

Relocation & Child abduction a Lebanese Perspective

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Introductory notes

- religious authorities have predominant jurisdiction over matters related to the family and especially matters of personal statutes (matters of marriage, divorce, alimonies, child welfare etc...).
- the religious court's jurisdiction is mandatory and is a matter of public policy
- in Lebanon we don't have a general law applicable in matters of family relationship
- matters related to the movement of children within the Lebanese Borders and across these borders matters related directly or indirectly matters related to personal statutes and therefore are subject to the competence of the religious authorities and their courts

Child abduction and relocation in the laws of the religious courts in Lebanon

- some of the laws of personal statutes addressed the matters related to the child mobility by application of the applicable personal statute law in regard to parental responsibility and child custody
 - the parent holding the parental authority or has the legal or physical custody of a child cannot move with him/her outside the borders of the Lebanese Republic without the consent of the other parent or the reference to the competent religious court
- Examples:
- ✓ "The custodian is not entitled to travel with the child without the consent of the other party or the approval of the court" Art 59 – Orthodox
 - ✓ "In the case the custodian mother of the child is separated from the father, she is not entitled to travel with the child from a country to another without the prior consent of the father. Same for the father who is not entitled to take the child out of the country of the country of the mother without her prior consent in the case she is a custodian unless otherwise decided by the court on both cases" Art. 127 – Cath.

Child abduction and relocation in the laws of the Muslim Sunni courts in Lebanon

Decision 46, art 22, the mother or any other custodian of the child is not entitled to travel with the child whether living with or separated from the father or the Tutor (holder of the parental authority) without the written notarized consent of this father (or the tutor) or by referring to the court, even if she is taking the child (or children) where she first got married with father of the child. Same rule applies for the father (or tutor) when the child is within the legal custody of the mother. The text give express authority to the Sharia Judge to order a travel ban injunction or to order a permission to leave injunction by reference to the interest of the child

• The text organizes the internal movement. Although the country is very small, the text of article 23 of the decision 46 clearly states that the child shall remain in the town where his father (tutor- holder of the parental authority) is living and the mother is not authorized to taken him/her out unless she is taking him/her to her home town where she has male close relatives.

Child abduction and relocation within the jurisprudence of the criminal courts

Article 495 of the Criminal code incriminates positive removal and kidnapping of a child from his legal custodian

Article 496 incriminates a parent (or a non-parent) who refuses or delays the execution of a court decision ordering the remittance of a child

Application of foreign laws and enforcing foreign decisions

Application of a foreign Law by the Lebanese courts

✓ "...foreign nationals, even if they follow a recognized faith in Lebanon that has an organized regime of personal statute, are subject to their national law in their personal statutes matters"

✓ Which foreign law? The law of Nationality of the Husband

Enforcement of a foreign Court Decision in matter of Child Custody, welfare, residence

✓ party upholds a foreign court decision

✓ Exequatur procedure

✓ Outcome of an exequatur procedure

Concluding note

In our opinion the real solution shall be by drafting a new law special to mobility of children offering real tools to prevent unlawful movements of children and to guarantee the return of the children to their "habitual residence"
