

Úvodní stránka>Rodinné věci a dědictví>Legální přestěhování s dětmi do zahraničí / Legální usazení s dětmi v zahraničí
Moving/settling abroad with children

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

If the parents exercise joint parental authority, each parent is allowed to travel with the child without the express consent of the other parent, except in special circumstances. However, if one of the parents explicitly withholds their consent and it is not possible to reach an agreement, an application must be made to the family court with a view to resolving the dispute.

If the parents exercise joint parental authority, one of them may not take the decision alone to move permanently to a foreign country with the child without the other's consent.

If one parent exercises sole parental authority, the consent of the other parent is not necessary, whether for holidays or a move abroad. However, he/she must keep the other parent informed pursuant to Article 373(2)(1) of the Civil Code, which states that a parent who does not exercise parental authority must be kept informed of important choices affecting the life of the child.

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

Objection to or prohibition on leaving the country

To oppose the child's removal abroad by one of the parents, the other - if he/she is also exercising parental authority - may lodge an application with the prefecture for the child to be prohibited from leaving the country for a period of 15 days and/or apply to the family court for the child to be prohibited from leaving the country without the permission of both parents (Article 373(2)(6) of the Civil Code) until the child comes of age, for a specific period or until a new decision is made. A prohibition on leaving the country without the permission of both parents prevents the child from leaving the country. However, the parents may give their consent to a specific trip taken by the child alone or with one of the parents by making a declaration to a law enforcement officer (normally made 5 days before the trip). If one of the parents refuses to give their consent, the other parent can apply to the court for the prohibition on leaving the country to be lifted or for exceptional permission to be given for the child to leave the country.

Travel for the purpose of changing the place of residence:

Even if there is no objection to travelling with the child abroad and no prohibition on leaving the country, the consent of the other parent is required if the purpose of such travel abroad with the child is to change the child's place of residence, unless the parent wishing to move exercises sole parental authority.

In that case alone, he/she may move without the consent of the other parent, but must keep the other parent informed of this major change for the child.

If the parent disregards the other parent's lack of consent, the latter may apply for the child to be returned citing wrongful removal pursuant to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Proceedings must be instituted in the state to which the child has been removed, if necessary with the help of the central authorities established by the Convention.

Whatever the nature of removal, and apart from the specific cases of prohibition on leaving the country and objection to travelling abroad, the parent leaving the country with the child is not required to prove the explicit consent of the other parent, which is deemed to be given with respect to third parties.

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 one of the parents exercising parental authority refuses to give his/her consent for a trip, the parent who wishes to travel with the child has the right to initiate proceedings before the family court, which may issue an authorisation for the child to leave the country. The same applies if the child has been prohibited from leaving the country without the permission of both parents.

Similarly, if the child's removal is in fact a change of residence, the parent who wishes to move with the child must apply to the family court of the child's place of residence before travelling if the other parent exercising parental authority refuses to give consent.

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

As indicated above, a distinction should be made between temporary removal and permanent removal. Reference will be made to the points set out above.

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