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**Subsequent registration in member States  
of the International Commission on Civil Status**

**1. Declaration and registration of births in general**

**1.1. Obligatory declaration**

Under the law of all the member States of the International Commission on Civil Status (ICCS) there is an obligation to declare with a view to recording in the civil-status registers a birth occurring on the territory of the State concerned. This obligation exists irrespective of the child's nationality, except that in Turkey it is possible to declare the birth of a child of foreign nationality, but it is obligatory to do so only if the parent holds a residence permit valid for at least six months<sup>1</sup>.

The law of all the member States also provides that the declaration must be made within a prescribed time-limit. This time-limit, which can be extended in some cases, varies from country to country, running from 3 days (France<sup>2</sup>, the Netherlands<sup>3</sup>, Switzerland<sup>4</sup>) to 6 weeks (England, Wales and Northern Ireland<sup>5</sup>).

**1.2. Procedure in the absence of a declaration**

In all the ICCS member States it is possible to make up for the absence of a declaration of birth and the registration to which it would have given rise by a procedure akin to that laid down for any record that has been lost or omitted. Often, it is expressly stated that proof of the event can be furnished "by any means" (for example, Hungary<sup>6</sup>, Poland<sup>7</sup>, Spain<sup>8</sup>, Switzerland<sup>9</sup>, United Kingdom<sup>10</sup>). Thus, recourse is often had to statements by any witnesses who may be found. As the following summary shows, the procedure may be administrative or judicial or both.

Belgium: in the absence of a declaration, the birth record cannot be drawn up; there has to be a court decision that takes the place of the record<sup>11</sup>.

Croatia: the civil registrar may draw up the record only with authorisation from the State administration office; if that office cannot reconstitute the facts, a court decision is required<sup>12</sup>.

France: no birth record can be drawn up without a declaration; if there is no declaration, a judgment declaring the birth must be given by the *tribunal de grande instance*<sup>13</sup>.

Germany: after a delay of more than three months, the birth can be registered only after the civil registrar has conducted an enquiry; the local authority may, however, declare a birth which has come to its knowledge<sup>14</sup>.

<sup>1</sup> Population Act 2006, s. 8, and implementing circular; circular of 20.10.2006 on the keeping of registers of the civil status of foreigners in Turkey

<sup>2</sup> Code civil, art. 55

<sup>3</sup> Code civil, art. 19

<sup>4</sup> Ordonnance fédérale sur l'état civil du 1<sup>er</sup> juin 1953, avec des modifications ultérieures, art. 65

<sup>5</sup> Births and Deaths Registration Act 1953; Births and Deaths Registration (Northern Ireland) Order 1976

<sup>6</sup> 1982. évi 17. tvr. az anyakönyvekről, a házasságkötési eljárásról és a névviselésről, art. 37 para 1; 6/2003 (III. 7.) MTTH rendelkezés az anyakönyvekről, a házasságkötési eljárásról és a névviselésről, art. 71 and 72

<sup>7</sup> Ustawa - prawo o aktach stanu cywilnego, art. 34

<sup>8</sup> Ley del registro civil (1957, última modificación en 1994), art. 2

<sup>9</sup> Practice

<sup>10</sup> Births and Deaths Registration Act 1953, s. 4; Births and Deaths Registration (Northern Ireland) Order 1976, art. 10

<sup>11</sup> Code civil, art. 46

<sup>12</sup> Zakon o državnim matricama, Narodne novine 96/93, art. 27, 36 and 50; Obiteljski zakon, NN br. 162/99 art. 25; Zakon o upravnom postupku, NN br. 53/91, art. 1 and 11

<sup>13</sup> Code civil, art. 46 and 55

<sup>14</sup> Personenstandsgesetz vom 8-8-1957 (BGBl. I S. 1125) - mit Änderungen -, §§ 19a and 28

Greece: after a delay of more than three months, the birth record can be drawn up only if the public prosecutor (*procureur*) so directs after an enquiry into the facts<sup>15</sup>. A record that cannot be produced may also be reconstituted by the civil registrar if it is established by a judgment that has become final that the event in question occurred.

Hungary: the civil registrar may draw up the birth record after conducting an enquiry<sup>16</sup>.

Italy and Luxembourg: in the absence of a declaration, the civil registrar can draw up the birth record only if a court so decides<sup>17</sup>.

The Netherlands: in the absence of a declaration, the birth record can be drawn up if the court so decides upon request by the person concerned or the *ministère public*<sup>18</sup>.

Poland: where a record, such as a birth record, has been omitted, the person concerned, the public prosecutor or the head of the civil-registration department may request the court to make good the omission<sup>19</sup>.

Portugal: the omission of a record, such as a birth record, may be made good by a special court procedure or by an administrative procedure<sup>20</sup>.

Spain: the birth record can be drawn up only in accordance with a special administrative procedure determined by the civil registrar (who in Spain is a judge); recourse can also be had to ordinary judicial proceedings before the first-instance court<sup>21</sup>.

Switzerland: facts affecting civil status that are not established by civil-status records can be entered in the registers only following a court decision, if they are satisfactorily proved<sup>22</sup>.

Turkey: the omission of a record, such as a birth record, can be made good by a decision of the *tribunal de grande instance* or the administrative tribunal, or by a notarial deed (*acte notarié*)<sup>23</sup>.

United Kingdom: in the absence of a declaration and after a delay of three months, the birth record can be drawn up only with the authorisation of the Registrar General, following an enquiry<sup>24</sup>.

## **2. Persons lacking civil-status documents (ICCS study now in progress)**

The ICCS member States have not yet all replied to the questionnaire prepared for the purposes of this study and the replies received have not yet been fully analysed. To date, no member State has cited a text or provision of domestic law<sup>25</sup> that imposed an obligation on the State to create, itself, a civil status for a person lacking one. Nevertheless, the replies show that very often there are means of making up for the absence of civil-status records, whether for nationals or for foreigners. Examples of these means appear later in this document.

It can also be noted that:

- some States (notably Belgium and Switzerland) have adopted legislation aimed at resolving, from the civil-status point of view, the problem of persons who have no papers or, at least, making it easier to establish the status of persons in the absence of civil-status records<sup>26</sup>;
- in the Netherlands it is envisaged to introduce in the Civil Code a new civil-status record for foreigners lacking documents that would attest their identity and civil status. Such a record would be drawn up when the person concerned is entered in the population register and would be prepared on the basis of a declaration made by him or her and of reports of hearings and verifications conducted by the Immigration and Naturalisation Department;
- in France the Lille *tribunal de grande instance* (28 September 1995) and the Paris Court of Appeal (2 April 1998) have held that in terms of public policy (*ordre public*) it is important that every individual

<sup>15</sup> Act 344/1976 on civil-status records, s. 20 § 3

<sup>16</sup> 1982. évi 17. tvr. az anyakönyvekről, a házasságkötési eljárásról és a névviselésről, art. 19 para. 5

<sup>17</sup> Italy: Regolamento per la revisione e la semplificazione dell'ordinamento dello stato civile (DPR 3-11-2000 n° 396, in vigore dal 30-3-2001) art. 31 and 32; Luxembourg: Code civil, art. 55 para 2

<sup>18</sup> Burgerlijk Wetboek, book I, art. 24

<sup>19</sup> Ustawa - prawo o aktach stanu cywilnego, art. 32

<sup>20</sup> Código do Registo Civil, art. 83 and 266

<sup>21</sup> Ley del registro civil (1957, última modificación en 1994) art. 92, 95 and 97; Reglamento del registro civil (1958, última modificación en 1993), art. 311 and 317-334

<sup>22</sup> Code civil, art. 42

<sup>23</sup> Nüfus ve Vatandaşlık hizmetlerine ait görev ve çalışma yönetmeliği (Nüf. ve Vat. Hiz. Ait. Yönetme.), art. 21 to 23

<sup>24</sup> Births and Deaths Registration Act 1953, s. 4; Registration of Births, Deaths and Marriages (Scotland) Act 1965, ss. 17 and 26; Births and Deaths Registration (Northern Ireland) Order 1976, art. 10

<sup>25</sup> This document does not deal with the case of refugees and stateless persons, governed by the Geneva and New York Conventions, nor with any obligations that may arise under other international instruments, such as the Convention on the Rights of the Child.

<sup>26</sup> Belgium: Act of 9 May 2007 modifying certain provisions of the Civil Code (Moniteur Belge, 15/06/2007); Switzerland: Code civil, art. 41 *et seq*

who is French or lives habitually in France should possess a regular civil status; thus, in one case a provisional civil status was created and its transcription on the civil-status registers was ordered.

The following paragraphs deal with the proof in general of the civil status of persons lacking civil-status documents (2.1.) and then with the drawing up of records concerning specific civil-status events affecting such persons (birth of a child, marriage, death) (2.2.).

As a general remark, it may be pointed out that several ICCS member States, in addition to their replies to specific questions, cite the possibility of obtaining judgments determining an individual's civil status and taking the place either of any category of civil-status record (Belgium<sup>27</sup>, France<sup>28</sup>, Luxembourg<sup>29</sup>, Switzerland<sup>30</sup>) or, more particularly, of the birth record (Hungary, Italy (for the birth of Italian nationals abroad)). In Belgium, such a judgment may be pronounced notably when the registers have not existed or are incomplete; it can be produced, to any authority, by any individual establishing that he or she cannot obtain the record in question and provided that its content has not been shown to be incorrect. In France, judgments taking the place of civil-status records do not constitute *res judicata*, so that –as is the case with civil-status records in other ICCS member States- they can be called into question if new data come to light. In Switzerland, if no civil-status document can be produced or if the documents produced or the information furnished are incoherent, the person concerned will be invited to have his or her civil status determined by the competent court. The court will take the relevant evidence on its own initiative and will assess it as it sees fit; it will not need to have definite proof of the identity that has to be determined but may find a high degree of probability to be sufficient. It will consult in particular documents in the possession of the civil-status supervisory authority, the files of authorities dealing with foreigners or asylum or other authorities, as well as reports by the competent diplomatic representation on the authenticity of the documents produced and the truth of the parties' allegations.

## **2.1 Proof in general of the civil status of persons lacking civil-status documents**

In the ICCS member States, the civil status of the person concerned may very often be proved by means other than a civil-status document, to an extent that varies from country to country and with the purpose for which such proof is required.

Thus, proof may be furnished by means of an identity or travel document or, to the extent that such documents exist, by a copy of the family record booklet or an extract from the population register: in Belgium in certain cases, but not for a declaration of intended marriage, for which the birth record is in principle necessary; in France, with certain exceptions, in an individual's relations with the administration<sup>31</sup>; in Hungary in certain cases; in Italy; in Luxembourg, if the civil status is asked for by way of information (e.g. for schooling), but not if it is a decisive element for determining an application (e.g. relating to social benefits or taxation), in which event a civil-status document is normally required; in the Netherlands, where other means may also be utilised in certain cases; in Switzerland, where use may also be made of documents prepared by the authorities dealing with immigration or confirmatory data derived from population records. In Spain, matrimonial status can be attested by a declaration made by the person concerned or by a record drawn up by a notary. In Italy, civil status may be proved by self-certification on the part of the individual concerned, but this is valid only for the public administration. In the United Kingdom, it is for each service-provider to decide what proof of civil status must be furnished; some will accept a travel document or a solemn declaration by the person concerned.

## **2.2. Drawing up of records concerning specific civil-status events affecting persons lacking civil-status documents**

In the ICCS member States, civil-status documents concerning persons lacking civil-status documents can generally be drawn up in the country in which they are present if they are affected there by a civil-status event (birth, marriage, death). Such records have in principle the same probative value as all the other records drawn up by a civil registrar and can be rectified on the same conditions.

### **2.2.1 Birth record of a child of a person lacking civil-status documents**

In order to draw up the birth record the civil registrar will in this case take into account identity documents or other documents that may be available (for example, in Belgium, France, Hungary, Luxembourg), or even of simple declarations (for example, Belgium, Hungary, Turkey, and also Italy if the

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<sup>27</sup> Code civil, art. 46; Act of 9 May 2007 modifying certain provisions of the Civil Code

<sup>28</sup> Code civil, art. 46 and 55

<sup>29</sup> Code civil, art. 46 and 55

<sup>30</sup> Code civil, art. 41 *et seq*

<sup>31</sup> Decree of 26 December 2000

declaration is confirmed by two witnesses). Several States specify in their replies to the questionnaire that the record must be drawn up even if the documents or data concerning the parents are missing (France, Italy, Spain). In the Netherlands, if the mother's names are missing, the civil registrar will draw up the record in accordance with the instructions of the *ministère public*<sup>32</sup>. In Switzerland, registration of the birth is in principle impossible without the parents' civil-status documents; if they establish that they cannot obtain those documents, the entry will be made with such data as are available, but with the reservation that the parents' identity must first have been determined by the court.

#### 2.2.2 Setting in motion the procedure preliminary to the marriage of a person lacking civil-status documents

In several ICCS member States, the absence of civil-status documents can be made good in this case by an officially recorded document (*acte de notoriété*) drawn up by the court (Belgium<sup>33</sup>, France, Luxembourg, the Netherlands). Also acceptable are a declaration by the person concerned (Hungary and –if sworn- the Netherlands<sup>34</sup>), a certified statement from friends or relatives (United Kingdom) or other evidence (Spain). In Switzerland, a declaration is acceptable if the data are not contentious; in other cases (including those where no civil-status document at all can be produced) the fiancés must have their civil-status established by the court. In Italy, on the other hand, the preliminary procedure cannot be set in motion if one of the future spouses cannot produce the civil-status documents requested.

#### 2.2.3 Drawing up the death record of a person lacking civil-status documents

In France<sup>35</sup> and in Luxembourg, the death record will reproduce the civil status under which the deceased was known to the person declaring the death; if the identity or the civil status of the deceased is not known, the record will include his or her full description. For information that is missing, the civil registrar will write "no further information" (Belgium) or, in Hungary, will render unusable the spaces relating thereto or will write "unidentified corpse" if the identity is not known. In the Netherlands, use will be made of other documents (identity, for example), statements by witnesses or biometric or DNA tests. In Switzerland, the requirements concerning the documents to be presented in this case are less strict than for the entry of a birth or a marriage; thus, the death can be registered on the strength of the documents produced or the data –sometimes incomplete- that are available. In the United Kingdom (where it is a criminal offence to give false information to a civil registrar), the person declaring the death is not obliged to present any documentary proof.

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The problem of subsequent registration has, of course, been frequently studied by several bodies such as UNHCR, UNICEF, the Council of Europe and MARRI and has been the object of numerous meetings and a voluminous documentation. The present document does not cite that documentation and the recommendations therein, which are certainly well known to the participants in the planned round table. Evidently, one of the questions arising concerns the extent to which the existing Serbian legislation and the practice followed in its implementation need to be adapted, that legislation –like that of the ICCS member States- probably not having been designed at the outset to deal with such a large number of persons lacking civil-status documents. Some guidance might be obtainable from special legislation enacted outside the circle of ICCS member States to deal with the specific problem of the absence of registration of a high percentage of the population (for example, measures introducing for a limited period a simplified procedure for late registration).

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<sup>32</sup> Art. 19b, Book I of the Civil Code

<sup>33</sup> Act of 9 May 2007 modifying certain provisions of the Civil Code

<sup>34</sup> Art. 45, Book I of the Civil Code

<sup>35</sup> Code civil, art. 87 para. 2