

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RESOLUTION (78) 37

ON EQUALITY OF SPOUSES IN CIVIL LAW

*(Adopted by the Committee of Ministers on 27 September 1978
at the 292nd meeting of the Ministers' Deputies)*

The Committee of Ministers,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, *inter alia*, by promoting the adoption of common rules in legal matters ;

Recognising that the principle of legal equality between spouses is being implemented progressively in the member states of the Council of Europe ;

Noting, however, that discrimination against spouses still subsists in some states and is sanctioned by legal provisions ;

Concerned to promote equality of spouses in civil law while respecting as far as possible national customs, if any, in the proposed solutions ;

Conscious of the necessity to ensure or promote the equality of spouses in other branches of the law, in particular in constitutional, administrative, fiscal, criminal, social or labour laws,

A. Recommends governments of member states to grant or promote equality of spouses in civil law concerning the matters referred to in paragraphs 1 to 19 of this resolution and to this end :

I. *General matters*

1. to take all necessary steps to ensure that the civil law does not contain provisions whereby a spouse is put in a more advantageous position than the other spouse, in particular by being designated to act as the head of the family or by being given the sole right either to take decisions concerning the other spouse or to represent this spouse ;

2. to ensure that both spouses have equal rights where the civil law contains provisions to resolve questions in cases of absence of agreement between the spouses ;

II. *Personal matters concerning the spouses*

3. to ensure that both spouses have equal rights to freedom of movement, in particular, to grant an equal right to each spouse to travel within the state of his habitual residence and to leave and return to this state ;

4. to grant both spouses equal rights to exercise a trade or profession and undertake or continue studies of their choice ;

5. to ensure that both spouses have equal rights to choose the common residence of the family and that each spouse has an equal right to a residence separate from that of the other spouse, in cases where such a right is granted ;

6. to regulate matters concerning the family name of the spouses to ensure that a spouse is not required by law to change his family name in order to adopt the family name of the other spouse and, in doing so, to be guided for instance by one of the following systems :

i. choice of a common family name in agreement with the other spouse, in particular the family name of one of the spouses, the family name formed by the addition of the family names of both spouses or a name other than the family name of either spouse ;

ii. retention by each spouse of the family name he possessed prior to the marriage ;

iii. formation of a common family name by the operation of law by the addition of the family names of both spouses ;

7. to allow, after the dissolution of the marriage, each spouse to retain the common family name unless, in the case of a divorce, one of the spouses has obtained a decision from the appropriate authority requiring the former spouse to cease using the family name, for serious reasons, which apply equally to both spouses ;

III. *Matters concerning the property and financial relations of the spouses*

8. to take all necessary steps in relation to household expenses or maintenance to ensure :

i. that household expenses are borne jointly by both spouses according to the means of each spouse, work in the house by one spouse being considered as a contribution to household expenses ;

ii. that each spouse has equal obligations and rights in respect of maintenance and assistance from the other spouse during the marriage, or of maintenance after the dissolution of the marriage ;

iii. that each spouse has a duty to give sufficient information to the other spouse concerning his own financial situation for the purpose of ascertaining the amount of his contribution to the household expenses or to the maintenance of the other spouse as provided for in subparagraphs i and ii above ;

9. to take all necessary steps to ensure the provision of legal protection for the spouse who lives in or has lived in the family home but who does not own or possess a lease or any other right to the enjoyment of this home when such rights belong or have belonged to the other spouse and could be lost or have been lost owing to the unfair behaviour of this spouse, without prejudice to the rights of third parties ;

10. to take all necessary steps in relation to contracts of marriage to ensure :

i. that the laws relating to such contracts do not contain provisions which discriminate against one spouse ;

ii. that such contracts do not contain terms providing for an irrevocable transfer of the powers of administration of the property by one spouse to the other spouse ;

11. to provide for the removal of all presumptions relating to property based on the sex of either spouse ;

12. to give both spouses equal rights and obligations concerning their common property where the operation of law provides for a matrimonial property regime of community of goods and in particular :

i. the right to be informed by the other spouse of the actual extent of the common property ;

ii. an equal right to use, administer, receive profits or dispose of the common property and income as well as to share in the division of the property ;

iii. equal obligations concerning debts.

13. to ensure that where the operation of law provides for the sharing of the property acquired during the marriage and, where applicable, the property belonging to one of the spouses, the legal provisions protecting the rights of the spouses in such property, for example, the prohibition of gifts of great value, should be the same for both spouses ;

14. to ensure that, where a matrimonial property regime of separation of goods arises by the operation of law, a spouse, on the termination of the marriage by a judicial decree of divorce or nullity, has a legal right to obtain a fair share in the property of his former spouse, or a fixed sum, for any financial inequalities which had arisen during the course of the marriage ;

15. to ensure that, in those legislations which have provisions for dowries, both spouses have equal rights both to administer the dowry property, for example joint administration by both spouses, as well as to dispose of this property if such a disposal is not prohibited by law ;

16. to grant each spouse an equal right to be informed of the extent of the property belonging to the other spouse where the law requires such information to be given ;

IV. *Matters concerning the spouses and their common children*

17. to consider the possibility of taking the necessary steps with a view to allowing both spouses equal rights as to the family name to be given to the children of their marriage, or the children adopted by them, by making use, for instance, of one of the following systems :

i. when the parents do not have a common family name ;

a. to allow the child to take the family name of the parent whose name he was not granted by law,

b. to allow the family name of the children to be chosen by the common agreement of the parents ;

ii. when the parents have, by the addition of their family names, a common family name which has been either chosen by them or formed by the operation of law, the omission of part of this family name should not lead to discrimination concerning the choice of the family name or names to be omitted ;

18. to take all necessary steps to grant both spouses equal rights and obligations in respect of the children of the marriage and children adopted by them in particular in the following matters :

i. the use, administration, receipt of profits, disposal of the property or income of the child ;

ii. the legal representation of the child ;

iii. decisions concerning the personal life of the child, in particular matters relating to education, religion, health, travel, consent to marriage, adoption, choice of the first name or first names of the child, access and other rights and obligations concerning the child itself ;

iv. the contribution of spouses towards the maintenance of their children according to the means of each spouse ;

19. to take all necessary steps to ensure that, in the case of separation and after the dissolution of the marriage, the rights and obligations granted to spouses or former spouses concerning their common children, shall be given without any discrimination based on the sex of the parents ;

B. Invites governments of member states to inform the Secretary General of the Council of Europe in due course of the measures taken in order to implement the recommendations contained in this resolution.