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Moving/settling abroad with children

 Germany

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European Judicial Network
(in civil and commercial
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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

The question of where the child should live permanently is subject to legal rules about the right to determine the child's place of residence, and so forms part of the de facto care of the child (Section 1631(1) of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB)). Like care for the child's property, this falls within the scope of parental responsibility under Section 1626(1) of the Civil Code.

Where only one parent has parental responsibility and, thus, the right to determine the child's place of residence, they do not need the other parent's consent when deciding where the child should live and, therefore, also whether the child should be removed to another country.

Where both parents have parental responsibility, they must decide together whether the child should be removed to another country. This is because this issue – unlike, for example, a short holiday to a neighbouring European country – is a matter of appreciable importance within the meaning of the first sentence of Section 1687(1) of the Civil Code, for which the mutual consent of both parents is required.

However, a family court can, upon request, transfer parental responsibility for particular issues – and, thus, the right to determine the child's place of residence, for example – to only one parent, cf. Section 1671(1) of the Civil Code. In this instance too – even in the case of joint parental responsibility in other matters – the parent can decide on their own and without the consent of the other parent on the child's place of residence and, thus, on removing the child to another country.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

The other parent's consent to the child's moving abroad is needed if the parents share parental responsibility (or at least the right to determine the child's place of residence) (see also answer to question 1).

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

Removing the child to another country is lawful if the parent who wants to move with the child is allowed to make that decision on their own, for example, because they have sole parental responsibility, or at least the sole right to determine the child's place of residence (see also answer to question 1).

If, however, the parents share parental responsibility, but have different opinions on the child's moving abroad and cannot reach an agreement on that matter, they may each apply to the family court to be awarded the right under Section 1628 of the Civil Code to decide on the move. The Court must then reach a decision on the basis

of what is in the best interests of the child, taking into account the particular circumstances and practicalities, and the legitimate interests of those involved (Section 1697a of the Civil Code).

Furthermore, a parent living apart from the other parent may also apply to the family court under Section 1671(1) of the Civil Code to be awarded sole parental responsibility, or parental responsibility for a particular issue, for example, the right to determine the child's place of residence. The court will grant the application if the other parent agrees (unless the child - where they are at least 14 years old - objects) or if (partial) removal of joint parental responsibility or (partial) transfer of parental authority to the applicant is likely to be in the best interests of the child. If the court grants the application, the parent may freely decide where the child should reside.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

A parent who has sole parental responsibility or the sole right to determine the child's place of residence is free to take their child abroad for short periods whenever they wish.

However, parents with joint parental responsibility must, in principle, take this decision jointly (Section 1627 of the Civil Code). If the parents have joint parental responsibility but live apart, they must decide jointly whether the planned trip is a day-to-day matter or a matter of appreciable importance (Section 1687(1), first sentence, of the Civil Code). The parent with whom the child normally lives is entitled to decide on their own about day-to-day matters (Section 1687(1), second sentence, of the Civil Code). In accordance with Section 1687(1), fourth sentence, of the Civil Code, the other parent may - when the child is living with them with the consent of the other parent, or on the basis of a decision by a court - decide on their own regarding the de facto care of the child, e.g. what the child may eat or when they may go to bed. The legislation does not specify which matters are of appreciable importance, which are day-to-day matters or which are matters concerning the de facto care of the child. This issue depends on the particular circumstances of the case. In principle, both the parent with whom the child normally lives and the parent who has right of access to the child may therefore decide on their own with regard to temporary holiday trips abroad, insofar as this does not concern travelling to areas that pose a particular risk to the child, such as remote areas, areas without sufficient medical care or areas experiencing political unrest. However, the parent who has right of access to the child must inform the parent who is the child's primary carer of the destination of the trip in advance.

A parent who does not have parental responsibility does not have the right to decide where the child should live. However, during the time that they have access to the child, they are also authorised, in accordance with Section 1687a of the Civil Code, to decide on their own regarding matters of the child's de facto care.

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