

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

Both parents are responsible for dealing with issues of particular importance (Articles 1901, 1902, 1911 and 1912 of the Civil Code (*Código Civil*)).

When parents break up (divorce or separation), both of them remain responsible for issues of particular importance (Article 1906(1) of the Civil Code), unless the court, based on a reasoned decision, decides that responsibility should be exercised by only one parent, or when the joint exercise of responsibility is deemed not to be in the best interests of the child (Article 1906(2) of the Civil Code).

There is no specific definition of 'issues of particular importance'. They refer to a limited range of aspects in the life of a child or to serious and uncommon existential issues relating to the child's core rights.

The location or selection of where a child's life will be centred, in other words, choosing where he or she will live is an issue of particular importance. Both parents are responsible for this decision; in the event of parental disagreement on this matter, the child's place of residence will be determined by the court (Article 1906(5) of the Civil Code).

Therefore, one parent may lawfully remove a child to another state without the consent of the other parent only when he or she has exclusive parental responsibility or the child's place of residence has been determined or changed by a court, allowing removal to another state.

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

Consent is required whenever both parents exercise responsibility, as is currently the general rule under Article 1906(1) of the Civil Code.

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 does not consent to the removal of a child to another state and both parents exercise responsibility, such removal of a child to another state may only take place through a judicial decision (Article 1906(5) of the Civil Code).

In such an event, the proceedings must be brought before the court or court division with territorial jurisdiction and with jurisdiction for matters relating to families and minors (see Articles 122 to 125 of Law No 62/2013 on the Organisation of the Judicial System); the proceedings will take the form set out in the rules governing civil guardianship proceedings approved by Law No 141/2015 (see Articles 3, 9 and 67 thereof).

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

In legal theory and case-law, temporary removal for holidays or leisure has not been considered as an issue of particular importance where removal does not require changes to the place where a child's life is centred. Exceptions include removal to countries in armed conflict, countries which are notably unsafe or countries affected by pandemics, thus placing the health and safety of the child at risk.

However, health care has been considered as an issue of particular importance, requiring the agreement of both parents, depending on the specific health care in question and the repercussions such care could have on the child's core rights. It may involve significant medical treatment (chemotherapy, experimental therapies) or the need to accompany the child because he or she does not understand the language used by medical staff or the medical staff may find it hard or impossible to obtain exact information from the child on symptoms, thus requiring translation.

When health care of such importance requires the temporary removal of the child, if both parents agree to the treatment, this agreement extends to the removal of the child.

Forms

The Aliens and Borders Service (SEF) has model forms for the removal of minors.

They can be found at the following links:

<https://www.sef.pt/pt/pages/conteudo-detalle.aspx?nid=73>

Applicable legislation

Rules governing civil guardianship proceedings -

http://www.pgdlisboa.pt/leis/lei_mostra_estrutura.php?tabela=leis&artigo_id=&nid=2428&nversao=&tabela=leis&so_miolo=

Civil Code - http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=775&tabela=leis

Law on the Organisation of the Judicial System

http://www.pgdlisboa.pt/leis/lei_mostra_estrutura.php?tabela=leis&artigo_id=&nid=1974&nversao=&tabela=leis&so_miolo=

Note:

The EJN-Civil Contact Point, the courts or other entities and authorities are not bound by the information contained in this factsheet. Although the information here is updated regularly, the legal texts in force should always be consulted and the interpretation of case-law may change over time.

Last update: 13/12/2021

The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJN nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.