
CHAMBERS GLOBAL PRACTICE GUIDES

Child Relocation 2025

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Spain: Law & Practice

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SPAIN



Law and Practice

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1. The Care Provider's Ability to Take Decisions About the Child

1.1 Parental Responsibility

Spanish Civil Code (CC)

Parental authority is regulated in Articles 154 to 171 of the CC.

- Definition (Article 154 CC) – a set of duties and powers vested in parents to look after their unemancipated minor children, keep them in their company, feed them, educate them, and ensure their overall development.
- Core content:
 - (a) legal representation of the children;
 - (b) administration of their property; and
 - (c) decisions concerning their education, training, and place of residence.
- Exercise (Articles 156 and 159 CC) – parental authority is exercised jointly by both parents, regardless of their marital status or whether they live together.

Civil Code of Catalonia (CCC)

In Catalonia, parental authority is regulated in Book Two, Articles 236-1 to 236-30 of the CCC.

- Definition (Article 236-1 CCC) – the function of parents to care for, maintain, educate, and ensure the overall development of their unemancipated minor children.
- Core content (Article 236-17 CCC):
 - (a) decide on their habitual place of residence;
 - (b) ensure their health, education, leisure, and personal development; and
 - (c) represent them legally and manage their assets.
- Exercise – both parents exercise parental authority jointly, even after separation, unless otherwise agreed by the parties or ordered by the court.

1.2 Requirements for Birth Mothers

In Spain – whether under the CC (state law) or the CCC (foral law) – a birth mother automatically acquires parental responsibility (*patria potestad/potestad parental*) for her child from the moment of birth.

Key Points

- No additional legal requirements must be met beyond the fact of giving birth.
- The mother is registered as such in the Civil Registry at the time of birth, which serves as formal proof of maternity and automatically confers parental responsibility.
- This parental authority is a combination of rights and duties toward the child: care, custody, education, legal representation, and administration of assets.
- It is not contingent on marital status, cohabitation with the father, or any administrative/court application.
- Loss, suspension, or limitation of this authority can only occur by court decision in exceptional circumstances (eg, risk to the child's welfare).

However, there are a few situations in which a birth mother might not automatically have parental responsibility under Spanish law, such as adoption cases or assisted reproduction with legal disclaimers.

1.3 Requirements for Fathers

Automatic Acquisition

A father acquires parental responsibility automatically from the moment he is legally established as the child's father, if:

- he is married to the mother at the time of birth (presumption of paternity – Article 116 CC/Article 235-9 CCC);
- he recognises the child at birth registration or before a notary/public official at the time of birth; or
- paternity is determined by a court judgment.

Requirements Where Parents Are Unmarried or Paternity Is Not Presumed

If the parents are not married, the father must recognise the child legally (*reconocimiento de paternidad*) before the Civil Registry, a notary, or in a will.

This recognition can be done:

- at the time of birth, through registration (jointly with the mother or with her consent); or

- later, with the consent of the child's legal representative if the child is a minor, through a court declaration.

1.4 Requirements for Non-Genetic Parents

For non-genetic parents seeking to obtain parental responsibility, certain legal requirements must be met -

- the existence of an affective and/or cohabitation bond between the child and the non-genetic parent;
- circumstances in which the biological parent has been deprived, suspended or excluded from the exercise of parental authority, or does not comply with the duties inherent to it;
- procedures for the attribution of parental authority, guardianship or adoption in favour of a third party (not a biological parent), either in the best interests of the child or to consolidate a de facto parent-child relationship; and
- application of the CCC or the CC.

To achieve this objective, the arguments to be used, based on the selected cases, are as follows.

- Existence of a consolidated parent-child relationship and prolonged cohabitation – if the non-genetic parent has lived with the child from an early age and has exercised parental functions continuously, the attribution of parental authority or adoption can be requested, thus formalising a de facto situation for the benefit of the child.
- Best interests of the child and disinterest/incapacity of the biological parent – if the biological parent has shown disinterest, lack of contact or failure to comply with their duties, the exclusive attribution of parental authority to the applicant can be justified, prioritising the well-being and stability of the child.
- Suspension or deprivation of parental authority of the biological parent – in circumstances of family crisis, abandonment or risk to the child, the judicial authority may suspend or deprive the biological parent of parental authority and assign it to a third party who better guarantees the interests of the child.
- Equating cohabitation to that of separated parents – Catalan jurisprudence allows de facto cohabita-

tion to be equated to that legally required for the adoption or attribution of parental authority, even in cases of separation or divorce.

1.5 Relevance of Marriage at Point of Conception or Birth

Requirements for Non-Genetic Parents Requesting Parental Authority

- Existence of a non-genetic parent requesting parental authority (eg, in assisted reproduction, surrogacy or adoption contexts).
- Attribution of parental authority, especially in situations where filiation is not biological or based on marriage.
- Relevance of the marital status of the parents at the time of conception or birth.
- Application of the CC or the CCC.

Different Cases

- Consent and formalisation in cases of a non-genetic parent – in assisted reproduction situations, the consent of the (non-genetic) spouse is essential for the attribution of parental authority, and must be formalised in accordance with the applicable regulations. In Catalonia, although the law requires a public deed, case law has allowed some flexibility, but formalisation is still relevant for filiation and parental authority.
- Adoption and surrogacy – in the case of minors born by surrogacy, the attribution of parental authority to the non-genetic parent (eg, the spouse of the biological parent) requires compliance with the legal requirements, especially the assent of the biological mother to the judicial authority. The marital status of the parents may influence the presumption of filiation, but the attribution of parental authority depends on compliance with the legal requirements and the best interests of the child.
- Deprivation or exclusion of parental rights of the biological parent – if the biological parent is in serious breach of their duties, their consent is not necessary for a third party (eg, the spouse of the other parent) to obtain parental rights through adoption. This is applicable in both the CC and the CCC, prioritising the best interests of the child.
- Extramarital filiation and parental authority – when filiation is determined judicially against the opposition of the parent, the law provides for the exclu-

sion of parental authority, which allows the other parent or a third party to exercise it exclusively. The marital status of the parents at the time of conception or birth does not prevent this consequence if the legal requirements are met.

- Particularities of Catalan law – in Catalonia, the exception contained in the CC that allows the mother to suspend the registration of non-marital paternal filiation does not apply, giving precedence to the principles of biological truth and
- *favor filii*. This reinforces the protection of the child and the attribution of parental authority in accordance with the biological reality and the best interests of the child, regardless of the marital status of the parents.

1.6 Same-Sex Relationships

The following elements must be present for parental responsibility in same-sex couples to be recognised:

- existence of a homosexual couple who have formed a family with a minor child;
- one member of the couple has no genetic link to the child;
- the non-genetic parent requests recognition of parental authority;
- the best interests of the child are a central element in the decision; and
- the court decision grants parental authority to the non-genetic parent.

Different Cases of Jurisprudence

- Case in which a female couple requested that the non-biological mother be recognised as the holder of parental authority, the claim being upheld on the grounds of the best interests of the child and stable cohabitation.
- Resolution in which parental authority was given to a man in a homosexual couple, without a genetic link, for having actively participated in the upbringing and education of the minor.
- Judgment that granted parental authority to the non-biological mother in a female couple, emphasising the procreational intent and family stability.
- Case in which parental authority was granted to the non-genetic parent in a homosexual couple, after proving the existence of a shared parental

project and the integration of the child into the family nucleus.

- Resolution in favour of the attribution of parental authority to the non-biological parent, based on the protection of the child and the equalisation of rights within same-sex families.
- Judgment that awarded parental authority to the non-genetic parent, highlighting the importance of parental co-responsibility and non-discrimination on the basis of sexual orientation.

1.7 Adoption

In order for cases to be comparable to the one raised, the following elements must be present:

- existence of a procedure for the adoption of a minor;
- biological parents are subject to deprivation of parental authority (for serious and repeated breach of parental duties, abandonment, abandonment, etc);
- debate over whether the consent of the biological parents is necessary for adoption or whether a simple hearing is sufficient; and
- the best interests of the child are at the centre of the decision.

What follows is a selection of different jurisprudence whose conclusions align with the principle that the assent of biological parents is not necessary if they are subject to deprivation of parental authority.

- The consent of biological parents is not necessary for adoption if they are involved in a legal cause of deprivation of parental authority, even if there is no prior judicial declaration. The best interests of the child and the effective protection of their rights take priority.
- Parents involved in the cause of deprivation of parental authority must only be heard in the adoption proceedings, without the need for their assent. This clarifies the procedure and the exceptional nature of the measure.
- The consent of the biological parents is not necessary for the adoption of the child if they are involved in a cause of deprivation of parental authority, highlighting the assessment of parental skills.

- If the parents are involved in a legal cause of deprivation of parental authority, their consent to the adoption is not necessary, and a simple hearing is sufficient.

2. Relocation

2.1 Whose Consent Is Required for Relocation?

For a case to be assessed, the following elements must be present:

- existence of a disagreement between parents regarding the change of residence of the child;
- application for judicial authorisation for change of residence;
- judicial evaluation based on the best interests of the child, considering factors such as emotional stability, the social and family environment, the relationship with both parents, and the justification for the change; and
- conclusion detailing the criteria that the courts consider relevant to deciding on the change of residence.

In order to request or defend a change of residence for a child, the request must be based on the best interests of the child, providing objective and detailed evidence that justifies the transfer and demonstrates that it does not harm the emotional, educational and social stability of the child or the relationship with the other parent. It may be advisable to prove the child's capacity for parental co-operation, personal and economic situation, and, where appropriate, the child's opinion. However, it should be borne in mind that the lack of justification, the damage to the relationship with the other parent or the negative impact on the stability of the child could be solid arguments for the opposing party to successfully challenge the request. It would therefore be prudent to prepare a solid argument and anticipate potential objections, providing all the necessary documentation and evidence.

2.2 Relocation Without Full Consent

The parent seeking relocation must file an application for judicial authorisation, requesting such relocation.

At present, under the current law, is mandatory for parties to prove that they have gone through mediation or made reasonable attempts to reach an agreement.

2.3 Application to a State Authority for Permission to Relocate a Child

2.3.1 Factors Determining an Application for Relocation

If one parent does not agree with the relocation of the children, the other parent must request judicial authorisation.

2.3.2 Wishes and Feelings of the Child

The child's opinion, which gains increasing significance with age and maturity, is not the sole factor to be considered. Other personal, family, and social circumstances also play a decisive role in the final decision.

2.3.3 Age/Maturity of the Child

The age of the child is a particularly relevant factor when assessing their wishes, especially from the age of 12 onwards, at which point both legislation and judicial practice presume a greater degree of maturity and capacity for discernment. At this stage, the child is usually more firmly rooted in their family, educational, and social environment, which means that their preferences and wishes carry significant weight in decisions affecting them. However, such wishes must be considered alongside other objective factors to ensure that the final decision primarily serves the child's best interests.

2.3.4 Importance of Keeping Children Together

Legislation, case law, and judicial practice consistently affirm that, in cases involving a change of residence, siblings should remain together, as sibling cohabitation is considered an essential element for their emotional stability and proper affective development. This principle is grounded in the best interests of the child, as recognised in both the CC and the CCC, as well as in various judicial decisions that prioritise maintaining close family bonds.

However, this criterion is not absolute, and courts have recognised exceptions where specific circumstances – such as the special needs of one of the children, the

existence of strong bonds with third parties, differences in age and educational stages, or the express wishes of the minors themselves – make a temporary or permanent separation advisable. In all cases, the decision must be duly reasoned and aimed at safeguarding the best interests of each child involved.

2.3.5 Loss of Contact

Courts place particular importance on how ongoing contact and a meaningful relationship with the non-relocating parent will be ensured. This is a key criterion when assessing applications for a change of residence, as maintaining strong emotional bonds and regular communication with both parents is essential to the child's well-being, in line with the principle of the best interests of the child as set out in legislation and case law.

For this reason, it is crucial that the proposal submitted with the petition includes a detailed and realistic plan specifying the frequency, means, and conditions of such contact – whether in person, virtual, or through scheduled visits – as well as the allocation of any travel-related costs.

In addition, the court must be provided with sufficient evidence to rule out that the relocation request is motivated by the applicant parent's personal interests or by arbitrary reasons. It is therefore essential to submit objective and well-documented justifications showing that the move is based on legitimate grounds.

2.3.6 Which Reasons for Relocation Are Viewed Most Favourably?

The reasons for relocation that the authority appears to be most sympathetic towards are as follows.

- Best interests of the child – this is the guiding criterion and must prevail over any other interests, including those of the parents. The court will assess whether the change benefits the emotional, educational and social development of the child.
- Justification for the change – the parent requesting the change must provide objective and justified reasons (work, family, economic, educational, etc) that explain the need for the relocation and demonstrate that it is not a mere personal whim.

- Stability and adaptation of the child – the emotional and social stability of the child, their adaptation to the current environment and the anticipated adaptation to the new environment, as well as the continuity in their personal and educational development will be assessed.
- Relationship with both parents – the court will look at how the change of residence will affect the child's relationship with the non-custodial parent and whether family ties and visitation can be reasonably maintained.
- Opinion and age of the child – depending on the age and maturity of the child, their opinion will be taken into account, especially if they have the capacity to express their preferences.
- Capacity for parental co-operation – the willingness of both parents to collaborate in the exercise of parental authority and facilitate the child's contact with the other parent will be assessed.
- Personal and economic situation of the parents – the court may consider the employment, economic and social situation of the parent requesting the change, always subject to the interests of the child.

2.3.7 Grounds for Opposition to Relocation

The grounds for opposition that the authority appears to be most sympathetic towards are as follows.

- Lack of objective justification for the change – if the need for the transfer is not sufficiently proven, the court may deny the authorisation.
- Detriment to the relationship with the other parent – if the change significantly hinders visitation or contact with the non-custodial parent, it may be considered contrary to the child's interests.
- Negative impact on the child's emotional or educational stability – if there are reports or evidence that the change may adversely affect the child, the court may deny the request.
- Lack of consensus or communication between parents – the absence of agreement and the existence of parental conflict can be assessed negatively if it is considered that the change increases conflict.
- Failure to listen to the minor's opinion – if the minor is considered old and mature enough, not taking their views into account may be a procedural defect.

2.3.8 Costs of an Application for Relocation

It is not possible to establish a standard or predetermined cost for this type of procedure, since, in accordance with current regulations and the principle of freedom of contract within the legal profession, each lawyer is entitled to freely agree their fees with their client.

The final amount will depend on multiple factors, including:

- the legal complexity of the case, including the need to undertake specific procedural actions or address technically challenging legal issues;
- the amount of time required for the study, preparation, and monitoring of the case, as well as for attending hearings or meetings;
- the volume of documentation that must be reviewed and submitted; and
- the urgency or procedural deadlines that may require a higher intensity of work.

Therefore, the fee assessment must be carried out on an individual basis, taking into account the specific characteristics of each case and the level of specialisation required from the professional.

2.3.9 Time Taken by an Application for Relocation

The duration of the proceedings will largely depend on the location of the competent court. In courts located in large cities, where the caseload is generally high and the judicial bodies are often overburdened, the estimated timeframe for handling this type of matter generally ranges between six and eight months.

Conversely, in courts in medium or smaller cities, although one might assume that timeframes would be shorter, in practice, proceedings can still be extended due to limited resources or the accumulation of cases in courts with fewer staff.

An additional factor affecting these timelines arises from recent legislative reforms, which have introduced the requirement to prove that the parties have made a genuine attempt to reach an agreement before initiating judicial proceedings. This requirement, which involves carrying out prior conciliation or mediation

steps, has extended the overall duration of the process by at least two additional months.

Therefore, the total length of the proceedings must be assessed on a case-by-case basis, taking into account both the specific workload of the court in question and the preliminary procedural requirements imposed by law.

2.3.10 Primary Caregivers Versus Left-Behind Parents

The judge will assess, in each specific case, all the circumstances surrounding a request to change the residence of minor children, always following the guiding principle of the best interests of the child.

In general terms, the parent acting as the primary caregiver – that is, the one who assumes the majority of the day-to-day responsibilities for the children's upbringing, education, and care – is more likely to obtain authorisation for such a change, given the closer emotional bond and established routines of cohabitation. However, this factor cannot be considered in isolation. The court must weigh a broader set of elements, including:

- the emotional, educational, and social stability of the children;
- the feasibility of maintaining a meaningful relationship with the other parent;
- the living conditions and opportunities in the proposed new place of residence; and
- the impact the change may have on the children's family relationships and social environment.

It should be noted that the increasing prevalence of shared custody arrangements has introduced an additional layer of complexity to these requests. When both parents exercise parental responsibilities on an equal time and functional basis, a change of residence constitutes a substantial alteration of the caregiving structure, requiring a stronger justification and a more rigorous judicial evaluation.

Therefore, while the role of the primary caregiver remains a significant factor, the final decision will depend on a comprehensive assessment of all rel-

evant variables to ensure that the measure adopted truly serves the best interests of the child.

2.4 Relocation Within a Jurisdiction

The feasibility of a change of residence is closely linked to the distance between the current location and the proposed destination. In Spain, some cities may be 800 to 1,000 km apart, which represents a substantial relocation and, consequently, a significant impact on the child's life, routines, schooling, and social and family environment. In such cases, the relocation proposal must be supported by a thorough consideration of these circumstances, providing clear justifications and a detailed plan that ensures the continuity of the parent-child relationship and the child's stability.

By contrast, when the distances are shorter – for example, 30 to 50 km – the obstacles to obtaining judicial authorisation are generally fewer, as maintaining the established contact arrangements with both parents is easier and the disruption to the child's daily life is considerably less significant.

3. Child Abduction

3.1 Legality

For a permanent relocation of a child outside the national territory, the express consent of the other parent holding parental responsibility is mandatory. In the absence of such consent, prior judicial authorisation must be obtained. This requirement is intended to safeguard the joint exercise of parental authority and to ensure that decisions of such significance are always made in the best interests of the child.

By contrast, when the trip abroad is temporary and limited to a holiday period, no formal authorisation from the other parent is required. In such cases, it is sufficient to inform the other parent in advance of the travel arrangements – including dates, destination, and conditions – so as to facilitate parental coordination and to ensure the proper exercise of both parents' rights and responsibilities.

3.2 Steps Taken to Return Abducted Children

The return of a child who has been unlawfully removed may be requested either through the Spanish Central

Authority or directly before the courts of the country to which the child has been taken. The latter option is generally advisable, as it is often faster and more effective, particularly given that the Spanish Central Authority is currently overburdened due to insufficient staffing.

When the child is located in a state that is a signatory to the 1980 Hague Convention on the Civil Aspects of International Child Abduction, there are additional safeguards to secure their return. Nevertheless, in such cases it is essential to act with the utmost urgency and to obtain immediate legal representation in the child's new jurisdiction. This will help ensure that proceedings are initiated without delay and will increase the likelihood of a swift and successful return.

3.3 Hague Convention on the Civil Aspects of International Child Abduction

In Spain, the availability of free legal advice to the parent of an abducted child under Articles 7 (g) and 25 of the 1980 Hague Convention is primarily channelled through the country's legal aid system (*asistencia jurídica gratuita*).

Article 7 (g) – Co-Operation to Provide Legal Aid

- The Spanish Central Authority (Subdirectorato-General for International Legal Co-operation (*Subdirección General de Cooperación Jurídica Internacional*) of the Ministry of Justice) facilitates access to legal aid for left-behind parents requesting the return of a child.
- Upon receiving the application, the Central Authority can inform the applicant of the eligibility criteria and provide assistance in applying for legal aid.
- If the applicant resides abroad, the request is typically processed through the Central Authority of the requesting state, which forwards the relevant documents to Spain.

Article 25 – Equal Treatment

- Foreign applicants are entitled to the same legal aid conditions as Spanish nationals.
- Legal aid may cover lawyers' fees, court representation, translator/interpreter costs, and certain procedural expenses, provided the applicant meets the economic requirements set by Spanish Law 1/1996 on Legal Aid.

Practical Availability

- Legal aid is not automatic; the parent must apply and demonstrate insufficient financial means in accordance with Spanish thresholds.
- In urgent Hague return cases, applications for legal aid are usually processed quickly to avoid delaying proceedings.
- Even if free legal aid is not granted, the Central Authority can help identify lawyers experienced in Hague Convention cases.

Limits

- If the applicant's income exceeds the legal aid threshold, they must cover their own legal expenses.
- The scope of legal aid depends on the applicant's circumstances and may not always cover all costs (eg, travel expenses).
- According to a 2015 national report, Spain was the seventh Central Authority with the highest total number of requests (restitution and visits) and the fifth with the most requests for return. That year, the Spanish Central Authority received 112 requests for return and sent 92 to other states.

This report, although dated, seems to be the only specific source with detailed figures. No updated public link with year-to-year statistics from the Spanish Central Authority has been identified. According to some unofficial sources, around 350 international abductions occur in Spain every year.

It can be said that Spain effectively complies with the mandate established by the 1980 Hague Convention on the Civil Aspects of International Child Abduction, both in terms of international co-operation and the implementation of swift domestic procedures for the child's return.

Through its Central Authority – the Subdirectorato-General for International Legal Co-Operation of the Ministry of Justice – Spain has developed mechanisms to receive, process, and enforce return applications, working in co-ordination with the central authorities of other contracting states. It also ensures that applicant parents, whether nationals or foreigners, have equal access to free legal aid as provided for in Articles 7 (g) and 25 of the Convention, provided they meet the

economic eligibility criteria set out in Law 1/1996 on Legal Aid.

Furthermore, the Spanish courts apply the Convention's timelines and principles as a priority, striving for prompt proceedings and adopting precautionary measures where necessary, with the aim of safeguarding the best interests of the child and preventing displacement-related harm.

Possibility of Applying for the Return of the Child

If the country from which the child has been removed is not a signatory to the 1980 Hague Convention, the parents can still request the child's return in Spain. Such applications would be made directly before the Spanish courts, generally through civil proceedings based on parental rights under Spanish law (parental responsibility) and the best interests of the child as per Article 2 of the Organic Law on the Legal Protection of Minors (LO 1/1996) and Article 154 of the CC. The return will not be automatic; the court will assess the circumstances, including the child's welfare and any risks involved.

Procedure, Applicable Principles, Cost and Timescale

- Procedure – an application (*demanda*) is filed before the Family Court (*Juzgado de Familia*) of the child's habitual residence in Spain. The process includes an urgent hearing of both parties, reports from social services, and where appropriate psychological evaluations of the child.
- Principles – paramount consideration is given to the best interests of the child (Article 2 LO 1/1996) and the right to maintain personal relations and direct contact with both parents (Article 94 CC). The child's opinion will be heard if they are mature enough, usually from the age of 12.
- Costs – the costs vary according to the complexity of the case and whether legal aid is granted; private legal representation for such cases may range from EUR3,000 to EUR8,000, plus court fees and expert costs.
- Timescale – in non-Hague cases, proceedings often take longer – typically six to 12 months – depending on court workload and whether appeals are lodged. There is no specific “summary return”

procedure, so the case follows the standard family law litigation timeline.

Effect of the Country of Origin on the Principles

While the fundamental principle of the child's best interests applies in all cases, the absence of reciprocity (when the other country is not a Hague signatory) removes the presumption of prompt return and can make enforcement abroad more difficult. If the other country has bilateral agreements with Spain covering family law co-operation, these may influence the court's decision and the practical enforceability of orders. Without such agreements, the Spanish court can still order return, but its execution in the foreign jurisdiction may be uncertain.

3.4 Non-Hague Convention Countries

There is no applicable information in this jurisdiction.

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