



## Significance of the new provisions of the Civil Code on joint parental responsibility in international cases

The new provisions on joint parental responsibility came into force on 1 July 2014. These may have repercussions on the assessment of the legality of a child being removed to or retained in another country in terms of the Hague Convention on International Child Abduction (Art. 3 und 5 HCCA). This document summarises the more important consequences and the legal principles behind them. More detailed information is available in German, French and Italian on the website of the Federal Office of Justice:

(<https://www.bj.admin.ch/content/bj/de/home/themen/gesellschaft/gesetzgebung/elterlichesorge.html>), in particular the report of the Federal Office of Justice from May 2014:  
<https://www.bj.admin.ch/content/dam/data/bj/gesellschaft/gesetzgebung/elterlichesorge/ber-bj-d.pdf>.

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### Basic principle

Joint parental responsibility means that the parents decide jointly on all matters concerning the child, with the exception of everyday or urgent matters when the other parent cannot be consulted without incurring unreasonable trouble or expense (Art. 301 para. 1<sup>bis</sup> Civil Code).

### Right to decide on the child's place of residence

Parental responsibility includes the right to decide where the child lives (Art. 301a para. 1 Civil Code). The former right of a parent granted sole custody ("Obhut", "garde", "custodia") to decide alone on the child's place of residence ceased to apply as of 1 July 2014.

### Moving abroad

With joint parental responsibility, the child may only move abroad permanently with the consent of the other parent or on the basis of a decision made by a court or the child protection authority (Art. 301a para. 2 Civil Code).

### Staying abroad

If the child is habitually resident abroad, generally speaking the Swiss authorities have no jurisdiction to decide on matters of parental responsibility (Art. 5 HCCP). This also applies to a subsequent application for joint parental responsibility (Art. 12 para. 1 Final Title Civil Code).

### Foreign law

If joint parental responsibility applies at the child's habitual place of residence abroad, it continues to apply if the child moves permanently to Switzerland (Art. 16 para. 3, 20 HCCP).

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## Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (Hague Convention on Child Abduction, HCCA)<sup>1</sup>

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### Art. 3

The removal or the retention of a child is to be considered wrongful where -

- a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State

### Art. 5

For the purposes of this Convention -

- a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
- b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence

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## 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 (Hague Child Protection Convention, HCCP)<sup>2</sup>

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### Art. 5

(1) The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.

(2) Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

### Art. 16

(1) The attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority, is governed by the law of the State of the habitual residence of the child.

(2) The attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect.

(3) Parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State.

(4) If the child's habitual residence changes, the attribution of parental responsibility by operation of law to a person who does not already have such responsibility is governed by the law of the State of the new habitual residence

### Art. 20

The provisions of this Chapter apply even if the law designated by them is the law of a non-Contracting State.

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## Swiss Civil Code<sup>3</sup>

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### Art. 301 para. 1bis

The parent who is taking care of the child may decide alone if:

1. the matter is routine or urgent;
2. the other parent cannot be consulted without incurring unreasonable trouble or expense

### Art. 301a

1. Parental responsibility includes the right to decide on the child's place of residence.

2. If parents exercise joint parental responsibility and if one parent wishes to change the child's place of residence, this requires the consent of the other parent or a decision of the court or the child protection authority if:

- a. the new place of residence is outside Switzerland; or
- b. the change of place of residence has serious consequences for the ability of the other parent to exercise parental responsibility and have contact.

3. If one parent has sole parental responsibility and if he or she wishes to change the child's place of residence, he must inform the other parent of this in good time.

4. A parent who wishes to change his or her own domicile has the same duty to provide information.

5. If required, the parents shall agree to modify the rules on parental responsibility, residence, contact and the child maintenance contribution in such a way as to safeguard the child's well-being. If they are unable to agree, the court or the child protection authority decides.

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<sup>1</sup> [SR 0.211.230.02](#)

<sup>2</sup> [SR 0.211.231.011](#)

<sup>3</sup> [SR 210](#)