

EXPLANATORY REPORT

Adopted by the General Assembly in Patras on 7 September 1989

A. GENERAL REMARKS

The object of this Convention is to secure recognition and facilitate updating by the Contracting States of civil status booklets issued in any of them. It is not designed either to deal with errors or to make good any omissions from such booklets, these being matters that remain governed by domestic law.

The Convention thus provides users of the booklets and their families, whose mobility across frontiers is on the increase, with the means of facilitating proof of their individual or family civil status since all they have to do is produce their booklet, whose evidential value is recognised by the Contracting States (it is to be noted that the verb “produce” (*“produire”*) is used in the Convention with the meaning, that is common in France, of present for a specific purpose).

It also provides for the updating of the booklet even outside the country of issue and thus helps to ensure that the document is reliable.

However, no obligation to create a booklet is imposed on any State.

The Convention supplements the system set up, on the one hand, by the Convention, signed at Paris on 12 September 1974, introducing an international family record booklet (Convention No. 15) and, on the other, by the Convention, signed at Athens on 15 September 1977, on the exemption from legalisation of certain records and documents (Convention No. 17).

That system is supplemented in that the effects of the present Convention extend not only to national booklets issued by one of the Contracting States but also to the international family record booklet issued by the States which have ratified Convention No. 15. The international booklet will accordingly be legally recognised not only by the States which have ratified Convention No. 15 but also by those which ratify the present Convention, even though it does not oblige them to issue such a booklet themselves.

In addition, the Convention supplements Article 2 of Convention No. 17, under which civil status documents are to be recognised without legalisation or equivalent formality, in that:

- it specifies the evidential value attaching to civil status booklets, by conferring on them the same value as that attached by the State where the booklet is produced to extracts from civil status records drawn up by the State issuing the booklet;
- it makes it compulsory for civil registrars of a Contracting State drawing up a record to update booklets presented to them, even those issued in another Contracting State.

B. COMMENTARY ON THE ARTICLES

Article 1

This Article gives a definition of civil status booklet for the purposes of the Convention. It is a document, issued by a civil registrar, taking the form of a bound collection of extracts from civil status records. Such extracts, in accordance with the rules applicable thereto, contain certain original particulars and subsequent annotations appearing in civil status records. However, if the law of a Contracting State so provides, the booklet may include only the original particulars entered in the extracts of which it is made up.

It should be noted that the words “civil registrar” in paragraph 1 cover not only civil registrars *stricto sensu* of the various States bound by the Convention but also other persons competent under national law, such as consular agents, captains of ships and, if appropriate, ministers of religion. The words “civil registrar” must therefore be construed broadly and include all authorities responsible in the various countries for drawing up the civil status records of which mention is to be made in the booklets.

Lastly, the Convention definition of civil status booklet presupposes that the document has been issued in accordance with the law of a Contracting State. By “law” is meant all texts having a normative function, such as a convention ratified by a State or a statute, decree, order or regulation.

Article 2

This Article deals with the question of the evidential value afforded by a Contracting State to civil status booklets issued by another Contracting State.

A Contracting State is to attach to civil status booklets, which are collections of extracts, the same evidential value as it does to extracts from civil status records issued by another Contracting State, without requiring any legalisation or equivalent formality.

However, it is for each State to specify in its national law whether a civil status booklet is admissible as evidence of civil status in given proceedings conducted within its territory.

Article 3

This Article indicates means that can be used to render the information in a civil status booklet more readily understandable, regardless of the State where it is presented.

For example, it is possible to use for married persons’ civil status booklets the model set out in Convention No. 15 of the International Commission on Civil Status. In that case, since the booklets would by definition be multilingual, there would of course be no question of demanding a translation.

It should be pointed out, however, that it is perfectly permissible for the booklets to take the form prescribed by national law. In such cases the Convention provides that the authority to which such a booklet is produced may ask for a translation thereof if it deems this essential. On the other hand, if the booklet, although written solely in the language of the issuing State, has its entries codified in conformity with a model approved by the International Commission on Civil Status, so that they are readily intelligible simply by consulting the multilingual model code, there is –as Article 3 indicates- no warrant for demanding a translation.

Article 4

Under Article 4, a civil registrar of one of the Contracting States who is drawing up a civil status record is obliged to update civil status booklets issued by another Contracting State, although this does not prevent the competent authorities in the issuing State from doing so themselves.

The obligation imposed by Article 4 relates only to the record which the civil registrar is in the process of drawing up. Updating does not relate to any previous civil status records.

Civil registrars will update the booklet either in the manner prescribed by the law of the State where the record is being drawn up or by completing any model contained in the booklet presented to them, in so far as the content of the record they are drawing up permits.

In any event the obligation to update applies only where the booklet is presented by the user. This shows that the main responsibility for ensuring the booklet's reliability devolves on the holder.

Article 5

Article 5 provides a means of verification where there are doubts about the accuracy of the date, the genuineness of the signature, the authenticity of the seal or stamp or the capacity of the signatory. However, recourse should be had to such verification only in exceptional cases.

As can be seen, the procedure is the same as that instituted by Article 3 of the Convention signed at Athens on 15 September 1977.

Verification must be as speedy as possible. The verification form may therefore be sent direct to the authority which issued or updated the booklet to be verified or to any central authority which the Contracting State has designated for the purpose. At no time, however, is the use of diplomatic channels precluded.

Article 6

The idea of assimilating refugees and stateless persons whose personal status is governed by the law of a particular Contracting State to nationals of that State, which is expressed in this Article, is to be found in other international agreements.

Article 7

The procedure foreseen by Article 7 supplements the provisions of Article 1.

To assist civil registrars, Article 7 provides that each State is, if appropriate, to draw up a list of the documents which it issues and which it declares to be in conformity with the definition of a civil status booklet set out in Article 1 and, where necessary, to update that list.

Article 8,9,10,12,13 and 14

These Articles contain the final clauses governing ratification of the Convention and its entry into force and duration.

The Convention is an open Convention: certain States, although not members of the International Commission on Civil Status, may accede to it after its entry into force (Article 10).

Article 11

The reservations mentioned in Article 11 may be made by any State which does not wish to alter the usual powers of its civil registrars or which wishes to recall its public-policy rules.

In that event, civil registrars would make to booklets issued by another Contracting State only such updatings as are provided for by their domestic law. A reservation might likewise relate to updatings whose content would be contrary to a State's public policy.