

The Hague Convention (1989) on the Law of Succession to Estates of Deceased Persons

In April 1991, the Commission published a Report on [*The Hague Convention \(1989\) on the Law of Succession to Estates of Deceased Persons \(LRC 36-1991\)*](#), as part of its First Programme of Law Reform.

Under Irish rules of private international law, succession to immovable property is determined by the law of the place where the property is situated; the law of the person's domicile generally governs succession to movable property. This approach is in harmony with other common law jurisdictions. In this Report, the Commission examined the question whether Ireland should ratify the Hague Convention of 1989.

The Hague Convention seeks to lay down rules of succession governing both movable and immovable property, which involve a delicate balance between nationality and habitual residence. Article 3 provides that where at the time of his or her death, the deceased was a national of and habitually resident in one state, then the law of that state governs his or her succession. Under the Convention, where the deceased has been resident in a state for at least five years immediately before his or her death and died habitually resident there, then in general, the law of that state governs his or her succession. However in exceptional circumstances, the law of the state of his or her nationality will apply instead, if at the time of the death, he or she was "manifestly more closely connected" with his or her state of nationality. In other cases succession is governed by the law of the state of nationality, unless at the time the deceased was "more closely connected" with another state, in which case the law of the latter state will apply. Article 5 of the Convention permits testators to designate the law of a particular state as the law governing the whole of their estates, provide that at the time of the designation or death, they are nationals or habitual residents of the state whose law they designate. It also contains detailed provisions relating to agreements as to succession, which are a feature of the succession law in several European States, as well as reciprocal wills. The Convention in Article 24, allows contracting states when satisfying the Convention to make one or more of four reservations.

The Commission recommends that Ireland should avail of its entitlement to make a reservation of one only of the reservations to the effect that Ireland will not recognize a designation made under Article 5 if:

- (i) Irish law would have been the applicable law (under Article 3) had the designation not been made; and
- (ii) The application of the law designated under Article 5 would totally or very substantially deprive the spouse or a child of the deceased of an inheritance or family provision to which they would have been entitled under the mandatory rules of Irish law; and
- (iii) The spouse or child is habitually resident in or is a national of Ireland

Unless Ireland makes this reservation, a testator's designation could have the effect of totally or very substantially depriving the surviving spouse or child of the deceased of an inheritance or family provision to which he or she would have been entitled under the mandatory rules of Irish law. Such a broad power of designation appears fundamentally out of harmony with our

Constitution and hence the need to make the recommended reservation if Ireland ratifies the Convention. Subject to this reservation, the Commission recommends that it would be desirable for Ireland to introduce legislation giving effect to its provisions.

Draft Legislation in Report

Not applicable.

Information on Implementation
