

Recommendation (No.2) on the law of marriage

adopted in Vienna on 8 September 1976

The International Commission on Civil Status,

noting that in all the member States marriage implies the freely-given consent of a man and a woman expressed before a competent authority,

noting that, beyond the diversity of certain rules, a broad consensus exists on the essential elements of the law of marriage,

considering it desirable that, as between the member States of the ICCS and on the occasion of the reforms currently in hand, the laws on this matter be brought more closely into line,

noting the general tendency, in all the member States of the ICCS, to facilitate the conclusion of marriage and to maintain the validity of the matrimonial bond,

recommends that the legislatures of the ICCS member States be guided by the following principles, approved by the General Assembly of the ICCS at its meeting in Vienna on 8 September 1976:

I.

1. No impediments to marriage may be founded on race, nationality or religion.
2. Marriage may not be made conditional on administrative authorisation or proof of a party's professional or military-service situation.
3. Marriage may not be made conditional on the results of a medical examination.
4. Divorce, for whatever cause pronounced, may not constitute an impediment, even temporary, to remarriage.

II.

5. Only persons of an age at which it is to be presumed that they have attained sufficient physical and intellectual maturity should be allowed to contract marriage; this age may not be lower than 15 years.
6. As regards a minor, the requisite consent of the person or persons exercising parental authority may be replaced by a court order based on the minor's interests.

III.

7. Celebration of a marriage may not be made conditional on the giving of prior notice.
8. The possibility of celebrating marriage in a purely civil form must be guaranteed.
9. Marriage by proxy may be permitted only in exceptional cases and if one of the spouses is present.
10. Posthumous marriage may not be permitted.

IV.

11. A marriage must be regarded as valid as long as it has not been declared null by decision of a court.
12. The grounds for nullity must be reduced to the minimum.
13. The right to institute proceedings for the annulment of a marriage should be exercisable only by a very restricted number of persons.

14. Except in the event of bigamy or incest, proceedings for nullity may not be instituted if the marriage has lasted for more than one year. In the event of bigamy, proceedings for nullity may not be instituted if the first marriage has been dissolved.
15. A declaration of nullity should produce effects relating to the person of the spouses for the future only and must not entail the illegitimacy of the children.