

## **Convention (No.12) on legitimation by marriage**

*signed at Rome on 10 September 1970*

The signatory States to this Convention, members of the International Commission on Civil Status, being desirous of furthering, by the adoption of uniform rules, the legitimation of natural children, as well as the recognition of and publicity for legitimation occurring abroad, have agreed as follows:

### **SECTION I**

#### **Article 1**

Where, under the domestic-law provisions of the national law of the father or mother, their marriage has the effect of legitimating a natural child, such legitimation shall be valid in the Contracting States.

This rule shall apply both to legitimations resulting from the celebration of the marriage *per se* and to legitimations established subsequently by a judicial decision.

#### **Article 2**

However, at the time of signature, of the notification mentioned in Article 11 or of accession, any Contracting State may reserve the right to refuse to treat the legitimation as valid:

- (a) if it is established that the child is not in fact the child of the persons who have legitimated him or her;
- (b) if the marriage was celebrated in its territory and its law does not recognise the validity thereof;
- (c) if one of its nationals was a party to the marriage and its law does not recognise the validity thereof; or
- (d) if the child was born to one of its nationals and is adulterine in relation to that person.

This right may not be exercised in cases where the domestic law of the State concerned would not prevent such legitimation.

#### **Article 3**

Recognition of the validity of a legitimation that complies with the domestic-law provisions of the national law of the father or of the mother may not be refused, even on grounds of public policy, in circumstances other than those set out in Article 2.

#### **Article 4**

Decisions pronounced in disputes arising under Article 2 may be invoked only in the territory of the Contracting State in which they were pronounced.

#### **Article 5**

The preceding provisions shall apply in relation to all States, even if they are not Contracting States. They shall not prevent the application of any rules in force in the Contracting States which may be more favourable to legitimation.

#### **Article 6**

Where the record of birth of the child has been drawn up or transcribed by a civil registrar of one of the Contracting States, the registrar shall make an annotation concerning the legitimation in his or her registers after verifying, or after his or her superior authority has verified, that the conditions laid down by this Convention are satisfied.

The making of such an entry may not be made conditional on any prior judicial proceedings for recognition. The same shall apply even in cases of legitimation established after marriage by a judicial decision.

## **SECTION II**

### **Article 7**

Where a marriage has been celebrated in one of the Contracting States and the spouses have stated that they had a child or children in common, the record of whose birth was drawn up or transcribed in the territory of another Contracting State, the civil registrar for the place of marriage or any other competent authority shall send a notice, either directly or through diplomatic channels, to the civil registrar for the place where the record of birth was drawn up or transcribed, so that an annotation may be made concerning any legitimation resulting from the marriage. Any available supporting documents shall be attached to the notice. Where legitimation has been established after marriage by a judicial decision, the Public Prosecutor's Office or any other competent public authority shall arrange for the notice to be sent.

The notices shall be set out on a multilingual form, a model whereof is appended to this Convention. Such notices and any attached documents shall be exempted from any legalisation in the respective territories of the Contracting States.

### **Article 8**

Extracts from the record of birth of a legitimated child shall be made out in the same way as for a legitimate child, without disclosing the legitimation.

### **Article 9**

Application of this Section shall not be confined to nationals of the Contracting States.

## **SECTION III**

### **Article 10**

For the purposes of this Convention, the term "national law" of a person shall be taken to mean the law of the State of which that person is a national or, in the case of a refugee or a stateless person, the law governing his or her personal status.

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

### **Article 11**

The Contracting States shall notify the Swiss Federal Council of the completion of the procedures required by their Constitutions to render this Convention applicable in their territory.

The Swiss Federal Council shall inform the Contracting States and the Secretary General of the International Commission on Civil Status of any notification made pursuant to the preceding paragraph.

### **Article 12**

This Convention shall enter into force from the thirtieth day following the date of deposit of the second notification and shall take effect from that day between the two States which have completed that formality.

For each Contracting State which completes the formality mentioned in the preceding Article at a later date, this Convention shall take effect from the thirtieth day following the date of deposit of its notification.

### **Article 13**

Each Contracting State may, at the time of signature, notification or accession, declare that it does not undertake to apply the provisions of Section I of this Convention.

Any State which has made a declaration pursuant to the provisions of the first paragraph of this Article may subsequently declare at any time by notification to the Swiss Federal Council that it also undertakes to apply the provisions of Section I of this Convention.

The Swiss Federal Council shall inform each of the Contracting States and the Secretary General of the International Commission on Civil Status of such notification.

The declaration mentioned in the second paragraph of this Article shall take effect from the thirtieth day following the date on which the Swiss Federal Council receives the notification.

#### **Article 14**

The reservations referred to in Article 2 may be wholly or partly withdrawn at any time. The Swiss Federal Council shall be notified of such withdrawal.

The Swiss Federal Council shall inform the Contracting States and the Secretary General of the International Commission on Civil Status of any notification made pursuant to the preceding paragraph.

#### **Article 15**

This Convention shall apply *ipso iure* throughout the metropolitan territory of each Contracting State.

Any Contracting State may, at the time of signature, notification or accession or subsequently, declare by notification to the Swiss Federal Council that the provisions of this Convention shall apply to one or more of its extra-metropolitan territories or the States or territories for whose international relations it is responsible. The Swiss Federal Council shall inform each of the Contracting States and the Secretary General of the International Commission on Civil Status of the last-mentioned notification. The provisions of this Convention shall become applicable in the territory or territories designated in the notification on the sixtieth day following the date on which the Swiss Federal Council receives the notification.

Any State which has made a declaration pursuant to the provisions of the second paragraph of this Article may subsequently declare at any time by notification to the Swiss Federal Council that this Convention shall cease to apply to one or more of the States or territories designated in the declaration.

The Swiss Federal Council shall inform each of the Contracting States and the Secretary General of the International Commission on Civil Status of the further notification.

The Convention shall cease to apply to the territory concerned on the sixtieth day following the date on which the Swiss Federal Council receives that notification.

#### **Article 16**

Any member State of the Council of Europe or the International Commission on Civil Status may accede to this Convention. The instrument of accession shall be deposited with the Swiss Federal Council. The latter shall inform each of the Contracting States and the Secretary General of the International Commission on Civil Status of every deposit of an instrument of accession. The Convention shall enter into force, for the acceding State, on the thirtieth day following the date of deposit of the instrument of accession.

Deposit of an instrument of accession may take place only after the entry into force of this Convention.

#### **Article 17**

This Convention shall remain in force indefinitely. However, each Contracting State shall have the option of denouncing it at any time by written notification to the Swiss Federal Council, which shall give notice thereof to the other Contracting States and the Secretary General of the International Commission on Civil Status.

The option to denounce may not be exercised before the expiry of a period of one year from the notification mentioned in Article 11 or the accession.

Denunciation shall take effect six months after the date on which the Swiss Federal Council receives the notification mentioned in the first paragraph of this Article.

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

Done at Rome, on 10 September 1970, in a single copy 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 Contracting States and to the Secretariat General of the International Commission on Civil Status.

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#### **Declarations of reservation**

The *Federal Republic of Germany* declares, pursuant to Article 2, letters (a) and (b)\*, that it reserves the right to refuse to treat the legitimation as valid:

- (a) if it is established that the child is not in fact the child of the persons who have legitimated him or her, but only where the absence of such a relationship is established either by a German judicial decision or by a foreign judicial decision which can be recognised in Germany;
- (b)\* if, under German law, the marriage of the German national is non-existent.

(\* Editorial note: For (b) read (c).)

The *Republic of Austria* declares, pursuant to Article 2, that it reserves the right to refuse to treat the legitimation as valid:

- (a) if it is established that the child is not in fact the child of the persons who have legitimated him or her;
- (b) if the marriage was celebrated on Austrian territory and Austrian law does not recognise the validity thereof;
- (c) if an Austrian national was a party to the marriage and Austrian law does not recognise the validity thereof\*.

(\* Editorial note: text of the reservation as formulated at the time of notification of ratification of the Convention.)

When depositing the instrument of ratification of the Convention, the *Hellenic Republic* confirmed the reservations formulated at the time of signature and referred to in Article 2, letters (a), (b) and (c) of the Convention.

The *Italian Republic* declares, pursuant to Article 13, that it does not undertake to apply the provisions of Section I of this Convention.

When depositing the instrument of ratification on behalf of the Kingdom of the Netherlands (the whole Kingdom), the Government of the Kingdom of the Netherlands made the reservation that, pursuant to Article 2, letters (b) and (c), a legitimation complying with the domestic-law provisions of the national law of the father or mother will nevertheless not be treated as valid in the Netherlands and the Netherlands Antilles if one of the parties to the marriage having the effect of legitimation is a Netherlands national and if, in the relevant territory of the Kingdom, that marriage was not celebrated before a civil registrar, or if, in a foreign country, that marriage was not celebrated in accordance with the law of that country.

The *Swiss Confederation* declares, in pursuance of Article 2, that it reserves the right to refuse to treat the legitimation as valid:

- (a) if it is established that the child is not in fact the child of the persons who have legitimated him or her;
- (b) if the marriage was celebrated on Swiss territory and Swiss law does not recognise the validity thereof;
- (c) if a Swiss national was a party to the marriage and Swiss law does not recognise the validity thereof.

At the time of notification of ratification of the Convention, the *Turkish Republic* declared, pursuant to Article 2, letters (a), (b) and (c), that it reserved the right to refuse to treat the legitimation as valid :

- (a) if it is established that the child is not in fact the child of the persons who have legitimated him or her;
- (b) if the marriage was celebrated on Turkish territory and Turkish law does not recognise the validity thereof;
- (c) if a Turkish national was a party to the marriage and Turkish law does not recognise the validity thereof.

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### **Territorial scope of the Convention**

*At the time of notification of ratification of the Convention*, the Royal Embassy of the Netherlands in Bern stated that the Convention is applicable to the Kingdom of the Netherlands in Europe and to the Netherlands Antilles (Editorial note : including Aruba).

It is to be noted that the *Kingdom of the Netherlands* sent to the Swiss Federal Council on 5 October 2010 the appended communication concerning a change in the structure of the Kingdom and, on 8 September 2011, a recapitulation of treaties deposited with the Swiss Federal Council. The present convention, then, is applicable to the European part of the Netherlands from 31 July 1977, to the Netherlands Antilles (Bonaire Islands, Sint Eustasius and Saba) from 10 October 2010, to Aruba from 1 January 1986, and to Curacao and Sint Maarten from 10 October 2010. It has also been applicable to the former Netherlands Antilles since 31 July 1977.

The *Kingdom of the Netherlands* also confirmed its reserve of 1<sup>st</sup> July 1977 also for Curacao, Sint Maarten and the Netherlands Antilles (the Bonaire Islands, Sint Eustasius and Saba and reformulated its declaration of 10 September 1970 in these terms : "Regarding the Kingdom of the Netherlands, having regard to the relation that exists from the public-law perspective between the European part of the Netherlands, Aruba, Curacao, Sint Maarten and the Netherlands Antilles (Bonaire Islands, Sint Eustasius and Saba), the terms "metropolitan" and "extra-metropolitan" used in the Convention lose their initial meaning as concerns the Kingdom of the Netherlands, and shall consequently be considered to signify "European" and "non-European"."

*At the time of notification of ratification of the Convention*, the Government of the French Republic declared, pursuant to Article 15, that the provisions of the Convention are applicable to the whole of the Territory of the French Republic.

