

## CIVIL-STATUS REGISTERS AND POPULATION REGISTERS: BATTLING BROTHERS OR SIAMESE TWINS ?

René De GROOT

Professor of comparative law and private international law  
at Maastricht University (NL), the University of Aruba and the University of Hasselt

### 1. Introduction of civil-status registers

Population registration has a very long tradition. Nobody knows precisely the time when rulers started registering their subjects as well as counting them. But we all know about the population registration, which is described in the Gospel according to Luke, and which happened at the time of Quirinius - governor of Syria - during the time of Caesar Augustus, emperor of Rome. If that population registration had not taken place, Jesus - very likely - would not have been born in a stable in Bethlehem, but in a very normal house in Nazareth.

During the European Middle Ages and until the French revolution, the registration of personal data - like birth, marriage and death - was often undertaken by churches. Priests administered the baptism of children, church marriages as well as the funerals of their parishioners.<sup>1</sup> Next to this registration, cities, municipalities and local lords administered often their citizens, respectively the population of their territories.

The reliability of these registration systems was modest. On the one hand, the quality of the registrations depended highly on the accuracy of the persons in charge. On the other hand, the administrators had often to rely on the information given by the persons involved and on facts which could be described in the French language as 'possession d'état' (the possession of an apparent status), i.e. a civil status confirmed by the local community.<sup>2</sup>

An extremely important step in creating a more reliable system of registration of the identity of persons was made by the introduction of registers of civil status ('registres de l'état civil') during the French revolution. Background of this introduction was the freedom of religion, which had as a consequence that not all people in France would be registered by the priests of the Catholic church.<sup>3</sup> A whole system of certificates ('actes') of birth, marriages and death was introduced and the task to take care of this registered data was attributed to the mayors of cities and municipalities.<sup>4</sup> After the introduction of this new system, birth, marriage or death of a person could - in principle - only be proven by a civil registry certificate ('acte de l'état civil') and not anymore by certificates made on the basis of registers of churches. Of course, at the beginning, much data inserted in the new civil-status certificates were still based on data of church registers, e.g. the names and dates of birth of (future) spouses used in a certificate of marriage. Therefore, the churches were obliged to submit their old registers to the civil authorities.<sup>5</sup>

An important feature of this new system was the fact that all certificates had to be made 'in duplo' (in two copies) and, in addition, that both copies had to be saved at different places. By these means, the risk of losing the registration in cases of disastrous events (fire, war, etc.) was to be diminished. If one set of copies was destroyed, measures were taken in order to copy the remaining set of certificates.<sup>6</sup> The rules on the registry of civil status were later - in 1804 - included in the French Code civil, also known as Code Napoléon, book 1, title 2: 'Des actes de l'état civil' (articles 34-101) and the task to care for these registers was attributed to so-called 'officers of civil status' (officiers de l'état civil).<sup>7</sup>

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<sup>1</sup> See for the situation before the French revolution in France: Merlin, Répertoire universel et raisonné de jurisprudence, 4<sup>th</sup> edition, tome IV, Paris 1812, 872 ff. (sub: état civil).

<sup>2</sup> See on the historical background of the later -typical French - legal construction of the 'possession d'état': Merlin, o.c., tome VII, 219 ff (sub: légitimité) and Viviane Morgand-Cantegrit, La possession d'état d'enfant, PhD thesis Lille 1993. See for remarks on the contemporary application of the construction of possession d'état in the Netherlands: Kees J. Saarloos, 'Bezit van staat' of het wormvormig aanhangsel van het Nederlandse afstammingsrecht?, WPNR 2006, 123-129].

<sup>3</sup> See J.G. Locré, Esprit du Code Napoléon, Tome II, Paris: Imprimerie impériale 1806, 4—7.

<sup>4</sup> Statute of 20 September 1792, Lois et actes du gouvernement VI, 275; see also art. 13, of the Statute of 28 Pluviôse an VIII, Bulletin des lois de la république française, 3<sup>rd</sup> Serie, nr. 17/115. See on these statutes Jan Wiarda, Mr. C. Asser's Handleiding tot de beoefening van het Nederlands Burgerlijk Recht, Eerste deel: Personen- en familierecht, Eerste stuk: Natuurlijke personen en familierecht, 9<sup>th</sup> edition, Zwolle: W.E.J. Tjeenk Willink 1957, 1101 ff.

<sup>5</sup> These registers received the status of so-called 'retro-acta' of civil status. See on the transfer of these retro-acta in the province of Groningen during the French period: [http://www.archieven.nl/pls/m/zkstart.ahd?p1=5&p\\_adt=5&p\\_code=124](http://www.archieven.nl/pls/m/zkstart.ahd?p1=5&p_adt=5&p_code=124) (5-3-2009).

<sup>6</sup> This happened e.g. for registers of the town of Maastricht, see Statute of 4 July 1887, Staatsblad 110.

<sup>7</sup> See for an early extensive commentary on these provisions: Toullier, Le droit civil français, Tome I, Bruxelles 1829, 97 ff.; F. Laurent, Principes de droit civil français, 4<sup>th</sup> edition, Bruxelles/ Paris 1887, tome II, 5-89.

The new French system of registration of persons was also introduced in many other countries during the 19th century. In some countries, like Belgium and the Netherlands, this happened ‘ratione imperii’, because of the fact that they became part of the French empire (until 1814). In other countries, the introduction took place ‘imperio rationis’, because of the persuasive power of this very rational and effective system.

## 2. Population registers

However, the introduction of civil-status registers did not make a population registration superfluous. For various reasons, cities, municipalities and the State had an interest in having easy access to the personal data of all people living within their territory. Moreover, they wanted to add other data, such as addresses, value of property or entitlement to participate in elections. The strict personal data (date and place of birth, name of the parents, name of the (former) spouse and of children) were principally related to the data of the registers of civil status. However - of course - also persons had to be listed about whom no civil-status certificates existed; either because they were born prior to the introduction of these registers of civil status or because they immigrated from countries where no civil registry existed.

In this presentation, the relation between the civil-status registry and the population registers will be exemplified by means of three countries: Belgium, Germany and the Netherlands. All three countries have a system of certificates of civil status. In Belgium and the Netherlands, this system was introduced during the period these countries were part of the French empire. In Germany,<sup>8</sup> the French civil code was only applicable on a part of its territory. Within the whole German territory, the system of certificates of civil status was not introduced before the foundation of the German empire in the 1870's. All three countries introduced next to the civil registry system also a population register.

### Belgium

Belgium was a part of France at the moment the French Code civil, including the regulation of the civil-status registers came in force in 1804. The first population registers were introduced in Belgium after the first census on 15 October 1846.<sup>9</sup> The main goal was in first instance the collection of statistical data on the population. Gradually, the population registers were enriched with additional data e.g. necessary for taxation or the registration of entitlement to participate in the elections. In 1968 the creation of a Central register of natural persons (Rijksregister van de natuurlijke personen) was initiated and finally regulated by the Act of 8 August 1983 (Wet tot regeling van een Rijksregister van de natuurlijke personen, hereinafter abbreviated as: Wet Rijksregister), in force on 1 May 1984. The data of the centralised Rijksregister/ Registre National are in principle derived from the local population registers, local registers of foreigners and the registers of Belgian nationals mentioned in the registers of the Belgian diplomatic and consular missions. Every person registered in the Central register receives immediately a unique identification number. This number contains personal information as it is made of the date of birth, a sequential number taking into account the gender and a control number. Next to strict civil-status data, the Central register includes data on the nationality, main habitual residence, profession, the existence of an identity- and signature-certificate<sup>10</sup> (if applicable) as well as - for foreigners residing in Belgium - immigration status.<sup>11</sup> The local and diplomatic, respectively consular authorities, are responsible for the conformity of the data, which they communicate to the central register, with the certificates (actes) and documents which they possess (art. 4 Wet Rijksregister). However, the data included in the Rijksregister are presumed to be correct until evidence of the contrary is put forward. The data of the Rijksregister can be used to correct to local, diplomatic or consular registers. Everybody (an authority or a natural person), who discovers a discrepancy between the data of the latter registers and the Central register, has to report this without any delay.<sup>12</sup>

### Germany

In Germany, the civil-status registry was introduced by the Reichsgesetz über die Beurkundung des Personenstands und die Eheschliessung (Statute on the certification of civil status and marriage) of 6 February 1875<sup>13</sup>, which was replaced by the Personenstandsgesetz (Statute on civil status) of 8 August 1957.<sup>14</sup> Very recently - at 1 January 2009 - the latter act was replaced by the Personenstandsgesetz (Statute on civil status) of 19 February 2007.<sup>15</sup> Next to the Personenstandsgesetz Germany has on federal level the

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<sup>8</sup> From 1807-1870 Germany did not exist as a political, statal entity.

<sup>9</sup> Arrêté Royal of 30 June 1846, Recueil des lois 1846, 20.

<sup>10</sup> Wet houdende vaststelling van bepaalde regels in verband met het juridisch kader voor elektronische handtekeningen en certificatie diensten of 9 July 2001.

<sup>11</sup> See for more information <http://www.registrenational.fgov.be/> (03-03-09).

<sup>12</sup> See on the precise procedure Royal Decree of 19 March 2008; see also Circular letter (circulaire) III 11/3000/08 of the Minister of the Interior, Patrick Dewael.

<sup>13</sup> RGBl. 1875, 23.

<sup>14</sup> RGBl. I 1937, 1146; see also BGBl. I 1957, 1125.

<sup>15</sup> BGBl. I 2007, 122. See on the new act: Bornhofen, Das Gesetz zur Reform des Personenstandsrechts, StAZ 2007, 33 ff.

Melderechtsrahmengesetz (Statute on the general framework of population registration, hereinafter abbreviated as: MRRG) of 16 August 1980,<sup>16</sup> but the implementation of the population registration is a responsibility of the different federal states (the Länder). The basic data of the Melderegister (population register) are derived from the civil-status registers, but several other data are added, like doctor's titles, nationality or nationalities, religion, addresses, data on identity cards and passports. A unique identity number for every registered person as the one which exists in Belgium and the Netherlands is unknown in Germany.<sup>17</sup> If the authorities in charge of the Melderegister have concrete indications (konkrete Anhaltspunkte) regarding incorrectness or incompleteness of their registers, they have to start investigations on the facts on their own initiative. They have the obligation to try to administer the data in the population registry as accurate as possible.

## Netherlands

In the Netherlands, a comprehensive population register was introduced in 1887.<sup>18</sup>

A first link created between the registry of civil status and the population register was the obligation of every registrar of civil status to communicate all relevant facts within 24 hours to the population register. Immediately after the registration of a child's birth a 'persoonskaart' (person-card) had to be issued by the population registrar and this card had to be submitted without any delay to the registrar of civil status, who had to control the conformity of the content with the data in the birth certificate.

At the end of the 20<sup>th</sup> century, the population registration was digitalized. This digitalization was prescribed by the Wet gemeentelijke basisadministratie (Statute on the municipal basic administration; hereinafter abbreviated as GBA) of 9 June 1994.<sup>19</sup> Nowadays, person-cards are no longer made, but a digital 'person-list' ('persoonslijst'). In principle, the data on this list are derived from the certificates of civil status; but in addition, the list also includes other data like the unique 'burgerservicenummer' (unchangeable civil identity number), nationality or nationalities, the addresses where the person involved lives, respectively lived and data on travel documents.<sup>20</sup>

The population register in the Netherlands is not centralized. Data are stored in the municipality of residence of a person. If this person moves to another commune in the Netherlands, the 'person-list' is also transferred to the new place of residence. When a person emigrates to another country, the 'person-list' stays in the place of last residence in the Netherlands.<sup>21</sup>

Because of the fact that the data included in a person-list should be as reliable as possible, article 36 GBA gives detailed instructions about the type of documents from which data for the person-list may be derived. In principle the data should be taken from a

- 1) Netherlands certificate of civil status; or a
- 2) decision or a judgment of a Netherlands court.

If these sources are not available, data may be derived from other sources in following order of importance:

- a foreign certificate (drafted in order to give evidence of the fact mentioned) or judicial decision
- an 'akte van bekendheid' (certificate of acquaintance issued by the sub-district court of his or her place of birth or residence on the basis of a declaration made by four witnesses of age) or an affidavit (see art. 45 book 1 Netherlands civil code)
- a 'beëdigde verklaring' (sworn declaration; affidavit) made and signed in presence of a competent municipal official

In the person-list it is indicated which sources constituted a basis for the personal data.

### 3. The relationship between civil-status registration data and data of the population register

It is evident, that the ideal situation would be that all strict civil-status data of the population register are based on domestic civil-status certificates. In that case, we have a perfect relationship between the two registration systems. The reliability of the civil-status data is optimal and the population registry adds extra information to these data. If the registration of a certain fact is based on a judgment or another court decision which determined or modified the civil status of a person, a similar degree of certainty exists. Due to the still increasing mobility of persons, this level of certainty is frequently lacking. If a migrant taking

<sup>16</sup> Most recently amended by Act of 20 December 2007, BGBl. I 2007, 3150.

<sup>17</sup> However since 2009 a identificationnumber for taxes (Steueridentifikationsnummer) was introduced, which could a first step towards a general identity number. See: [www.identifikationsmerkmal.de](http://www.identifikationsmerkmal.de) (05-03-2009).

<sup>18</sup> Statute of 17 April 1887, Staatsblad 67. See also Act of 24 Juli 1948, Staatsblad I 335, which renamed this Act as 'Wet bevolkings- en verblijfsregisters'.

<sup>19</sup> Staatsblad 707.. See on this Act: Ger Lütter/ Ron von Troost, De dataalloads en zijn machinekamer, Inleiding tot de GBA, Deventer: Kluwer 2008, 18, 19.

<sup>20</sup> Different than in the past on the persoonskaart the religion is not registered.

<sup>21</sup> See for more information <http://www.bprbzk.nl> (05-03-09).

habitual residence in the country comes from a country, which in practice has a similar civil registry system, a level very close to the purely domestic cases will be reached, if one requires the immigrant to submit certified copies of relevant civil-status registers. In all other cases, one has to accept that the data in the population registry have a lower level of reliability.

This fact also can also have consequences for the registers of civil status. If a person registered in the population register has to be mentioned in a civil-status certificate it is very tempting to use the data of the population registers to be included in the new civil-status certificate. But it is evident, that using these less reliable data, not based on older civil-status certificates, makes the content of the new certificates also partially less reliable. This is a difficult dilemma.

However, in respect of birth and death certificates, it will in some cases be necessary to use the data already registered in the population registers as basis for the certificates involved without further control of their reliability.

In particular, birth certificates have to be made immediately after the birth of a child, even if the personal data of the parents as registered in the population register are less reliable. The birth certificate documents the existence of a new person and it is an important step in order to give the child access to rights. Drafting a birth certificate shall never be postponed because of less reliable data of a parent. It would be unacceptable to make e.g. the drafting of a birth certificate of a child dependent on the submission of a birth certificate of a parent.

In case of inserting personal data in a death certificate, it is also necessary to register the death as soon as possible. The death of the person involved has to be registered even if the reliability of the personal data of the deceased is low. Of course, as such, the death certificate does not indicate this low reliability, but in combination with the population registry the (low) degree of reliability can often easily be reconstructed, in particular if in the population register mentions the documents or declarations on which the registered data are based.

Actually, only at the occasion of the preparation of a marriage, a registrar of civil status could be stricter and require the submission of a birth certificate, if such a document was not submitted at an earlier occasion. The preparation of marriage documents is a good 'momentum' to stimulate future spouses to acquire more reliable data on their identity.<sup>22</sup> But this request should not be too strict. There must be a serious chance that the person involved can get more reliable documentation on his/her identity within reasonable time and for a reasonable fee. Refusing persons to marry because convincing documents on their personal data can not be acquired within a couple of months would be problematic in the light of article 12 European Convention on Human Rights, if the persons involved are already registered in the population register.

In this context, it is appropriate to indicate, what would still be 'within reasonable time' and what still a 'reasonable fee' is. Given the fact that the population registration contains already personal data of the persons involved, I would like to suggest that it would be unreasonable if it would take more than two months to acquire the perhaps more reliable documentation on the personal data of a future spouse. Furthermore, it should not be completely left to the future spouse to undertake action. Given the public interest in the accuracy of the registration of persons, all possible assistance should be given to the future spouse in order to increase the chance that the requested information is obtained.

To be rather lenient in respect of the documents required for a marriage causes of course that some details regarding personal data of a spouse may be less reliable. But in combination with the population registry, this fact can easily be discovered, if the population registry contains information on the sources used for the registered data. Of course, this lower reliability can later also have consequences for the reliability of the data involved in the birth certificate of children born within this marriage. That may be regrettable, but must be accepted. As already mentioned earlier, the immediate registration of the birth of the child is of paramount importance. The names of the (legal) parents have to be mentioned in the birth certificate as accurate as possible, but under some circumstances one has to accept - in the best interest of the child - that remaining doubts exist in respect of some details of the personal data. There is no way to avoid this.

Furthermore, one should realize that increasing the reliability of personal data via severing the rules on the documents to be submitted for marriages can only have consequences for the birth certificates of children born within a marriage. Given the fact, that an increasing percentage of children is born outside of marriage<sup>23</sup>, this approach is increasingly ineffective.

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<sup>22</sup> Another 'momentum' which often is used in order to get more reliable documents on the civil status data of a person is the application for naturalisation of the person involved.

<sup>23</sup> In the Netherlands nearly 40 % of the children is born out of wedlock.

In this context it has to be mentioned that in the three countries studied for this presentation only a civil marriage has private law consequences. A religious marriage lacks these consequences. In order to 'force' persons, who want to marry each other, to conclude a civil marriage all three countries provided originally that the conclusion of a religious marriage ceremony before the civil marriage constituted a criminal offence. In Belgium and the Netherlands this is still the case<sup>24</sup>. In Germany, this criminal law provision was abolished very recently, on 1 January 2009. If German authorities would be extremely strict in requiring certain documents before a civil marriage can be concluded, although some data already mentioned in the population register, there is a good chance that the persons involved will decide to conclude only a religious marriage. Consequently, their children will be - in perspective of the secular family law - be born out of wedlock. Moreover, the spouses married only religiously, do not enjoy the privileges which the law provides for spouses in a civil marriage. The rights and obligation of spouses according the secular family law do not apply for them. This causes for the persons involved legal uncertainties. Therefore, by trying to get more certainty regarding civil-status data, other uncertainty would be caused. That would not be a desirable situation.

In the three countries mentioned above, the formal links between the data in the population registration and the data in the civil-status certificates differ slightly. In Belgium, the data in the central register are presumed to be correct until evidence of the contrary. In Germany, the personal data in the Melderegister are for immigrants in principle based on the data mentioned in their national passports and not on foreign civil-status certificates. And these data of the Melderegister are used for the preparation of civil-status certificates wherein these immigrants have to be mentioned. In the Netherlands, the rather detailed rules for the registration of data in the population register were already described above.

In all three countries, there is a great awareness of the registrars of both types of registers, that the data registered should be as reliable as possible. That is a very essential point. If differences are discovered in respect of the data of a certain person, this has to be reported immediately in order to enable the responsible authorities to initiate investigations. Furthermore, the discrepancy involved has to be indicated in at least the population register. The character of the certificates of civil status does - in principle - not allow to express hesitations on the reliability of the data mentioned in the certificates. Together, the both types of registers give a rather good picture of the civil-status data of a person, including an impression of their degree of reliability. It is desirable, that the degree of reliability of the data always can be reconstructed, even after many years. A core feature of the system of civil-status certificates is, that these certificates will be kept by the competent authorities for ever, ideally 'in saecula saeculorum'. This is also what should happen with at least those data of the population registry which are relevant for civil-status documents, including the indication of the sources used for the registration of a certain fact.

#### 4. Conclusion

The system of civil-status registers and the population registers constitute together as optimal sources for highly reliable documentation on the identity of persons. The rules governing to both types of registers could be described as the core 'identity law'.<sup>25</sup>

In the three countries studied for this presentation, the relationship which exists between the two types of registers can be compared with Siamese twins. Therefore, it has to be noted that they can certainly not be described as battling, independent brothers. The Siamese twins have partly their own life and identity, but they have organs in common. It is therefore understandable, that the one very 'serious brother' sometimes worries about what the other more 'world oriented brother' is eating and drinking. The food that the second brother takes can also influence the constitution and health of the first brother.

However, the both Siamese twins should not be separated. An attempt to separate them would be risky for both. After separation, they perhaps could survive alone, but both would be seriously handicapped. They would only be able to compensate their handicaps, if they decided to walk constantly hand in hand and to care for each other as if they still were Siamese twins. Therefore, I would like to conclude that one should never initiate a separation operation of these twins.

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<sup>24</sup> Art. 449 Netherlands Wetboek van Strafrecht; art. 267 Belgian Wetboek van Strafrecht.

<sup>25</sup> This term was invented by my 15 year old daughter Sophia after I tried to explain her about which topic I was preparing this presentation. Other parts of 'identity law' can be found in immigration law (in particular refugee law), nationality law (identity requirements for naturalisation), criminal law (e.g. obscuring civil status).