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Moving/settling abroad with children



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European Judicial Network
(in civil and commercial
matters)

1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

Where they are the sole holder of parental responsibility or the exclusive exercise of such responsibility is conferred on one of the parents by a court decision, parental responsibility being the rights and obligations of parents in relation to their unemancipated children. In the case of relationship breakdown, this is entirely independent of custody and access rights.

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

If the parents have shared parental responsibility, regardless of which parent has the rights of access and which has the rights of custody.

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?

If the consent of the other parent is necessary but there is disagreement and that parent refuses to give their consent, the removal must be authorised by the judicial authority.

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

The rules for temporary removals are not the same as those for permanent removals. When it comes to taking the child for normal healthcare, on holiday or similar, the parent whom the child is with at that time makes the decision, whether they hold rights of custody or rights of access, whilst still respecting the contact time or visits the child must have with each parent. Only important decisions about the children's lives, such as, for example, a permanent removal, have to be authorised by the holders of parental responsibility.

The certificate of mutual consent of both parents for the minor to leave national territory can be presented at a civil guard station (Puesto de la Guardia Civil) or a national police station (Comisaría de Policía Nacional). One of the following forms must be used:

(https://www.guardiacivil.es/documentos/pdfs/autorizacion_menor_extranjero/PRC_197953_Formulario_declaracion_firmada_permiso_viaje_fuer.pdf or https://sede.policia.gob.es/portalCiudadano/_es/tramites_ciudadania_documentacionviajar.php).

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