

Brazilian Superior Court: foreign judgement on child support has to be enforced despite the excessive amount resulting from the economic pattern of the country of origin

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The Brazilian Superior Court of Justice reinforced the understanding that a foreign judgment that sets the amount of child support must be enforced even if the high economic-financial standard of the country of origin gives rise to an excessive amount, when compared to the national standards.

The case concerns the enforcement in Brazil of a decision from the District Court of Bludenz, in the Republic of Austria, against a debtor residing in Brazil.

The Austrian court set the monthly amount of maintenance at EUR 290.00 and determined that the amounts in arrears totaled EUR 35,090.00.

The debtor claimed that the decision could not be enforced since such amount would be totally unreasonable in relation to the economic reality of the defendant, characterizing the foreign decision as violating human dignity and the basic principles of the Brazilian legal system by ignoring the socioeconomic reality of Brazil and of the defendant in particular.

However, the Court emphasized that the enforcement of a foreign decision is a merely formal act, whereby is not possible to enter into the merits of the original dispute, nor investigating any injustice of the foreign decision. This enforcement, therefore, has the sole and exclusive purpose of transferring into the Brazilian

legal system a decision handed down abroad, provided the formal requirements required by Brazilian law are met.

With this, the enforcement does not deprive the debtor of the possibility of filing a suit to review the amount of the child support, in view of the alleged disparity between the economic realities in Brazil and in the country where the amount was fixed.

The decision was rendered in Application HDE n.º 4.289 (Special Section of the STJ) and took into consideration the requirements under Brazilian law for enforcement of a foreign decision.

Brazilian legal framework on enforcement of foreign decisions

The Brazilian Federal Constitution states that the enforcement of foreign judgements is a competence of the Superior Court of Justice (STJ). The Brazilian legal instrument, therefore, for the recognition of foreign decisions is, in Portuguese, the *Ação Especial de Homologação de Decisão Estrangeira* (HDE).

The requirements for the enforcement of a foreign judgment through HDE are foreseen in Article 963 of Código de Processo Civil (CPC) and in Articles 216-C and 216-D of the Internal Rules of the STJ. In this regard, it is worth remembering that neither Brazil nor Austria ratified the Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations.

The article 216-D states that the foreign decision must:

1. have been rendered by a competent authority,
2. contain evidence that the parties have been duly summoned or that a default judgement has been legally issued, and
 - have become effective or *res judicata* in the country in which it was rendered.

According to Article 216-F a foreign decision shall not be enforced if that offends national sovereignty, human dignity and/or public order.

In short, the debtor argued that the economic disparity and the lack of analysis by the Austrian Court about his financial condition in particular would imply a violation of human dignity and the Brazilian legal order, but the Brazilian Court

found that these issues would be a question of merit, and not of formal requirements. Whereas related to the merit of the suit filed before the foreign Court, these questions cannot be analyzed before the Court in the exercise of its competence merely to enforce the decision rendered abroad.

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