

Jurisdiction in Proceedings for Nullity of Marriage, Recognition of Foreign Nullity Decrees, and the Hague Convention on the Celebration and Recognition of the Validity of Marriages (1978)

In October 1985, the Commission published its Report on [*Jurisdiction in Proceedings for Nullity of Marriage, Recognition of Foreign Nullity Decrees, and the Hague Convention on the Celebration and Recognition of the Validity of Marriages \(1978\) \(LRC 20–1985\)*](#) which forms part of its First Programme of Law Reform.

In approaching the rules on jurisdiction the Commission took the view that the Courts of Ireland should have jurisdiction in nullity proceedings when, in broad terms, the parties have a reasonable connection with the State. Accordingly the Report recommended that such jurisdiction should exist in the following cases:

- (i) where, at the time of the marriage, the validity of which is in question, either party had his or her habitual residence in the State;
- (ii) where, at the time of the proceedings, either party has his or her habitual residence in the State;
- (iii) where the marriage was celebrated in the State and a ground on which the marriage is alleged to be invalid is one to which the law of the place of celebration is applicable;
- (iv) where, in the opinion of the court, either spouse has, or has had, such substantial ties with the State as to make it appropriate to hear and determine the petition

The Report recommended that a nullity decree obtained outside the State should be recognized in the State in any of the following cases:

- (i) where the court granting the decree applied the choice of law rules which the Commission proposed in the Report on [*Private International Law Aspects of the Capacity to Marry and Choice of Law in Proceedings for Nullity of Marriage \(LRC 19-1985\)*](#);
- (ii) where the decree was obtained or recognized in the country of either spouse's habitual residence;
- (iii) where the decree was obtained or recognized in a country with which either spouse had a real and substantial connection.

Regarding the withholding of recognition from foreign nullity decrees on grounds such as public policy, natural and constitutional justice and res judicata, the Report recommended that the courts should be allowed to develop the law. Where a foreign nullity decree is obtained by fraud, whether as to the foreign court's jurisdiction or as to the actual merits of the petition, the Report recommended that the decree should not be recognized here. Where a party's predominant purpose in seeking to establish an habitual residence in, or a real and substantial connection with, a particular country was to obtain a nullity decree there, which would not otherwise be recognized, it was recommended that the decree should not in such circumstances be recognized.

The Report recommended that Ireland should not accede to the Hague Convention on the Celebration and Recognition of the Validity of Marriages (1978). It concluded that the effects of the rules in the Convention would be to increase rather than reduce the present complexity of the international dimensions on the subject.

Draft Legislation in Report

Draft legislative provisions are included in the Report.

Information on Implementation

Recommendations of the Commission were implemented by the *Family Law Act 1995*.