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**NOTE**

Subject: Explanatory Report on the Convention, drawn up on the basis of Article K.3 of the Treaty on European Union, on jurisdiction and the recognition and enforcement of judgments in matrimonial matters

Pages 38, 39, 50 and 84 shall be replaced by the following pages.

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Such jurisdiction is termed "residual" in view of its nature and the place it occupies in relation to the grounds of jurisdiction established by the Convention. That description was regarded as preferable to "extra-Community disputes". In view of the function that that Article performs, like that of Article 4 of the Brussels Convention, contrary to the practice followed in Article 3 of the 1968 Brussels Convention, a list of these types of jurisdiction has not been included in this Article.

Some States, like the Netherlands, have no jurisdiction in their internal legal system which can be defined as "residual" for the purposes of Article 2 of the Convention.

Such jurisdiction does, however, exist in other national systems. Some examples are set out below.

In Germany, the rules of jurisdiction provided for in sections (1), (3) and (4) of Article 606a of the Zivilprozessordnung could be described as residual; they provide that German courts have international jurisdiction when (1) one spouse is German or was German when the marriage took place; (2) one spouse is stateless and is habitually resident in Germany; or (3) one spouse is habitually resident in Germany, except where any judgment reached in their case could not be recognized in any of the States to which either spouse belonged.

In Finland, under Section 8 of the "Laki eräistä kansainvälisluontoisista perheoikeudellisista suhteista"/"Lag angående vissa familjerättsliga förhållanden av internationell natur" (International Family Relations Act) revised in 1987, Finnish courts will hear matrimonial cases even where neither spouse is habitually resident in Finland if the courts of the State of habitual residence of either of the spouses do not have jurisdiction or if application to the courts of the State of habitual residence would cause unreasonable difficulties and, furthermore, in the circumstances it would appear to be appropriate to assume jurisdiction (*forum conveniens*).

In Spain the only example would be one of the rules contained in Article 22(3) of the Ley Orgánica del Poder Judicial (Law on the judicial system) of 1 July 1985 which allows the application to be made in Spain when the applicant is Spanish and is resident in Spain but does not meet any of the requirements in Article 2(1) of this Convention such as the express or tacit submission referred to in Article 22(2). Apart from that, all the other grounds for international jurisdiction in matrimonial matters which exist in Spanish law are contained in the Convention, these being that both spouses are habitually resident in Spain at the time of the application or that both spouses are of Spanish nationality, whatever their place of residence, provided that the application is made either jointly or with the agreement of the other spouse.

In France, Article 14 of the Civil Code would give French courts jurisdiction if the petitioner had French nationality.

In Ireland the courts would have jurisdiction in matters of annulment (Section 39 of the Family Law Act, 1995), divorce (Section 39 of the Family Law (Divorce) Act, 1996), and legal separation (Section 31 of the Judicial Separation and Family Law Reform Act, 1989), when either of the spouses is domiciled, for the purposes of Article 2(3), in the State on the date of institution of proceedings.

In Italy, the rules laid down in Articles 3, 4, 32 and 37 of Law 218 of 31 May 1995 on the reform of the Italian system of private international law are of this nature.

decisions, that is to say those that do grant a divorce, legal separation or marriage annulment. As regards decisions on parental responsibility that come within the scope of the Convention and are subject to the jurisdictional rules laid down in Article 3, some positive judgments may have negative effects with regard to parental responsibility for a person different from the person in whose favour the judgment was given. Clearly a judgment of that sort comes within the scope of the Convention.

Special attention must be given to divorce judgments given by Netherlands and Belgian courts. Under Netherlands law, a divorce judgment must be registered if the divorce is to be effective. If registration is not effected within six months of the date of the judgment, the judgment loses its effect as a *res judicata*. Under Belgian law (Articles 1275, 1303, 1309 and 1310 of the "Code judiciaire"/"Gerechtelijk wetboek") the enacting terms of the divorce or legal separation judgment must be recorded in the register of marital status within one month of notification of the judgment to the registrar; this requirement does not appear in connection with judgments for marriage annulment; however, failure to record the judgment only prevents the divorce from being relied upon as against third parties.

It is for national legislation to determine what is meant by measures relating "to parental responsibility". For this concept, see the commentary on Article 1.

In relation to costs, the provision in Article 38(1) regarding the application of the 1954 Hague Convention on Civil Procedure and, where appropriate, the 1980 Hague Convention on International Access to Justice needs to be taken into account.

123. In Italy the relevant agreement is the Agreement of 18 February 1984 between the Italian Republic and the Holy See amending the Concordato Lateranense of 11 February 1929. Article 8(2) provides that marriage annulment judgments by the ecclesiastical courts which are enforceable will produce effects in Italy by decision of the Corte d'appello having jurisdiction, provided that: (a) the ecclesiastical court had jurisdiction over the case in that it was a marriage celebrated in accordance with the requirements laid down by that Article; (b) the procedure before the ecclesiastical courts afforded the parties the right to appear and to be defended, in accordance with the fundamental principles of the Italian legal system; (c) the conditions required by Italian legislation for declaring foreign judgments effective have been met. Although Law 218 of 31 May 1995 on the reform of the Italian system of private international law (Article 73) derogated from Articles 796 et seq. of the Codice di Procedura Civile (Code of Civil Procedure), in practice it is understood that, pursuant to Article 2 thereof (International Agreements), those Articles remain in force for recognition of ecclesiastical judgments on annulment of marriages.

124. Paragraph 4, like Article 38, requires Member States party to such international treaties or concordats to send to the depositary of this Convention a copy of the Treaties and to notify any denunciation of or amendments to them. Deletions from the list of agreements will be made in accordance with the arrangements in Article 49(3).