

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	636
Land:	Syrien
Kilde:	Udenrigsministeriet
Titel:	Udenrigsministeriets hørings svar af 12. juli 2016 vedr. asylsag og familiesammenføring - svar på konkrete spørgsmål.
Udgivet:	12. juli 2016
Optaget på baggrundsmaterialet:	11. oktober 2016

NOTAT

Anonymiseret kopi

SYRIEN. Asylsag og familiesammenføring: svar på konkrete spørgsmål fra Udlændingestyrelsen. US mail af 3.5.2016 US ref. [REDACTED]

Udlændingestyrelsen har anmodet udenrigsministeriet om assistance til at få svar på en række konkrete spørgsmål i forbindelse med en anmodning fra syriske statsborgere om familiesammenføring.

De af Udlændingestyrelsen rejste spørgsmål har været forelagt den af Danmarks ambassade i Beirut sædvanligt anvendte juridiske kilde i Syrien.

Kildens besvarelse af de stillede spørgsmål er som følger, idet Kilden indledningsvis finder behov for at definere dels "custody" dels "guardianship", således som disse begreber forstås i den syriske lovgivning "the Syrian Personal Status Law" (artiklerne 137-151):

Ad Custody:

*Custody is the act of bringing up, attending to and caring for a child at a certain age.
For a boy: up until he reaches the age of 13
For a girl: up until she reaches the age of 15*

Priority of custody goes to the mother.

In cases where the mother is not present or not eligible, the custody will go to the maternal grandmother, then to the maternal great grandmother, then to the paternal grandmother or to the paternal great grandmother.

Custody is conditioned by eligibility, maturity, rigorous mind and ability to maintain and attend to the child.

Custody is lost in the following cases:

- *the marriage of the mother*
- *the inability of the custodian to attend to and take care of the child*
- *the mother being away from the child due to work obligations*
- *the mother traveling with the child without permission*

Custody will be restituted to the "priority custodian" once the reason that led to its loss vanishes.

The decision on whether the custodian is eligible or not and whether the custody is lost is made by the Sharia Judge.

Ad Guardianship:

Guardianship has two aspects:

- *Al Wilaya (the guardian is called Wali)*

Al Wali is the administrator of the minor's money, mind, soul and spirit (called Al-Nafs in Arabic). Administrating the mind, soul and spirit of the child includes the disciplinary authority, health, education and approval of marriages.

Al Wilaya always goes to the father unless he is dead or ineligible. In this case, the paternal grandfather replaces the father.

- *Al Wissaya (the guardian is called Wassi)*

In the case where Al Wali is not present or ineligible to administrate the minor's money then the Sharia Judge appoints a "Wassi" whose role would be to administrate the minor's money.

Al Wisaya always goes to the father unless he is dead or ineligible. In this case, the Legal Judge will decide upon a guardian.

Questions & answers:

In a case where a married couple with children has been separated by unknown circumstances and against their will, and the minor children are staying with the father, who has no contact with the mother (and the mother's family):

a) Who has custody of the minor children according to Syrian legislation?

According to the Syrian legislation, if a married couple has been separated by unknown circumstances and against their will and the minor child is staying with his father who has no contact with the mother (and the mother's family), then the custody will go to the paternal grandmother or to the paternal great grandmother.

The child may also stay with his father in his capacity of guardian (Wali/ Wassi) as long as there is no dispute over the custody.

b) Is it a prerequisite that the father obtains a decision from the court to get custody of his minor children?

The custody is exclusively given to the mother (the father cannot be custodian).

The child may however stay with his/her father in his capacity of guardian (Wali/ Wassi) as long as there is no dispute over the custody, and consequently the father does not need a court ruling to keep the children with him.

c) If so, and the father cannot obtain a decision from the court, because of the current situation in the country or because he has left the country, would he be able to obtain custody of the children in another way e.g. by proxy or outside of Syria?

Whether the father is inside or outside Syria, he does not need a court ruling to keep the children with him. He is according to the Syrian law the guardian (Wali/ Wassi) over the children. The father may keep the children with him as long as there is no dispute over the custody.

What is the procedure for obtaining a decision from the court regarding custody in Syria?

The mother or the female custodian files an application to the Sharia Court requesting to get the children. An extract of the family registration and a marriage certificate have to be attached to the application. Once the Legal Judge makes his decision then the children have to be handed over to the custodian.

In light of the abovementioned situation, who gets custody of the minor children, in a case where the parents are legally divorced, the mother has left the minor children with the father, who has no contact with the mother and the mother's family?

In a case where the parents are legally divorced, the mother has left the minor children with the father, who has no contact with the mother and the mother's family, then the custody will go to the paternal grandmother or to the paternal great grandmother.

The children may also stay with their father in his capacity of guardian (Wali/ Wassi) as long as there is no dispute over the custody.

Udenrigsministeriet, den 12. juli 2016