometimes even conflicting. Such cultural shocks, in

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turn, can be pointed out as one of the reasons, among an extensive list of factors, that led to the termination of a considerable amount of affective relations.

In this scenario of rupture of internalized relationships, issues regarding family disputes involving children require greater caution as they involve a vulnerable social stratum and they are still forming their personal identity. Therefore, one of the main consequences of litigation in global relations is the parental alienation generated by the international child abduction. This phenomenon is manifested when one parent takes the child from his home country permanently, without the authorization of the other parent, thus causing psychological and emotional damages of varying degrees to the child, something that can directly affect his individual formation and affect others ties throughout his or her life.

Thus, in order to mitigate the harm suffered and to promote the best for the personal development of children who have been victims of this practice, international treaties have been established regulating measures to be taken in these cases, with particular emphasis on the Hague Convention (1980) on the Civil Aspects of International Child Abduction. The international agreement between the States, of which Brazil is a signatory, according to Decree nº. 3.413/2000, prescribes the cooperation between its signatories for the speedy and proper reintegration of the children to the countries from which they were illegally removed by the alienating parent, to protect the emotional bond between the alienated and the child. At this juncture, collaboration between the contracting countries is imperative in combating the harmful effects of parental alienation, since remedial measures must be applied urgently, which can only be achieved in a situation of cooperation.

In this sense, this article aims to give an account to reiterate the importance of complying with the above treaty for the preservation of the physical and psychological well-being of the minors involved, as well as the affective ties related to children. In this way, the harmful effects of the consecration of parental alienation in the face of the children will be approached emphatically, with due attention to the aggravating factor that is the transnational territorial distancing established by the alienating parent. This analysis will be carried out through an exposition of information acquired in the various literary sources that, with excellence and criticality, discuss this legal question, pointing out the appropriate care to be taken so that the interests of the child involved in the concrete situation are not neglected, since these are the main legal assets to be protected.

In addition, a brief comparison of some judicial decisions in which Brazil was involved in this matter will be carried out, in order to explore both cases in which the Brazilian

performance was ineffective in protecting the child, and situations in which that it, in fact, was satisfactory. This will also be observed through the presentation of the Brazilian Office of the General Attorney (AGU - acronym in Portuguese), an agency closely related and active in the treatment of this type of litigation.

It is therefore perceived that, from this scientific production, it is intended to deeply understand the need to combat such harmful practice, such as parental alienation through international abduction, since it endangers the personal formation of individuals belonging to a social group whose primary right is protection: minors, regardless of their nationality.

2. Parental Alienation: constitutive characteristics and aggravating by international child abduction

In the face of the great questions that plague the twenty-first century, the problem of parental alienation represents a serious psychological abuse perpetrated against children and which, if not treated in a timely and appropriate manner, can produce severe damage throughout the lives of their victims. In this logic, it becomes relevant to conceptualize it as a phenomenon in which one of the parents, or whoever holds authority or guard over the minor, performs a series of practices that have the purpose of disrupting and/or destroying its bond with the other parent, without there being any real reasons to justify such conduct.

As important as conceptualizing parental alienation is to identify the main acts committed by the alienating parent, who commits these actions, in the face of the alienated, parent who has his bond shaken with the child. Some behaviours of the alienating parent are performing campaigns disqualifying the conduct of the other parent in its parenting position, hindering the exercise of parental authority, disturbing the child's contact with the other parent, disrupting another's visitation period, omitting personal information on the child, presenting false accusations against the other and changing domicile without reasons, in order to make it difficult for the minor to live with the other parent and its relatives (BRASIL, 2014, p. 7).

This kind of behaviour worries, because the greatest victims are children and these conducts make them deprived of social and family life, thus incapable of creating lasting affective bonds, subject, therefore, to damages for life (GASPAR; AMARAL, 2013, p. 2). Children who are subject to this phenomenon may exhibit feelings of low esteem, insecurity, depression, social withdrawal from other children and personality disorders. In addition, the

individual, if not treated in time, by the time he reaches adolescence or adulthood, he may develop a sense of guilt when he realizes that he has attacked the alienated person, and often the distance created between them is so great that the reversal of this detachment is no longer possible. In these cases, feelings of guilt and regret often become so extreme that the individual runs the risk of being heavily involved with alcohol, drugs, having depressive episodes and even attempting suicide (BUOSI, 2011, p. 77).

There is no doubt, therefore, that parental alienation represents a serious risk to the health of children and adolescents, and for this reason was promulgated in 2010 the Law n°. 12.318 on parental alienation. This Law in its article 3 characterizes that this phenomenon damages the fundamental right of the child or adolescent to healthy family life, besides being a type of moral abuse and a noncompliance with the duties inherent to the parental authority (BRASIL, 2010, online). The law also provides for a series of sanctions from fines to the alienating parent, expansion of the regime of coexistence with the alienated parent, monitored psychological intervention and even the suspension or loss of family power of the alienating parent.

It should be noted, of course, that in the context of globalization the problem of parental alienation reaches extraterritorial limits, which further aggravates the effects of alienation and makes it more difficult to dissolve. This is the International Child Abduction. Before taking a hasty look at this issue, it is necessary to realize that this phenomenon differs from the Inter-American Convention on International Traffic in Minors. The International Child Abduction would be the illegal transfer of the minor by one of his parents to a country that does not correspond to that of his habitual residence, in most cases the parents of the children belong to different nationalities. That already refers to the abduction, removal or retention, or attempted abduction, removal or retention, of a minor for unlawful purposes or by unlawful means:

Article 2

This Convention shall apply to any minor who is habitually resident in a State Party or is located in a State Party at the time when an act of international traffic occurs in respect of him or her.

For the purpose of the present Convention:

- a) "Minor" means any human being below the age of eighteen.
- b) "International traffic in minors" means the abduction, removal or retention, or attempted abduction, removal or retention, of a minor for unlawful purposes or by unlawful means.
- c) "Unlawful purpose" includes, among others, prostitution, sexual exploitation, servitude or any other purpose unlawful in either the State of the minor's habitual residence or the State Party where the minor is located.
- d) "Unlawful means" includes, among others, kidnaping, fraudulent or coerced consent, the giving or receipt of unlawful payments or benefits to achieve the consent of the parents, persons or institution having care of the child, or any other means unlawful in either the State of the minor's habitual residence or the State

Party where the minor is located (ORGANIZATION OF AMERICAN STATES, 1994, online).

From this perspective, it is particularly relevant that this phenomenon is a case of parental alienation, since it fits perfectly into the provisions of article 2, VII, of the Parental Alienation Act:

Art. 2.º, § único: “São formas exemplificativas de alienação parental, além dos atos assim declarados pelo juiz ou constatados por perícia, praticados diretamente ou com auxílio de terceiros: (...) VII – mudar o domicílio para local distante, sem justificativa, visando a dificultar a convivência da criança ou adolescente com o outro genitor, com familiares deste ou com avós (BRASIL, 2010, online).

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Parental subtraction occurs when the father or mother removes the children of the other parent without any justification and, to this end, takes them from their habitual residence to a different country, without the authorization of the other. The parent who abducts the child may be termed the abductor parent, while another is called the abandoned parent (BRASIL, 2016, online).

It is no exaggeration to say that in this case there are strong evidences that this minor can be alienated, because moving him from his home to a new environment, a place in which his only bond will probably be with the abductor, he will be dependent on that and, therefore, vulnerable to any means the abductor parent use to make him see the situation from his point of view. It is undeniable that the International Child Abduction exposes the child to the same risks present in situations of parental alienation, except that they are aggravated by the physical distance between the minor and the abandoned parent. It can be stated that parental abduction, in its national and international modalities, represents the worst form of parental alienation, with damages often irreversible for both the child and the parent who suffers it (VIVEIROS, 2016, online).

Abduction usually occurs in two possible ways, in the first of which the abductor removes the child from his legal (or conventional) guardian, without the latter's permission, and takes him from his or her habitual residence to another country. The second hypothesis comes when the guardian authorizes the other parent to travel, with a stipulated return date, and in the moment of the return the subtractor refuses to return the child to his or her home.

It is possible that the subtractor motivates his behaviour in the insecurity of losing the custody of the child to the other parent or even, in the case of shared custody, to do not being allowed to return to his or her home country without the child, he has to continue to live in another state. But this idea rightly ignores the fact that the subtractor ends up doing what he

feared most against the abandoned parent, and this behaviour profoundly harms the child, who is undoubtedly the greatest victim of this whole situation.

Thus, as it turns out, the child leaving his or her mother experiences feelings of incomprehension, insecurity, guilt, fear, abandonment on the part of the other parent, suffering because his/her life has changed abruptly and without even knowing why. Allied to this, it is common for the abductor to influence the child to conceive the other parent in a bad perspective so that the minor always claims to want to stay with the one who abducted him/her. The estranged child of one of his parents will not be able to meet the abandoned parent and not even make his own criticisms of him/her. The abductor, then, cruelly abducts part of the child's emotional life with his or her other parent (BENTO, 2017, p. 1-2).

The challenge that is built, from the exposed reality, is to promote means that mitigate these episodes and ensure, at the minors, the maintenance of their psychological integrity and the construction and conservation of their family ties, which are essential to their physical, mental and social development. In view of this, international treaties on this subject, in particular the Hague Convention on the Civil Aspects of International Child Abduction, and international cooperation, both between signatory and non-signatory countries, are essential to obtain the best solution, always aiming at the interest of the child, in a timely manner to mitigate any damage caused by the parental alienation.

3. Brief essay on the Hague Convention

Globalization, accompanied by the technological development of the post-modern world, as mentioned earlier, has led to a significant increase in the transnational relations in which families are formed and, in some cases, descendants are generated. However, from a comparative analysis, there was also an expansion of the number of ends of relationships over the years, which, in turn, made it possible to aggravate practices detrimental to family relationships, and especially to children from these relationships.

Faced with such a scenario, State representatives realized the need to create conventions that ratified the protection of children's rights below their limits of jurisdictional action, so that they gradually began to make international treaties that deal with such issues. At this juncture, the need to preserve such a social stratum of parental alienation through transnational abduction, unhealthy conduct committed by the person who has the right of custody of the child, totally or partially, when withdrawing him or her from the country in

which their cultural and emotional references were built, illegally and without plausible justification or pretence of return.

On October 25 of 1980, the Hague Convention on the Civil Aspects of International Child Abduction was instituted, which became effective only on December 1, 1983, and was enacted in Brazil by Decree nº. 3.413 of 14 April of 2000. This international agreement currently has 190 signatory countries, consecrating, therefore, as the document adopting the most ratified Children's Law in the world, acting on the basis of laws, institutions and practical measures, as well as political and ethical measures to promote integrated approaches to children's rights, recognizing that the full development of the child implies the realization of its social, cultural, economic and civil rights, in order to be essential a balance between the rights of children and their guardians (LUCAS MÉRIDA, 2011, p. 8).

Thus, through the implementation of the Convention, the aim is to promote the speedy location of the minor that has been abducted and the appropriate return to his former country of residence, in order to mitigate any possible psychological and emotional damages that the child may have thanks to the abrupt distancing of its area of cultural references and part of its affective bonds, especially the relatives. However, rights of visit and custody decided in accordance with the laws of the contracting States in which they were established must always be observed. Such legislation, in turn, is prescribed in Article 1 of the already mentioned multinational treaty, which is responsible for delimiting the agreed objectives, which are "to secure the prompt return of children wrongfully removed to or retained in any Contracting State" and "to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States" (HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, 1980, online).

[...] deve-se avaliar os delineamentos dessa importante Convenção, no sentido e que se possa garantir, com absoluta prioridade, a preservação do direito fundamental das crianças de serem criadas no seio familiar onde estabeleceram vínculos afetivos e no lugar onde construíram suas referências culturais (DUARTE, 2015, online).

Nevertheless, it is important to consider the appropriate, timely and effective cooperation to be carried out by the signatory States, since the implementation of the aforementioned objectives requires communication and due support from the competent authorities highlighted by each country. After all, in order to develop a satisfactory resolution of existing demands, in the best interests of the child, it is vital that there be a concrete and relevant exchange of information on the specific aspects of the situation from the perspective of all the nations involved, for example, about the existence of protective measures in the former country of residence against the parent who pleads for the return of the child.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures -

- a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- d) to exchange, where desirable, information relating to the social background of the child;
- e) to provide information of a general character as to the law of their State in connection with the application of the Convention; [...] (HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, 1980, online).

After this brief essay, a detailed analysis of the material and formal aspects of the norms prescribed in the Convention will be made, in order to promote a certain elucidation about the requirements to be fulfilled so that the countries can act in the matter, always aiming at preserving the physical, psychological and emotional well-being of children.

4. Formal aspects necessary for the implementation of the Hague Convention

It is first necessary to understand what are the legal requirements to be fulfilled so the international displacement of the children, by one of the parents, to be regarded as unlawful in the light of the 1980 Hague Convention. Then, referring to the considerations and measures to be adopted by the signatory States in the treatment of international abduction as a mechanism for effecting parental alienation, with an exceptional emphasis on cooperation between nations.

Once such a reservation has been made, during the discussions promoted for the consolidation of the aforementioned treaty, it was agreed that the withdrawal of the child, from the territorial limits of his country of residence, could only be classified as unlawful if it complied with two cumulative conditions: the effective violation, before the displacement, of the right of custody, and that this same right was being exercised at the time of the abduction or that the person has had the exercise of this right prevented for that reason. In other words, it is necessary that the right of custody of the child, established in the terms of the State from which it was taken, has been affected by one of its parents through the action of the other parent. This is shown by interpreting the normative content extracted from Article 3 of the Convention:

Article 3

The removal or the retention of a child is to be considered wrongful where -

- a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a)* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State (HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, 1980, online).

Before proceeding with the analysis of the formal requirements to be verified for the actions of States in the cases of abduction of children, it is worth noting that the Convention defines custody as “rights of custody shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence” (HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, 1980, online) and that there is no analysis of merit about it, and the return of the minor is executed regardless of what was stipulated on this matter at first. This legal-procedural act of revision, in turn, rests strictly on the courts determined by the law of the country from which the minors were illegally displaced, so that a new judicial decision on this issue is due to the facts added to the case.

Configurando-se os requisitos que caracterizam a transferência ilícita, deve a criança retornar ao Estado de onde foi levada, independentemente do mérito da decisão que, no Estado de origem, conferiu a guarda ou regulou as visitas (GONÇALVEZ PORTELA, 2015, p. 784).

It can be inferred that, in cases of parental alienation by international child abduction, the measure to be adopted by the State in which the alienating parent has established domicile with the child is the granting of the return of the child to his previous place of residence in the fastest way possible, as properly emphasized in Article 1 of the Convention, transcribed in the previous item. However, there are situations in the specific case where the return of the minor is not in line with the proposal to promote the preservation of his own interests or his physical, psychological and emotional well-being. Thus, considering this possibility, restrictions in the Multinational Agreement itself were made on the return of the children to their former countries, which are expressed in Article 13 as follows:

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that

- a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) 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.

The judicial or administrative authority may also refuse to order the return of the child if it finds that 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.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence (HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, 1980, online).

It should be noted that there is, at least in theory, a remarkable care in ascertaining the concrete situation as a whole in order to mitigate the possible direct or even collateral damage of the territorial transfers of the child, either for its abduction or for his return to the country from which he was taken. A possible example of a criterion to be considered before returning the minor is the existence of protective measures against the parent who pleads for the return of the child, once they rebuild the contact between both in these circumstances, without due protection, can bring similar damages to those who tried to avoid this by returning the individual.

Finally, the Contracting States need to establish competent authorities for the treatment of such conflicts, so that cooperation can take place in a more centralized and, therefore, efficient manner. In Brazil, Decree 3.413/2000 ratified the points agreed in the Convention on international child abduction, and it was determined that the Brazilian Office of the General Attorney would be the competent body to work in these cases, always observing the precepts of international cooperation and the well-being of those subtracted.

5. Legal Cooperation as an essential condition for the implementation of International Treaties

It is undeniable that, among the many changes that have occurred in the process of globalization, the integration between the various nations and, consequently, the expansion of transnational legal relations has heightened the importance of private international law. Unlike private law, which deals with private interests at the national level, private international law provides for particular international legal relationships, in other words, involving people of different nationalities. It is clear in this case that private international law faces great challenges in trying to harmonize the different legal systems of the various nations, because it is not acceptable, for example in cases of parental abduction, that one of the parents illegally transports the child to another country and there he/she acquires the

unilateral guard, thus leaving the abandoned parent at a loss. In view of this idea, it should be recognized that the role of international law in solving this type of conflict is of great relevance, as it is international legal cooperation, since this is the principal means used to resolve transnational private conflicts.

Before taking a deeper look at this subject, it is necessary to point out that the Federal Constitution understands sovereignty as one of the foundations of the Federative Republic of Brazil, that is to say that Brazil demonstrates that it is not subject to accepting external interference in the Brazilian Jurisdiction:

Article 1. The Federative Republic of Brazil, formed by the indissoluble union of the states and municipalities and of the Federal District, is a legal democratic state and is founded on:

I – sovereignty (SUPREME FEDERAL COURT, 2019, online).

However, in a world in which globalization opens the way for a society that has conflicts beyond national scope, sovereignty cannot prevent the realization of individual rights. From this perspective, in order to adapt to the new world reality, it is understandable that the sovereignty undergoes a certain relativization. This process of relativization can be solidified in the international treaties whose definition was made in Article 2 of the Vienna Convention on the Law of Treaties, which Brazil adhered to through Decree No. 7.030/09:

Article 2.

USE OF TERMS

1. For the purposes of the present Convention:

(a) "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(b) "Ratification", "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty [...] (UNITED NATIONS, 1969, online).

It should be noted, of course, that for a treaty to be effective in Brazil, it is necessary for it to be ratified by the Brazilian legal system, which is the responsibility of the Executive Branch. It can be corroborated this affirmation having as base the Federal Constitution in the article 21, I: "Article 21. The Union shall have the power to: I – maintain relations with foreign states and participate in international organizations"; in the article 84, VIII: "The president of the Republic shall have the exclusive power to: VIII – conclude international treaties, conventions and acts, ad referendum of the National Congress"; however, in order to harmonize the three Powers, it is ensured in the article 49, I: "it is exclusively the competence of the National Congress: I – to decide conclusively on international treaties, agreements or acts which result in charges or commitments that go against the national property" (SUPREME FEDERAL COURT, 2019, online). It is possible to understand the approval of

the Legislative Power as a solemn validation of the Brazilian State, of the terms of the international treaty, in front of the other signatory countries.

It is important to emphasize that it is this ratification made by Brazil to the other States that obliges the Union to comply with what was agreed upon, as well as that which allows the Brazilian State to request compliance with it in the face of the other signatories. This relationship can be translated into international legal cooperation.

In view of this, it can be said that international legal cooperation aims to guarantee the right of the State and its citizens to prosecute and adjudicate disputes within their jurisdiction, even when elements indispensable to the conduct of the process are in foreign jurisdiction (BRASIL, 2008, p. 12). After all, it is a question of preventing the mere fact of crossing a frontier or of being illegally in foreign territory a restriction on the work of the Judiciary.

In this perspective, international treaties serve as a legal basis for the provision of reciprocal legal assistance (BRASIL, 2011, p.7). Through the signing of treaties, conventions and agreements based on reciprocal collaboration between the signatories, it will be easier to construct solutions to issues that cross national boundaries, and in which the State is unable to resolve unassisted.

International legal cooperation can be classified as active and passive and directly and indirectly. Active cooperation would be one in which one State formulates to another the request for legal assistance, and passive cooperation occurs when the State receives the request for cooperation from the other. Regarding indirect cooperation, this depends, in order to be effective, on a judgment of deliberation, as opposed to the direct cooperation in which the trial court level judge has full knowledge (BRASIL, 2008, p. 12). The cooperation also has different modalities, one can cite the letters rogatory, the extradition, the homologation of foreign sentence, the transfer of prisoners and the direct aid.

The letters rogatory is considered to be one of the oldest mechanisms of international legal cooperation, and is defined in accordance with article 237, II of the Brazilian Code of Civil Procedure as a request to be made “for a foreign court to perform an act of international legal co-operation in relation to an action pending before a Brazilian court” (ALVIM; DIDIER JÚNIOR, 2017, p. 114). Extradition is “a medida de cooperação internacional entre o Estado brasileiro e outro Estado pela qual se concede ou solicita a entrega de pessoa sobre quem recaia condenação criminal definitiva ou para fins de instrução de processo penal em curso” (BRASIL, 2017, online). The homologation of a foreign sentence is the procedure by which it is made effective, in national territory, judicial decisions made outside the country.

The transfer of prisoners occurs when an individual, who has already been convicted, is removed from a State to serve his sentence in his State of origin. The direct aid is the institute that allows full cognition, in other words, its cognition is attributed to the trial court level judge (BRASIL, 2011, p. 7).

With regard to the application of the Hague Convention on the Civil Aspects of International Child Abduction, the modality granted is the direct aid. This allows the judge "a broad knowledge of the merits discussed in the request of international legal cooperation, granting the national magistrate the decision about the occurrence of unlawful transfer or retention of children, according to the aforementioned Hague Convention" (BRASIL, 2011, p. 7). The Central Authorities are the administrative organs responsible for centralizing international legal cooperation, in Brazil this cooperation still lies with the Brazilian Office of the General Attorney.

5.1. The Brazilian Office of the General Attorney's performance in the application of the 1980 Hague Convention

When discussing the problem of International Subtraction of Minors, it becomes relevant to determine the appropriate measures when configured this phenomenon. Since Brazil adopted the Hague Convention of 1980, it is clear that Brazil is obliged to take all necessary actions to reinstate minors illegally detained in the country to their habitual residence. Requests for the return of minors between the signatory countries of the Convention shall be made through the Central Authorities, which will be indicated by each State Party as provided in the Article 6 of the Convention:

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State (HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, 1980, online).

The Central Authority is the national body responsible for managing the legal cooperation with signatory States or with international organizations. The Central Authority makes the preliminary admissibility judgment in the requests for cooperation, having to consider both the international treaties in force and the national legislation as well as national and international customs and practices (SIFUENTES; CALMON, 2015, online). Therefore,

this body was established to facilitate international legal relations by unifying the burden of international cooperation in a single institution, in order to make cooperation quicker and more efficient, in addition, it is an important milestone in the communication between the states that previously only carried out this process through diplomatic channels (BRASIL, 2008, p. 12).

In Brazil, the competent Central Authority is the Special Secretariat for Human Rights (SEDH - acronym in Portuguese) of the Presidency of the Republic, which then has the duty to cooperate with the other Central Authorities in the sense of:

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Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures -

- a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- d) to exchange, where desirable, information relating to the social background of the child;
- e) to provide information of a general character as to the law of their State in connection with the application of the Convention;
- f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;
- g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application. (HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, 1980, online)

SEDH also acts as the central authority in the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and the Inter-American Convention on the International Return of Children. In view of this, it may be stated that SEDH, upon receiving the request made by the State of the child's habitual residence, and if the administrative requirements for the admission of the request are present, must send administrative notification to the person who retains the child illegally in Brazil (BRASIL, 2011, p. 17).

A documentação necessária para dar início ao pedido judicial de restituição varia de acordo com o caso concreto. Todavia, é recomendável que sejam anexados ao formulário-padrão documentos que comprovem e/ou identifiquem:

- a) o local onde a criança residia no país de origem (residência habitual);
- b) o endereço onde a criança possivelmente será localizada no Brasil;

- c) o efetivo exercício do direito de guarda pelo pai ou parente que foi deixado para trás;
- d) os dispositivos legais do país de origem que tratam sobre o tema da guarda de menores;
- e) a transferência ou retenção ilícita da criança (autorização de viagem apenas para passeio, passagens aéreas de ida e volta para o país de origem, entre outros) (BRASIL, 2011, p.17).

However, if there is any resistance to amicably return the child, the Brazilian Central Authority will refer this case to AGU. The role of the AGU is necessary, since the Central Authority is an organ of the public administration and, as such, does not have legal personality, consequently, it is the responsibility of the Union to represent it judicially (BRASIL, 2011, p.9). AGU will then act in this case because it has *jus postulandi* in relation to the Union, according to Article 131 of the Federal Constitution and Article 1 of Complementary Law No. 73:

Article 131. The Advocacy-General of the Union is the institution which, either directly or through a subordinated agency, represents the Union judicially or extrajudicially, and it is responsible, under the terms of the supplementary law which provides for its organization and operation, for the activities of judicial consultation and assistance to the Executive Power (SUPREME FEDERAL COURT, 2019, online).

Lei complementar n.º 73, art. 1.º: A Advocacia-Geral da União é a instituição que representa a União judicial e extrajudicialmente.

Parágrafo único. À Advocacia-Geral da União cabem as atividades de consultoria e assessoramento jurídicos ao Poder Executivo, nos termos desta Lei Complementar (BRASIL, 1993, online).

The AGU represents the Union in a procedurally and must defend its interests, which in this case includes the realization of international cooperation between the signatory States. After the request for restitution of the child and the country of origin of the child granted the request, the AGU and SEDH employ reinforcements, together with the Justice, to ensure the physical and psychological health of the child, as well as a safe return home of residence (BRASIL, 2011, p.9).

The AGU is organized internally in order to connect the headquarters of the Central Authority, in Brasilia, with the AGU executing agencies, present in each state. In addition, the International Department of the Brazilian Office of the General Attorney signs the legal theses to be used in these processes aiming at the uniformity of Brazil's position in cases of International Child Abduction. It is also necessary to emphasize that, due to its internal division, the AGU works these processes through the so called "focal points". These include the Union's attorneys who are determined by their respective heads to deal with cases involving international law, in particular those dealing with the Hague Convention of 1980. The appointment of these focal points allows them to be coordinated jointly with the

International AGU Department which, in turn, maintains direct contact with the Central Authority (BRASIL, 2011, p. 9).

It is also imperative to point out that the AGU, representing the Union's legitimate interest in fulfilling its obligations under international treaties, does not act in the private interest of one of the child's parents. Moreover, the location of the child is reached through Interpol, which does not presuppose the existence of a police investigation, but is justified by the control of the disappeared persons and by the agreement with the Brazilian Central Authority. In addition, as a consequence of Article 26 of the Convention, AGU always demands the condemnation of the abductor parent to pay the costs generated by the location and return of the minor.

All this organization of the Brazilian State in the attempt to reach the solution that privileges the best interest of the child, however, is not always achieved. It should be noted that, unfortunately, since has joined the Hague Convention of 1980, Brazil has been the target of criticism from the international community, especially in terms of slowness in the following to process. Among the many problems responsible for this delay, one can cite the conflict of jurisdiction between the State Courts and the Federal Courts.

This conflict occurs because, normally, the abductor, upon arriving in Brazil, requests provisional custody in family courts of the State Court, which is not usually denied. However, when the Central Authority receives the request for international legal cooperation, it forwards the request to the AGU that takes a legal action of restitution in front of the Federal Court (GASPAR; AMARAL, 2013, p. 30). However, it is decisive to note that, according to Article 109 of the Federal Constitution, it is the responsibility of the Federal Court to judge actions of interest to the Union and to adjudicate the causes arising from treaties, that is, both requirements fit in the cases of Hague Convention of 1980:

Article 109. The federal judges have the competence to institute legal proceeding and trial of:

I – cases in which the Union, an autonomous government agency or a federal public company have an interest as plaintiffs, defendants, privies or interveners, with the exception of cases of bankruptcy, of job-related accidents, and of those subject to the Electoral and Labour Courts;

II – cases between a foreign state or international organization and a municipality or a person domiciled or residing in the country;

III – cases based on a treaty or a contract between the Union and a foreign State or international organization; [...] (SUPREME FEDERAL COURT, 2019, online).

It is necessary, however, to recognize that there is no point in having this whole structure if there is no effective international cooperation between the signatory countries of the Convention, since it is only through collaboration between those states that what is agreed

in the Convention will actually be applied to the many cases of International Child Abduction that currently exist.

The phenomenon of International Subtraction of Minors is serious and deserves full attention both from international organizations and from States, and although ratifying the Convention is an important step in combating this practice, it cannot be accepted that the measures instituted remain only on paper. That is to say, it really needs to be applied and collaborated with other States to solve these cases. As a consequence, States that are signatories to international treaties have an International Responsibility, this can be defined as the guarantee of balance and equivalence between the signatory States and the international community (BRASIL, 2011, p. 15).

In this perspective, Brazil has an obligation to comply with the provisions of the Hague Convention of 1980, as well as have a duty to repair any damage resulting from non-compliance with the Convention. The Brazilian courts are not being ranked in relation to the international bodies, but only assuring what Brazil has committed to follow when submitting to the treaty.

5.2. Judgments on cases of International Child Abduction

Because these processes deal with children and adolescents, it becomes difficult to find much information about them because of the secrecy of Justice that surrounds them. However, the website of the Brazilian Office of the General Attorney has some judicial decisions that will be commented, even superficially.

CONVENÇÃO DE HAIA SOBRE ASPECTOS CIVIS DO SEQUESTRO INTERNACIONAL DE CRIANÇAS, DE 25/10/80 - DECRETO N.º 3.413/2000 - COOPERAÇÃO JUDICIÁRIA INTERNACIONAL - RESTITUIÇÃO DE MENORES À NORUEGA - A UNIÃO FEDERAL É PARTE LEGÍTIMA PARA FIGURAR NO PÓLO ATIVO DA DEMANDA - PRECEDENTES DO STJ E DO TRF-2ª REGIÃO - GUARDA E JURISDIÇÃO (ARTS. 16, 17 E 19 DO DECRETO N.º 3.413/2000) - SEGURANÇA DENEGADA.

I-A cooperação judiciária internacional pode se dar pela via da carta rogatória, através da homologação de sentença estrangeira ou diretamente, como é o caso dos autos, hipótese em que a União Federal não pretende executar em solo nacional a sentença estrangeira, mas tão-somente obter uma "decisão brasileira de restituição dos menores à Noruega", com base na Convenção de Haia sobre os Aspectos Civis do Sequestro Internacional de Crianças, à qual o Brasil aderiu, tendo-a incorporado ao ordenamento jurídico pátrio. (...)

III- A União postula, pela via oblíqua, os interesses da Noruega - Estado requerente da cooperação judiciária internacional - de ver restituídos para o seu território os menores que ali residiam até o momento da ilícita transferência para o Brasil. (...)

VI- A questão da guarda e a jurisdição apropriada para apreciá-la são matérias disciplinadas pela Convenção de Haia nos dispositivos dos arts. 16, 17 e 19, não cabendo à Justiça brasileira tomar para si o conhecimento de questão que compete à jurisdição de outro Estado.

VII- Ainda que exista decism do Judiciário Brasileiro definindo questões de guarda e visitas, o Estado Brasileiro, por meio do Poder Judiciário, não pode negar pedido de restituição de menores se os requisitos do Tratado estiverem presentes. [...] (BRASIL, 2010, online).

The concern with international juridical cooperation is noted, first with regard to the different ways in which it can manifest itself and pointing out the method established by the 1980 Hague Convention, which is direct aid.

Next, it indicates the Brazilian State's action to adopt measures for the benefit and in the interest of the Norwegian State so that the best decision for the benefit of the child is made. Finally, international co-operation and responsibility can be observed by pointing out that Brazil could not deny restitution, since there were no impeding characteristics, according to the criteria of the Convention itself.

The decision still attentive to the fact that custody issues are not competent in Brazil, but rather of the State whose habitual domicile of the child is located.

The next decision:

SEQUESTRO INTERNACIONAL DE MENORES. CONVENÇÃO DE HAIA. APLICABILIDADE. PRELIMINAR DE CERCEAMENTO DE DEFESA AFASTADA.

(...)

III - Da literalidade do artigo 12 da Convenção de Haia ressalta a preocupação dos Estados Contratantes em garantir a maior celeridade possível ao repatriamento das crianças ilegalmente transferidas de seu país de origem, com vistas a evitar ao máximo os malefícios inerentes a um retorno que somente viesse a ocorrer após a possivelmente árdua adaptação das crianças ao seu novo meio social. Entretanto, se comprovado que as medidas adotadas pelo genitor dos menores objetivando o retorno dos filhos ao seu país natal se iniciaram dentro do prazo de um ano previsto no referido artigo, não há que se falar em recusa ao repatriamento "em razão de estar integrada a criança ao seu novo meio".

IV- Por se tratar de uma exceção à regra geral, o art. 13, "b" da Convenção de Haia, segundo o qual a autoridade judicial do Estado requerido não está obrigada a ordenar o retorno da criança ilegalmente subtraída de seu país de origem quando restar provado que "existe um risco grave de a criança, no seu retorno, ficar sujeita a perigos de ordem física ou psíquica, ou de qualquer outro modo, ficar numa situação intolerável", deve ser interpretado restritivamente, pois a intenção dos Estados Contratantes teria sido, visando ao bem-estar do menor, apenas o de protegê-lo de perigos concretos a que pudesse expô-lo o seu retorno ao país de origem, tais como guerras civis, epidemias fora de controle, escassez de alimentos, e situações que evidenciassem uma falta de civilidade no âmbito do Estado requerente. Neste sentido, não poderia uma desavença entre o casal, ainda que grave, servir de fundamento para a aplicação da exceção ali prevista, mormente quando não comprovado o comprometimento da integridade física ou mental dos menores. [...] (BRASIL, 2010, online).

In this sentence, it is highlighted the concern with the speed of the process, always aiming at the best interest of the child, as well as being essential to mitigate the effects of parental alienation, which, in cases of international abduction, has its consequences aggravated. In addition, it is noted that the request for restitution was made within one year,

which, according to the Convention, means that the child must be returned immediately, since it cannot be integrated into the new environment in the short term. It is also worth mentioning the absence of conditions that exclude the immediate return of the child.

In the following case there is a different decision:

DIREITO INTERNACIONAL E PROCESSUAL CIVIL. AÇÃO CAUTELAR DE BUSCA E APREENSÃO DE MENOR. CONVENÇÃO SOBRE OS ASPECTOS CIVIS DO SEQUESTRO INTERNACIONAL DE CRIANÇAS - CONVENÇÃO DE HAIA. UNIÃO. INTERESSE DE NATUREZA PÚBLICA. ASSISTÊNCIA LITISCONSORCIAL. RESIDÊNCIA HABITUAL. DEFINIÇÃO. INTERESSE DO MENOR. DIREITO INDISPONÍVEL. BUSCA DA VERDADE REAL. PODER INSTRUTÓRIO DO JUIZ. ARTIGO 130 DO CPC. NECESSIDADE DE DILAÇÃO PROBATÓRIA. DESCONSTITUIÇÃO DA SENTENÇA MONOCRÁTICA. AGRAVO REGIMENTAL, APELAÇÃO E AÇÃO CAUTELAR INCIDENTAL PREJUDICADOS.

(...)

9. O presente feito não se encontra devidamente instruído, perdurando dúvidas e divergências quanto ao local de residência habitual do menor, sendo necessária a produção de provas para esclarecimento da questão. (...).

11. A desconstituição da sentença é de rigor para que se proceda à devida instrução, eis que a ampla dilação probatória, a ser realizada com o intuito de fixar, com a máxima certeza, e por ocasião da ocorrência dos fatos descritos na inicial, o local de residência habitual do menor para a adequada decisão da demanda, visa à efetiva proteção do interesse do menor, objetivo precípua da Convenção de Haia, bem como de nossa Carta Magna, especialmente em seu artigo 227. (...).

13. Admitido o ingresso da União no feito na qualidade de assistente litisconsorcial; desconstituindo-se, de ofício, a r. sentença monocrática de fls. 552/557, com o retorno dos autos ao juízo de origem para a devida instrução do feito, com a produção das provas pertinentes, bem como a tentativa de conciliação entre as partes, após o que, observadas as formalidades processuais, deverá ser proferida nova sentença, prejudicados o agravo regimental da União, a apelação do autor e a ação cautelar incidental nº 2009.03.00.005254-2, nos termos constantes do voto (BRASIL, 2010, online).

In this decision, there is a concern to reach the best interest of the child, and since there was no certainty as to the habitual residence of the child, it was decided that the case would go back to the first instance so that the evidence was duly constituted and the correct analysis of the proceedings. It is undeniable, in this case, the Brazilian Justice's effort to arrive at the most harmonious solution to the concrete case.

6. Final comments

As seen repeatedly throughout this article, parental alienation is an extremely damaging conduct to the affective bond between the alienated parent and the child, which causes direct repercussions on the child's personal formation. This injury, in turn, becomes more intense and, consequently, harmful, when the practice of alienation is accompanied by an international abduction of the juvenile, after all, in addition to the abrupt physical distance

established from the alienated parent, there is still a departure from the cultural references in which he was inserted.

The importance of establishing and effectively implementing an international treaty that compiles in itself rules on how to recognize the phenomenon and what measures should be applied if there is a positive finding of its occurrence, always aiming at cooperative attitudes among the states. The Hague Convention on the Civil Aspects of International Child Abduction, of which Brazil is a signatory, and because of the promulgation of Decree 3.314/2000, which adopted the necessary measures to comply with the established criteria, among others, and the designate of a competent authority to deal with this type of concrete situation, this being the AGU.

Lastly, it is worth noting, through the analysis of the concrete cases presented, the importance of preserving the interests and well-being of children, treating them according to the dignity of the human person, that is, as the end of themselves and not as a mere object upon which it is litigated after the ends of relationships, or worse, as a mechanism from which it is possible to inflict pain upon the former companion.

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