

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (84) 4

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON PARENTAL RESPONSIBILITIES ¹

*(Adopted by the Committee of Ministers on 28 February 1984
at the 367th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

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

Considering that it is possible to make improvements to the legal systems relating to parental responsibilities in order to promote the development of the personality of the child and to protect his person and his moral and material interests while guaranteeing legal equality between parents,

Recommends governments of member states to adapt, where necessary, their legislation to comply with the principles concerning parental responsibilities set out in the appendix to this recommendation.

Appendix to Recommendation No. R (84) 4

Principle 1

For the purposes of this recommendation :

- a. parental responsibilities are a collection of duties and powers which aim at ensuring the moral and material welfare of the child, in particular by taking care of the person of the child, by maintaining personal relationships with him and by providing for his education, his maintenance, his legal representation and the administration of his property ;
- b. the terms "father", "mother", "parents" refer to persons having a legal filiation link with the child.

Principle 2

Any decision of the competent authority concerning the attribution of parental responsibilities or the way in which these responsibilities are exercised should be based primarily on the interests of the child. However, the equality between parents should also be respected and no discrimination should be made, in particular on grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

1. When this recommendation was adopted and in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies,

— the Representatives of Denmark, Liechtenstein, Norway and the United Kingdom reserved the right of their Governments to comply or not with the first paragraph of Principle 9 as set out in the appendix to the recommendation ;

— the Representative of the Netherlands reserved the right of his Government to comply or not with Principle 11 as set out in the appendix to the recommendation.

Principle 3

When the competent authority is required to take a decision relating to the attribution or exercise of parental responsibilities and affecting the essential interests of the children, the latter should be consulted if their degree of maturity with regard to the decision so permits.

Principle 4

When the persons having parental responsibilities exercise them in a way which is detrimental to the essential interests of the child, the competent authority should take, of its own motion or on application, any appropriate measures.

Principle 5

Parental responsibilities for a child of their marriage should belong jointly to both parents.

Principle 6

In the case of a dissolution of the marriage or of a separation of the parents, the competent authority requested to intervene should rule on the exercise of parental responsibilities. It should accordingly take any appropriate measures, for example by dividing the exercise of the responsibilities between the two parents or, where the parents consent, by providing that the responsibilities should be exercised jointly. In taking its decision, the authority should take account of any agreement concluded between the parents provided it is not contrary to the interests of the children.

Principle 7

1. Where the child is born out of wedlock and a legal filiation link is established with regard to one parent only, the parental responsibilities should belong to that parent.
2. Where the child is born out of wedlock and a legal filiation link is established with regard to both parents, national law may provide that the parental responsibilities should be exercised :
 - a. subject to the provisions of Principle 8 :
 - i. by the mother alone ;
 - ii. by the father alone, when a decision has been taken by the competent authority or when an agreement has been concluded between the two parents ;
 - b. according to the division between the two parents decided by the competent authority ;
 - c. jointly by both parents if they live together or if an agreement has been concluded between them.

Principle 8

In all cases both parents should be under a duty to maintain the child. The parent with whom the child does not live should have at least the possibility of maintaining personal relationships with the child unless such relationships would be seriously harmful to the interests of the child.

Principle 9

1. Where the parental responsibilities are exercised jointly by both parents and one of them dies, these responsibilities should belong to the surviving parent.
2. Where the parent who exercises alone some parental responsibilities dies, his responsibilities should be exercised by the surviving parent unless the interests of the child require any other measures.
3. Where there is no longer any parent living, the competent authority should take a decision concerning the attribution of parental responsibilities. National legislation may provide that these responsibilities may be given to a member of the family or to a person designated by the last parent to die, unless the interests of the child require any other measures.

Principle 10

1. Where parental responsibilities are exercised jointly by both parents, any decision affecting the interests of the child should be taken by the agreement of both.
2. Where there is a disagreement and the matter is referred to the competent authority by one of the parents, this authority should, insofar as the interests of the child so require, try to reconcile the parents, and, if this fails, take the appropriate decision.
3. With regard to third parties, the agreement of both parents should be presumed except in cases where national law, having regard to the importance of the interests at stake, requires an express agreement.

Principle 11

Each parent should normally be informed of the exercise of the responsibilities which have not been given to him, to the extent desired by him and, in any event, when the essential interests of the child are affected.