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**CIVIL-STATUS REGISTRATION IN EUROPE.
EXAMPLES OF INTERNATIONAL CO-OPERATION BY THE ICCS.**

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Introduction

Present the "civil-registration in Europe" in fifteen minutes will necessarily lead to various arbitrary choices, and I have first of all to mention that I am not in a position to draw a picture for all the European countries, but only for those which are members States of the International Commission on Civil Status, the ICCS.

As most of you are probably not too familiar with the ICCS, I should shortly present this organisation, which celebrated its sixty years of existence in March 2009 by organising a colloquy on "Civil Status in the XXIst century".

The International Commission on Civil Status, whose seat has been established in Strasbourg since 1981, is the only intergovernmental body organising international co-operation in civil-status matters. The ICCS is currently made up of fifteen member States¹, and Argentina and Mexico are soon to join it. Eight more States² have the observer status. To specify the relations with other international organisations, the ICCS concluded co-operation agreements with the Council of Europe, the Hague Conference on Private International Law, the United Nations High Commissioner for Refugees and the European Union. Historical reasons explain why the French language became the official language of the ICCS, and it still is, but the greater part of the ICCS work is also available in English and other languages.

According to the Protocols which founded the ICCS and the Commission's internal Rules, the mission of the ICCS is to facilitate international co-operation in civil-status matters and to further the exchange of information between civil registrars. Since its creation, the ICCS tried to fulfil this mission by developing its activities in two major fields, namely the documentation work and the normative work. I shall give some more details on ICCS activities in a second part, but will first try to define more precisely the notion of "civil status" and present major lines of the civil registration systems and functions of registrars in ICCS States.

Definition of "civil status"

What is "civil status"? Everybody has automatically a general idea about the matter, and links it to records and events he or she occasionally has to perform. Usually one is also convinced that everybody has automatically a civil status. But things are more complex and this notion of universality is far from being obvious: it is relatively recent in our countries and not a true fact all over the world because there are still millions of births which are not registered, and this lack of registration is depriving these persons of any legal identity and legal rights deriving from a birth registration, notably human rights, family rights, political rights, right to an education or social rights.

¹ Belgium, Croatia, France, Germany, Greece, Hungary, Italy, Luxembourg, The Netherlands, Poland, Portugal, Spain, Switzerland, The United-Kingdom and Turkey.

² Cyprus, Lithuania, the Russian Federation, Moldova, Romania, Slovenia, Sweden and the Holy See.

“Civil status” is the literal translation of the French “état civil” which has no exact equivalent in the common-law countries. In the widest sense, when speaking of civil status, we mean the status of a person in private law, between the moments of birth and death, and this status reflects the main elements whereby persons are differentiated from one another, such as parentage, nationality, name, residence, sex and legal capacity. Civil status is also the system which has been created in order to establish officially all these elements, i.e. the method of determination and registration of facts or events pertaining to the status of a person (birth, marriage, divorce, death, denial of paternity, acknowledgment of a natural child, legitimation, adoption, etc.) and the keeping of public registers thereof. Civil status is furthermore the public service which has the task of drawing up, keeping up-to-date and preserve documents recording those facts and events, and of issuing extracts from the registers (copies of or extracts from records, family booklets, certificates, etc.).

Civil registration systems and Registrars in ICCS States

Background. The registration of life events exists in European countries for centuries. Until the end of the 18th century and the French Revolution, the system of registration of life events was mostly performed by the churches, for the priests registered the events in their parish registers once they had administrated the baptism of children or conducted marriages and funerals. But these registrations were not universal because they concerned only the events and parishioners of their own community and the quality of the registration depended on the accuracy of the persons in charge and on the information given by the persons involved. In order to have all the people registered and achieve a more reliable system of registration altogether, France progressively then introduced a civil registration and attributed the task of registration to civil authorities. A whole system was developed for this registration, introducing specific civil-status registers where births, marriages and deaths had to be registered accurately and certificates were to be issued from these registers to prove from now on the said events. In order to prevent loss or destruction of the registers, all the records had to be made in two copies, to be saved at different places. More precise rules on registers and registrars were then progressively specified in the French *Code civil*.

This very rational new French system of registration of persons was then introduced in many other countries during the 19th century. It is mostly valid nowadays.

Civil registration and registrars. In all ICCS countries, the civil registration is a duty of the State, but the tasks are performed by registrars under the control of State authorities, who might be administrative or judicial authorities. Except for the United Kingdom, various ministries may be in charge of civil-status matters, either the Ministry for Justice (as in Belgium, France, Portugal, Spain or the Netherlands) or the Ministry for Internal or Administrative Affairs (as in Croatia, Germany, Greece, Italy, Poland or Turkey). In the United Kingdom, the performance of civil registration is the responsibility of General Registrars, respectively for England and Wales, for Scotland and for Northern Ireland, who have authority to adopt regulations and give instructions to registrars.

In Spain, registrars are judges but in the other countries they are most often civil servants or employees of municipalities, or in some cases the mayors. In most countries diplomatic and consular agents are also allowed to perform civil-status duties and sometimes even to celebrate marriages. In many countries, but not all, registrars have a specific professional training, what seems to be an always growing necessity given the more and more complex international situations they have to deal with.

Except for Turkey, all life events –concerning citizens and foreigners- have to be declared to the civil registration service in all the other ICCS States and it is the duty then of registrars to record them in the appropriate registers. In Turkey, events concerning foreigners have not necessarily to be declared in all the cases, but there is an obligation for Turkish citizens and the events are then registered in a “family register”. Registrars also have to keep the records and to issue extracts thereof.

Besides receiving declarations and recording the events, registrars conduct marriage ceremonies, this prerogative being often performed personally by the mayors or by an authorised member of the local council. Although civil-status registration is a competence of States, there are still some religious acts producing civil effects. This is generally the case for foreign events which are registered in countries where the religious form is the only local rule. It is also the case for the celebration of marriages in some ICCS countries, where the State has usually concluded specific agreements with various religions or groups. In these countries the civil preliminaries and controls are usually done by the registrars but once celebrated, the religious marriage has to be recorded in the civil-status register in order to produce legal civil effects. Such is for example the case in Croatia, Italy, Poland, Portugal and Spain, but in Spain and in Greece the absence of registration would not affect the validity of the marriage. In the United Kingdom, each entity has its own rules and the time assigned is too short to give all the details, but marriages may be conducted,

usually in the absence of any registrar, by religious authorities or other authorised individuals and the person officiating at the marriage will draw the record and send the document or copy of it to the registrar for the entry in the civil-status register. In other countries (such as Belgium, Germany, France, Hungary, The Netherlands, Switzerland or Turkey) a religious marriage may be celebrated but has necessarily to be preceded by a civil marriage. One must note that there is a trend for more and more exotic demands as well as for the persons to officiate as for the places where the ceremony is to be performed.

Except for the United Kingdom where subsequent notes or annotations cannot be added to entries, civil-status records are up-dated in all the ICCS States. This means that the original records are completed each time a new event or decision affects and modifies the personal status or the family status of the individual. Among the countries up-dating their records, there are two major systems: in some -as for example, Croatia, France, Greece, Italy, Luxemburg, Portugal- all the changes affecting a person's status will be annotated on the birth entry and if need be on other records: for example, change in affiliation or name, marriage and divorce on the birth entry and separation and divorce on the marriage record. In that group of countries, a full copy of the birth entry is therefore giving a full picture of a person's life. In the other countries, some changes are mentioned on some records and other changes are annotated on other records; for example, Belgium and Germany will add annotations concerning affiliation or the change of name on the birth entry whereas they will mention the divorce or annulment of marriage on the marriage entry.

Civil-status registers are public registers, but this does not mean that anybody may consult them. Except for the United Kingdom where anybody may consult or buy an extract from the registers, probably because the British system has no up-dated entries, in the other ICCS countries the publicity of registers is assured by the issue by registrars of full copies or various certificates more or less detailed, and that only to the persons authorised to obtain these documents according to strict rules on the protection of personal data.

As for the costs that citizens have to bear for various civil-status services, there are also major groups of countries: those where citizens benefit from a service completely free of charge (as France, Greece or Spain), those where some documents are free and others to be paid for (as Portugal or Turkey) and those where they have to pay fees for everything and which may sometimes be relatively expensive (as Belgium, Croatia, Germany or Switzerland).

Need for an international co-operation

In such a short description of the major features of the civil registration systems of the 15 ICCS States, one needs to stress the lines which are most characteristic, but when it gets to the specificities of each system in each country things are obviously far more complex, and following this presentation, you will have noted the frequency of the terms "usually", "generally", "except".

Unless confronted to a specific issue or problem, nobody really takes care about civil status. So the first question one may be tempted to raise is: why was there such a great need for an international co-operation in civil-status matters more than 60 years ago that some countries created a specific organisation to deal with such matters?

This necessity clearly existed in the past. It obviously continues to exist nowadays, and the need for co-operation is even growing. In the introduction, I mentioned that ICCS developed its activities in two major fields, the documentation work and the normative work. There is no time to describe here these activities in detail, but with an always increasing number of persons circulating from one country to another, with increasingly changing family relationships and persons having more often several nationalities, the need for international co-operation is a reality. We need to avoid when ever possible differing personal and family status persons might have in the various countries as a consequence of their greater circulation but we also have to facilitate life of the concerned persons and concerned registrars.

Documentation work. Right from the start, providing a legislative and jurisprudential documentation setting out the laws of the member States on matters relating to the status and capacity of persons, to the family and to nationality was felt as a necessity. And there is certainly today an increasing need to know the foreign legal rules one has to apply when confronted to a situation with international elements.

Registrars have to know and apply rules of domestic law, but when the event to be registered involves foreigners and several foreign laws, they have to determine which law has to be applied in that specific situation and they have to know what that relevant personal law provides for. If they have to register the birth of a child and the parents of the baby are foreigners, they have to check if the parents are married and the validity of their marriage in order to determine the child's legal parentage and his or her name. If they

are requested for a marriage and one or both future spouses are foreigners, they have to know the personal law which are to be respected and must check that the requirements of the personal law(s) are fulfilled and that no incapacity is preventing any of the couple to contract that marriage; they will also need to know if the personal law will affect or not the name of the spouses after the marriage, and in which way. The same concerns exist for all the aspects of civil and family law that will affect the civil status of a person.

Normative work. Next to the documentation work, the ICCS has developed an important normative activity, with a view to furthering the harmonisation of the law relating to persons, organising the coexistence of the legal registration systems of its various member States and facilitating the communication of information directly between the registrars. But more significantly, many technical instruments are providing standardised forms much appreciated both by registrars and by the public in their everyday life and relationships with foreign civil-status authorities.

For the individual, it is not essential that the legal rules of law are the same in all the countries. What is important for a person is that if he or she lives in another country and needs a civil-status certificate from his/her country of origin, that document issued by his/her national authorities is accepted without formalities in the country of residence. Concretely, that means that if persons are to circulate, civil-status documents and decisions concerning them must also be able to circulate, but it also means that these documents must be easily understood and accepted in the foreign country.

To facilitate the international circulation of civil-status certificates and their comprehension abroad, the ICCS has prepared a number of Conventions establishing international uniform models, which are multilingual forms in the older Conventions and coded forms in the more recent ones. In all cases, the international documents – issued to the users or automatically transmitted to a foreign authority - are all accepted abroad without translation or legalisation. The multilingual forms have a system of pre-printed translations and numbered boxes on the front and the back of the documents, which makes it possible for the foreign authorities to read the international document directly. When the languages in the multilingual forms became too numerous, the ICCS worked out a new system, where the pre-printed translations were replaced by a system of coding, every entry appearing in a civil-status document being assigned a code number, which is common to all ICCS countries.

Conclusion

To conclude this presentation, I simply wish to say a word on a major project which is presently in preparation. The ICCS has decided to adapt to the new technological environment and to create a Platform for the electronic exchange of civil-status documents. A pilot has been prepared to experiment the feasibility of the project, and tests have proved to be successful for exchanges of some plurilingual extracts and free text messages, but a lot of work is still to be done. The appropriate standardised electronic format for all the certificates to be exchanged or issued, must be set up, respecting existing ICCS Conventions and national specificities of member States. The system of coding, which replaced the pre-printed translations, served as a basis for the preparation of a dictionary of civil-status terms where each has a code number facilitating computerisation, but this dictionary has to be completed.

In a first step, the Platform will be limited for the exchange of documents appended to ICCS instruments, but in a future step the project is to allow national authorities to use the Platform for internal use and bi-lateral communications. The project will involve all ICCS member States, and other countries will be able to join the platform for the exchange of data under ICCS Conventions to which they are party. Furthermore, ICCS is also presently preparing a specific Convention regulating the use of the Platform, intended in particular to deal with the legal value to be attributed to data transmitted electronically and compliance with applicable European data-protection requirements, notably through utilisation of electronic signatures. The possibility for authorities to issue and exchange these data by electronic means will certainly accelerate and facilitate exchanges of information.

This presentation is just an overlook, far from being a complete picture. Should you wish to have more extensive information, you may easily find it by consulting the ICCS webpage (<http://www.ciec1.org>), where almost all documents are available in the French original, but most documents are also available in an English translation or many in other languages. You may also see a demonstration of the pilot I just mentioned, which has been prepared for the Platform on electronic exchanges.

I thank you for your attention.

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