

ROLE AND BENEFITS OF THE INTERNATIONAL HAGUE NETWORK OF JUDGES (IHNJ) IN CROSS-BORDER CHILD ABDUCTION AND CHILD PROTECTION MATTERS



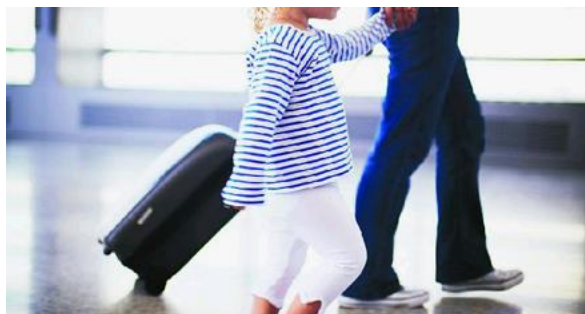
António José Fialho
Appeal Judge - President of the District Court of Setúbal
IHNJ Portugal

CROSS-BORDER CHILD ABDUCTION AND CHILD PROTECTION

↪ Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (**1980 Child Abduction Convention**)

↪ Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (**1996 Child Protection Convention**)

↪ Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) (**Brussels II-b recast**)



INTERNATIONAL HAGUE NETWORK OF JUDGES

In April 2014, the Portuguese High Council of the Judiciary, at the request of the Ministry of Foreign Affairs and the Ministry of Justice, appointed a liaison judge to the International Hague Network of Judges.

This designation was communicated to the Permanent Bureau and the first interventions by the liaison judge in certain cases began, initially at the request of the Portuguese Central Authority, then at the request of other judges of the IHNJ and, finally, at the request of some judges of the family and children's Portuguese Courts.



GENERAL PRINCIPLES FOR DIRECT JUDICIAL COMMUNICATIONS

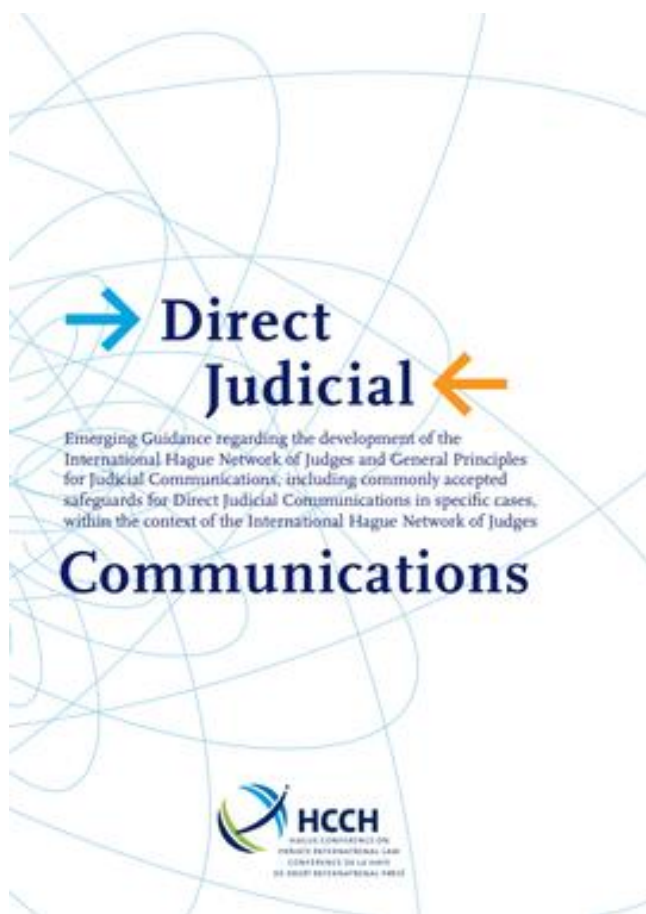
Respect for the rule of law - Principle No 6.1

6.1. Every judge engaging in direct judicial communications must respect the law of his or her own jurisdiction

Judicial independence - Principles Nos 6.2 & 6.3

6.2. When communicating, each judge seized should maintain his or her Independence in reaching his or her own decision on the matter at issue

6.3. Communications must not compromise the Independence of the judge seized in reaching his or her own decision on the matter at issue



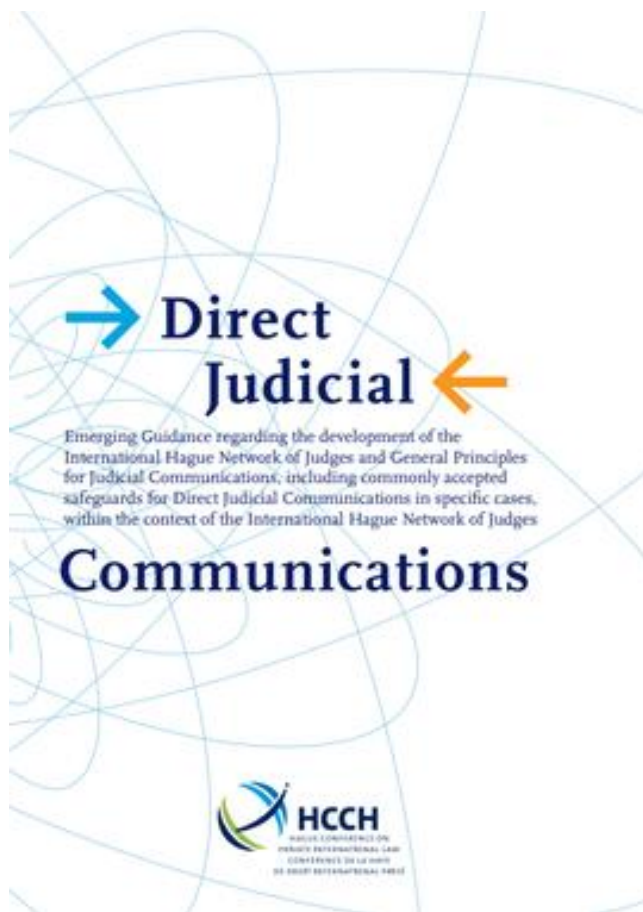
GENERAL PRINCIPLES FOR DIRECT JUDICIAL COMMUNICATIONS

Due process safeguards - Principles Nos 6.4 & 6.5

6.4. In Contracting States in which direct judicial communications are practiced, are commonly accepted procedural safeguards:

- . Except in special circumstances, parties are to be notified of the nature of the proposed communication;
- . A record is to be kept of communications and it is to be made available to the parties;
- . Any conclusions reached should be in writing;
- . Parties or their representatives should have the opportunity to be present in certain cases (*e.g.* via conference call facilities).

6.5. Nothing in these commonly accepted procedural safeguards prevents a judge from following rules or domestic law or practices which allow greater latitude.



IHN JUDGES

THE ROLE OF THE MEMBERS OR LIASON JUDGES

- OBTAIN INFORMATION ON THE STATUS OF PROCEEDINGS, ACTS IN PROGRESS AND STEPS TAKEN**
- PROVIDE THE JUDGE IN THE CASE WITH THE NECESSARY SUPPORT FOR ANY DOUBT OR CLARIFICATION ON THE APPLICATION OF THE HAGUE CONVENTIONS (1980 CONVENTION AND 1996 CONVENTION)**
- EMPHASISE THE IMPORTANCE OF SPEEDY DECISION-MAKING IN ORDER TO FULFIL THE OBJECTIVES OF THE CONVENTIONS (ARTICLE 11 1980 CONVENTION)**
- ACT IN SUCH A WAY THAT THERE IS NO INTERFERENCE WITH THE INDEPENDENCE AND FREE CONVICTION OF THE JUDGE, ONLY ACTING AS SUPPORT, LIAISON AND WHEN THE JUDGE, AFTER BEING CONTACTED OR ON THEIR OWN INITIATIVE, CONSIDERS THIS SUPPORT IMPORTANT**

FUNCTIONS OF DJC

⇒ FIRST FUNCTION OF DIRECT JUDICIAL COMMUNICATIONS

- LACK OF A SPECIFIC PROCEDURE (GENERAL NATURE)
- GENERIC INFORMATION SHARING BY THE INTERNATIONAL NETWORK OF JUDGES OR THE PERMANENT SECRETARIAT OF THE HAGUE CONFERENCE
- SHARING OF INFORMATION ON THE INTERPRETATION OR IMPLEMENTATION OF INTERNATIONAL LAW INSTRUMENTS

⇒ SECOND FUNCTION OF DIRECT JUDICIAL COMMUNICATIONS

- BETWEEN TWO JUDICIAL AUTHORITIES ON A SPECIFIC CASE
- THE AIM OF OVERCOMING INFORMATION GAPS OR ENSURING ADEQUATE MECHANISMS TO GUARANTEE THE PROPER FUNCTIONING OF THE CONVENTIONS
- TO OBTAIN INFORMATION ON THE AVAILABILITY OF PLACEMENT MEASURES

SOME EXAMPLES OF GENERAL INTERVENTIONS

- 1 - Publication and intervention in doctrinal works on the unlawful removal or retention and the international protection of children**
- 2 - Participation in the European Judicial Network, collaborating in the drafting of documents related to the application of the 1980 and 1996 Hague Conventions and Brussels II-b**
- 3 - Participation in seminars and conferences on the subject, bringing up for discussion the topic of enforcement of return decisions, good practice in implementing the conventions and some contributions on procedural arrangements**
- 4 - Regular publication (every six months) of a newsletter on the themes of international jurisdiction, international protection and the unlawful removal and retention of children**

SOME EXAMPLES OF SPECIFIC INTERVENTION

- 1 - Provision of information about proceedings, in particular when there are difficulties in contact between judicial authorities and/or central authorities**
- 2 - Obtaining information with a view to avoiding *lis pendens* between proceedings concerning the same children taking place in different States and, in the absence of rules on the matter, seeking to avoid contradictory decisions**
- 3 - Obtaining information on the possibility of carrying out joint acts of taking evidence in a more informal and direct manner**
- 4 - Collaborating in obtaining positive decisions on the transfer of jurisdiction, by giving more concrete and precise information on the criteria for assessing the best interests of the child**

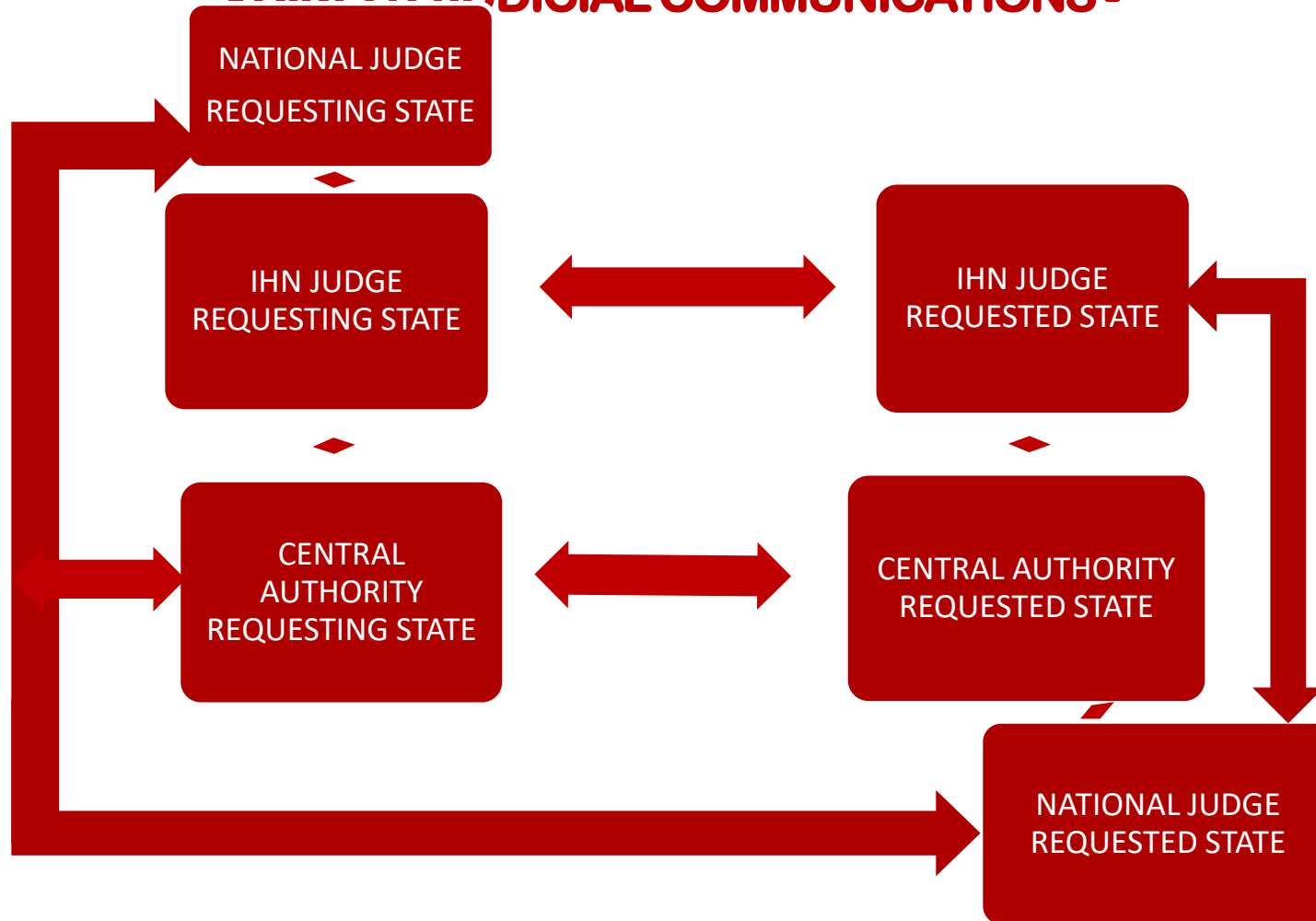
OTHER EXAMPLES OF INTERVENTION BY THE IHNJ

- . Application of Articles 8 and 9 of the 1996 Child Protection Convention (cooperation and transfer of jurisdiction)**
- . Application of Article 82 of the Brussels IIb recast and Article 33 of the 1996 Hague Convention (placement of a child).**
- . Information on protection measures to be applied in the event of refusal of return (Paragraph 45 of the Brussels II-b Regulation).**
- . Information on transfer of jurisdiction, international abduction, recognition of judgments and judicial cooperation (Articles 86, 12, 13, 15, 20 and Chapters III to V Brussels II-b)**



INTERNATIONAL HAGUE NETWORK OF JUDGES

- DIRECT JUDICIAL COMMUNICATIONS -



INTERNATIONAL HAGUE NETWORK OF JUDGES (IHNJ)

PRINCIPLES TO BE OBSERVED IN DIRECT JUDICIAL COMMUNICATIONS

- THE USE OF THE TECHNOLOGICAL MEANS AT THEIR DISPOSAL MOST APPROPRIATE FOR **RAPID AND EFFICIENT COMMUNICATION**;
- METHOD AND LANGUAGE SHOULD PREFERABLY OBSERVE THE PREFERENCES INDICATED BY THE REQUESTED JUDGE;
- WHEN THERE IS NO COMMON LANGUAGE, USE **SIMPLE AND EFFECTIVE TRANSLATION TOOLS**;
- USE **SIMPLE LANGUAGE** BUT WITH **SUFFICIENT INFORMATION**;
- USE **PRAGMATIC AND IMAGINATIVE SOLUTIONS** TO PROMOTE PERSONAL CONTACTS;
- **MUTUAL TRUST** IS A KEY FACTOR.

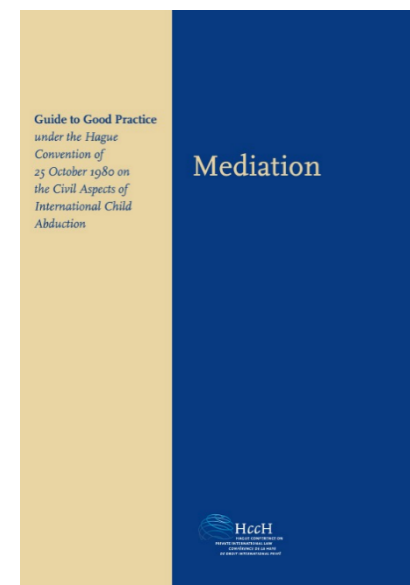


AFTER MALTA IV



Organisation and coordination of a seminar on mediation in cross-border parental conflicts, involving the following entities:

- . The Hague Network's liaison Judge;
- . The Central Authority (at that time);
- . The entity responsible for Public mediation;
- . The entity coordinating the Private Mediation;
- . The Bar Association;
- . The Ismaili Centre (with extensive experience in mediation).



OTHER SEMINARIES



ENCONTROS DE DIREITO INTERNACIONAL

Comemoração do Dia Europeu da Justiça
(25 de outubro)

34 anos da Convenção da Haia de 1980
(Aspectos Cíveis do Rapto Internacional de Crianças)



OS TRABALHOS DA CONFERÊNCIA SERÃO PUBLICADOS NA
REVISTA



CONFERÊNCIA LUSO-AFRICANA SOBRE OS ASPECTOS CIVIS DO RAPTO INTERNACIONAL DE CRIANÇAS

26 DE OUTUBRO DE 2015
9h30m - 17h30m

Auditório 1 do Novo Edifício Sede da Polícia Judiciária (Lisboa)
Participação gratuita mas sujeita a inscrição prévia

ORGANIZAÇÃO



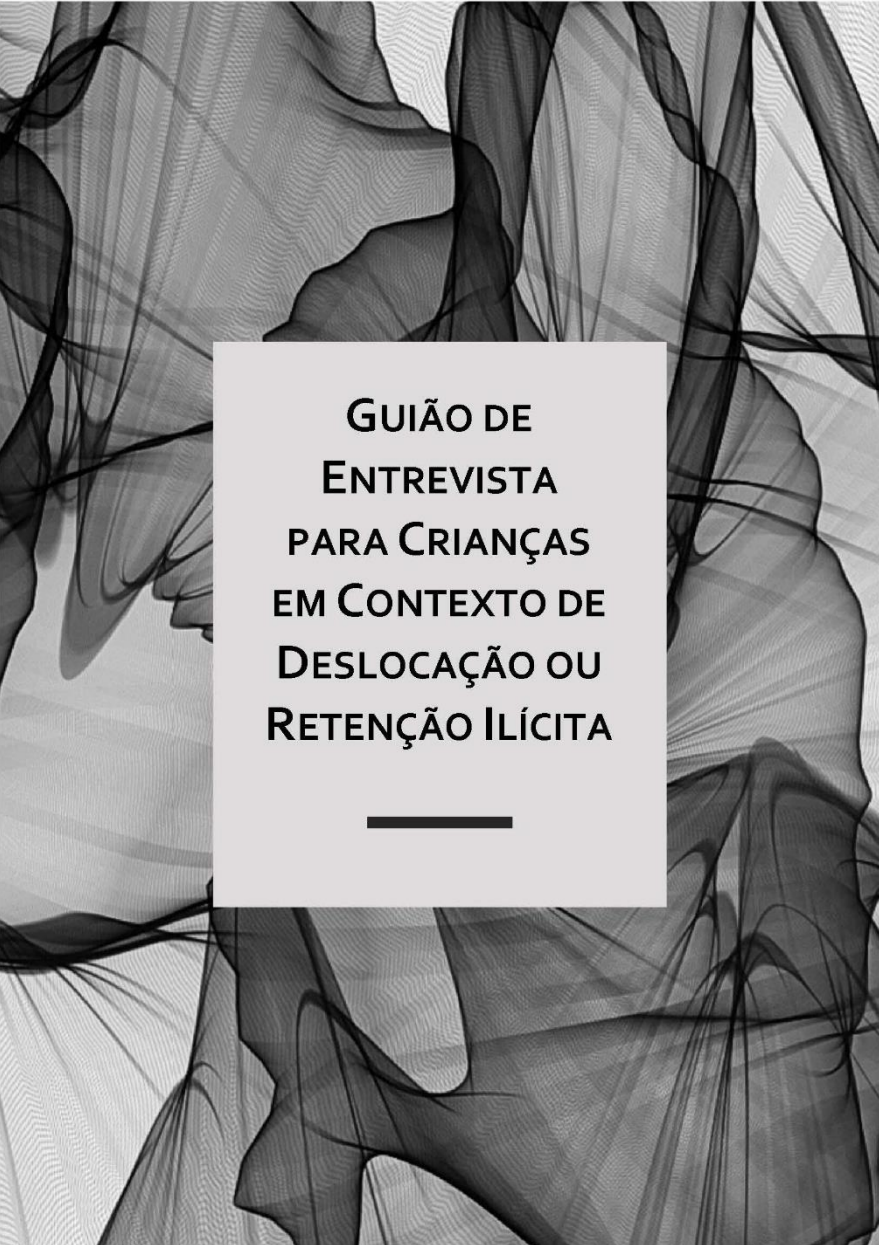
WHAT WE ARE TEACHING ... AND DEFENDING

- **Harmonization of procedures (internal and external)**
 - **Training geared to judicial practice**
- **Dissemination or use of good solutions tried out in other countries**
 - **Reducing obstacles by DJC**
 - **Concentration of jurisdiction**
 - **Extension of the 1980 and 1996 Hague Conventions to portuguese-speaking countries (the recent accession of Cape Vert)**

CHILDREN HEARING IN CROSS-BORDER CASES

- The age and maturity
- The place where the hearing take place ?
- Who conduct the children hearing ?
- Who must be present during the children hearing ?
- How is recorded the hearing ?
- Who must have access to the result of the hearing ?
- How can be protected the privacy of certain information during the hearing ?

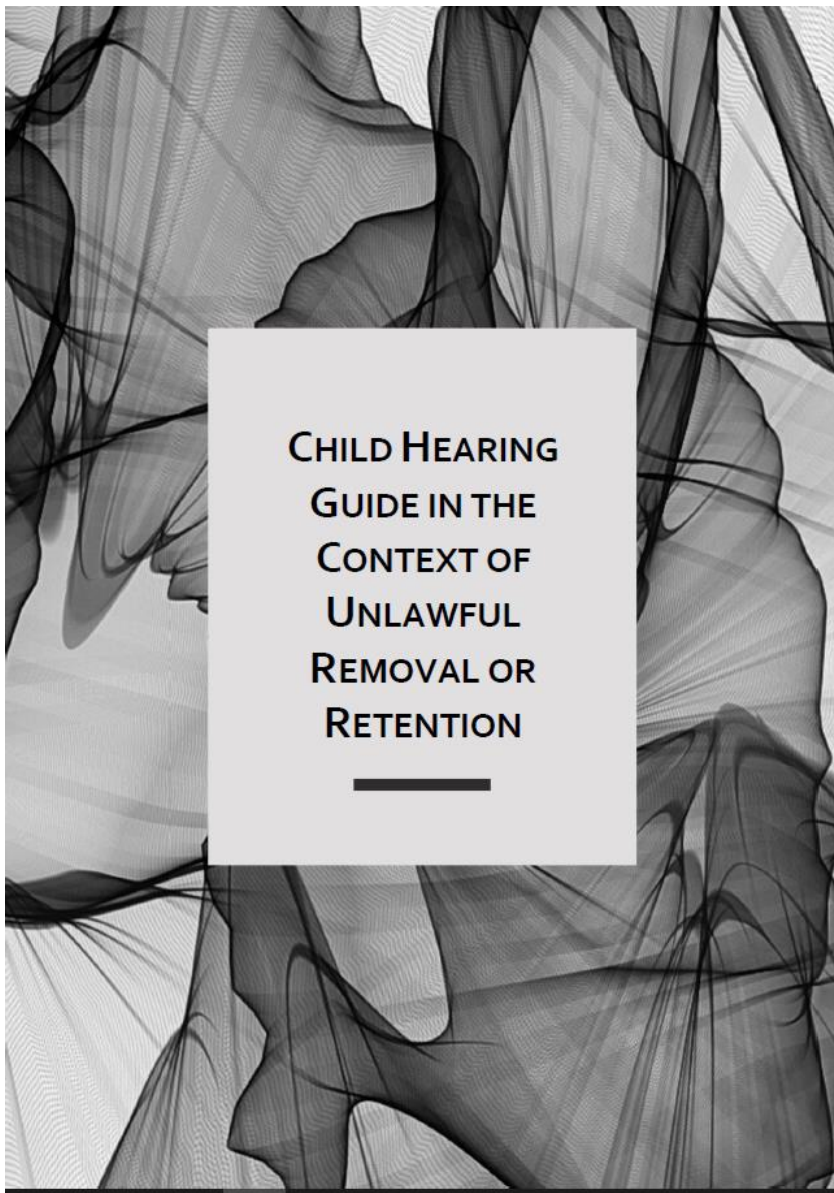




GUIÃO DE
ENTREVISTA
PARA CRIANÇAS
EM CONTEXTO DE
DESLOCAÇÃO OU
RETENÇÃO ILÍCITA

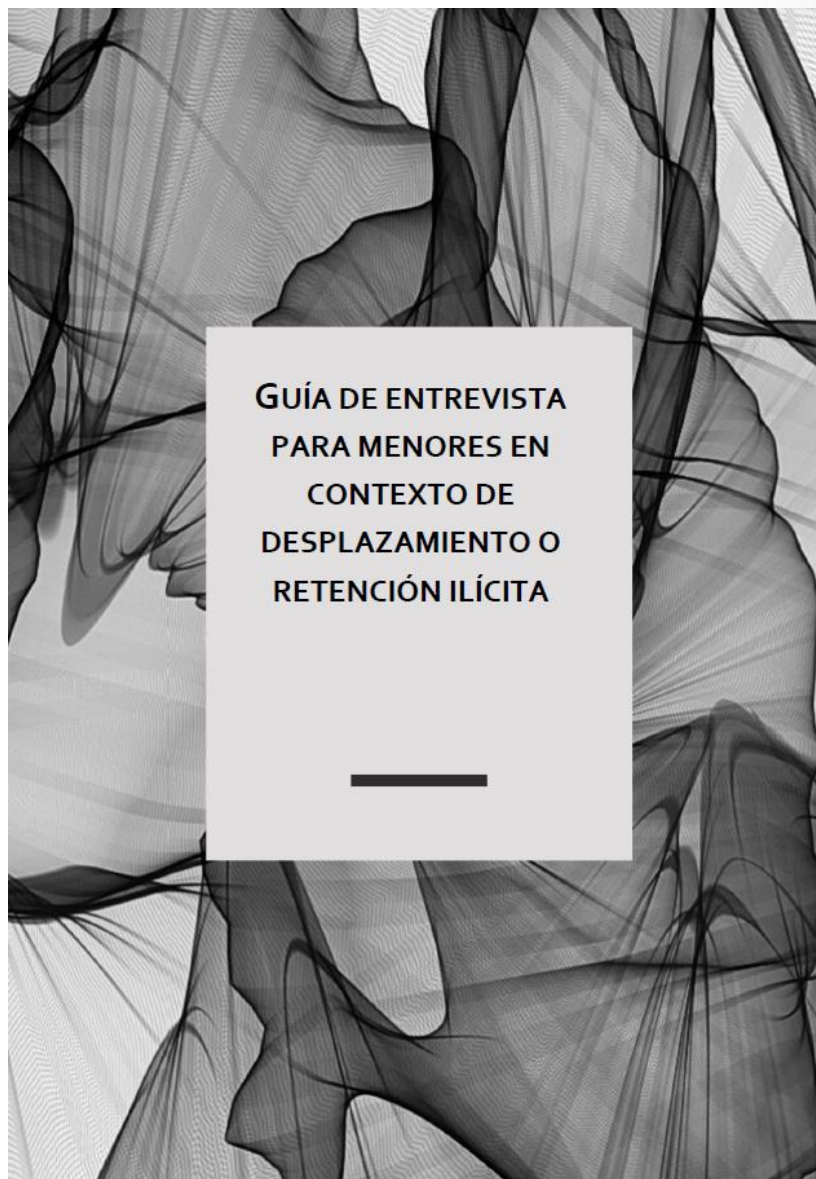
CHILD HEARING GUIDE AND PROTOCOL

(addressing the questions that can be asked to determine the specific object of the child abduction case, the issue of international family mediation, the intervention of the Public Prosecutor's Office and the lawyer in the case and the issue of maturity and discernment of the child)



**CHILD HEARING
GUIDE IN THE
CONTEXT OF
UNLAWFUL
REMOVAL OR
RETENTION**

ENGLISH VERSION



**GUÍA DE ENTREVISTA
PARA MENORES EN
CONTEXTO DE
DESPLAZAMIENTO O
RETENCIÓN ILÍCITA**

SPANISH VERSION

GUIDELINES FOR UNACCOMPANIED AND MIGRANT CHILDREN

- **Jurisdiction of Portuguese Courts to apply urgent measures to remove danger (even if the child comes from a non-Contracting State 1996 Convention)**



- **The aim is to prevent these children from becoming victims of child trafficking networks for sexual exploitation, slavery or international adoption**
- **In the case of unaccompanied children, the Court always intervenes, since the absence of the holders of parental responsibility means that administrative mechanisms cannot be used**

GLOBAL MEETING MIAMI (FL-EUA) - 24/26.OCT.2018



- . The use of DJC as an essential tool in resolving cases of wrongful removal or retention;
- . The reduction of the average length of return proceedings;
- . The use of DJC for the determination of foreign law, verification of the lawfulness of removal or retention or the organization of the safe return of the child;
- . The prevention of abduction and the use of mediation;
- . The hearing of the child;
- . The enforcement of decisions and the exercise of criminal prosecution.

FIU Communication,
Architecture +
The Arts



CONFERÊNCIA DOS JUÍZES DA REDE INTERNACIONAL DE JUÍZES DA HAIA
CELEBRANDO O 20.º ANIVERSÁRIO DE ESTABECIMENTO DA
REDE INTERNACIONAL DE JUÍZES

(MIAMI, 24-26 outubro 2018)

CONCLUSÕES E RECOMENDAÇÕES¹

Entre 24 a 26 de outubro de 2018, juizes da Argentina, Austrália, Bahamas, Bélgica, Brasil, Canadá, Ilhas Caimão, Colômbia, República Dominicana, Equador, São Salvador, Alemanha, Guatemala, Guiana, Japão, México, Holanda, Nova Zelândia, Noruega, Paquistão, Panamá, Portugal, Roménia, Singapura, África do Sul, Espanha, Suíça, Reino Unido (Inglaterra e País de Gales e Escócia), Estados Unidos da América e Venezuela, bem como membros da Autoridade Central dos Estados Unidos da América, peritos da REUNITE e de outras organizações particulares, e do Secretariado Permanente da Conferência da Haia de Direito Internacional Privado, reuniram-se na Universidade Internacional da Flórida, em Miami, para discutir a Rede Internacional de Juizes de Haia (RIJH), as Comunicações Judiciais Diretas (CJD) em assuntos de direito internacional da família e o funcionamento da Convenção sobre os Aspectos Cíveis do Rapto Internacional de Crianças, concluída na Haia em 25 de outubro de 1980 (Convenção de 1980) sob uma perspetiva judicial.

As discussões também abordaram outras Convenções da Haia relativas à Criança, ou seja, a Convenção relativa à Competência, à Lei Aplicável, ao Reconhecimento, à Execução e à Cooperação em Matéria de Responsabilidade Parental e Medidas de Proteção de Crianças, adotada na Haia em 19 de outubro de 1996, e a Convenção da Haia de 2007, de 23 de novembro de 2007, sobre a Cobrança Internacional de Alimentos em Benefício dos Filhos e de Outros Membros da Família.

Os participantes nesta reunião da RIJH reconheceram ainda a extraordinária contribuição da Juiz Conselheira Robyn Moglove Diamond junto da RIJH, bem como os seus esforços incansáveis ao serviço da justiça familiar internacional.

Os participantes nesta Conferência aprovaram as seguintes **Conclusões e Recomendações**:

A RIJH e o uso das CJD

1. A Conferência saúda o crescimento da RIJH, que inclui agora 134 juizes de 84 Estados. Assinala-se que, nas Américas, todas as jurisdições se encontram agora cobertas pela RIJH, com exceção da Bolívia, Cuba, Haiti e das Ilhas Turcas e Caicos.
2. A Conferência sublinhou o valor comprovado da RIJH e das CJD na solução de casos internacionais de rapto de crianças.
3. A Conferência encoraja todos os Estados que ainda não designaram juizes para a RIJH, sejam ou não Partes na Convenção de 1980 ou da Convenção de 1996, a fazê-lo imediatamente.
4. A Conferência reconhece a necessidade de os atuais Membros da Rede e o Secretariado Permanente da Conferência de Haia trabalharem juntos para promover a designação de novos membros para a RIJH.

MEETINGS ... AT DISTANCE



INTERNATIONAL HAGUE NETWORK OF JUDGES

- TOOLS FOR THE FAMILY JUDGES -



- 1 -

PONTO DE CONTACTO NACIONAL DA REDE INTERNACIONAL DE JUÍZES
DA CONFERÊNCIA DA HAIA DE DIREITO INTERNACIONAL PRIVADO

EXECUÇÃO DAS DECISÕES DE REGRESSO PROFERIDAS NO ÂMBITO DA
CONVENÇÃO DA HAIA DE 1980

“É comprida a estrada que vai desde a intenção até à execução.”
Jean Baptiste Molière
(1622-1673)

A concentração de competências nos processos de rapto
internacional de crianças

António José Fialho
(Juiz de Direito)
(Membro da Rede Internacional de
Juizes da Conferência da Haia de Direito
Internacional Privado e da Associação
Internacional de Juizes de Família)

A COMPETÊNCIA INTERNACIONAL
DOS TRIBUNAIS PORTUGUESES EM MATÉRIA
DE RESPONSABILIDADE PARENTAL

ANTÓNIO JOSÉ FIALHO

Contributo para um regime processual das ações de
regresso das crianças ilicitamente deslocadas ou retidas

(CH 1980)

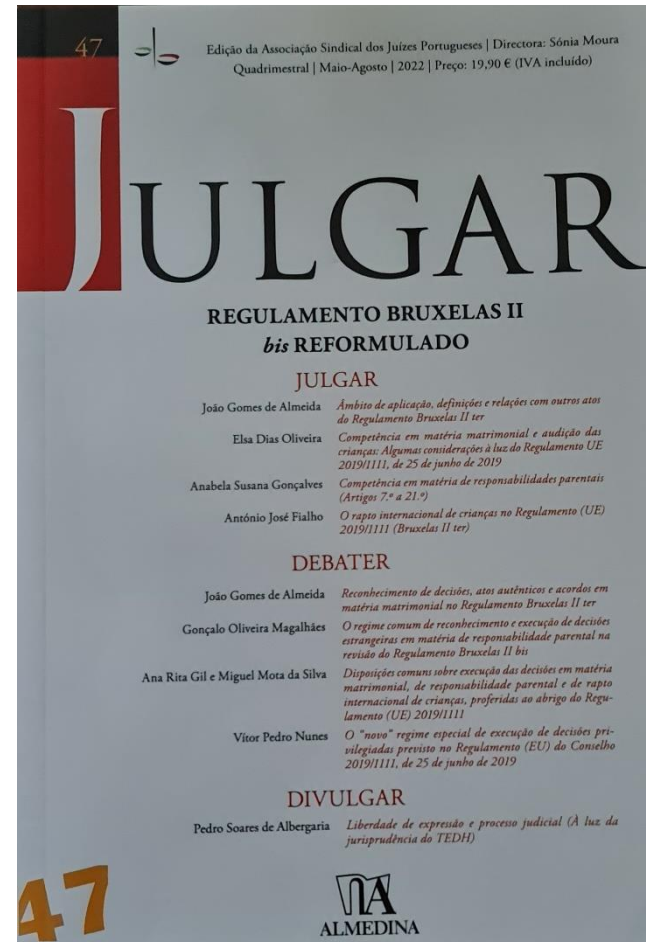
António José Fialho ()*

INTERNATIONAL HAGUE NETWORK OF JUDGES

- TOOLS FOR THE FAMILY JUDGES -



Portuguese version of the
Practical Guide (Article
13/1/b 1980 Convention)



An issue of regular
publication “Julgar” entirely
devoted to the Brussels II-b
Regulation

WEB PAGE (in development)

<http://www.rijh.csm.org.pt/>



REDE INTERNACIONAL DE JUÍZES
DA CONFERÊNCIA DA HAIA
PORTUGAL

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Apresentação

A crescente mobilidade transnacional de pessoas ou o aumento das deslocações internacionais de cidadãos de diversas origens, a cada vez mais frequente miscigenação de casamentos ou uniões entre pessoas de nacionalidades e de culturas diferentes, [...]

Jurisprudência



Instrumentos

- Convenção da Haia de 1980
- Convenção da Haia de 1996

Contacto

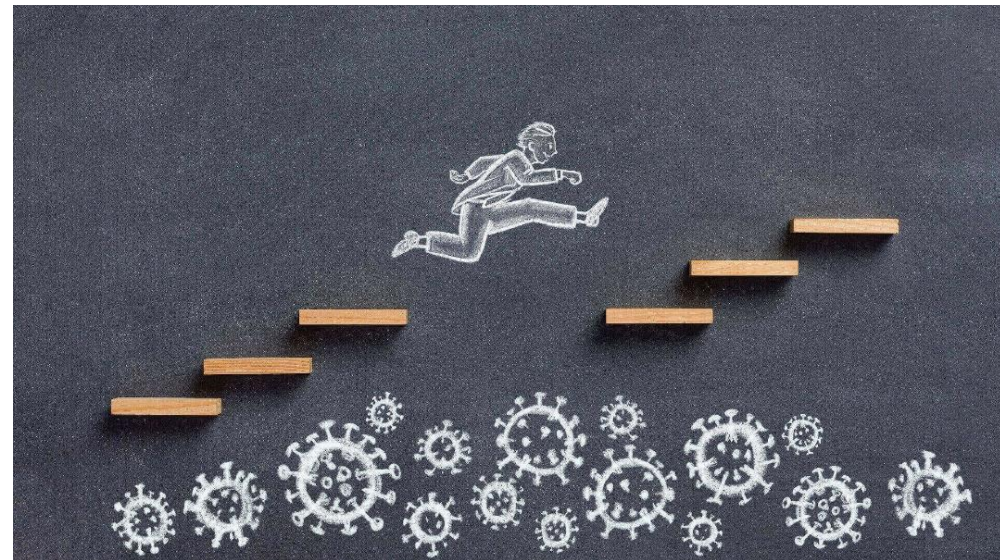
António José Fialho
Juiz de Direito

UPCOMING OBJECTIVES



. The publication of the 1980 Child Abduction Convention 1996 Child Protection Convention (annotated and commented)

. The implementation of a procedural regime for return actions and other proceedings under the 1980 and 1996 Hague Conventions (including the assignment of the functions of the Central Authority)



Finally, don't forget to visit Portugal



**OBRIGADO PELA VOSSA ATENÇÃO
THANK YOU FOR YOUR ATTENTION
MERCİ POUR VOTRE ATTENTION
GRAZIE PER L'ATTENZIONE
GRACIAS POR SU ATENCIÓN
VIELEN DANK FÜR IHRE AUFMERKSAMKEIT
DANK U VOOR UW AANDACHT
СПАСИБО ЗА ВАШЕ ВНИМАНИЕ
GRAZZI TAL-ATTENZJONI TIEGHEK
GO RAIBH MAITH AGAT AS DO AIRD
DĚKUJI ZA POZORNOST
شكرًا لكم على اهتمامكم**



• REDE
INTERNACIONAL
DE JUÍZES
DA HAIA

António José Fialho
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