## RESOLUTION (72) 1

## ON THE STANDARDISATION OF THE LEGAL CONCEPTS OF "DOMICILE" AND OF "RESIDENCE"

*(Adopted by the Committee of Ministers on 18 January 1972 at the 206th meeting of the Ministers' Deputies)*

The Committee of Ministers,

Having regard to Resolution (63) 29 on the legal programme of the Council of Europe;

Having considered the proposals contained in the report of the CCJ on its 16th Session;

Aware of the fact that the objectives sought in European agreements for the standardisation of certain legal rules are frequently jeopardised in practice because the same concepts are variously interpreted in the different countries;

Considering that the effectiveness of any attempt to standardise national laws depends, to a considerable degree, on the standardisation of fundamental legal concepts;

Considering, moreover, that the standardisation of fundamental legal concepts would be likely to reduce considerably the difficulties arising out of conflict of laws;

Convinced that it is highly desirable to proceed as of now with a progressive standardisation of the legal concepts of "domicile" and of "residence",

Recommends to governments of member States :

1. to be guided, with regard to their respective laws by the Rules contained in the Annex relating to the concepts of domicile and residence, at least in their applications in the international field, without prejudice, however, to any special meaning which may be attributed to these concepts for particular purposes;

2. to inform the European Committee on Legal Co-operation (CCJ) of all measures taken for that purpose;

3. to make known the Rules and the explanatory memorandum as widely as possible.

# ANNEX

## RULES

### Domicile

No. 1. The concept of domicile imports a legal relationship between a person and a country governed by a particular system of law or a place within such a country. This relationship is inferred from the fact that that person voluntarily establishes or retains his sole or principal residence within that country or at that place with the intention of making and retaining in that country or place the centre of his personal, social and economic interests. This intention may be inferred, inter alia, from the period of his residence, past and prospective, as well as from the existence of other ties of a personal or business nature between that person and that country or place.

No. 2. A person's domicile is regarded as continuing until another domicile is acquired.

No. 3. The domicile of a married person does not depend upon that of his spouse, but the domicile of one spouse is an element which may be taken into consideration in determining the domicile of the other.

No. 4. If a minor lacks legal capacity to acquire a domicile of his own, his domicile is that of the person who has the right to fix his residence. Nevertheless, if at the instance or with the consent of that person or of a competent authority, the minor resides in another country and has there the centre of his personal, social and economic interests, he shall be deemed to have his domicile in that other country.

No. 5. If a person of full age lacks legal capacity to acquire a new domicile, he shall retain his existing domicile, subject however to the following rules applicable where another person has the right to fix his residence.

Where the incapax and the person who has the right to fix his residence are both domiciled in the same country, the incapax shall be deemed to have his domicile there, in the same place as that person. If, at the instance or with the consent of that person or of a competent authority, the incapax resides in another country and has there the centre of his personal, social and economic interests, he shall be deemed to have his domicile in that country.

No. 6. If the domicile of a person who possesses a sole or principal residence cannot be determined in terms of the preceding rules, he shall be regarded as being domiciled in the place of that residence. The same rule applies to refugees from the country of their former domicile who have not yet established a domicile in another country in terms of Rule No. 1.

### Residence

No. 7. The residence of a person is determined solely by factual criteria; it does not depend upon the legal entitlement to reside.

No. 8. A person has a residence in a country governed by a particular system of law or in a place within such a country if he dwells there for a certain period of time. That stay need not necessarily be continuous.

No. 9. In determining whether a residence is habitual, account is to be taken of the duration and the continuity of the residence as well as of other facts of a personal or professional nature which point to durable ties between a person and his residence.

No. 10. The voluntary establishment of a residence and a person's intention to maintain it are not conditions of the existence of a residence or an habitual residence, but a person's intentions may be taken into account in determining whether he possesses a residence or the character of that residence.

No. 11. A person's residence or habitual residence does not depend upon that of another person.