

## **EXPLANATORY REPORT**

*Adopted by the General Assembly in The Hague on 8 September 1982*

### **1. GENERAL REMARKS**

#### **Preamble to the Convention**

The differences existing between national laws regarding filiation, adoption or change of name have, for a long time now, had the result in a few relatively rare cases that the same person does not have, under those laws, one and the same surname. The number of persons with several surnames is, however, destined to grow more rapidly in the future, now that certain States allow spouses, at the time of their marriage, to choose as their surname the surname of the husband or the surname of the wife and make this option available to foreigners who are resident in their territory and contract marriage there. To give an example: a French national of the name of Dupont resident in the Federal Republic of Germany will, in law, have the name of Schmitt in that country if he chose that name when he married Miss Schmitt before a German civil registrar but, under French law, he will nevertheless have no other name than Dupont. These differing names are obviously likely to cause him administrative, fiscal or banking difficulties, notably if he travels outside the Federal Republic of Germany, has assets in France or a third country or wishes to transfer moneys from one State to the other. That such difficulties are real and serious is, moreover, demonstrated by the demands for remedial action to be taken, made in the course of interventions in the European Parliament.

After consulting its national sections and studying this problem in detail in both its Bureau and the General Assembly, the International Commission on Civil Status concluded that the most practical way of easing the difficulties mentioned was to provide persons to whom the law of one State attributes a surname different from the one that they are recognised to have in another State with an international document, called a "Certificate of differing surnames", which would make it possible to identify them despite their having several names.

The ideal solution would, of course, have been to eliminate the underlying causes of differing names by fixing a single connecting factor by means of an international agreement. The International Commission on Civil Status had already followed this approach when, in Article 1 of the "Convention on the law applicable to surnames and forenames" that was opened to signature by States in Munich on 5 September 1980, it enunciated the principle that the matter was to be governed by national law. However, since the Commission could not leave out of account the current legal position in the various States that remain firmly attached to the law of the habitual place of residence, it accepted the possible application of that law by operation of the reservation provided for in Article 6 of that Convention. Far from affecting the principle enounced in Article 1 of the Munich Convention, the creation of a "Certificate of differing surnames" is confined to remedying certain divergences that result from the application by various States of the law of the habitual place of residence.

### **2. COMMENTARY ON THE ARTICLES**

#### **Article 1**

The first paragraph of this Article specifies that the certificate of differing surnames is intended to facilitate proof of identity for persons who "owing to differences between the laws of certain States" are not designated by one and the same surname; it thus limits the scope of the Convention "*ratione materiae*", in that it expressly confines the possibility of issuing the certificate to cases where the difference in surnames derives from a correct application of dissimilar laws. This excludes from the domain of the Convention all the other cases of differences in surnames, for example those that may

arise from an incorrect application of the law or from a misunderstanding or clerical error that modified or deformed a name when a civil status record was being drawn up. In those cases the persons concerned should not ask for a certificate of differing surnames but should have recourse to the procedures whereby the mistake made can be rectified.

A difference in surnames will most often derive from differences between States' laws regarding marriage, filiation or adoption. Nevertheless, the use of the adverb "particularly" in paragraph 1 shows that these matters are not cited by way of limitation. Thus, a difference in surnames may be the result of a procedure or a decision by an authority that has the effect in law of changing a name in one State but is not recognised in the State of which the individual concerned is a national.

Paragraph 2 of Article 1 states that "the sole purpose" of the certificate in question "is to record that the various surnames it mentions designate, under different laws, the same person". A purpose circumscribed in such a way gives the certificate the status of a purely supplementary document. Thus, to revert to the example given above of the Frenchman Dupont who became Schmitt in the Federal Republic of Germany following his marriage, the certificate of differing surnames will establish that under French and German law respectively Dupont and Schmitt are the names of one and the same person. Yet that will not prove that the individual producing the certificate is in fact the person with two names, *in casu* Dupont-Schmitt, mentioned therein. The certificate is accordingly meant to be produced along with another document (identity card, passport, diploma, etc.).

By stating, in the last sentence, that the certificate "cannot have the effect of overriding legal rules governing names", paragraph 2 of Article 1 emphasises that it is not capable of bringing about any departure from the legal rules governing names in each of the States concerned. Indeed, the certificates are essentially intended to simplify matters for their users so that they can, for example, avail themselves in one State – without problems related to the difference in their names – of the legal effects of records and documents drawn up in another State under the name recognised by that other State. Accordingly, Dupont-Schmitt will be obliged to use the name of Dupont both in France and in States which in the matter of names apply the national law of foreigners, whilst in the Federal Republic of Germany he will have to use the name of Schmitt, which he is recognised to have under the legal rules of that State. Finally, it should be specified that, for the purposes of the Convention, the expression "legal rules" should not be taken as comprising only legislative provisions; on the contrary, it comprises the whole corpus of law of the State concerned, including its private international law.

## Article 2

This Article may be said to delimit the scope of the Convention "*ratione personae*". The main practical rules that can be identified from the principles it enunciates are the following:

**(A)** The certificate is to be issued only at the request of a person concerned who produces the requisite supporting documents. The nature of these documents is left to the discretion of the authorities of the State to which the request is submitted, an approach that is warranted by the fact that the Convention is "closed". The requisite documents must, of course, be such as to disclose the origin of the difference in names cited in the request so as to make it possible to determine whether that difference really derives, as is required by Article 1 of the Convention, from differences between dissimilar laws.

**(B)** If the person concerned holds the nationality of a Contracting State, he or she is free to choose whether to submit the request to the competent authorities of that State or to the competent authorities of the Contracting State whose law has attributed to him or her a surname different from

the one resulting from the application of his or her national law. Indeed, there is nothing to prevent the request's being submitted to the competent authorities of these two States at the same time.

Nationals of a third State are not precluded from taking advantage of the Convention, since the terms it employs are general in scope. However, they will not be able to address themselves to that State, since it is not a party to the Convention, so that their only possibility will be to submit the request for a certificate to the competent authorities of the Contracting State whose law has attributed to them a surname different from the one resulting from the application of their national law.

**(C)** The competent authority to which the person concerned has submitted a valid request accompanied by supporting documents proving that it is well-founded is obliged to issue to him or her a certificate of differing surnames complying with the model appended to the Convention. The competent authorities of the Contracting State of which the person concerned is a national cannot, for example, refuse to issue such a certificate on the ground that the difference in names derives from the application of a foreign law, even that of a third State. The competent authorities of the Contracting State whose law has attributed to the person concerned a surname different from the one resulting from the application of his or her national law cannot refuse to issue the certificate on the ground that he or she is a national of a third State.

### **Article 3**

According to this Article, certificates evidence "the correctness of the particulars they contain concerning the different surnames of the person designated therein", unless and until the contrary is proved. It follows from this that any other particulars appear in the certificate solely by way of information designed to facilitate identification of that person. The holder of the certificate therefore cannot use it as specific evidence of his or her date of birth, sex or nationality. This limitation on the evidential value of certain of the particulars in the certificate confirms that it has the status of a supplementary document and means that it can be used only to establish that the difference in names really exists.

The evidential value conferred, unless and until the contrary is proved, on the particulars in the certificate concerning the difference in names of its holder has to be recognised by all the Contracting States. If Dupont-Schmitt takes up residence in the territory of a Contracting State other than France or the Federal Republic of Germany, it will, for example, be open to him to use his certificate in that State in order to receive there, without encountering difficulties related to the difference in names, profits, instalment payments or interest from commercial transactions or private contracts that he had entered into in France under the name of Dupont or in the Federal Republic of Germany under the name of Schmitt.

### **Article 4**

This Article repeats the provisions in favour of refugees and stateless persons, which are already to be found in several Conventions drafted on the initiative of the International Commission on Civil Status.

### **Articles 5 to 18**

These Articles do not call for any special comment. Articles 5 to 10 specify the particulars or symbols to be included in the model certificate of differing surnames and the entries to be made therein by the competent authorities designated by the States pursuant to Article 11. In accordance with the multilingual technique already used several times by the International Commission on Civil Status, each heading on the front of the certificate has a number. The translations of that heading into the languages of the various member States and into English are found on the back, under the same number. Finally, Articles 12 to 18 contain the usual final clauses dealing notably with the signature and entry into force of the Convention, accessions and any amendments or denunciations.