

## Domov>Družinske zadeve in dedovanje>Zakonita selitev v tujino z otroki

### Moving/settling abroad with children

Poljska

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

Parental authority is inherently exercised jointly by both parents. This follows from Article 97(2) of the Polish Family and Guardianship Code (*kodeks rodzinny i opiekuńczy*), pursuant to which the parents take decisions jointly in essential matters concerning a child and, if they fail to come to an agreement, these matters are decided upon by a guardianship court (*sąd opiekuńczy*). Each parent decides independently, without having to consult the other parent and obtain his or her consent, only in less important matters concerning a child. In Polish case-law, taking a child abroad, both permanently and temporarily, even on holiday, is considered an essential matter.

In the light of Article 97(2) of the Family and Guardianship Code, a parent may take a child abroad without the other parent's consent only if:

- a) the other parent has been deprived of parental authority over the child by decision of a Polish court (Article 111 of the Family and Guardianship Code);
- b) the parental authority of the other parent has been suspended by decision of a Polish court (Article 110 of the Family and Guardianship Code);
- c) the other parent has limited parental authority over the child (Article 109 of the Family and Guardianship Code). The court decides how parental authority is to be limited by applying the measure that will best protect the child's welfare. In particular, the parent whose parental authority has been limited may be deprived of the right to co-decide in essential matters concerning the child or in some of these matters. If a parent has been deprived of the right to co-decide about the child's habitual residence by such a judgment, then that parent will not be able to oppose a change of the child's habitual residence in Poland to habitual residence abroad.
- d) the parents' rights and obligations towards the child may change following a judgment handed down in proceedings for divorce (Article 58(1) and (1a) of the Family and Guardianship Code), marriage annulment (Article 58(1), read in conjunction with Article 21 of the Family and Guardianship Code) and separation (Article 61(3)(1) of the Family and Guardianship Code). This also applies to decisions issued in paternity proceedings (Article 93(2) of the Family and Guardianship Code), in proceedings for amendment of a judgment on parental authority and the manner of exercising this authority given in proceedings for divorce, separation, marriage annulment or establishing parenthood (Article 106 of the Family and Guardianship Code) and in proceedings for entrusting the exercise of parental authority to one of the parents in cases where they do not live together (Article 107(1) and (2) of the Family and Guardianship Code). In particular, the court may in such cases entrust the exercise of parental authority to one of the parents, limiting the other parent's rights to specific obligations and rights towards the child. If a divorce court entrusts the exercise of parental authority to one of the parents and limits the parental authority of the other parent, then, although such a judgment does not deprive the other parent of parental authority over the child, that parent may exercise his or her rights and obligations only in so far as the court permits him or her to do so. If the court does not confer the right to co-decide about the child's residence on the other parent, then, in principle, the parent to whom the exercise of parental authority has been entrusted takes decisions on this residence by himself or herself (see, however, point 2).
- e) the other parent has been deprived of the right to co-decide about changes in the child's residence by a judgment of a foreign court recognised in Poland.

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

The other parent's consent is necessary in all cases not listed in the previous point, namely situations where a parent has full parental authority, or his or her parental authority has been limited but he or she has not been deprived of the right to co-decide about the child's residence. Polish case-law goes even further in this respect. As the Supreme Court (*Sąd Najwyższy*) explained in its decision of 10 November 1971 in case III CZP 69/71, *for a minor to go abroad permanently with one of their parents who was entrusted with the exercise of parental authority in the divorce proceedings, the consent of the guardianship court is required if the other parent, entrusted with supervising the child's upbringing, has not submitted a declaration consenting to the child's departure*.

Thus, in the light of this judgment, if the court has not conferred on the other parent, for example in divorce proceedings, the right to co-decide about the child's habitual residence, that parent may demand the return of the child if he or she would be unable to exercise his or her right to contact the child. In its decision of 6 March 1985 in case III CRN 19/85 the Supreme Court ruled that *since a child's trip abroad on holiday is considered an essential matter, it requires the agreement of both parents exercising parental authority or, where such agreement is not forthcoming, a judgment of the guardianship court*.

#### 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?

In such cases, an application must be lodged with the guardianship court in Poland for substitute consent for a child to go abroad.

Applications for such consent may be lodged by parents who have not been deprived of parental authority or whose parental authority has not been suspended. Applications may be lodged by the applicants themselves: in such cases, Polish law does not require parties to be represented by a lawyer before the court. The court with subject-matter jurisdiction to consider these applications is the district court (*sąd rejonowy*) (family and juvenile division) as the court of first instance, while the court with territorial jurisdiction is the court of the place where the child resides or is staying.

#### 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 mentioned above, taking a child abroad for a short period of time requires the consent of the other parent.

Consent forms for taking a child abroad (permanently or temporarily) are not used in Poland. Consent can therefore be given in any form. However, it seems advisable to obtain written consent, which could serve as evidence in any proceedings for the return of a child based on the 1980 Hague Convention. The assistance of a Polish lawyer, legal advisor or notary may be useful in preparing such consent.

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