

## RE 778,889

### Adoption Leave

**Country:**

Brazil

**Court:**

Federal Supreme Court

**Competent Court:**

Full Court

**Format of the Session:**

In-person

**Rapporteur:**

Justice Luís Roberto Barroso

**Decision Date:**

March 10, 2016

**Matter:**


### CASE SUMMARY

An Extraordinary Appeal (RE) filed by an adoptive mother who seeks to have the period of adoption leave equalized with the period of maternity leave to which biological mothers are entitled, based on the principles of human dignity, the best interests of the child, the doctrine of full protection of the child, and the right to equality. In this case, the existing legislation established shorter periods for adoptive parents than those constitutionally provided for biological mothers and organized them in such a way as to reduce the leave the older the adopted child.

### LEGAL REASONING

1. Maternity leave, a social right established by the 1988 Federal Constitution, includes both maternity leave and adoptive leave. Both are guaranteed for a minimum period of 120 days (article 7, item XVIII of the 1988 Federal Constitution), which may be extended by 60 days (articles 1 and 3 of Law 11,770/2008). The unequal treatment of leave granted to biological and adoptive mothers violates the principles of human dignity, equality between biological and adopted children, full protection, priority, and the best interests of the child.
2. Adopted children are a vulnerable group who require additional time and effort to adapt to their new family, form bonds of affection, and overcome trauma. Therefore, adopted children must not receive less protection than biological children, and the leave granted to the adoptive mother must be equal to that granted to the biological mother, in order to ensure the full protection of the child.
3. The older the child and the longer the compulsory stay in foster care, the more difficult the adaptation to the adoptive family. Discriminatory treatment, especially according to the age of the adopted child, violates the principle of proportionality, since it creates more complications precisely for those who need the most attention and care.

4. It is the duty of the State to ensure dignity, autonomy, and conditions for women to reconcile motherhood and work, especially in cases of adoption. Parental leave provides adopted children with a fundamental opportunity for family life. The State also has a duty towards underprivileged and institutionalized children, since the absence of policies to combat poverty or the inadequacy of public institutionalization policies aggravate the problems of underprivileged children. Therefore, the least that the government can do for these families and children is to provide them with adequate conditions for adaptation and coping.

## DECISION OF THE COURT

The Federal Supreme Court granted adoptive mothers the remaining period of parental leave: a total of 180 days of paid leave, equivalent to the time granted to biological mothers (120 days of maternity leave, plus 60 days of extension), as defined by the Federal Constitution and existing legislation. The issue discussed in this case allowed the Brazilian Supreme Court to adopt a new understanding of the meaning of parental leave and of the equality between adopted and biological children. This advanced the rights of adopted children, families, and women.

## ADDITIONAL NOTES

**Topic:** Possibility of a law establishing different periods of maternity leave for pregnant and adoptive parents working as civil servants (General Repercussion Topic 782).

**Rule Statement:**

“The adoption leave cannot be shorter than the pregnancy leave, and the same applies to extensions. Regarding adoption leave, it is not possible to set different periods depending on the age of the adopted child.”

