

CIVIL REGISTRAR : TASK OF THE PAST - CAREER FOR THE FUTURE?

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What is a 'civil registrar' in Belgium?

According to article 125 of the Nouvelle Loi Communale, it would be the Mayor or a councillor delegated to that effect, whose mission is to make sure everything related to records and the keeping of registers is observed. This delegation makes the councillor a town magistrate for the length of his term as councillor. As such, he must not take any oaths, and will not receive any complementary allowance from the Council.

His competence is territorial and limited to the territory of the town. He acts 'in the name of the law' when he celebrates a wedding, or verifies certain events (birth, death), or 'according to the law' when he receives statements relating to civil status, compile them into a record, reads the record, delivers related extracts, enters marginal annotations, transcribes records or court decisions.

He must respect the Law and court decisions, but acts independently. Although he may ask the King's Procurer for a second opinion, this opinion is not binding.

He has a triple responsibility: penal, civil and administrative. In principle (art. 154 NLC), he may choose, name or dismiss employees under his management without referring the matter to the town council.

In summary, he is a political delegate who celebrates weddings and signs records and registers, on a given territory, for a limited period (6 years). He is personally, legally and penally responsible.

Here in Belgium, civil-status records are always archived on paper by town councils.

Article 167 of the Constitution entrusts the drafting of civil-status records and the keeping of registers exclusively to town authorities. One of the consequences is that, in Belgium, we do not, in principle, have standardised documents. The signature of the town delegate is communicated to the Minister of Foreign Affairs, who can then certify that documents to be used abroad are authentic.

Record slips must be listed and initialed by the President of the Court of First Instance or the Judge in charge of civil matters before the beginning of the year.

It is immediately obvious that this legislation is obsolete, and dates back to a time when records only reflected a community and the status of its inhabitants, if not their 'citizenship'. Close links with the local community made it relatively easy to reconstitute the history or genealogy of a family.

And it seems easy, by going over the tasks of a civil registrar one by one, as they figure in the Constitution, the Civil Code and the Code de la Démocratie locale, to prove that the role of civil registrar, as it currently exists in Belgium, needs a good overhaul. Whilst it seems a little inappropriate, currently, to say that a civil registrar 'verifies' births or deaths: we simply copy the documents that have been filled out by the competent medical authorities. If the death certificate is necessary in order to initiate inheritance procedures, and thus has an impact on the estate and succession, the role of the civil registrar is limited, and the same applies to the birth certificate. The wedding ceremony has now become more of a festive occasion, which calls for a certain decorum and, why not, the presence of a local politician who cares about his constituents, but, here also, the most arduous task is establishing the marriage title and checking the substantive conditions. Registration and transcription of records certainly necessitates care and precision, but, is the signature, in a large register, of a politician who does not have the wherewithal to check what he is signing, really indispensable?

Moreover, you might wonder about the current importance of all of this formality, when you read, in a letter from the General Commissioner for refugees and stateless persons: 'In order to establish that you are single, you are required to produce to the civil registrar in charge of celebrating your wedding an extract (sic) of the population register of the town where you are resident, the only administrative document establishing your civil status.'

As was stated by Professor Yves-Henri LELEU (Family and Personal Law, P. 20), 'the acceleration of social, economic, scientific, medical and political changes after world wars, the new focus on fundamental rights, and the secularisation and internationalisation of European societies have shaken up the rules and the method. The question is whether law can still structure society around a single family model, or if it must

observe changes and adapt institutions to them' - in this case, civil registrars, although it is important to remember that the social function of the status of persons demands stability and traceability.

How can we make this task from the past a career for the future?

What must be evaluated is the difficulty of applying the legislation in force (Private International Law Code, sex changes, new law on parenthood, legal cohabitation...) and the increasing involvement demanded of us in the administration of registers with other institutions (the Ministries of the Interior and of Health, Banque-Carrefour, e-birth...), as though we were the point of junction of the entire population - which is not necessarily untrue.

I do not see how we could evolve without envisaging the clarification and/or the interlocking of the rules on 'population' and 'civil status'.

The Code of Belgian private international law requires that we respect the personal status of citizens. For marriages, acknowledgments, nationalities... the town of Liège includes people of more than 143 nationalities within its territory, which makes the job of a civil registrar more of an obstacle course than anything else.

The same private international law Code allows and obliges the civil registrar to certify foreign records. Even with a database at your disposal, as is the case in the Netherlands, it is impossible to know everything.

We are increasingly required to have an active role in the prevention of fraud, sham marriages, or bogus acknowledgment of children, in fact to have a role in the context of immigration policy. Does it make any sense for a civil registrar to have to "investigate" how a future married couple met each other?

It is also necessary to envisage the role in a larger context than just Belgium. Increasingly, the European Union will provide the standard we have to live up to.

For me, the function of civil registrar is a career for the future, as long as we accept that it must be integrated within the context of standardisation and computerization of records, professionalised, and supported by specialised central organisations.

It seems necessary to me to depoliticise the role. In fact, this idea is not new. In France, in 1792, during the debates on the people who were to take over civil-status verification from vicars, some people, such as François de Neufchâteau, believed that, and I quote, 'Municipal elected officials are incompetent, and this responsibility must be transferred to judges, notaries or teachers'. This is, of course, a rather harsh judgement.

However, I remain conscious of the political and ceremonial usefulness of celebrating weddings, and it seems to me that a reform will be accepted only on the condition that the role of celebrant is dissociated from the role of manager of the files.

Currently, civil registrars, my colleagues, have trained themselves on the job. They more often than not provide work of good quality, but they are not required to have had any specific training, and they have never been offered any training that would allow them to keep up with increasingly numerous and complex legislative changes. This is unacceptable, and out of proportion with the consequences, be they only legal, which could result from errors or disputes.

The increasing difficulty of the subject and its increasingly numerous implications, which are multiplying with secondary legislation (population register, protection of private life, immigration department, criminal records), require, I would think, a lawyer's (or level 1) training.

As far as the Belgian situation is concerned, one difficulty is to find a status which can be adapted to different local situations: in large or small towns, the basic problems are often the same, but the form, and especially the number of cases handled calls for different organisation. I am aware of the cost this could involve for small units. Maybe we could envisage, as in Switzerland, the idea of districts or arrondissements, allowing us to share the burden ?

As far as foreign records are concerned, I think it would be useful to set up a federal service in order to validate them, as happened with the Central Adoption Services at the Ministry of Justice. The Ministry of Foreign Affairs, I believe, would be the best choice, having at its disposal the information from various consulates.

Would it be possible to envisage a European database?

How to preserve the independence of the civil registrar?

Could it be done by making him a civil servant under the authority of the Minister of Justice? This system seems to me to be forgetting the central role of the civil registrar, and his/her involvement in matters under the jurisdiction of the Ministry of the Interior. I wonder if the solution would not be to confer a particular

status, such as that of the town Secretary, or the town Receiver. Paid by the local council according to a pay scale determined by the size of the town or district, the person in this role would also be responsible for his acts before the Board, while not being revocable. His appointment would be the object of an advertisement and an examination. He would be appointed by the town council. The system could usefully be completed by organising judicial supervision, particularly by the Public Prosecutor's Department.

But I realise that some of my colleagues work from the idea that the validation of gathered information must be done by someone charged with responsibility by society, which means an elected official, and that my proposal would mean implementing a US-style system, which does not provide the option of protecting 'vulnerable' citizens against possible turpitudes.

I feel more victimized than guilty: victim of fraudsters, tribunals whose judgments are more humanitarian than legalistic, administrations with other aims, and constituents who do not envisage the possibility of anyone ever disagreeing with them.

In any case - and in this, I am entirely in accord with my Flemish colleagues from VLAVVABS and the work they have already carried out - it is necessary to establish a general index of records, to be included within a computerized central register.

The move towards computerization will, in effect, make it mandatory to revise the rules on signatures.

With the support of VLAVVABS, we have created a working group composed of civil-status practitioners from all over Belgium. We wish, on the one hand, to make proposals for the modernisation of civil status, and on the other hand, to demand an active role in any discussions taking place on the subject.

Thank you for your attention.