

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

The following situations must be differentiated in terms of the circumstances under which a parent may lawfully remove the child to another state without the other parent's consent:

a) when the parent with whom the child is living wants to lawfully remove the child to another state, and

b) when the parent with whom the child is not living but with whom the child has a personal relationship, wants to lawfully remove the child to another state.

a) The parent with whom a child is living may, after divorce, as part of their everyday parental care of the child, lawfully remove the child to another state (e.g. on a one-day excursion), under the condition that this does not jeopardise the right of the other parent to establish a personal relationship with the child, as provided for in Articles 95 and 119 of the Family Proceedings Act (*Obiteljski zakon*) (*Narodne Novine* (NN; Official Gazette of the Republic of Croatia), No 103/15, hereinafter: ObZ 2015). That is to say, irrespective of whether the parents are jointly or individually responsible for the child's care and upbringing, each of them has the right to independently make everyday child-related decisions when the child is in their care (Article 110 ObZ 2015). If, after divorce, the parents are jointly responsible for a child's care and upbringing (Article 104 ObZ 2015), then decisions that are important for the child must be made consensually (Article 108 ObZ 2015). Taking into account that an occasional trip to another country (e.g. a one-day excursion) does not entail intent to change the child's permanent or temporary residence and is therefore not among the exhaustive list of significant individual rights of the child as referred to in Article 100 ObZ 2015, the provisions of Article 99(2) ObZ 2015 should therefore be applied appropriately. The same applies to a case where the parent with whom the child is living after the divorce has partial individual responsibility for parental care (Article 105 ObZ 2015). However, if the parent with whom the child is living after the divorce has, on the grounds of a court order, sole individual responsibility for parental care, then he or she does not require the consent of the other parent in order to temporarily remove the child to another state (Article 105(5) ObZ 2015).

b) If the parent with whom a child is not living after the divorce, but with whom the child maintains a personal relationship, decides to lawfully remove the child to another state, then he or she may do so under the condition that this is a temporary stay in another country (e.g. a one-day excursion), taking place during the time the parent has the right to maintain a direct personal relationship with the child (Article 121 ObZ 2015) and on condition that this right has not been prohibited or restricted by a court order (Articles 123-126 ObZ 2015). That is to say, irrespective of the fact whether the parents are jointly or individually responsible for the child's care and upbringing, each of them has the right to independently make everyday child-related decisions when the child is in their care (Article 110 ObZ 2015). If, after divorce, the parents are jointly responsible for the child's care and upbringing (Article 104 ObZ 2015), then decisions that are important for the child must be made consensually (Article 108 ObZ 2015). Taking into account that a temporary stay in another state during the time the parent has the right to maintain a direct personal relationship with the child (e.g. a one-day excursion) does not entail intent to change the child's permanent or temporary residence and is therefore not among the exhaustive list of significant individual rights of the child as referred to in Article 100 ObZ 2015, the provisions of Article 99(2) ObZ 2015 should therefore be applied appropriately. The same applies to a case where the parent with whom the child is living after the divorce has partial individual responsibility for parental care (Article 105 ObZ 2015), since the parent establishing a direct personal relationship with the child has the freedom and the right to represent the child in everyday matters during the time the child is in his or her care (pursuant to Articles 110 and 112, and in conjunction with Article 105(1) ObZ 2015).

In these situations, the importance of the provisions of Article 111 ObZ 2015 should be emphasised. That is to say, both parents, irrespective of whether they are jointly or individually responsible for parental care, are obliged to mutually exchange information on the child, which includes information on the possible removal of the child abroad. As well as this being a legal obligation of the parents, the crossing of a state border requires personal and other documents which the child, or each of the parents, should bring with them.

In the event that one of the parents feels that the other parent might abuse such a temporary removal of the child, he or she is permitted to require the court to impose one of the actions set out in Article 418 ObZ 2015 in an out-of-court proceeding to ensure that the decision on establishing a personal relationship between the parent and child is enforced, or to impose one of the actions of Article 419 ObZ 2015, which ensures the safe return of a child.

The most desirable solution is that parents reach a consensual agreement on these and similar matters, which they may then regulate in their agreement on joint parental care (Article 106(3) ObZ 2015).

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

Any (permanent) removal of the child to another state which would serve to change the permanent or temporary residence of the child requires the consent of both parents. Irrespective of whether the parents are jointly responsible for the child's care and upbringing or whether one of them has partial individual responsibility, the parent who removes the child and thus changes the child's permanent or temporary residence must obtain the written consent of the other parent to do so (Articles 100 and 108 ObZ 2015). However, if the parent with whom the child is living after the divorce has sole individual responsibility for parental care, then he or she does not require the consent of the other parent to remove the child to another state for the purpose of changing the child's permanent or temporary residence (Article 105(5) ObZ 2015).

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 a parent, by removing the child to another state, wants to change the child's permanent or temporary residence, and is unable to obtain the written consent of the other parent, then, in an out-of-court proceedings, the court determines which of the parents represents the best interest of the child in this matter (Articles 100(5) and 478(1) ObZ 2015). A mandatory out-of-court counselling procedure must take place prior to initiating these out-of-court proceedings, the purpose of which is to have experts from the Department of Social Services try to help the parents reach an agreement on the matter (Article 481 ObZ 2015 - out-of-court proceedings of mandatory counselling as a procedural requirement for initiating the proceedings of Article 100(5) ObZ 2015). If in the course of mandatory counselling the parents are unable to reach an agreement, the matter will be decided on by a court of law in an out-of-court proceeding that will particularly focus on: the age and opinion of the child, the child's right to establish a personal relationship with the other parent, the willingness and readiness of the parents to cooperate in the exercise of their parental rights, the personal circumstances of the parents, the distance between the places of permanent or temporary residence of the parents and the place where the child could relocate, as well as the traffic connections between these places and the parent's right to freedom of movement (Article 484 ObZ 2015).

However, it should be emphasised that if one of the parents has sole individual responsibility for parental care of the child, then he or she does not require the consent of the other parent in order to remove the child to another state for the purpose of changing the child's temporary or permanent place of residence, i.e. in such an event the opposition of the other parent has no legal effect (Article 105(5) ObZ 2015).

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 stated in the responses to questions 1-3, ObZ 2015 governs the rights and obligations of parents differently, depending on whether it is a temporary removal of the child to another state (e.g. a one-day excursion which does not jeopardise the rights of the other parent) or a permanent removal of the child to another state with the purpose of changing the child's place of permanent or temporary residence.

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