



The legal procedures available in Spain for international family relocation



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Is there a specific relocation procedure available in your State?

Spanish Law and International Family Relocation

THERE IS NO SPECIFIC LEGAL PROCEDURE IN SPAIN TO RESOLVE CHILD RELOCATION DISPUTES, BUT DIFFERENT PROCEDURAL WAYS THAT ATTORNEYS USE DEPENDING ON EACH CASE.

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

SPANISH
PROCEDURAL WAYS
TO SOLVE FAMILY
RELOCATION
DISPUTES

SPANISH PROCEDURAL WAYS TO SOLVE FAMILY RELOCATION DISPUTES

In Spain, there are 2 legal procedures to solve family relocation disputes, which apply to both national and international family relocations:

- **Voluntary jurisdiction procedure**
- **Procedimiento de modificación de medidas**

This is equivalent to a **Child Arrangements Order** and is a procedure to change a court order concerning child arrangements or maintenance.

SPANISH PROCEDURAL WAYS TO SOLVE FAMILY RELOCATION DISPUTES

- **Voluntary jurisdiction procedure**
- **Child Arrangements Order procedure**

DIFFERENCES

VOLUNTARY JURISDICTION PROCEDURE

Regulated in Law 15/2015, 2 July, on Voluntary
Jurisdiction

VOLUNTARY JURISDICTION

Voluntary Jurisdiction applies when disagreement regarding joint parental responsibility exists (and parental responsibility includes where the child lives). In these cases, if one of the parents does not consent and agree to decide on the children's habitual residence, the other parent may apply for a court order to get the court's permission.

VOLUNTARY JURISDICTION

COMPETENT JUDICIAL AUTHORITY:

- **Court of First Instance of the child's permanent address or habitual residence, IF NO JUDICIAL DECISION EXISTS REGARDING PARENTAL RESPONSIBILITY.**
- **Court of First Instance where joint parental responsibility was issued.**

CHILD ARRANGEMENTS ORDER PROCEDURE

Regulated in Articles 770-775 of the Spanish Civil
Procedure Law (LEC)

CHILD ARRANGEMENTS ORDER PROCEDURE

The Child Arrangements Order procedure applies when the circumstances taken into account by the Court that decided on the final child arrangements order have changed (in this case, a relocation dispute) and one of the parents requests to the same Court to change the arrangements agreed upon by the parents or those issued by the Court in the absence of agreement.

CHILD ARRANGEMENTS ORDER PROCEDURE

COMPETENT JUDICIAL AUTHORITY

The Court that issued the final child arrangements order

Spanish Law and International Family Relocation

Voluntary Jurisdiction?



Child Arrangements Order?

SINCE NO SPECIFIC PROCEDURE EXISTS IN SPAIN FOR FAMILY RELOCATION,

legal uncertainty reigns

Spanish Law and International Family Relocation

- Spanish judges are aware of these **different procedures and the lack of accuracy** within the Spanish legal system in determining the child's best interest in relocation cases.

For instance, the Barcelona Provincial High Court has stated that:

Spanish Law and International Family Relocation

"**The law does not determine weighting elements** to decide on a relocation application and to give a content of the child's interest in each case. This increases the **risk of arbitrary** and/or **biased decisions** and hinders the prediction of the judicial decision and, therefore, of the agreements. **This causes legal uncertainty.**"

Barcelona Provincial High Court Judgements 206/2024 (12 April), 296/2024 (21 May), 355/2024 (17 June)

DIFFERENT PROCEDURES **VS** THE CHILD'S BEST INTEREST

The lack of a specific procedure in the Spanish Legal System to solve child relocation disputes rapidly while fulfilling all legal guarantees may undermine the child's best interests.

For instance, in the following case, the Barcelona Provincial High Court (Judgement 429/2024, 30 July) stated that the First Instance Court should have done things differently when deciding on a relocation dispute:

Barcelona Provincial High Court Judgement 429/2024, 30 July

➤ WHAT HAPPENED:

"The appellant alleges omission in the judgement regarding the **claim for relocation and the change of the child's school**, as requested in the counterclaim (...). However (...), in the hearing, the first instance judge dismissed the counterclaim by viva voce judgement.

The **judge** (first instance) **considered that the procedure for such claims should have been through **voluntary jurisdiction**** and the viva voce judgment became final since no appeal was lodged in that act."

Barcelona Provincial High Court Judgement 429/2024, 30 July

- THE BARCELONA PROVINCIAL HIGH COURT IS SAYING THAT, REGARDING FAMILY RELOCATION DISPUTES, THE APPROPRIATE PROCEDURE IS THROUGH A CHILD ARRANGEMENTS ORDER:

"This is not the time to reverse the viva voce judgement regarding the counterclaim, which was not appealed; however, **this Court understands that it should have been sustained in order to resolve in one single procedure the different claims the parties bring to court (regarding child arrangements) and, therefore, to avoid possible contradictory judicial decisions.**"

The previous case is an example of how Spanish Courts do not have common criteria regarding which procedure (Voluntary Jurisdiction or Child Arrangements Order) is best to decide relocation disputes.

THIS SITUATION CAUSES LEGAL UNCERTAINTY AND DOES NOT PROTECT CHILDREN'S BEST INTERESTS.



Voluntary Jurisdiction or Child Arrangements Order



WHAT LEGAL PROCEDURE SHOULD BE CHOSEN IN
INTERNATIONAL RELOCATION CASES?

WHAT LEGAL PROCEDURE SHOULD BE CHOSEN IN INTERNATIONAL RELOCATION CASES? **IT DEPENDS**

It will depend on **(1)** whether the couple is still together and one of them wants to move to another country -or town within Spain- but the other parent does not want to, or **(2)** whether the couple is already separated.

In the first case, a petition for parental responsibilities shall be filed applying for custody and permission to relocate.

In the second case, it will depend on whether there is joint or sole custody.

If relocation is urgent, the voluntary jurisdiction procedure should be filed first and, if this application is rejected, a Child Arrangements Order shall be filed coupled with provisional arrangements so the parent can move while the main procedure is decided upon.

For instance, in a case I dealt with in Murcia, I decided that -for that specific case- Voluntary Jurisdiction would better protect the child's best interests since there was a real and urgent need to relocate to Madrid and the mother -sole custody- could not wait for 12-24 months for a judicial decision on their case.

A year later, the Murcia Provincial High Court decided that the dispute should have been brought to court through a Child Arrangements Order procedure. However, given that the child was already settled in Madrid, the court determined that it was in his best interest to remain there.

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

LEGAL ASSISTANCE IN SPAIN

- Yes, legal assistance (asistencia jurídica gratuita) is available in Spain for relocation procedures -as well as for other legal procedures-.
- The right to free legal assistance includes some benefits, such as:

Free legal expert advice and assistance before and during the process, or court fee exemption.

LEGAL ASSISTANCE IN SPAIN

- It can be requested by people who lack sufficient assets to litigate and do not exceed certain financial thresholds as regulated by the Law. So, yes, it is subject to a means test.
- Specifically, Spanish citizens, nationals of the other Member States of the European Union and foreigners living in Spain, when they prove insufficient means to litigate, are entitled to free legal assistance.

4

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

LEGAL REPRESENTATION IN COURT

- As I said before, in Spain, there are 2 different procedures available for relocation disputes:

Child Arrangements Order and Voluntary Jurisdiction.

- While, in the first one, the parties **must be assisted** by a Lawyer/abogado and a *procurador*, a legal professional who assumes the task of representing the rights and interests of the client before the Courts of Justice; in the latter, Article 85 of Law 15/2015, on Voluntary Jurisdiction, states that **legal representation** by both lawyer and procurador **is not mandatory**.

LEGAL REPRESENTATION IN COURT

- However, even when legal assistance and representation are not mandatory, people normally go to a Court of Justice assisted by a Lawyer and a legal representative (procurador) due to the importance of a legal procedure and people's lack of legal knowledge.
- In fact, **the judge may require** both parties to go to Court legally assisted due to the complexity of these matters. For instance, if the plaintiff has decided not to be assisted by a lawyer but the defendant counterclaims, the judge shall require the plaintiff to be legally assisted.
- Therefore, no matter if the Law says the parties can represent themselves, **it is always advisable to go to Court with legal representation.**

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

Spanish Case Law and the Washington Declaration on International Family Relocation

Yes, in the Case Law I have studied for the purpose of this Conference, consideration is given to the Washington Declaration on International Family Relocation and most of the judicial decisions studied also refer to:

- The Principles of European Family Law concerning parental responsibility;
- The Hague Convention on Child Abduction (Convention of 25 October 1980 on the Civil Aspects of International Child Abduction); and
- The Hague Convention of 19 October 1996 (on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children)

RELEVANT SPANISH
CASE LAW &
THE 2010 WASHINGTON
DECLARATION

Spanish Case Law and the Washington Declaration on International Family Relocation

Most relevant cases have been judged by the **Barcelona Provincial High Court** (1) and the Spanish **Supreme Court of Justice** (2).

It is important to highlight that, whether **national or international** family relocation disputes, the Barcelona Provincial High Court takes into consideration the 2010 **Washington Declaration** principles -as well as the UN General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) and the Recommendation CM/Rec(2015)4 of the Committee of Ministers to member States on preventing and resolving disputes on child relocation- which are applied **equally** to all family relocation matters.

(1) **Barcelona Provincial High Court (AP)**

(2) **Supreme Court of Justice (TS)**

Spanish Case Law and the Hague Conference on Private International Law

As the Barcelona Provincial High Court has stated in judgments 314/2023 and 429/2024:

"These **criteria** are aimed at solving **international relocation cases**. However, they are **equally applicable** **when the relocation proposal is** to move from one city to another, **within the same country**."

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

Spanish Case Law and the Washington Declaration on International Family Relocation

For the purpose of this talk, I have studied **6 recent cases from the Barcelona Provincial High Court** (since most relevant cases published have been judged by this High Court) and they all refer to the principles of the 2010 Washington Declaration.

Barcelona Provincial High Court – CASE LAW

- **314/2023** (31 May)
- **409/2023** (06 July)
- **206/2024** (12 April)
- **296/2024** (21 May)
- **355/2024** (17 June)
- **429/2024** (30 July)

In the case law studied, I found common criteria the Provincial High Court applied in accordance with the 2010 WD, specifically:

- the child's right to maintain personal relationships with both parents;
- the child's opinion;
- the reasons for the relocation;
- any history of family violence or abuse;
- previous family decisions regarding custody and visitation rights;
- the impact of grant or refusal on both child and parents;
- the nature of parent-child relationships and
- the commitment of the parent who wants to relocate regarding the maintenance of personal relationships with the other parent;
- if the relocation proposal is realistic;
- the enforceability of contact provisions in the State of destination.

The same criteria applied in those cases where relocation was not granted, but I also found common criteria in these cases because the Provincial High Court ponders, for instance:

- Whether or not the **right to an effective legal remedy** has been infringed (in the procedure granting relocation).
- The lack of or an inadequate **statement of reasons** by the court.
- If **circumstances have changed**, between the time the divorce decree was issued and the present moment.
- Parents' **ability to reach agreements**.

CASE LAW

COMMON
CRITERIA
FOLLOWED
WHEN
RELOCATION
IS IS NOT
GRANTED

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

*DA = Domestic Abuse / DV = Domestic Violence

One of the common criteria found in the Case Law studied when relocation is granted is the family background before and after the break-up.

This is: Who has been the main caregiver, any history of violence, parental skills, if the children are currently living with the parent who seeks to move, et cetera.

So, any past or present situation of domestic abuse or violence is taken into consideration to a great extent.

In fact, regarding these types of allegations, the Constitutional Court of Spain, on the judgement of 10 March 2025, has set an important legal precedent for relocation disputes.



**THE CONSTITUTIONAL COURT OF SPAIN,
ON THE JUDGEMENT OF 10 MARCH 2025
HAS SET AN IMPORTANT LEGAL PRECEDENT
FOR RELOCATION DISPUTES.**

This recent decision says: “relocation of children whose parents are separated or divorced requires the consent of both parents or, otherwise, prior judicial authorization (if one of the parents does not consent and agree on the child's habitual residence). **However, this legal obligation may be adapted by the Court on the basis of the child’s best interests and the parents’ right under Article 19 of the Spanish Constitution (freedom of movement).** **Now,** this Constitutional Court can affirm that **the existence of gender-based violence indicators** is an important aspect to be considered by the judge as part of our civil legislation regarding children's relocation when parents are involved in separation or divorce proceedings since it is **beyond legal and logical reasoning to require a mother, who claims to be a victim of gender-based violence, to ask for the other parent’s consent** to remove the child from a potential threat to their life and safety.”



**I MUST WARN THIS CASE SETS A
DANGEROUS LEGAL AND CONSTITUTIONAL PRECEDENT
FOR RELOCATION DISPUTES IN SPAIN, GIVEN THAT**

In this decision, the Constitutional Court only refers to "reporting being a victim of gender-based violence", which is different from "BEING a victim of gender-based violence."

This difference is important because it could somehow encourage some mothers -who wish to remove their minor children from their habitual residence and stop them from seeing their other parent- to "report being a victim" in order to produce those "gender-based violence indicators" necessary to create the circumstances to relocate without the other parent's consent.



**I MUST WARN THIS CASE SETS A
DANGEROUS LEGAL AND CONSTITUTIONAL PRECEDENT
FOR RELOCATION DISPUTES IN SPAIN, GIVEN THAT**

In such a scenario, once the mother has relocated with her children, the passing of time would be enough to win the legal battle (child's settled environment) and create a new life wherever she has decided to go; and this will happen regardless of whether the mother ultimately turns out to be or not a victim of gender-based violence, since -it seems- it would be enough to "report being a victim" to relocate without the other parent's consent or prior judicial authorization.



This Constitutional decision is so recent that we will have to wait for its application in lower Courts and its consequences in future relocation cases where domestic violence or abuse is alleged.

8

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

AVERAGE TIME FRAME

In the case of a family relocation matter filed through a **Voluntary Jurisdiction procedure**:

- Theoretically, it is a quick procedure (2-3 months), but
- **in practice**, it can take **several months** depending on:
 - if an appeal is filed, or
 - the judicial delay or gridlock in that specific Court

AVERAGE TIME FRAME

When family relocation issues are filed through a

Child Arrangements Order procedure:

- On average it can last about **12-24 MONTHS** since psychological assessments are normally required to protect the child's best interest and support whether relocation should be granted or not.
- Coupled with the above, it is a **slow procedure** due to the courts' work overload and lack of staff.

However, it could take **longer in case of appeal** to the Provincial High Court, which may take another twelve months or longer.

9

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

AVERAGE SUCCESS OF RELOCATION

- **There are no records** about it since not all judicial decisions are published in Spain; so it is difficult to tell.

Therefore, I must use the Case Law studied as a reference to answer this question.

- As I explained before, I studied 6 decisions from the Barcelona Provincial High Court.
 - 2 from 2023 and 4 from 2024.
 - In 3 out of 6 cases, relocation was granted.
 - Of those 6, there were 2 international relocation cases and only in one of them, relocation was granted.

AVERAGE SUCCESS OF RELOCATION







- I would also like to point out something that I found interesting while studying those judgements because in those cases.

The previous custody arrangement before the Provincial High Court decided on the relocation dispute was:

3 Joint custody cases and 3 sole custody cases; and, contrary to what many legal professionals may think, relocation was not granted to the mother in the 3 cases where relocation was not granted.







Spanish Case Law and the Washington Declaration on International Family Relocation

In these cases, the **previous** custody arrangements were:

- **314/2023** (31 May)  **Joint custody**
- **409/2023** (06 July)  **Joint custody**
- **206/2024** (12 April)  **Sole custody granted to the father**
- **296/2024** (21 May)  **Sole custody granted to the mother**
- **355/2024** (17 June)  **Sole custody granted to the mother**
- **429/2024** (30 July)  Sole custody granted to the mother > after child arrangement order: **Joint custody**







Spanish Case Law and the Washington Declaration on International Family Relocation

Barcelona Provincial High Court – CASE LAW

- **314/2023** (31 May)  Relocation is **granted** (National relocation)
- **409/2023** (06 July)  Relocation is **granted** (International relocation)
- **206/2024** (12 April)  Relocation is **not** granted (International relocation)
- **296/2024** (21 May)  Relocation is **not** granted (National relocation)
- **355/2024** (17 June)  Relocation is **not** granted (National relocation)
- **429/2024** (30 July)  Relocation was previously **granted** and the Court consequently changed the child's custody to sole legal custody (National relocation)

Spanish Case Law and the Washington Declaration on International Family Relocation

After the Provincial High Court decided on the **family relocation**, custody arrangements were:

- **314/2023** (31 May)  Joint custody > **Sole** custody granted to the **mother**
- **409/2023** (06 July)  Joint custody > **Sole** custody granted to the **father**
- **206/2024** (12 April)  Sole custody granted to the father > = *
- **296/2024** (21 May)  Sole custody granted to the mother > = *
- **355/2024** (17 June)  Sole custody granted to the mother > = *
- **429/2024** (30 July)  Joint custody > **Sole** custody granted to the **mother**




*In these three cases relocation was not granted to the mother / In 3 out of 6 cases, relocation was granted

AVERAGE SUCCESS OF RELOCATION

- Also, the joint custody status did not influence the high court decision to grant relocation since in the 3 cases where relocation was granted the previous custody arrangement was joint custody.

Spanish Case Law and the Washington Declaration on International Family Relocation

After the Provincial High Court decided on the **family relocation**, custody arrangements were:

- **314/2023** (31 May)  Joint custody > **Sole** custody granted to the **mother**
- **409/2023** (06 July)  Joint custody > **Sole** custody granted to the **father**
- **429/2024** (30 July)  Joint custody > **Sole** custody granted to the **mother**

AVERAGE SUCCESS OF RELOCATION

- **IT IS IMPORTANT TO HIGHLIGHT THAT THE JOINT CUSTODY STATUS DID NOT HAVE AN INFLUENCE ON THE HIGH COURT DECISION TO GRANT RELOCATION AND CHANGE CHILD ARRANGEMENTS.**
- No matter who -mother or father- applies for family relocation or what type of custody, in these cases, the High Court applied the 2010 Washington declaration and resolved accordingly.

10

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



MY OPINION
ON THIS
MATTER

- In Spain, **better legal regulation** is needed to avoid legal uncertainty.
- It is urgent to **ensure a single and specific procedure to resolve family relocation disputes** *-whether national or international-*
This is achievable where the political will (legislature power) exists to do so.



MY OPINION ON THIS MATTER

- On the other hand, many judges in Spain still are not aware of the 2010 Washington Declaration Principles and the Principles of European Family Law, even though these are extremely important principles judges must know and apply within our justice system.
- In this respect, each Member State, through the competent national authority, should inform the judiciary about The Hague Conference's work since it is important to make sure judges know the principles and how to apply them.



MY OPINION
ON THIS
MATTER

Therefore, I must insist that it is urgent in Spain to ensure **a single and specific legal procedure** by drafting and implementing a law to resolve family relocation disputes.

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?

THE PROCEDURES IN SPAIN TO RECOGNISE AND ENFORCE FOREIGN DECISIONS / AGREEMENTS

- In Spain, the recognition and enforcement of a foreign child relocation decision or agreement in family matters depends on whether the decision comes from an EU country or a non-EU country.

If the Decision is from an EU Country

If the Decision is from an EU Country, Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction –also known as the Brussels II ter Regulation- applies and decisions on parental responsibility (including child relocation) from another EU country are automatically recognised in Spain without the need for special proceedings; So, no declaration of enforceability (exequatur) is required.

If the Decision is from an non-EU Country

If the Decision is from a non-EU Country, an Exequatur Procedure (Recognition and Enforcement) is necessary under Law 29/2015, of 30 July, on International Legal Cooperation on Civil Matters and the parent seeking recognition shall file an application before the Juzgado de Primera Instancia (First Instance or Family Court) where the enforcement is sought.

In these cases, the foreign decision must meet certain conditions such as the right to a fair trial, if the court that decided on the case had jurisdiction, or if the decision complies with the Spanish Public Order.

THE PROCEDURES IN SPAIN TO RECOGNISE AND ENFORCE FOREIGN DECISIONS / AGREEMENTS

In conclusion:

- If the decision is from an **EU country**, recognition is automatic, and enforcement can be sought in Spanish courts.
- If the decision is from a **non-EU country**, it must go through the exequatur process before being enforced.

And, in any case, the **child's best interests** are always the primary consideration in the Spanish Courts of Justice.

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

The problem may arise when the parent who does not comply with the relocation decision or agreement decides to move to another place and change the child's habitual residence without the other parent's consent or court approval. This could constitute a wrongful removal or retention of a child, and Spain would consequently apply the 1980 Hague Convention on International Child Abduction and the 1996 Hague Convention on Parental Responsibility.

Besides, parents who do not comply with relocation decisions or agreements may face a change of custody that could be filed by the other parent through a Child Arrangements Order Procedure (due to violation of parental responsibility) or a Voluntary Jurisdiction procedure, in case the situation needs an urgent judicial response under Articles 156 or 158 of the Spanish Civil Code (for example, if the parent fears the child would never be returned or has serious concerns about the child's safety).

Furthermore, in Spain, if the relocation violates an existing custody agreement or court decision, the change of habitual residence of the child may constitute a child abduction crime under Article 225 bis of the Spanish Criminal Code. Consequently, parental responsibility may be terminated for 4-10 years, facing a prison sentence of 2-4 years.

GRACIAS

THANK YOU