
Convention on the issue of a certificate of differing surnames
signed at The Hague on 8 September 1982

The signatory States to this Convention, members of the International Commission on Civil Status, being desirous of easing the difficulties encountered by certain persons to whom the law of one State attributes a surname different from the one that they are recognised to have in another State, have agreed as follows :

Article 1

1. The certificate of differing surnames created by this Convention is intended to facilitate proof of identity for persons who, owing to differences between the laws of certain States, particularly regarding marriage, filiation or adoption, are not designated by one and the same surname.
2. The sole purpose of this certificate is to record that the various surnames it mentions designate, under different laws, the same person. It cannot have the effect of overriding legal rules governing names.

Article 2

The certificate described in the preceding Article must, on production of supporting documents, be issued to any person concerned, either by the competent authorities of the Contracting State of which he or she is a national or by the competent authorities of the Contracting State whose law has attributed to that person, although a national of another State, a surname different from the one resulting from the application of his or her national law.

Article 3

Certificates issued pursuant to this Convention shall be accepted in each Contracting State as evidencing the correctness of the particulars they contain concerning the different surnames of the person designated therein, unless and until the contrary is proved.

Article 4

For the purposes of this Convention, refugees and stateless persons whose personal status is governed by the law of a Contracting State shall be assimilated to nationals of that State.

Article 5

The certificate of differing surnames must comply with the model appended to this Convention.

No modification of this model may be made by a Contracting State without the prior approval of the International Commission on Civil Status.

Article 6

All the entries to be made on the certificate shall be written in Latin characters in detached script; they may also be written in the characters of the language of the authority issuing the certificate.

Article 7

1. Dates shall be written in Arabic numerals, denoting successively, under the symbols Jo, Mo and An, the day, month and year. The day and the month shall be indicated by two figures, and the year by four figures. The first nine days of the month and the first nine months of the year shall be indicated by numbers running from 01 to 09.
2. The name of any place mentioned in the certificate shall be followed by the name of the State in which that place is situated, whenever that State is not the State whose authority is issuing the certificate.
3. Only the following symbols shall be used:
 - to indicate male, the letter M, female, the letter F,
 - to indicate nationality, the letters used to designate the country of registration of motor vehicles,
 - to indicate the condition of refugee, the letters REF,
 - to indicate the condition of stateless person, the letters APA.

Article 8

If the competent authority is not in a position to fill in a space or part of a space, that space or part of a space shall be scored through.

Article 9

1. With the exception of the symbols for dates specified in Article 7, the standard headings on the front of each certificate shall be printed in at least two languages, including the official language or one of the official languages of the State in which the certificate is being issued, and the French language.
2. The meaning of the symbols must be indicated at least in the official language or one of the official languages of each of the States which, at the time of signature of this Convention, are members of the International Commission on Civil Status, and in the English language.

3. On the reverse of each certificate there shall appear:
 - a reference to the Convention, in the languages indicated in paragraph 2 of this Article ;
 - a translation of the standard headings, in the languages indicated in paragraph 2 of this Article, if those languages have not been used on the front ;
 - a summary of Articles 5, 6, 7 and 8 of the Convention, at least in the official language or one of the official languages of the authority issuing the certificate.
4. Any translation must be approved by the Bureau of the International Commission on Civil Status.

Article 10

1. Certificates shall be dated and bear the signature and seal of the issuing authority.
2. Certificates shall be exempted from legalisation or any equivalent formality in the territory of the Contracting States.

Article 11

1. At the time of signature, ratification, acceptance or approval of or accession to this Convention, each Contracting State must designate the authorities empowered to issue the certificate.
2. Any subsequent amendment to this designation shall be notified to the Swiss Federal Council.

Article 12

This Convention shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Swiss Federal Council.

Article 13

1. This Convention shall enter into force on the first day of the third month following the month of deposit of the second instrument of ratification, acceptance, approval or accession.
2. For a State ratifying, accepting, approving or acceding after its entry into force, the Convention shall take effect on the first day of the third month following the month of deposit by that State of the instrument of ratification, acceptance, approval or accession.

Article 14

Any member State of the International Commission on Civil Status, the European Communities or the Council of Europe may accede to this Convention. The instrument of accession shall be deposited with the Swiss Federal Council.

Article 15

No reservation to this Convention shall be permitted.

Article 16

1. Any State may, at the time of signature, ratification, acceptance, approval or accession or at any later date, declare that this Convention shall extend to apply to all of the territories for whose international relations it is responsible, or to one or more of them.
2. The Swiss Federal Council shall be notified of such declaration and the extension shall take effect when the Convention enters into force for that State or, subsequently, on the first day of the third month following the month of receipt of the notification.
3. Any declaration of extension may be withdrawn by notification to the Swiss Federal Council, and the Convention shall cease to apply to the designated territory on the first day of the third month following the month of receipt of that notification.

Article 17

1. This Convention shall remain in force indefinitely.
2. However, any State party to this Convention shall have the option of denouncing it at any time after the expiry of a period of one year from the date of the entry into force of the Convention in respect of that State. Denunciation shall be notified to the Swiss Federal Council and shall take effect on the first day of the sixth month following the month of receipt of that notification. The Convention shall remain in force among the other States.

Article 18

1. The Swiss Federal Council shall notify the member States of the International Commission on Civil Status and any other State which has acceded to this Convention of:
 - (a) the deposit of any instrument of ratification, acceptance, approval or accession;
 - (b) any date of entry into force of the Convention;
 - (c) any declaration concerning the territorial extension of the Convention or its withdrawal, together with the date on which it will take effect;

- (d) any denunciation of the Convention and the date on which it will take effect;
 - (e) any designation of the competent authorities effected pursuant to Article 11, paragraph 1, and any amendment made pursuant to paragraph 2 of that Article.
2. The Swiss Federal Council shall inform the Secretary General of the International Commission on Civil Status of any notification made pursuant to paragraph 1.
 3. On the entry into force of this Convention, a certified copy shall be transmitted by the Swiss Federal Council to the Secretary General of the United Nations for the purposes of registration and publication, in accordance with Article 102 of the United Nations Charter.

In witness whereof the undersigned, duly authorised to this end, have signed this Convention.

Done at The Hague, on 8 September 1982, in a single copy in the French language, which shall be deposited in the archives of the Swiss Federal Council and a certified copy of which shall be transmitted, through diplomatic channels, to each of the member States of the International Commission on Civil Status and to the acceding States. A certified copy shall also be sent to the Secretary General of the International Commission on Civil Status.

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.