

## 1. relocation procedure in the jurisdiction of Hungary (the public administration procedure)

- sources of law: Act V of 2013 (Civil Code), Act LXII of 2021 (On the international judicial cooperation in regards to parental responsibility), Act CXVIII of 2017 (on the rules applicable to civil extrajudicial proceedings and to certain extrajudicial proceedings), Act XXXI of 1997 on child protection and guardianship administration, Act XXVIII on the Private International Law Code, Govt. Decree no. 149/1997 (on guardianship authorities and child protection proceedings)
- content of parental responsibility (CC 4:146.§)
- jointly exercised parental responsibilities (CC 4:175. §) - even parents living apart exercise their rights jointly in terms of the questions of the fate of their child. These are fundamentally important topics: name issues, nationality issues, educational (institute-wise) issues, and relocation
- procedural forum by default is the district child protection authority (“Government office, guardianship office dept.”)
- procedure: dispute between the parents whether child should or should not relocate ---> application lodged ---> district authority decides within 60 calendar days by default.
  - application must contain: is the relocation for good (settlement) or is it for a temporary period of time (duration); 1) social report issued by foreign authority, 2) proof of school enrolment, 3) proof of relocating parent’s income, 4) proof of accommodation (illustrative and NOT exhaustive list) out of which the decisionmaker can ascertain that the child’s upbringing, maintenance, care and continuation of studies needs are ensured.
  - relevant factor: whether in the state of relocation execution of parenting/visitation plan is ensured based on international treaties or reciprocity (EU member states AND Hague 1996 states do have an advantage!)
  - if a parental responsibility/custody case is pending: application to be automatically dismissed.
  - if parental responsibilities have never been settled before: authority to inform parents: you can file for custody before coming “here”, and don’t “relocate” without the other parent’s consent or an official permission, because that may constitute child abduction, with all of its legal repercussions
  - in case the the applicant’s relocation request is granted, then the authority

- sets the purpose of relocation: temporary or permanent
- upon request or ex-officio regulates or amends the parenting/visitation plan, this includes approving the parents' such agreement
- informs the applicant on: the obligation of registering the address change of the child; the obligation of registering the schooling abroad; that the applicant may ask for a change in the parenting/visitation plan; that the applicant must credibly inform the respondent and the authority about the expected date of the actual relocation.
- informs the respondent on: within 3 months after the relocation, amendment of the parenting/visitation plan – provided that the child is relocated within the EU; the options and conditions of execution of the parenting/visitation plan.

Should the relocation be granted, the decision is in effect for 6 months.

- in case the the applicant's relocation request is granted, then the authority
  - informs the applicant on the expected legal repercussions of wrongful removal (child abduction, H1980) and
  - informs both parents on putting an alert (travel ban) onto the child in an extrajudicial speedy procedure (Art 32. 1 b)-c)-d) of the SIS Regulation)
- in case the child returns and establishes habitual residence in Hungary (again), a newer relocation application is a must.

- Case law:

- Curia Kfv. 37.910/2020/11.  
In determining the child's place of residence abroad for a long period or for the purpose of settlement, the authority may decide on the application on an individual basis, taking into account all the circumstances of the case, in a complex interpretation of the legislation governing the rights and obligations of the child and the parents, and taking into account the best interests of the child. II. The designation of a place of residence abroad shall not result in the termination of contact with the separated parent or in a disproportionate impediment to such contact. III. In reaching its decision, the authority must give a detailed account of the facts and circumstances taken into consideration.

- Curia Kfv. 37.857/2018/7.

In the case at hand, all these circumstances were examined by the authority, which correctly assessed them as permitting the children's residence abroad. ] Contrary to the applicant's position, it is not relevant for the authority to compare the conditions of residence in Hungary and abroad and to decide which country provides better housing conditions and, where appropriate, a better livelihood, because the authority must examine whether, in the case of residence abroad, the children are placed in appropriate conditions and whether their care and education are adequately provided. [...] The court of first instance rightly stated that any change, including moving abroad, may cause difficulties and disadvantages for the children, but that these are temporary and that if the change is to their benefit, the temporary difficulty should not be an obstacle to the authorisation of the expatriation.[...] The court of first instance was also justified in taking into account the positive changes in the income of the intervener, firstly by taking up a part-time job and then by taking up a full-time job.

- Curia Kfv. 37.516/2017/6.

In the event of a dispute between parents, the guardianship authority must decide whether to consent to the minor children's residence abroad, taking into account all the circumstances of the case. It is not in breach of the law if, in reaching this decision, the guardianship authority takes explicit account of a final court judgment during and in relation to the proceedings which has been handed down in support of the applicant's unlawful act.

In the present case, the applicant did not wait for that necessary decision, based on duly considered objective facts, circumstances and evidence. After the father had answered in the negative, he left with the children to go abroad without permission and of his own accord. He has no basis for alleging that he was in a situation of duress, nor that the guardianship authority took into account factors in its decision which went beyond the scope of its powers and beyond the scope of the law. In particular, it would have acted unlawfully if it had disregarded the fact that, in the course of the proceedings pending before it - which have not yet been concluded - the mother was found by a final court judgment to

have committed an unlawful act by taking the children abroad without permission.

In the present proceedings, the guardianship authority could not have done otherwise than to take into account the judgment of the German court and to conclude that it could not subsequently grant authorisation to take the children abroad in those proceedings. ] It is apparent from the documents that the decision of the guardianship authority was not based on the fact that the father had in the meantime also brought proceedings for a change of parental custody before the Hungarian court, nor did the court base its decision on the assumption of the outcome of a future court case, but on the findings of a court proceeding which had been concluded. ] The only relevant factor for the Public Guardianship Office was the fact that the applicant had moved to Germany with her children during the administrative proceedings, within a short period of time after the filing of her application, before the final decision on the merits was expected, and that the foreign court had made a final finding that the children had been unlawfully removed abroad.[... ] The position of the defendant and the court of first instance that the defendant could not grant permission for the expatriation ex post facto in the current proceedings is correct, and that it is not for the guardianship authority but for the competent court to decide which parent is better suited to the upbringing and care of the child.

**2. Is the relocation procedure in your State a single procedure or several procedures (e.g., (1) parental responsibility, (2) contact, (3) maintenance)?**

- in the jurisdiction of Hungary there are 3 separate options given by law to parents who wish to relocate their children to another country:
  - Parents agree themselves, no formal legal requirements given apart from the consent must be clear and it must be unambiguously meant for not only a travel but for relocation. (CC § 4:152. (6)) The parents' such prime agreement shall not be approved by anyone else.
  - Parents cannot agree in relocating, but parental responsibilities have already been decided on by the court (public administration procedure conducted by the district child protection authority)

- Parents cannot agree in relocating, and parental responsibilities have not yet been decided on by the court, so both parents are equal in rights and obligations (special procedure conducted by the court) § 32. of Act LXII of 2021 on the international judicial cooperation in regards to parental responsibility: § 4:166 and § 4:175(3) of Act V of 2013 on the Civil Code shall apply with the exception that if the application for the designation of the child's place of residence abroad for a long period or for the purpose of settlement is submitted in a court action concerning parental responsibility (custody) or after the commencement of proceedings concerning parental responsibility (custody), the court shall decide on the application. In the case of the designation of the child's place of residence abroad for a long period or for the purpose of establishment, the court and the guardianship authority shall also decide on contact, either on application or ex officio in the child's best interests.

**3. Is legal assistance available in your State for a relocation procedure? If so, is it subject to a means and / or merits test?**

- Yes, legal assistance is available for all EU citizens, in English and in Hungarian
- No means tested: disabled, living with close relative disabled, entitled to public healthcare with a public health care ID, homeless, refugee, or looks after a disabled child
- Means tested, and the costs shall be borne by the state: in case of applicants whose monthly net income does not exceed the amount of the social projection base (USD77)
- Means tested, and the legal costs shall be advanced by the state: for a maximum period of 1 year for those in need, whose monthly net per capita income does not exceed HUF 312 911 / USD 841 (this amount is calculated on the basis of the 43% of the average gross monthly income in the national economy in 2024)

**4. Can parties to a relocation procedure represent themselves or do they need legal representation?**

- can represent themselves, not obligatory to instruct an attorney/lawyer
- interestingly, when represented by an attorney/lawyer all statements must be made personally (128 § (3) of Act XXXI of 1997)

**5. Is consideration given to whether the State to which a person wants to relocate a Party to the 1980, 1996 and / or 2007 Conventions?**

- definitely. In Hungary, EU member states, H1980 and H1996 member states do have a practical advantage
  - o during the procedure the authority takes into account whether on the basis of an international treaty or (at least) reciprocity contact with the parent living separately can be ensured (24.§ (3))
  - o if during the procedure the authority cannot facilitate the parties to conclude an agreement, with regards to the planned country of relocation the authority calls the parents attention to the possibility of regulating/amending contact/access rules, and to the expected legal consequences of child abduction (24. § (4))
  - o in case of within the EU relocation, within 3 months after the relocation took place residual jurisdiction upheld for adjusting contact/access rules (24. § (5) b) bb))
  - o in case of refusal of the relocation application, the authority calls the attention of the (unsuccessful) applicant to the expected legal consequences of child abduction (24. § (6), H1980 countries), and the possibility of putting a general travel ban on the child (EU SIS2, all countries)

**6. Which principles of the Washington Declaration are followed in relocation procedures in your State and which principles are not followed (and why)?**

- best interest of the child ofc
- direct contact on a regular basis with both parents +
- child's age and maturity -
- accomodation, schooling and employment -
- reasons pro/con +
- DV/DA +-
- past and current care and contact arrangements +
- pre existing custody and access +
- impact of grant or refusal on the child +
- inter-parental relationship and commitment of applicant for support and facilitate relationship between child and respondent +
- costs of contact after relocation +
- enforceability of contact +
- issues of mobility for family members -





**7. What is the impact of DA/DV allegations in relocation procedures in your State?**

- no particular statutory rules within the relocation procedure for DA/DV (allegations)
- however DA/DV allegations are taken into account seriously when regulating care and access arrangements

**8. What is the average time frame for a relocation procedure to be decided in your State?**

- by law up to 60 calendar days
  - however this is a “net” duration, days when the authority conducts the fact finding (psychological assessment as a not so good example) process do not count
  - Clients had better expecting 4-8 months until the decision is made

**9. What is the average success rate of relocation procedures in your State?**

- no central statistics available to date
- by minding the law and procedural rules and mapping circumstances thoroughly, while setting goals realistically, success can be ensured

**10. Do you foresee / recommend possible improvements for relocation procedures in your State, if so on what aspects?**

- if it is a fundamental, top question by law, then it should always be decided upon by the top forum, the court and no other forum.
- non-judicial decisionmakers need more training (positions of parents, legal deadlines, scope of fact finding is many times a problem, as if the relocation was a “secondary” custody battle, when it’s not)
- mistakes can be irreversible: what if there are 2 caretaking parents (joint custody), one caretaker parent’s all other parental responsibilities can theoretically be annulled (withdrawal of court’s provinces)
- the social report is always the problem, as its concept in Hungary is unknown in other jurisdictions. What is a social report?
  - protocol on assessing the environmental circumstances (§ 130. of Act XXXI of 1997 on child protection
  - the authority may acquire it via international legal aid (don’t!!!!)
  - Includes:
    - a) the child
    - (aa) contact details of relatives or other persons residing in the place of residence,
    - (ab) contact details of persons present at the time the record is taken who are relevant to the care and education of the child,
    - (ac) the contact details of his/her general practitioner, his/her nurse or, if he/she is in a nursery or school, the head of the public education establishment,
    - (ad) any findings relevant to his/her case, an assessment of the family's circumstances;
    - (b) the circumstances of the person subject to guardianship
    - (ba) the contact details of the persons present at the time of the taking of the report who are relevant to his/her life and care,
    - (bb) contact details of his/her general practitioner or psychiatrist,
    - (bc) the contact details of the head of the social welfare institution to which he or she has recourse,
    - (bd) his/her financial and social circumstances,
    - (be) the findings relevant to his/her case.

**11. What is the procedure in your State to recognise and enforce a foreign relocation decision or to give effect to a foreign relocation agreement?**

- EU Member State orders: no exequatur necessary, A decision given in a Member State shall be recognised in the other Member States without any special procedure being required. (Art. 30 of the 2019/1111/EU (Brussels IIter Regulation))
- Non-EU Member State orders: 3. § of Act XXVIII of 2017 on the Private International Law code of Hungary: “court shall also be understood to mean any other authority in civil matters”
- § 109 (1) A decision of a foreign court shall be recognised if
  - a) the jurisdiction of the foreign court seised was established under this Act,
  - (b) the judgment has acquired the force of res judicata or equivalent legal effect under the law of the State in which it was given, and
  - (c) none of the grounds for refusal set out in paragraph 4 applies.
- must not be recognized if: against public policy, ex-parte, lis pendens

**12. How do you address non-compliance with relocation decisions or agreements?**

- no hungarian legal tools