



COVID-19 & return applications under the 1980 Hague Convention

COVID-19 is undoubtedly changing the way most of us live our lives. We face many restrictions on what we can do, including in relation to international travel. In light of this, many people may be wondering how COVID-19 will affect international parental child abduction and more specifically whether it will affect a court's decision under the 1980 Hague Convention to order the return of a child to Australia.

We understand that people are concerned by this possibility and if you are a parent seeking the return of their child to Australia under the 1980 Hague Convention, we can provide you with legal advice specific to your circumstances and how to address this issue in a return application under the 1980 Hague Convention.

International Social Service (ISS) Australia's Legal Service is increasingly seeing parents overseas responding to return applications by arguing that the risks associated with COVID-19 present a grave risk of harm to their child and/or create an intolerable situation if the child is ordered to return to Australia, pursuant to Article 13(b) of the 1980 Hague Convention.

In March 2020, the Family Division of the High Court in the United Kingdom considered whether ordering the return of a child from the United Kingdom to Spain posed a grave risk of physical harm to that child.

In the case, [*PT \(A Child\) \[2020\] EWHC 834 \(Fam\)*](#), the court noted the difficulty of gathering information related to COVID-19 given the speed at which the pandemic is developing, and found that while the pandemic was at a more advanced stage in Spain than in the UK, it could not conclude either country was more or less safe. Noting the fluid situation, the court also couldn't "make any findings as to the relative likelihood of contracting the virus in each country" other than to say there was a genuine risk the child could contract the virus in either country.

Interestingly, and relevant to a grave risk argument based on a 'global risk' such as a pandemic, the 1980 Hague Convention does not call for a comparison of risks between the two relevant countries. Rather, the court must simply assess whether the child faces a grave risk in being returned. Therefore, for COVID-19 to be successfully argued as the main source of a grave risk in a country of habitual residence, the risk in the country where the child has been wrongfully taken to or retained in, would arguably have to be zero or very low.

The court also held that although international travel did increase the risk of physical harm to the child from contracting COVID-19, this did not amount to a "grave risk" under the 1980 Hague Convention.

Although we cannot say what decisions other courts may reach with respect to this issue, this is a promising outcome for left behind parents in Australia.

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