

EXPLANATORY REPORT

Adopted by the General Assembly in Rome on 12 September 1996 and supplemented in Neuchâtel on 11 September 1997

A. GENERAL REMARKS

Of the various problems examined by the International Commission on Civil Status, one of the first to have received its attention is the communication of civil status records between the various member States' civil registrars.

Thus, after drafting its first Convention, on the issue of certain extracts from civil status records for use abroad, signed at Paris on 27 September 1956, and then facilitating the application of that instrument by adopting Convention No. 2, on the issue free of charge and the exemption from legalisation of copies of official records of civil status, signed at Luxembourg on 26 September 1957, the ICCS rapidly broke fresh ground by adopting Convention No. 3, on the international exchange of information relating to civil status.

Convention No. 3, signed at Istanbul on 4 September 1958, – which took as its starting point the fact that several of the ICCS's member States were bound by bilateral conventions providing for the automatic exchange of civil status information – extended such exchanges to all Contracting States by providing for notices of the making or transcription of records of marriage or death to be sent automatically to the civil registrars for the place of birth of each spouse or of the deceased.

Convention No. 3 was supplemented by a Protocol, in the form of Convention No. 23 signed at Patras on 6 September 1989, which adds English, Spanish, Greek and Portuguese translations to the model notices used for exchanging information. It also offers the option of using either the original model notices or the multilingual extracts appended to the aforementioned Convention No. 1 or to Convention No. 16, on the issue of multilingual extracts from civil status records, signed at Vienna on 8 September 1976.

The present Convention is intended to replace gradually Convention No. 3.

Firstly, it extends the latter's material scope to include exchanges of information not just on marriages and deaths but also on dissolutions of marriage and acknowledgments of children. Secondly, as will be seen below, it simplifies the forms used for transmitting information by inserting therein the coding introduced by the recent Convention No. 25, signed at Brussels on 6 September 1995. Finally, it concerns all of the civil registrars of a Contracting State and not just those performing their duties in its territory.

B. COMMENTARY ON THE ARTICLES

Article 1

This Article deals with the exchange of extracts from records of marriage. The use of the words "when civil registrars of a Contracting State enter a marriage" signifies that the Article applies to all marriages that have to be entered in the register, whether or not the ceremony was performed by the civil registrar himself or herself.

It should be noted that the text is addressed to the civil registrars of a Contracting State and not, as is the case with Article 1 of Convention No. 3, civil registrars performing their duties in the territory of one of the Contracting States. Consequently, consular officials performing the duties of civil registrars

fall within the scope of this provision and are bound by the obligations to transmit extracts which it entails.

It should also be noted that the option which Convention No. 3 grants to States of making the sending of information conditional on its relating to a national of the receiving State has been eliminated on the ground that, in an age characterised by the increasing movement of persons across frontiers and the growing numbers of cases of dual or multi-nationality, such a condition no longer has any real justification.

Article 2

This Article is concerned with entries relating to divorce (paragraphs 1 and 2), annulment or non-existence of the marriage and other forms of dissolution of marriage, such as the *Eheaufhebung* of German law (paragraph 3). The case of dissolution by death is covered by Article 4, paragraph 2. The notices provided for in this Article must be sent to the civil registrars for the place of celebration of the marriage and the place of birth of one or both of the spouses.

Article 3

Since acknowledgments may be registered by any civil registrar, even a foreign one, the communication of an extract from the record of acknowledgment to the civil registrar for the place of birth is an example of a case where the Convention will be of particular value.

On the other hand, it was decided not to provide for exchanges of information regarding legitimation, since several of our countries do not even know the concept of legitimation because identical status is enjoyed by legitimate and natural children. Moreover, in the absence of an instrument of legitimation, it would have been necessary for civil registrars to interpret the consequences of a civil status-related event in the light of a foreign law, which would undoubtedly have created difficulties likely to give rise to errors. It should be recalled that Convention No. 12 of the International Commission on Civil Status, on legitimation by marriage, signed on 10 September 1970, is designed to resolve some of these problems and provides for exchanges of information on this matter.

Article 4

The communication of an extract from a record of death to the civil registrar for the deceased's place of birth is very important in those States where individuals' records of birth serve as the basis of their civil status by virtue of the fact that all events affecting their subsequent status – acknowledgment, marriage, divorce and also death – must be the subject of a marginal annotation to the record of birth.

In the case of deceased persons who were married, this extract is also communicated to the civil registrars for the place of the marriage and the place of birth of the spouses.

Article 5

This provision makes a useful addition to Convention No. 9, on decisions concerning the rectification of civil status records, which, *inter alia*, lays down the conditions in which decisions to rectify such records are to be brought to the notice of the other Contracting States concerned.

Without prejudice to the use that the receiving State will make of the rectified record, the present Convention will permit the automatic transmission of the rectified decision to the civil registrars who have custody of other records relating to the person concerned.

By “persons concerned”, Article 5 means not only the person directly referred to in the record in question but also persons for whom a civil status record might be modified or supplemented as a consequence. For example, the rectification of the surname of the person who is the subject of a record of marriage could result in a change of surname in the various civil status records of his or her spouse or children, who thus become “persons concerned”.

As in Convention No. 9, the rectification decisions involved are those that serve to make good a clerical error and not those that modify personal status or rule on the right to a title of nobility or honorific title. In certain countries, such as Belgium, titles of nobility are an element of the surname; they are therefore included in civil status records as part of the surname and may in that case be subject to rectification and hence to the application of Article 5.

Article 6

The communications provided for in the Convention take place between civil registrars having custody of records relating to the individual concerned; they do not, therefore, take account of the latter’s nationality. It should anyway be noted that in most of the ICCS’s member States civil registrars have no powers in matters pertaining to the nationality of the persons mentioned in the records they draw up.

In order to avoid any problems of interpretation, it seemed advisable to specify in the Convention that the communication of notices and extracts from records would be without prejudice to the nationality of the persons concerned.

Article 7

This Convention is concerned solely with exchanging information on civil status; as far as the utilisation of this information is concerned, it refers back to the law of the receiving State, which will give its civil registrars the necessary instructions.

Depending on the State, the particulars received may therefore either be used to annotate a civil status record or be treated simply as information.

The information supplied may be communicated only under the same conditions as civil status data already held in the country concerned, with full respect for the confidentiality that normally attaches to data of this kind.

Article 8

In the case of States whose law provides for the maintenance of a family register, it is important that the civil registrar of the State to which one of the notices or extracts referred to in Articles 1 to 5 is sent should be informed of the place where the family register of the person concerned is kept and its number, if that person was born in the territory of that State.

Since this information is not always available to the civil registrar of the sending State, Article 8 specifies that he or she has to communicate it only where this is possible.

It is for each State to determine, in accordance with its law, whether it can collect this information from the individuals concerned, for example by perusal of the identity documents in their possession, or by any other appropriate means.

Articles 9 to 13

This Convention, like others drawn up by the ICCS, includes the model forms to be used for exchanging information. However, for the first time, the use of multilingual forms has been abandoned.

The increasing number of ICCS member States, and thus of languages used, would have resulted in forms that were difficult to use if all those languages had to be included on each of them. It was therefore considered preferable to exploit the progress made in Convention No. 25, on the coding of entries appearing in civil status documents, signed at Brussels on 6 September 1995.

The forms will be drawn up in the language of the authority preparing them, with the standard headings accompanied by a code based on that in the glossary appended to Convention No. 25.

Eight forms have been created for the purposes of this Convention. Civil registrars will be required to complete them and the notices and extracts will be dated and include the name of the signatory, his or her signature and the seal of the issuing authority.

It may transpire that certain entries are prohibited under a particular country's law, even though they are provided for in the forms. For example, in one of the Commission's member States the names of the mother and father cannot be shown in extracts from records of birth. In such cases, civil registrars will be entitled to leave the relevant space blank.

Similarly, as noted in connection with Article 8, the space concerning the family register will be completed only if this is possible in the State sending the notice or extract.

Article 9, paragraph 2, and Articles 10 to 12 require little comment. They are based directly on the provisions of Convention No. 16, on the issue of multilingual extracts from civil status records, signed at Vienna on 8 September 1976. Article 13 simply provides for an Appendix listing the terms used and the corresponding code numbers.

Article 14

As in the case of Convention No. 25, on the coding of entries appearing in civil status documents, the Contracting States will be required to deposit with the Secretariat General the translation into their official language or languages of the terms included in the list of the headings appearing in the forms and this translation will have to be approved by the Bureau of the ICCS.

It goes without saying that maximum consistency will be sought between the translations of these headings and the similar ones appearing as an Appendix to Convention No. 25.

The second paragraph of this Article deals with the procedure for modifying translations.

Article 15

This Article provides a simplified method of revising the coding of entries, so that a purely technical operation having no effect on the substance of the Convention does not become unnecessarily

complex. Such revisions can be effected by a resolution adopted by a simple majority of the representatives of the member States of the International Commission on Civil Status and of the non-member Contracting States. Naturally, any modifications must take account of the codes used in the Commission's other conventions.

Article 16

This Convention is intended to replace gradually Convention No. 3, on the international exchange of information relating to civil status, and the Protocol to that Convention, signed at Patras on 6 September 1989; it will therefore take the place of those instruments in relations between States that have ratified both Conventions.

Moreover, like Convention No. 3, the new Convention will not prevent the transmission of documents through diplomatic channels or any other channels provided for in a specific convention.

Article 17

This Article lays down the principle that if the person concerned is a refugee, no information concerning civil status may be communicated, under the Convention, to civil registrars of his or her State of origin.

Naturally, the provisions of this Article, which must not be interpreted *a contrario*, are not intended to alter the practices followed under other ICCS Conventions for the benefit of refugees.

Articles 18 to 23

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

It is a semi-open Convention, in that any member State of the European Union or the Council of Europe can accede to it.