

PRESENTATION OF THE ICCS : ACHIEVEMENTS AND PROSPECTS

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Before giving the floor to the speakers, I would like, ladies and gentlemen, to recall briefly what the ICCS is, to indicate its achievements and to give an outline of its future projects.

ORIGINS AND ORGANIZATION OF THE ICCS

The need for international cooperation in the civil status field has been felt for a long time, as is shown by the fact that an international association of civil status officials was created as early as 1926. However, this was an association of individuals that enjoyed no official recognition.

The association did not survive the 1939-1945 war. However, its leading officials, the Head of the Swiss Federal Civil Status Office and the Secretary General of the Municipality of The Hague, being aware of the need for inter-State collaboration in civil status matters, took up their pilgrim's staffs. Their visits to various governments were encouraging, and they therefore convened on 30 September 1948 a provisional committee of the association, which decided to set up the International Commission on Civil Status. The intention was to create an organisation that would be internationally recognised and would include not only civil status officials but also representatives of States (Ministries of Foreign Affairs, of the Interior and of Justice), members of legal services and professors of law, who would be responsible for promoting inter-State cooperation and collaboration in civil status matters.

This proposal was enshrined in an exchange of letters between five governments and then in a protocol signed in Berne on 25 September 1950. The five States were Belgium, France, Luxembourg, the Netherlands and Switzerland, in all of which the Napoleonic Code was in force ; a feature common to four of them was use of the French language, which explains why French is the official language of the ICCS. Subsequently, ten more States adhered : Turkey, Germany soon followed by Italy, Greece, Austria, then, a little later, Portugal and Spain, and more recently the United Kingdom, Poland and, just yesterday, Croatia.

Each ICCS member State sets up a national Section which plays an essential role in the functioning of the Organisation : in principle, it is the Sections, which have to deal with the practical problems that arise, which suggest questions to be entered on our agenda and, through their proposals, enable the study of those questions to advance.

The ICCS holds a General Assembly once a year, in September ; the Bureau of the Organisation meets at least twice a year. The Presidency is assumed, in rotation, by a member of one of the national Sections, the term of office of the President being two years.

The Secretariat General, which is located in Strasbourg and is the permanent organ of the Commission, is responsible for coordination and the follow-up of work in progress. Working groups and sub-committees are set up regularly to study each of the items on the agenda.

The Commission has concluded cooperation agreements with the Council of Europe, The Hague Conference on Private International Law, the European Union and the United Nations High Commissioner for Refugees. A certain number of States and the Holy See have been granted observer status.

ACHIEVEMENTS OF THE ICCS

In accordance with its objectives as laid down in the founding documents and in its internal regulations, the Commission's activities are concentrated on two fields : documentation, and the preparation of conventions and recommandations.

I. Documentation

A) «International Practical Guide on Civil Status »

Originally, the ICCS tried to fulfil its documentation mandate by editing a collection of files, setting out the national law and the rules of private international law of each member State relating to civil status, name and forenames, marriage and divorce, and parentage.

However, the Commission, which acted as its own publishing house, met a number of distribution problems. The work remained confidential and it gathered dust, and probably still does, on the shelves of law-court and university libraries. The updatings that had initially been envisaged ceased to be made.

In 1985, having learnt its lesson from this experience, the ICCS put together the « International Practical Guide on Civil Status ». It drew up a questionnaire that listed the problems arising in civil registration practice. The questions posed were answered by each of the national Sections, and the replies were re-read and harmonised by the Secretariat General.

The printing and distribution of this major work were entrusted to a private publisher (Ed. Berger-Levrault) and two editions have already been published. The work is in loose-leaf form and is updated once a year.

In my opinion – and I say this without boasting – the «Practical Guide» is a rather remarkable comparative-law tool, as it contains information and particulars that cannot be found elsewhere. The ICCS is proud of this achievement, and considers that the Guide deserves to be better known and can be of great use to researchers in universities and courts of law.

B) Specific studies

The documentation work of the ICCS has also led to the preparation of several specific studies.

The first of these concerns the phenomenon – regrettably constantly on the increase – of fraud in the field of civil status. On the basis of studies carried out by a specialised working party and questionnaires addressed to the national Sections, a summary report was drafted detailing the various types of fraud (false statements, forged documents, bogus marriages...) and their causes, the counter-measures taken in the various States to prevent or avoid giving effect to fraudulent acts, as well as the obstacles encountered in this context. The final version of this important study was published in French in the *Revue critique de droit international privé* (Ed. Dalloz-Sirey, Paris, 1996, pp. 541-571). Translations in, inter alia, English, Spanish, Italian and Dutch have also been published.

The second study, on the application in the civil status field of the principles set out in the European Convention on Human Rights, appeared in 1997 in the *Revue trimestrielle de droit européen* (Ed. Dalloz-Sirey, Paris, pp. 653-684).

More recently a paper entitled «Transsexualism, civil status and private and family life in the ICCS States», the outcome of studies made of this problem over a long period, appeared, in French, in the December 1998

issue of the *Revue Droit de la Famille* (Chronique n° 16, Ed. du Juris Classeur). It was completed, at the request of the Council of Europe, by a note prepared by the ICCS on «*Transsexualism in Europe*», which will soon be published, in English and French, by the Council of Europe.

In addition, at the end of 1998 also, a study on the rules applicable to the registration in civil status records of stillborn children and children who, though born alive, have died before their birth has been declared, appeared in the *Review of the Hellenic Association of Private International Law* (1998/4.B) ; it describes the practice followed in this area by the ICCS States. This study is to be published shortly in *La semaine juridique*.

C) There can also be classified under the heading «*documentation*» the communications or statements made by the ICCS at colloquies and meetings organised by international organisations (The Hague Conference, Council of Europe), by national institutions (for example, l'Ecole nationale de la magistrature and l'Ecole des cadres territoriaux in France) or by associations of civil status officials (for example, ANUSCA in Italy).

Finally, notes on the work of the ICCS or accounts of its activities are published regularly in general or specialised law journals.

A further item deriving from the Commission's documentation mandate is the report made by the Secretary General at each Assembly, which *inter alia* sets out the previous year's developments in the law of persons and family law in the various member States and thus constitutes a comparative-law study.

Mention should also be made of the *Journée internationale de l'Etat civil* organised in Berlin in 1992, without forgetting, of course, the present Colloquy.

II. Conventions and recommendations

The conventions and recommendations drawn up by the ICCS do not deal with major principles, but are designed to resolve practical and technical problems notified by the national Sections. They are therefore generally short and directed to a specific point : this explains why there are a large number of them – well over twenty. This is not the moment to analyse them ; I will merely indicate the aims pursued by the Commission in their preparation, namely a measure of harmonisation of the law of persons and of family law and the development of international cooperation in civil status matters.

A) Harmonisation of the law of persons and family law

The ICCS has attempted to contribute to the rules of the law of persons and family law applicable in the member States. This is a difficult task since these laws lend themselves less readily to harmonisation or assimilation than do commercial law and the law of obligations. When dealing with anything that affects persons, it is necessary and legitimate to respect national or even regional particularities, which are often based on historical traditions firmly rooted in the population's customary attitudes.

The ICCS nevertheless applied itself to drafting conventions designed to facilitate the establishment of maternal descent of natural children or to simplify the celebration of marriages in the various member countries. It also attempted to promote uniform rules to enable death certificates to be drawn up concerning persons who have disappeared in circumstances endangering their lives, whose bodies could not be found or identified.

Likewise, on a more technical level, the ICCS has formulated recommendations with a view to resolving the civil status problems of refugees, harmonising civil status certificates and striking a balance between the necessary publicity of registers and respect for the private life of citizens.

These conventions and recommendations have had some success, though to a degree that varies according to the subject-matter. Some of them have been ratified by only a minority of the States. It has to be recognised that the nations remain deeply attached to their particular rules.

B) International cooperation in civil status matters

The ICCS has made considerable efforts to facilitate the circulation and recognition of documents and judicial decisions and to bring about cooperation between authorities. It is, after all, of no real importance to a Portuguese worker settled with his family in France, in the Netherlands or in Germany that the rules of law and the provisions concerning personal or civil status be the same in the two countries. More prosaically, what counts for such a worker is that if he needs a birth certificate of one of his children to register him at school, the document issued by his national authorities will be accepted everywhere without formalities or administrative complications. Or again, that if he divorces in France, he will not be regarded in Portugal as being still married.

In other words, if persons are to circulate, documents and decisions concerning them must also be able to circulate and to be easily understood and accepted.

It was this concern that led the ICCS to prepare various international instruments. For example, it has designed multilingual extracts from civil status records, which include on the back a translation, into the languages of the ICCS countries, of all the unvarying entries therein (name, forenames, dates, name of father, name of mother, place of birth, marriage or death). These conventions have proved very successful, as they have been ratified by nearly all the ICCS States and also by some other countries ; they are frequently applied on account of their practical advantages, namely the avoidance of any need for translation and legalisation. Likewise, conventions have been drawn up to introduce an international family record booklet and to facilitate the recognition and updating of the various national family record booklets. Or again, conventions have been drafted to exempt records from the formality of legalisation and to facilitate the issue of certificates of capacity to marry, of certificates of differing family names and of life certificates.

In addition, various agreements have been concluded with the aim of ensuring that acknowledgments and legitimations of natural children made or occurring in one of the member States are more readily recognised and that the international validity of divorces granted by the courts of one of the member countries is more readily accepted.

Finally, the ICCS has organised direct exchanges of information between individual civil status officials, in that the office that drew up the birth certificate must be notified of acknowledgments, marriages, divorces, deaths and rectifications of civil status records occurring abroad.

FUTURE PROSPECTS

The increase in the number of member States of the ICCS – we are now 15 and tomorrow, let us hope, we shall perhaps be more – and the arrival of new technologies are obliging the Commission to reconsider some of its activities as well as some of its working methods.

As regards conventions, the question of the circulation of documents and information, the natural extension of which is the recognition without formalities of what is done abroad, must certainly take priority over the harmonisation of laws, an exercise that already proved difficult when there were few of us. However, the circulation of documents and information raises new problems : the most «efficient» of the ICCS conventions are based on the use of multilingual extracts, but the number of languages used cannot be increased ad infinitum. Hence the idea of coding, which led in 1995 to the preparation of a convention providing for the attribution of a code number to the unvarying entries in the uniform documents designed by the Commission. With this system it will suffice to possess a glossary indicating the meaning of that number to understand the document, which will also be readable by an appropriately-programmed computer. All the forms recently designed by the ICCS make use of this coding technique.

All the same, these remarks do not imply that a brake will be put on the Commission's work in the convention field, since our agenda includes two drafts which are already at a very advanced stage, one relating to the establishment of uniform certificates of nationality and the other to the recognition of decisions rendered concerning transsexualism. In addition, the German Section has just proposed that consideration be given to a text that would seek to resolve the divergencies currently resulting from the application of national law on the name of spouses and the name of children.

These initiatives must also be combined with a careful examination of the application of the existing conventions, which may lead to a « polishing » of some of them or even to a grouping together of several international instruments.

At the same time our documentary work will be actively pursued. A general revision of the «Practical Guide» is in hand, in order not only to include therein the replies of the new member States and the traditional updates but also to supplement it by new questions and new developments necessitated by the rapid evolution of the subject-matter. The success enjoyed by the specific studies already published can only encourage us to prepare further publications on various subjects of current concern : examples are registered partnerships, on which the Secretariat General made a communication last week at The Hague ; the organisation of civil status records for nationals living abroad ; the right to know one's origins and the entry of adoptions on civil status records. A supplementary study on fraud or a new, updated edition of the existing study is also envisaged.

Besides these traditional activities, there are other areas open to the ICCS.

The first of these relates to the development of cooperation in civil status matters. Closer relations between our Organisation and the civil status officials of the member countries and their representative associations are eminently desirable, firstly with a view to making our work and conventions more widely known and thus to improve their application, and secondly in order to draw up an inventory of the problems met by practitioners and to gather in their suggestions.

It also seems that there is a potential demand from several States of South America which would like to obtain technical assistance in civil status matters and that the problem of the registration of births in various States, especially in South-East Asia, is pressing. The ICCS could play a role in this area, either by organising information missions or by sending teams of technicians on the spot.

Finally, the development of information technology raises new problems. It opens new perspectives for the registration of events and the transmission of information. The ICCS has set up a working group on this subject and studies and trials are now in progress : thus, exchanges of information were recently carried out by computer between the town halls of Bologna and of Amsterdam. The creation, at European level, of a computerised network, in which the ICCS could have its place, is not to be excluded.

You can see, ladies and gentlemen, as is amusingly said by a morning radio broadcaster, that the future does not lack prospects.