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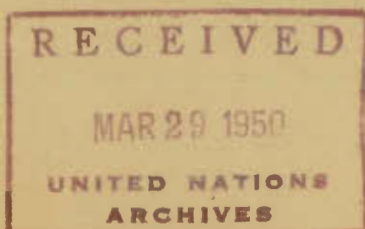
ANALYSIS OF CONFLICTS OF LAWS RELATING
TO THE DOMICILE OF MARRIED WOMEN

Summary

This document contains an analysis of the replies of Member Governments to questions IV (1) and (2) of the supplementary list of questions dealing with the domicile of married women. The information contained in these replies has been supplemented through independent research of the Secretariat in the legal systems of other countries. It is being circulated to Member States in accordance with resolution 242 C (IX) of the Economic and Social Council of 1 August 1949.

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/INTRODUCTORY NOTE
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INTRODUCTORY NOTE

1. The Economic and Social Council in its resolution 242 C (IX) of 1 August 1949 requested the Secretary-General:

"..... to prepare and circulate to Member States, an analysis of the conflicts in law demonstrated in documents E/CN.6/82¹/, E/CN.6/82/Add.1 and 2, and E/CN.6/81/Rev.1²/ and in any further replies received from Governments"

2. In accordance with this resolution the Secretary-General has prepared and circulated to Member States an analysis of conflicts of laws in the field of nationality of married women (document E/CN.6/126).

The Secretary-General has also prepared and circulated a compilation of the replies received by him to the supplementary list of questions (document E/CN.6/81/Rev.1) as of 1 February 1950 (document E/CN.6/127).

3. The present document is an analysis of conflicts of laws in the field of domicile of married women, as shown in the replies of Governments to questions IV (1) and (2) of the supplementary list of questions. While all the questions included in the supplementary list are relevant for the Commission on the Status of Women under its term of reference, only the question of domicile of married women is connected with the Commission's present urgent tasks. In view of the limited number of replies received from Governments and also in view of the fact that some of the questions on the supplementary list range over large fields of private international law, the analysis of conflicts of laws revealed in the replies to the other questions on the list will be prepared by the Secretariat for a later session of the Commission on the Status of Women.

The conflicts of laws revealed in the replies to question III (effect of the nullity of marriage on the nationality of the wife) have been included in the analysis of the conflicts of laws in the field of nationality of married women (document E/CN.6/126).

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- 1/ Report based on replies to part I, section G (Nationality) of the questionnaire on the legal status and treatment of women.
- 2/ Supplementary list of questions on Nationality and Domicile as they affect the status of married women.

/4. The present

4. The present analysis is based on the replies to the supplementary list of questions received from Governments, and on the documentation compiled by the Secretariat as a result of research into the legal systems of Member States which have not replied to the questionnaire, as well as of countries other than Members of the United Nations.

Chapter II of this document reviews the provisions contained in the national laws relating to conflicts of law in the field of domicile of married women.

There exists at the present time no international convention concerning the domicile of married women.

I. SOURCES OF CONFLICTS OF LAWS RELATING TO DOMICILE OF MARRIED WOMEN

Conflicts of laws relating to domicile of married women arise where various legal systems apply divergent principles with respect to the effect on the wife's domicile of the marriage itself, of a change of domicile by the husband during marriage, and of the separation of the spouses. However, the problem of the effect of the marriage itself on the domicile of the wife does not arise if both spouses have the same domicile at the time of their marriage and keep it thereafter: in this case, the wife retains the same domicile after the marriage.

Three main systems prevail in the world of today:

(1) The first system is based on the principle that the domicile of the wife follows the domicile of the husband. Marriage itself and change of domicile by the husband during marriage have, therefore, a direct effect on the domicile of the wife.

(2) The second system also recognizes the principle of inequality of sexes in the field of domicile; however, in order to avoid considerable practical inconvenience for women, the principle of unity of domicile in the family is superseded in certain cases by the rule that in the case of the separation of spouses, as well as under certain other circumstances, the married woman can establish her own domicile independently of her husband.

(3) The third system is based on the principle of equality of sexes in the field of domicile: marriage itself, change of domicile by the husband during marriage, or the separation of the spouses have no effect on the domicile of the wife.

It is obvious that if all the countries of the world followed one of the three prevailing systems the causes of double domicile or of lack of domicile of married women would be eliminated. If the first system became general, the wife would always lose her original domicile but would always acquire the domicile of her husband; if the second system were universally and consistently applied, the married woman would have the right to establish her own domicile under identical circumstances (or under identical conditions) all over the world; if the third system prevailed, the wife would in all circumstances retain her own domicile and would not acquire that of her husband. /It appears

It appears therefore that the real cause of double domicile or of lack of domicile for married women does not reside in any one of the prevailing systems of law but in the co-existence in the world of three main and differing systems.

II. PRESENT SOLUTIONS OF CONFLICTS OF LAWS RELATING TO THE DOMICILE
OF MARRIED WOMEN: SYSTEMS OF NATIONAL LAW

A. First group:

The domicile of the wife follows the domicile of her husband

The application of this general principle of law affects the domicile of the woman either as a result of her marriage as such, or upon the change of domicile by her husband during marriage, or after her separation from the man whose domicile she had acquired through marriage.

The application of the principle that the domicile of the wife follows the domicile of her husband has the following effects:

Upon marriage, the woman acquires her husband's domicile and loses her original domicile.

When the husband changes his domicile, the wife acquires her husband's new domicile.

Upon separation of the spouses, the wife retains her husband's domicile.

Belgium and Pakistan can be taken as examples of this type of legal system.

Article 108 of the Belgian Civil Code states:

"The married woman has no domicile other than that of her husband."

The law of Pakistan says that "a married woman acquires the domicile of her husband and is always deemed to have the domicile of her husband".^{1/}

In England, similar principles are applied by the Courts. It is an accepted rule of Common Law that "a married woman's domicile is the same as that of her husband, even though she is in fact living apart from him"^{2/} and that "even judicial separation does not change the wife's domicile or enable her to acquire an independent domicile."^{2/} Similar legal provisions are in force in Haiti and in Nicaragua.

^{1/} Reply of the Government of Pakistan to the supplementary list of questions.

^{2/} Jenk's "English Civil Law", vol. I, p. 3, #10; London, 1947.

B. Second group:

The domicile of the wife follows that of the husband
except in certain specified cases

In this group, the principle of unity of domicile in the family is generally applied, except where the application of this principle would cause undue hardship or inconvenience to the wife. Under the legal systems in this group, the wife acquires her husband's domicile as a result of her marriage but generally loses it and acquires her own domicile in case of separation. In several countries belonging to this group, certain changes of domicile by the husband, for example when he leaves his country and establishes his domicile abroad, do not affect the wife's domicile and give her the right to retain an independent domicile in that country.

The main features of the legal systems of this group are the following:

Upon marriage, the woman acquires her husband's domicile and loses her original domicile.

When the husband changes his domicile, the wife acquires her husband's new domicile, except in certain cases.

Upon separation of the spouses, the wife regains her right to have a domicile independent of her husband's.

In the following countries, the domicile of the wife follows the domicile of her husband except in case of judicial separation:

In Italy, the wife has the domicile of her husband unless and until she is judicially separated from him.^{1/}

In Lebanese law, a married woman is deemed to have the same domicile as her husband unless she is separated from bed and board.^{2/}

In the Philippines, "in the case of a married woman who is not legally separated from her husband, it is presumed that her domicile is the same as that of her husband".^{3/}

Another group of legal systems permits the wife to establish a separate domicile in certain cases other than separation:

^{1/} Article 18, Civil Code of 1865, as amended 1929.

^{2/} Reply of the Government of Lebanon to the supplementary list of questions.

^{3/} Reply of the Government of the Philippines to the supplementary list of questions.

/In France,

In France, the married woman has no other domicile than that of her husband, but the legal domicile of the wife separated from bed and board is not her husband's domicile.^{1/} However, articles 213 and 215 of the Civil Code permit the wife to choose the place of residence for the family if the place chosen by the husband presents a physical or moral danger to the family or if the husband is not in a position to assume the role of the chief of the family.

Similar provisions are found in the German Civil Code: "The husband establishes the conjugal domicile and residence. The wife is not bound to follow and obey the husband if his decision constitutes an abuse of his right".^{2/}

In Switzerland, the husband has the right to establish the domicile of the family, but the wife can have her own domicile if her husband's domicile is unknown, in case of abandonment, or if her husband has been interned for a long time in an insane asylum.^{3/}

In the United States, most of the State laws declare that the husband's domicile ordinarily determines the domicile of his wife and children during continuance of the marriage. However, his choice of a marital domicile must be made with due regard to the welfare, comfort and peace of mind of his wife and to her legal status as his helpmate and companion, and not as his servant.^{4/}

Several legal systems give to the wife the right to establish her own domicile if the husband changes his domicile during marriage and establishes his new domicile abroad.

In Chile,^{5/} the law imposes the husband's domicile on the wife as long as the former resides in Chile. Consequently, a wife does not follow her husband's domicile when the latter resides abroad.

In Portuguese law,^{6/} the domicile of the wife follows the domicile of the husband; if the husband, however, intends to take up his domicile abroad, the wife may apply to the court to release her from the duty to follow him.

In Mexico,^{7/} the wife is obliged to live with her husband but the courts can authorize her to establish a separate domicile if the husband leaves the country and goes abroad without being sent there by his government.

^{1/} Article 108 of the Civil Code.

^{2/} Article 1354 of the Bürgerliches Gesetzbuch of 18 August 1896, amended as of 1 September 1947.

^{3/} Tribunal Fédéral, 41', 106 J.T. 1915, 472 and 42', 370 J.T. 1917, 162.

^{4/} Reply of the Government of the United States to the supplementary list of questions.

^{5/} Article 71 of the Civil Code; reply of the Government of Chile to the supplementary list of questions.

^{6/} Article 40 of the Civil Code 1867, as amended.

^{7/} Article 169 of the Civil Code.

C. Third group:

The domicile of the wife is independent of that of her husband

In a large number of countries, marriage has such no effect on the domicile of the wife.

These legal systems are based on the principle of independence and equality of women in the field of domicile.

The main features of this group are the following:

Upon marriage the woman does not necessarily acquire her husband's domicile and does not necessarily lose her original domicile.

When the husband changes his domicile the wife does not necessarily acquire her husband's new domicile.

The separation of the spouses does not affect the domicile of the wife.

According to Section 92 of the Czechoslovak Civil Code, the wife was obliged to follow the domicile of her husband; however, the Constitution of Czechoslovakia of 9 May 1948 must be considered as having repealed this provision.^{1/}

In Denmark,^{2/} as in other Scandinavian countries, the wife does not necessarily have the same domicile as her husband.

In Panama,^{3/} the spouses choose the domicile by common agreement and the wife is not obliged to accept the choice of domicile of the husband.

In the USSR, "the change of residence by one of the spouses does not create for the other any obligation to follow him."^{4/} It is an accepted rule of civil law^{5/} that both spouses retain full freedom of choice of their place of residence and domicile.

^{1/} Reply of the Government of Czechoslovakia to the supplementary list of questions.

^{2/} Reply of the Government of Denmark to the supplementary list of questions.

^{3/} Civil Code, article 83, as amended by the Act ^{4/}43 of 1925.

^{4/} Code of laws of 1 July 1948, article 9.

^{5/} Zimelev, Civil Law, Moscow, 1947, p. 430.