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**2nd International Scientific Conference
Family Law in Poland and Ukraine
Experiences, Amendments, Co-operation**

The John Paul Catholic University of Lublin
29 and 30 May 2007

**THE INTERNATIONAL COMMISSION ON CIVIL STATUS (ICCS) AND ITS
ACTIVITIES. SOME EXAMPLES OF INTERNATIONAL CO-OPERATION.**

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Introduction

The International Commission on Civil Status (ICCS) is an intergovernmental organisation, made up of 16 member States, and whose seat is established in Strasbourg since 1981. With particularly limited human and financial resources, the ICCS achieved since its creation a work of which it does not have to redden, and which I will try to illustrate now. After a quick historical presentation, which allows a better understanding of the structures and operation of the organisation, I will present some achievements of the ICCS, by giving examples for the two principal fields in which the Commission tries to fulfil its mission of international co-operation, namely the documentation work and the normative activity.

The ICCS will soon celebrate its sixty years of existence. At the end of the Forties, the idea of its founders was to set up an officially recognised international organisation, which would have as its members civil registrars, government representatives, judges and law professors, in order to promote a co-operation and a collaboration between the various countries as regards civil-status matters. This idea

was embodied into a concrete form with a Protocol signed in Bern on 25 September 1950 by five countries - Belgium, France, Luxembourg, the Netherlands and Switzerland- which had in common the fact that the matter was governed by the Napoleon Code and that four of them used the French language. That explains why the French language became the official language of the ICCS. As a matter of fact, French is still the only official language of the ICCS, even if great efforts are made so that greater part of the ICCS work is available in other languages, and the introduction of a second language is again in discussion.

After the signature of an additional Protocol on 25 September 1952, other countries were admitted to the ICCS as members: Turkey in 1953, Germany in 1956, Italy in 1958, Greece in 1959, Austria in 1961, Portugal in 1973 and Spain in 1974, the United Kingdom in 1996, Poland in 1998 and Croatia and Hungary in 1999.

In order to allow ICCS to have contacts with non member States and other international organisations, the ICCS also has an observer status. Seven States have currently the observer status near the ICCS: Cyprus, Lithuania, the Federation of Russia, Moldova, Slovenia, Sweden and the Holy See. 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. Contacts were also developed with other countries and associations, in particular of registrars.

According to the Protocols which founded the ICCS and the Commission's internal Rules, the mission of the ICCS is to facilitate the international co-operation in civil-status matters and to further the exchange of information between civil registrars. The Protocol of 1950 explicitly mentions that ICSS must compile and keep up-to-date a legislative and jurisprudential documentation exposing the laws of the member States on matters relating to the status and capacity of persons, to the family and to nationality, and that it provides, on the basis of this documentation, information to Authorities of the member States. The internal Rules specify that the Commission carries out all studies and work aimed at harmonising the provisions in force in the member States in these same matters, in particular by the drafting of Conventions or Recommendations, and at improving the operation of civil-status departments in those States.

Right from the start, the ICCS wished to facilitate the communication of information directly between the registrars of the various countries. This will is expressed not only in the internal Rules, but it is also to be seen in the structures of the ICCS and in its operating mode. The originality of the ICCS is that its operation rests mainly on the National Sections which make it up. Each State, when becoming an ICCS member State is to set up on its territory a National Section charged to promote the aims of the ICCS. The National Sections have a central role in the operation of the ICCS for most of the work which is entered on the Commission's agenda is initiated on their proposals, and their role is to allow ICCS to start studying useful projects in a most practical approach and not in a technocratic way.

As indicated previously, the Commission tried to fulfil its mission of international co-operation by developing its activities in two major directions: the documentation work (1) and the normative work (2).

1. Documentation work

As far as the constitution of documentation is concerned, the most important work carried out by the ICCS is presently the "*International practical Guide on civil status*", but there are also several comparative studies on specific topics and various reports.

1.1. The *International practical Guide on civil status*

In order to fulfil the task entrusted to the ICCS to compile and up-date a documentation on legislation, ICCS had, as of the Fifties, prepared a collection of twelve files, each setting forth in several dozens of pages the national law and the rules of private international law of each member State relating to civil-status registration, name and forenames, marriage and divorce, parentage and nationality. These twelve files were updated and published during about thirty years before being replaced in 1985 by a work which wanted to be more accessible to the registrars, the "*International practical Guide on civil status*".

For the realisation of the *practical Guide*, the ICCS first of all drew up a single questionnaire taking stock of all problems posed in the practice of civil registration in all the fields previously exposed in the twelve files. Each National Section of the ICCS member States was then asked to prepare a written answer for each question, and to indicate the precise references of the applicable provisions. The answers are thereafter re-read by the Secretariat General with a view to their harmonisation. This *Guide* is supplemented by a "general introduction", outlining in two or three pages the system of civil registration of each member State and of most observer States, and by a list of the major legislative sources, which are relevant in that field in the various countries.

Despite what its title might suggest, the *International practical Guide on civil status* is not just confined to civil-status practice but constitutes a comparative-law documentation particularly rich for all the areas of law that can affect civil status. Besides the technical aspects of drawing-up, rectifying, cancelling or transcribing the various civil-status records and making the endorsements or annotations that supplement them as events or decisions affect a person's life and status, the *Guide* provides information on national legislative provisions relating to birth, parentage, marriage and registered partnerships as well as their annulment and dissolution, death and absence, nationality, surnames and forenames, etc.

The *practical Guide*, which was previously published in a loose-leaf edition of more than 500 large-size pages, can be consulted since the year 2001 on the ICCS webpage. It is a reference work for civil-status registrars but also for lawyers, judges, academics and researchers, but the most important difficulty is to have it regularly up-dated. The large number of countries and fields covered by the *Guide* and the great and frequent changes in the legislation of the member States, especially in the recent years, do not always allow an up-dating to be prepared as quickly as one would wish. This difficulty is also the major reason why this *Guide* exists only in a French version.

1.2. Specific studies and reports

The documentation work of the ICCS is not limited to the *practical Guide* and its updates. The States need to know the legislative and lawful provisions of other countries as well as the evolutions which are in hand abroad. To have a comparative

tool for a significant number of countries thus presents in this respect an unquestionable interest.

Sometimes comparative work is prepared to answer a specific request when a State which wishes to know how such or such point is approached elsewhere before launching out in a reform. Often comparative work is used by the ICCS in order to evaluate whether it is or not advisable to begin the study of a future normative activity. But whatever the future use of it, the information collected in this context led the ICCS to draft various comparative studies on specific subjects which are usually not frequently studied. May be mentioned more particularly in this respect five comparative-law studies which were prepared since 1996, respectively on "fraud with respect to civil status", on "the application in the civil-status field of the principles set out in the European Convention on Human Rights", on "transsexualism, civil status and private and family life", on "civil-status and perinatal deaths" or on "the establishment of maternal descent and surrogate motherhood". These studies were published in various reviews and translations for most of them can be read on the ICCS webpage.

Comparative-law studies are particularly delicate to carry out, especially when they relate to such a large number of countries, when the provisions of the ones and others are extremely differing and when the concepts behind the same words very often diverge in an important way. Yet if comparative-law studies are usually greatly appreciated and useful for the States and all the community of lawyers and researchers, they however have two great disadvantages: they require a considerable amount of energy and work and their length of validity is unfortunately particularly uncertain, since some new provisions adopted in one or the other country are often enough to call into question the unit. And provisions reforming the legislations on establishment of parentage, on marriage, on nationality or on surnames have been adopted successively in several countries at a particularly quick pace in the recent years.

The ICCS does not envisage to bring up-to-date the whole of the studies, but it decided to resume the study on fraud with respect to civil status, originally published in 1996 and already updated in 2000, and to develop more particularly the topic of the bogus marriages, for the question of fraud in respect to civil status raises important problems in all the States and the interest which the member States express for the realisation of a comparative study in this field is large.

In addition to the *practical Guide* and the publication of specific comparative studies, various other reports are to be considered as being part of the ICCS documentary task. First of all, there is an important report presented every year by the Secretary General at the General Assembly meeting, in which the legislative modifications which have taken place in the member States over the past year are highlighted. One may also quote in this category a number of comparative notes presented at conferences or seminars and/or published in publications of various countries. Most of these reports are to be read also on the ICCS webpage, often both in French and in translated versions.

2. Normative work

In addition to the constitution of documentation, the ICCS developed an important normative activity with a view to furthering the harmonisation of the law relating to persons and organising the coexistence of the legal registration systems of its various member States. The ICCS thus drew up 31 Conventions and 9 Recommendations. Certain Conventions are reserved for only ICCS member States, but the majority are more largely open to signature by other States, notably those which are member of the Council of Europe or the European Union, but sometimes also by any other State. As for the Recommendations, they attempt to identify what, according to the ICCS, is desirable in matters of civil status and the law of persons and they invite the various member States to conform to the principles enshrined in them.

Some of these instruments aim at harmonising the law of persons and family law (2.1.), others are very technical (2.2.).

2.1. Instruments aiming at harmonising the law

The ICCS tried to contribute to the harmonisation in the member States of the applicable standards in the fields of its competence. Various international instruments - Conventions or Recommendations - try to facilitate the establishment of the maternal descent of the children born out of wedlock or the celebration of the marriages in the member States, to promote a uniform legislation for the registration of records, to solve problems of civil status of the refugees, to harmonise civil-status records and extracts or to reconcile the necessary publicity of civil-status registers and documents with respect for private life.

The draft of an international instrument is always a hard-taking task. An international Convention is to define common rules and reach a compromise that is acceptable by all the countries. This is quite difficult, especially when the domestic legislations adopted in each State, instead of converging, tend to move away the ones from the others and that these new legislations generate oppositions between the various national provisions and create in the various countries types of situations hardly reconcilable. When a compromise is finally found and laid down in a Convention, one would like to see it implemented rapidly. It is therefore often disappointing to note that Conventions are not always ratified as largely as one would wish and the ICCS, like most other intergovernmental organisations, has unfortunately not the means to take provisions to impose implementation on the member States.

Yet, one can be pleased to note that a certain number of principles find sometimes their application many years after being formulated in an instrument. Such is the case, for example, of the harmonised presentation of the records and the extracts, which were recommended by the ICCS respectively in 1987 and 1990, and adopted rather recently by several countries, in particular within the framework of the computerization and the data-processing exploitation of the civil-status documents. Such is also the case, for example, of Recommendation of 1976 on the law of marriage, of which however one can draw a contrasted assessment. One can note that about thirty years after its adoption, the majority of the principles set out in this Recommendation have been incorporated in the various domestic laws, yet one cannot but observe that there still remain some principles that are not applied in

certain countries (for example, subordinating marriage to a medical examination or to the preliminary publication of banns) or that others have been undermined by the restrictive measures recently introduced in a great number of countries in the context of new immigration policies and the combating of marriages of convenience.

Taking into account the attachment of the various countries to their national law as regards the law of persons and family law and the difficulties encountered by Conventions aiming to the harmonisation of law, attention can be drawn here to a new method, which was adopted by the ICCS in recent years for two particularly difficult subjects. It is that of the recognition of what was done abroad, when certain conditions between the State of origin and the situation created are met. This method was adopted for the Convention on the recognition of surnames, signed in Antalya in September 2005, and for the draft convention on the recognition of registered partnerships.

2.2. Technical instruments

The ICCS also worked out a significant number of technical Conventions, trying to bring an appreciated progress to the registrars and to the citizens, in their everyday life and relationships with the foreign civil-status authorities.

For the individual, it is not essential that the 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 documents and their comprehension abroad, the ICCS prepared a number of Conventions both for the issue of documents and for the exchange of information as regards civil status. In both cases, the Conventions establish uniform multilingual models, having a system of pre-printed translations and numbered boxes on the recto and the back of the documents, which makes it possible for the foreign authorities to read directly the international document. The latest models replace the multilingual translations by a system of coding. These international documents – issued to the users or automatically transmitted to a foreign authority - are all accepted abroad without translation, nor legalisation.

a) Conventions on the issue of uniform documents for use abroad

The ICCS Conventions on the issue of documents are numerous and they proved quite successful. The list being too long, they cannot be all enumerated here. I'll only mention some of them, stressing again that they all aim at facilitating the administrative steps of the citizens and provide for the issue of uniform international certificates.

- One is first to mention Convention No. 1 on the issue of certain extracts from civil-status records for use abroad, signed at Paris on 27 September 1956, and Convention No. 16 on the issue of multilingual extracts from civil-status records, which modernized and replaced Convention No. 1. Convention No. 16 was signed at Vienna on 8 September 1976 and ratified very largely by ICCS member States

and non-member States. It is one of the three ICCS Conventions ratified by Poland and it is in force for that country since 1 November 2003.

- One is also to quote specially four other Conventions: Convention No. 20, signed at Munich on 5 September 1980, on the issue of a certificate of legal capacity to marry; Convention No. 21, signed at the Hague in September 1981, on the issue of a certificate of differing surnames; and Conventions No. 27 and No. 28, signed respectively at Paris in September 1998 and Lisbon in September 1999, and which provide for the issue of life and nationality certificates.

However, one should mention that several multilingual forms currently raise some difficulties, but it would take too long a time to expose the reasons here.

b) Conventions on the exchange of information between authorities

Many ICCS Conventions contain provisions obliging competent authorities of one member State to furnish information to the authorities of another State, either *ex officio* or on request. The exchange of information is sometimes the main purpose of a Convention, sometimes it is ancillary to that principal objective, but the exchange is always carried out by the sending of a document drawn up on a uniform -multilingual or coded- international model.

When ancillary, the obligation of information is to supplement the principal objective of a Convention in order to enhance its effectiveness. This is the case of several Conventions, but I'll just give two examples.

- Such is the case of Convention No. 17, whose main purpose is to exempt certain records or documents from legalisation, and nevertheless enables an authority having doubts as to the authenticity of the signature, the identity of seal or the capacity of the signatory to contact the authority who issued the document in order to have the matter verified. This Convention was also ratified quickly by Poland, where it is in force since 1 June 2003.
- Such is also the case of Convention No. 31 on the recognition of surnames which, in cases of application of paragraph 2 of Article 4, obliges the authority of one State to send to the civil registrar of the place of birth, for rectification in his or her registers, a notice of the attribution of a surname which it has affected at the parents' request. The notice is drawn up in accordance with a uniform coded model, which is appended to the Convention.

Other Conventions have as main objective the exchange of information. I will quote three of them, which are closely linked together.

- The first example is given by Convention No. 3 on the international exchange of information relating to civil status, signed at Istanbul on 4 September 1958, and which provides that every civil registrar who draws up a marriage or death record shall give notice thereof to the civil registrar for the place of birth of each spouse in the case of marriage, or for the place of birth of the deceased in the case of a death certificate. This Convention is the first ICCS instrument that Poland ratified; it is in force for Poland since 14 March 2003.

In order to render its implementation more flexible, Convention No. 3 was modified by means of an Additional Protocol (Convention No. 23), signed at Patras on 6 September 1989. Convention No. 23 ensures a larger confidentiality of the information transmitted and to take account of the wishes of the new

contracting States, it adds other languages to the five already used in the model forms appended to the Convention drafted some forty years before.

- It was then decided to extend the automatic exchange of information to other civil-status documents, so that after several years of study, a new Convention on the international exchange of information relating to civil status was signed at Neuchâtel on 12 September 1997. The new Convention, No. 26 in the ICCS classification, extends the field of application of Convention No. 3, which it should progressively replace. It provides that when a civil registrar from a Contracting State registers a marriage or the dissolution of a marriage, a death certificate or the acknowledgment of a child, he or she shall give notice thereof to the civil registrar of another Contracting State who drew up the birth and marriage record of the person concerned. It also provides for a similar exchange of information when birth, marriage, death or acknowledgment records have been rectified. The exchange is carried out using eight uniform coded forms, which are appended to the Convention.

As regards the authorities involved in the exchange of information, the ambit of Convention No. 26 is also extended compared to that of Convention No. 3. The latter only concerned the civil registrars performing their duties in the territory of a Contracting State, whereas the new Convention concerns all the civil registrars of a Contracting State, and thus includes the diplomatic and consular officials performing the duties of civil registrars.

However, one has to mention that Convention No. 26 proved less successful for the moment, since it has been ratified only by France and Turkey.

I complete here this presentation of the International Commission on Civil Status, hoping that the activities of this organisation will from now on be more familiar to you. I tried to outline some major aspects but this description is far from being complete: for more extensive information, feel free to consult the ICCS webpage (<http://www.ciec1.org>).

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Strasbourg, 20 mai 2007