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ETAT CIVIL ET DECES PERINATAL

DANS LES ETATS MEMBRES DE LA CIEC

(Allemagne - Autriche - Belgique - Espagne - France - Grèce - Italie
Luxembourg - Pays-Bas - Portugal - Royaume-Uni - Suisse - Turquie)

CIVIL STATUS AND PERINATAL DEATH

IN ICCS MEMBER STATES

*(Austria - Belgium - France - Germany - Greece - Italy - Luxembourg -
Netherlands - Portugal - Spain - Switzerland - Turkey - United Kingdom)*

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**Etude rédigée par le Secrétariat Général de la CIEC
avec le concours de Madame Frédérique GRANET,
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Liste des abréviations utilisées / List of abbreviations used

- BBS** (Pays-Bas/Netherlands)
Besluit Burgerlijke Stand
Décret sur l'état civil / Decree on civil status
- BGB** (Allemagne/Germany)
Bürgerliches Gesetzbuch
Code civil / Civil Code
- BW** (Pays-Bas/Netherlands)
Burgerlijk Wetboek
Code civil / Civil Code
- Cc**
Code civil / Civil Code
- Cct** (Turquie/Turkey)
Türk Medeni Kanunu
Code civil turc / Turkish Civil Code
- CIEC**
Commission Internationale de l'Etat Civil / International Commission on Civil Status
- CRC** (Portugal)
Codigo do Registo Civil
Code de l'état civil / Civil Status Code
- DA** (Autriche/Austria)
Dienstanweisungen zur Vollziehung des PStG
Instructions relatives à l'exécution de la loi sur l'état civil / Instructions concerning the implementation of the Civil Status Act
- LRC** (Espagne/Spain)
Ley del registro civil
Loi du registre civil / Registration Act
- OEC** (Suisse/Switzerland)
Ordonnance fédérale sur l'état civil / Federal Order on Civil Status
- OStC** (Italie/Italy)
Ordinamento dello Stato Civile
Règlement de l'état civil / Civil Status Regulations
- PStG** (Allemagne – Autriche/Germany - Austria)
Personenstandsgesetz
Loi fédérale sur l'état civil / Federal Civil Status Act
- PStV** (Allemagne/Germany)
Verordnung zur Ausführung des PStG
Décret d'application de la loi sur l'état civil / Decree on the implementation of the Civil Status Act
- R.D.** (Italie/Italy)
Regio Decreto
Décret royal / Royal Decree
- RRC** (Espagne/Spain)
Reglamento del Registro civil
Règlement du Registre civil / Regulations of Civil Status Registration

Plan / Outline

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Stillborn child

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Identification and parentage of child

1 - L'enfant né vivant mais sans vie lors de la déclaration

Child alive at birth but lifeless on declaration

2 - L'enfant mort-né

Stillborn child

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Circumstances of death

Foreword

The International Commission on Civil Status (ICCS) is an intergovernmental body comprising 16 States¹ : Austria, Belgium, Croatia, France, Germany, Greece, Hungary, Italy, Luxembourg, Netherlands, Poland, Portugal, Spain, Switzerland, Turkey and United Kingdom. It has its seat in Strasbourg (France), at 3 Place Arnold, the address of the premises of the Commission's Secretariat General.

Each ICCS member State sets up a national section composed generally of professors of law, judges, representatives of ministries or administrations charged with supervising civil status, together with local registrars. Made up of chairpersons of the national sections assisted by a number of experts, the ICCS Bureau meets annually in late March, usually in Strasbourg, and the Commission holds an annual General Assembly in September, in one or other of its member States.

The purpose of the ICCS, as defined by the instruments by which it was set up and by its rules of procedure, is as follows :

- « *to compile and keep up to date a documentation on legislation and case-law setting out the law of the various member States in matters relating to the status of persons, to the family and to nationality* » ;
- « *to provide, on the basis of this documentation, information to the authorities referred to in Article 2 of the Protocol of 25 September 1950* » (i. e. government departments, diplomatic missions, consuls-general, consuls, vice-consuls or consular agents of each High Contracting Party) » ;
- « *to carry out any studies and work -in particular by drawing up recommendations or draft conventions- aimed at harmonising the provisions in force in the member States on these matters* » ;
- *to seek legal and technical means for « improving the operation of civil registration in the member States » ;*
- *to «coordinate its activities with those of other international bodies » which are also dealing with the law of persons and family law.*

It was in this general context that the question of the registration of lifeless children was raised in September 1996 by the French section of the ICCS in Rome. Since the drawing up of new instructions for French registrars in the framework of the revision of the General Instructions on civil status had given rise to various problems as a result of the coming into force of the Act of 8 January 1993 rescinding the Decree of 1806 which defined how lifeless children, i. e. children dead at the time of the declaration of birth, were registered, the French section wished to obtain information about other ICCS States practices in this area.

After the Rome meeting a questionnaire to which national sections were invited to reply was compiled and it was agreed to place the question on the agenda of the Bureau meeting held in March 1997 in Strasbourg. On that occasion a discussion brought out the interest aroused by the topic, and it was decided to pull together in a study the interesting material conveyed by national sections in their replies. The outline of an initial consolidated version was drawn up in May 1997 by the Secretariat General, especially by Professor Frédérique Granet of the University of Strasbourg, bringing out those points on which additional information was still needed so as to ensure as specific and harmonised a set of replies as possible. The information contained in these various replies has served as a basis for the present study approved by the ICCS which has adopted its content and authorised its publication in legal journals.

The French original version of this study has consequently been published in Private International Law Review (N. Sakkoulas Publishers, Athènes, 1998, pp. 291-302) et in JCP - La Semaine Juridique Edition Générale (Paris, 1999, n° 13, pp. 613-616).

¹ Poland having been admitted on 9 September 1998, Croatia on 25 March 1999 and Hungary on 15 September 1999, the study is limited to the other 13 States.

Civil status and perinatal death in ICCS member States

Considerable progress in neonatal and fetal medicine has led to a large drop in the proportion of deaths among the newborn and the saving of many premature children, even of very premature children. The fact remains, however, that perinatal death continues to give rise to specific civil status issues, in respect of which two cases may be contemplated :

- that of the stillborn child
- and that of the child that, although live at birth, dies before having been declared at the registrar's office. Despite its infrequent occurrence this case is not purely academic, all the less so as the deadline for declaring births varies from one State to another (as a rule, this deadline is set at three days in France, the Netherlands and Switzerland ; five days in Luxembourg ; one week in Germany and in Austria ; eight days in Spain ; ten days in Greece and in Italy ; 15 days in Belgium ; 20 days in Portugal ; 21 days in Scotland ; six weeks in England, Wales and Northern Ireland ; 30 days in Turkey).

As far as civil status is concerned, the medically observed situation of life or death is apprehended under the legislations of ICCS States in a variety of ways, with the result that the registration of the child entails legal consequences that vary according to the legislation concerned.

« The child shall be registered immediately on birth » ; thus reads the principle worded in the form of a postulate in Article 7-1 of the New York Convention on the rights of the child that has been signed and ratified by all ICCS States. However, although the Convention clearly lays down the upper age limit of its beneficiaries (18 years unless the national law provides for a lower age of majority), this does not apply as regards the moment when life starts, and not every child conceived will necessarily be registered. As a rule, it is the child's physiological state on expulsion from the mother's womb that determines the nature of the instrument drawn up by the registrar as well as – to some extent – its content. Several States have recently modernised their legislation on this point by discarding various rules that have become too demanding at a time when, with most deliveries taking place in health institutions, there is no longer cause to fear improper sollicitation of legacies and when efforts are made to take more account of the the distress of parents who are deeply upset by the loss of their child. Praiseworthy though it may be, this compassion cannot be given too free a rein lest it detract from the reliability of civil status and its traditional role as the recorder of births, deaths and the main events throughout people's lives. Consequently registrars do not record fetuses or products of abortion below certain thresholds. In Belgium (Section 326 Cc), in France (Ministry of Justice Decree of 3 March 1993, I 3-7), in Greece (Section 37. Para. 3 of law 344/1976), in Luxembourg (constant administrative practice), there is no registration if gestation is less 180 days. In Spain (Section 45 LRC, Sections 171-174 RRC) and in Switzerland (Section 66 sub-para. 1 OEC), stillbirths occurring before the end of six months of pregnancy are not registered, nor are they in Portugal if they occur before 22 weeks of pregnancy (Section 209 CRC). In the Netherlands (Section 19 i, Schedule 1 BW and the Inhumation Act of 12 April 1995) and in the United Kingdom 24 weeks of pregnancy is the limit below which no civil status instrument is drawn up. In Italy this limit is set at 28 weeks. In Germany (para. 29, sub-para. 3 PStV – Decree on implementation of the Civil Status Act) and in Austria (P 23.4 DA and para. 8 sub-para. 1 Z 2 of the Midwives Act) « miscarriages » are not entered into civil status registers when the child that fails to survive weighs less than 500 grammes. These reference thresholds correspond to WHO recommendations (22 weeks' amenorrhea or a weight of 500 grammes) and are tantamount to a presumption of viability, a physiological capacity of survival on the part of the child conceived. Finally, in Turkey, no civil status instrument is established for stillbirths whatever the length of the period of gestation (Sections 16 of the Population Act and 84 of the Regulations on the setting up, functions and operation of civil status bodies).

Inhumation of these fetuses is permitted in several countries : in Germany if the parents so wish ; in Austria in accordance with local authority practice ; in Belgium on request by the parents but in a public cemetery plot specially reserved for that purpose and with no indication of name (Ministry of Interior Decree of 9 September 1991) ; in Spain on presentation of a medical certificate attesting to the origins of the human remains stemming from the abortion (Section 9 of Decree 2263/1974 of 20 July) ; in Luxembourg, in the family grave should the family so wish ; in the Netherlands (the Inhumation Act is not applicable in such cases, but inhumation is possible in practice) ; in the United Kingdom the matter is left to the local authority, the general rule being that inhumation is possible if the parents so request. On the contrary, such inhumation is not possible in Greece, Italy, Portugal or Turkey. In Switzerland, the solutions vary from one canton to another, inhumation and public health being governed by cantonal law. Finally, France has no specific rules on the matter.

Over and above the case of fetuses that are lifeless on expulsion below these thresholds and that are dealt with along more or less the same lines in the legislations of ICCS States, with the exception of Turkey, there still remain to be examined the situation of stillbirths occurring beyond these thresholds and that of children alive at birth but victims of a very early death. Here we fail to find the same harmony between national legislations when it comes to the nature and the content of instruments drawn up by registrars.

I - Nature of instruments drawn up by registrars

In all ICCS States the birth of a child is declared to the registrar and immediately entered into the register of births (as to entries in the birth certificate, cf. the study by Professor F. Granet and the ICCS Secretariat General : « L'application en matière d'état civil des principes posés par la Convention européenne des Droits de l'Homme », Revue trimestrielle de Droit européen, éd. Dalloz-Sirey, Paris, 1997, p. 653 s.)

However, from one State to another solutions vary firstly as regards children live at birth but dead even before their registration, with a distinction in France as between viable and non-viable children, and secondly regarding stillborn children whose weight or period of gestation is sufficient to require mandatory registration. Indeed, from the standpoint of civil status, at times only the birth of live children is taken into account, without regard to whether they were lifeless when registered ; at other times, on the contrary, only the absence of life on declaration is taken into consideration, which boils down – for civil status purposes – to assimilating children declared as lifeless to stillbirths. This choice of legal policy has implications for the nature of the instruments drawn up by the registrar : birth certificate and death certificate or only one of the two.

A - The child alive at birth but dead on declaration

Several systems are conceivable :

- *In most States, if the child has lived, even if only for a short time , the same rules are applied to that child as to children still alive. The child is thus entered into the register of births like any other person born live and its death is entered into the register of deaths : two instruments are thus drawn up. This is the case in Germany (Para. 1 BGB ; paras. 21 and 23 PStG – Civil Status Act) ; in Austria (Paras. 19 and 28, sub-para. 1 PStG) ; in Italy (R. D. No. 1238 of 9 July 1939, known as the « Civil status system » and Section 74 of OstC) ; in the Netherlands (Section 19 i Schedule 1 BW) ; in Portugal (Section 100 CRC) ; in the United Kingdom (where the act of birth and of death is reported to the registrar not only by the declarers but also by the physician or the health services) ; in Switzerland (Section 74 OEC) ; in Turkey (Section 84 of Regulations quoted above).*

- *In other States regard used to be paid solely to the death prior to declaration to the registrar, in which case a special certificate for a lifeless child was entered into the register of deaths. This by the way is the solution still in force in the Grand Duchy of Luxembourg (Decree of 4 July 1806), whereas it is on the wane in Belgium and France. In Belgium, where it is generally accepted since the Act of 30 March 1984 that if a child dead on declaration was still alive when its birth was duly noted by the authorised physician, then a birth certificate and a death certificate (Section 56 para. Cc) should be drawn up, whereas in the contrary case an inscription is entered into the register of deaths to the effect that the child was dead on presentation. In France Law No. 93-22 of 8 January 1993 introduced into the Civil Code a new Section 79-1 prescribing that there be drawn up a birth certificate and a death certificate on presentation of a medical certificate showing that the child was born live and viable and the dates and times of its birth and its death. Solely in the absence of such a certificate is there drawn up a certificate of stillbirth (cf. also the Ministry of Justice Decree of 3 March 1933 already quoted). It should, however, be made clear that in Belgium as in France and Luxembourg the drawing up of a certificate of stillbirth does not prejudge whether the child lived or not, which is a question that can be decided by a county court apprised of the matter by any interested party.*
- *Spain has an original system. A birth certificate may not be drawn up before the expiry of a period of 24 hours after the cutting of the umbilical cord (Section 40 LRC). As from then a birth certificate and a death certificate are drawn up. However, the opinion has been voiced that Article 7 of the New York Convention, being directly applicable, would permit the entering of a birth without waiting for 24 hours as laid down in the Act.*
- *In Greece yet another solution has been adopted : should death occur before declaration to the registrar, a birth certificate containing a reference to the death is drawn up. However, this method applies only if death occurred in the statutory 10-day deadline for the declaration of birth. If death occurs later and if the birth has not been declared, then a death certificate and a posthumous birth certificate are made out. In all cases the causes of death are indicated.*

B - Stillborn child

Subject to the exception of Turkey where we may recall that the stillborn child is never registered, in all ICCS States a declaration to the registrar is mandatory beyond a minimum short period of gestation or when the weight of the fetus exceeds 500 grammes.

Being dead at birth, the child is entered into the register of deaths in Austria (Para. 28, sub-para. 2 PStG), in Belgium, France, Luxembourg (Decree of 4 July 1806) and in the Netherlands (Section 19, Schedule 1 BW). The same applied in Germany (Para. 24 PStG – Civil Status Act) until 1 July 1998, the date which saw the entry into force of the Marriage Reform Act (Eheschließungsgesetz) of 4 May 1998. From then on, stillbirths have been entered into the register of births with a reference to the fact that the child was stillborn and, on request by the parents, mention is made of the family name and given names. Similarly, the parents may request that the stillborn child be mentioned in the official family register (Familienbuch). A reminder should be given of the fact that in France and Luxembourg a child born unviable is also entered into the register of deaths, and that the same holds true in Belgium for the child having died before the physician's official recording of the birth.

Italy (R.D. No. 1238 of 9 July 1939 already mentioned and Section 74 OStC), Greece (Section 37 law 344/1976) and Switzerland (Section 59 sub. paras. 1 and 74 OEC) have adopted another solution : the registrar draws up a birth certificate containing a reference to the death.

In the United Kingdom a certificate of stillbirth is drawn up in a specific register (Register of Stillbirths).

In Portugal, since the reform introduced by the Decree-Law No. 36/97 of 31 January 1997, no special certificate is made out for stillbirths, although in the registry a declaration is filed to which the medical certificate is appended (Section 209 CRC).

Finally, in Spain the child is entered on to a special sheet for aborted children (*legajo de abortos* : Sections 29 and 30 Cc ; Sections 171 to 174 RRC) which is kept in a file on aborted children along with the relevant medical documents. This applies also to the child having died within 24 hours of the delivery.

II - Content of instruments

A - Identification and parentage of child

As a rule the birth certificate of a child alive on declaration indicates its name and given names (cf. « *L'application en matière d'état civil des principes posés par la Convention européenne des Droits de l'Homme* », *op. cit.*). Such a child is entered into the family record booklet (« *livret de famille* ») in States where a booklet of that type exists. Various considerations have prompted certain States to extend this system to the child born live but dead at the time of its declaration to the registrar and even, occasionally, to the stillborn child.

1 - The child born alive but lifeless on declaration

Having acquired legal personality, a child medically recorded live at birth but dying before registration of civil status enjoys the status conferred by the ordinary law : legally the child is an individual since it possesses a surname and first names ; it appears in the parents' family record booklet, if such booklet exists ; if its parents are married, it is connected to their marriage, otherwise its parentage can be established by the ordinary rules. This is so in Germany (Para. 15, 21 and 37 PStG – Civil Status Act), in Austria (Para. 28, sub-para. 1 PStG), in Belgium (although it should be observed that posthumous recognition is not possible, Section 328 Cc), in France if the child is born viable (Decree of 3 March 1993, *Journal Officiel* 24 March), in Greece (Section 1475, sub-para. 3 Cc), in Italy (Section 1 Cc), in the Netherlands (Section 50, sub-para. 2 BBS on recognition), in Portugal (Sections 100, 102 No 1 sub-para. a) and 130 CRC), in the United Kingdom (Scotland : 1965 Act, Section 14 ; England and Wales : 1953 Births and Deaths Registration Act, Section 1 ; Northern Ireland : Births and Deaths Registration (Northern Ireland) Order 1976), in Switzerland (Section 46, sub-para. 1 Cc and Section 59 sub-para. 1 OEC ; Section 48 Cc and Section 74 sub-para. 1 OEC), in Turkey (Sections 241 and 252 Cct). In Italy, a person's parentage can be established after death only if that person leaves children who could benefit from such parentage (Section 255 Cc), with the result that acknowledgments concerning lifeless children cannot be accepted.

In Luxembourg a lifeless child is registered without any indication of first names but may be entered into the family record booklet and posthumous recognition is permitted (Section 336 Cc).

Finally in Spain only a child that has lived 24 hours after the cutting of the umbilical cord and been entered into the register of births is given a surname and first names and entered into the family record booklet. If this condition is not fulfilled, the special sheet for aborted children then made out does not indicate the surname and first names of the child (Section 173 RRC) which cannot then appear in the family record booklet (Section 36 RRC).

2 - The stillborn child

Mindful of the father's and mother's feelings, certain countries allow them, should they so wish, to give the stillborn child a surname and first names and to request that it be entered into the family record booklet, if any. This is the case in the Netherlands (Section 66 BBS (Royal Decree on Civil Status)) as well, since 1 January 1996 (Section 67, para. 1, ch. 3, littera b OEC ; Section 147, sub-para. 1 bis OEC), in Switzerland. This applies also to France not only in respect of the stillborn child, but also for the unviable child, both being the subject of a certificate concerning a lifeless child and into which one or more first names (but not surname) may be entered (IGEC (J) No. 469 ; Ministry of Justice Decree of 3 March 1993 mentioned above ; Section 9 of Decree of 15 May 1974 as amended by a Decree of 16 September 1997).

In Greece, any child born in wedlock, even if stillborn, acquires the matrimonial name chosen by the spouses (Sections 1465 and 1505 Cc). If the parents are not married, the child may be recognised before or after its birth and the recognition is mentioned in the margin of the birth certificate. A given name may be indicated in its birth certificate (Section 25 of Law 344/1976), but in practice the case very seldom arises inasmuch as the choice of given name takes place later, when the child is baptised. In the United Kingdom the deadline for the declaration of stillbirths and live births is the same. A surname and first names may be given to the child if the parents so wish. The child is linked to the marriage if the parents are married to one another ; otherwise the child is linked to the mother, and to both parents in the event of a joint declaration by the father and the mother. Copies of a certificate concerning a stillborn child may be issued to the parents only.

In Belgium (Sections 1 and 2 of Decree of 4 July 1806), as in Luxembourg, first names cannot be given to stillborn children (yet, in Belgium, a private member's bill has been tabled with a view to allowing it), but there is no objection to their being entered into the parents' family record booklet if such is their wish.

In Austria the stillborn child is registered without any indication of surname or first names and is not linked to the parent's marriage (Para. 28, sub-para. 2 PStG). In Germany, since the reform (mentioned above) which came into force on 1 July 1998 it is provided that, in addition to being recorded in the register of births (and no longer in the register of deaths), the child is given a surname and first names at the parent's request. The child may also be entered into the family record booklet. In Italy also this matter is currently being debated and the question has been mooted as to whether or not it would be desirable to give the stillborn child a surname and first names, in accordance with a well-established traditional practice.

In Spain the record of abortions does not mention any surname or first names (Section 173 RRC), but only the parents' identity if they are married or, if not, that of the mother, in which case nothing prevents indicating the father's identity, although such indications cannot entail the effects of acknowledgment (Section 126 Cc). By the same token, such declaration of maternity or paternity is not recorded in the civil status registers. Similarly, an acknowledgment made during pregnancy, which doctrine deems to be possible, would have no effects since, ex hypothesi, the child was not born live and was therefore unable to have lived for at least 24 hours.

In Portugal, neither a surname nor first names may be given to a stillborn child. The declaration filed with the registrar contains the mother's name and that of her spouse if she is married. If she is not married, a prenatal acknowledgment would not be entered and posthumous acknowledgment is not possible.

In Turkey stillbirths are neither recorded nor entered into the official family register (Section 16 of the Population Act).

B - Circumstances of death

The circumstances of death have traditionally been considered as matters falling within the private sphere. In most ICCS States circumstances of death are thus not indicated on certificates concerning stillbirths or infants declared to be lifeless. When special instruments are drawn up their very nature indicates that death occurred prior to birth or shortly afterwards, but the cause of death is not recorded in the registers. In Italy, where the birth certificate specifies that « the child was stillborn as may be seen from the medical certificate », the latter certificate is attached to the former which, however, never indicates the cause of death (R.D. No. 1238 of 9 July 1939 mentioned above). The situation is different in Greece, the United Kingdom and Turkey where the cause of death is always indicated in death certificates.

It is perhaps useful to stress that the evolving national legislation of various countries points towards a greater readiness to take account of stillbirths or infants declared as lifeless.

In no ICCS State does a stillborn child acquire legal personality, traditionally defined as being the ability to hold rights and to assume obligations. However, as we have seen, some States accept that such a child may be given a surname and first names, that its parentage be established and that it may appear in its parents' family record booklet.

It will further be noted that in some States live birth suffices to enable the infant to acquire legal personality, whereas in others the fulfilment of an additional condition (viability, a given length of life) is needed to that end.

Major consequences may flow from this acquisition of legal personality, concerning such matters as entitlement to claim upon an estate, welfare benefits (although many of these are often coupled with the parental obligation to maintain and bring up one's children rather than with birth), the mother's entitlement to early retirement or, conversely, to continue working.