Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 1271 (1995)[1]

Discrimination between men and women in the choice of a surname and in the passing on of parents' surnames to children

Parliamentary Assembly

1. The Assembly recalls that a name is an element which determines the identity of individuals and that, for this reason, the choice of name is a matter of considerable importance. Continued discrimination between men and women in this area is therefore unacceptable.

2. Many countries have introduced legislative reforms in recent decades with the aim of gradually achieving equality between the sexes in respect of the legal system governing surnames. Other countries have, however, retained the traditional legal systems based on criteria which are often doubly discriminatory: discriminatory between mother and father and discriminatory in terms of whether the child is born in or out of wedlock. Accordingly, a determined effort needs to be made to ensure that the legislation of all Council of Europe member states is quickly brought into line with the major principles of equality.

3. The Assembly points out that the Committee of Ministers of the Council of Europe adopted a very explicit resolution in 1978 (Resolution (78) 37), which recommended, inter alia, that member states should eliminate all discrimination between men and women in the legal system governing surnames. It further points out that many Council of Europe member states have ratified the United Nations convention of 18 December 1979, Article 16 of which stipulates that all signatory states should take the necessary measures to eliminate all sexist provisions in respect of the right to choose a family name.

4. The Assembly is therefore surprised that no follow-up action has been taken by some Council of Europe member states on the Committee of Ministers' 1978 resolution. It is also surprised that those member states which are signatories to the international convention initiated by the United Nations in 1979 have not fulfilled their commitments.

5. Consequently, the Assembly recommends that the Committee of Ministers of the Council of Europe identify those member states which retain sexist discrimination and ask them to take the appropriate measures to:

5.1. implement strict equality between mother and father in the passing on of a surname to their children;

5.2. ensure strict equality in the event of marriage with regard to the choice of a common surname for both marriage partners;

5.3. eliminate all discrimination in the legal system for conferring a surname between children born in and out of wedlock.

6. The Assembly also recommends that the Committee of Ministers ask each member state which is a signatory to the 1979 United Nations convention and which has not brought its legislation into line to specify whether it plans to do so, and if so, when and how.

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1. Assembly debate on 28 April 1995 (16th Sitting) (see Doc. 7259, report of the Committee on Legal Affairs and Human Rights, rapporteurs: Mrs Err and Mr Masson). Text adopted by the Assembly on 28 April 1995 (16th Sitting).