

INTERNATIONAL RELOCATION

It is very difficult to obtain a relocation order by the Spanish Courts, especially if one of the parents is Spanish and therefore the child is Spanish too with an extended family living in Spain. It is uncommon that the Court authorises the international relocation of the Spanish child with a Spanish left behind parent and an extended family living in Spain, since the parents are already living in Spain and both parents have the same right to determine the child's place of residence after the divorce. Article 156 of the Civil Code says that both parents have the same parental responsibility and they must agree on these matters concerning their child; in case of dispute any parent can issue a proceeding and the Judge after having heard both parents and the child (mandatory for children older than 12 years) will issue an order stating which parent can decide in this specific matter. Setting the child's place of residence is a parental responsibility's matter of article 156 Civil Code.

If both parents are foreigners without family support in Spain it is easier to relocate internationally.

The most important Judgment on international relocation by the Spanish Supreme Court is the "**Sentencia del Tribunal Supremo (Civil), sección 1^a, 20.10.2014, nº 563/2014, rec. 2680/2013**".

The case is a Brazilian mother and a Spanish father, the son was born in Spain and the parents separated when the child was two years old. Since then, the child had been living with the mother with few and sporadic contact with his father. The child was 4 years old when his parents filed for divorce.

"The question is the suitability for the child to relocate abroad, which may entail a radical change in his social and parental environment, with adjustment problems. If the international relocation affects the best interest of the child, it might bring a change of the child's parental custody."

The best interest of the child is paramount in relocation cases, of a perfectly specific child, and not of a Spanish national, as a factor to be protected to dismiss the child's relocation. It is important to check if the child is better under the mother's or the father's custody. The security and stability that the mother provides to the child is not guaranteed with the mother's and child's stay in Spain. It is not possible to oblige the mother to live in a country, which is not hers, and in a family environment which is neither the child's (...); the protection of the children's right does not necessarily imply to be detrimental to the parent's right."

The Supreme Court orders the child relocation to Brazil based on:

*"- The mother has all her family in Brazil, not only parents and siblings, but also another 17 years old son,
.- The father has a bad relationship with his family in Spain, therefore his family and close friends environment is not sufficient to take care of the child if he finds a job,
.-The father and child contact is protected with a fair and balanced share of the journey's costs. "*

In year 2014, the Supreme Court set a new case-law precedent: ***the international relocation of the custodial parent can be ordered only in the best interest of the minor child under his/her custody, whom the child will relocate with.***

DOMESTIC RELOCATION

Internal relocation orders are more common. The factors taken into account by the court to make a decision on a child moving to a different part of Spain are: the child's best interest; the distance between the former and new residence which would facilitate the other parent to meet the child; better employment opportunities for the parent who wants to move, as well as wider family support in the new place.

The main ground to allow relocation in Spain is a better job with better financial prospects for the custodial parent when the earnings of the left-behind parent are not relevant and it would provide a better standard of living to the children.

Other factors are the distance between the left-behind parent and the new home, the existence of wider family support in the new residence, etc.

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