PERSONS DEPRIVED OF CIVIL-STATUS AND IDENTITY DOCUMENTS

("UNDOCUMENTED MIGRANTS")

Contents

Foreword

The International Commission on Civil Status (ICCS) is an international intergovernmental organisation currently comprising 15 member States[1]. Each ICCS member State has set up a national section within its territory, composed generally of professors of law, judges, representatives of the ministries concerned and administrators in charge of civil status, and local civil registrars. The national sections and their members represent their countries at ICCS meetings and liaise with the Secretariat General for the preparation of the works that are undertaken.

The ICCS aims to facilitate international co-operation on matters of civil status and to further the exchange of information between civil registrars. To this end, it carries out any work or studies, particularly the elaboration of recommendations or draft conventions, aiming to harmonise the various legal provisions in force in areas relating to people's status and capacity, family, and nationality in its various member States, and to improve the techniques available to the offices in charge of dealing with civil status in these States. It co-ordinates its work with other international organisations and facilitates relationships with organisations whose work relates to civil status. It may also, within the scope of its competence, collaborate with third-party States in order to facilitate co-operation between these States and its member States.

According to its founding instrument, it is the ICCS's role to compile and keep up to date in the aforementioned subject areas a documentation on legislation and case-law setting out the law of its member States, which the latter agree to provide free of charge, for its studies and works (Article 1 of the Protocol signed in Bern on 25 September 1950).

This is the context of the present study. Its aim is to summarise all the available information on an issue with which ICCS member States have been confronted more and more regularly over the last few years: the presence within their territories of an increasing number of persons who are devoid of identity and/or civil-status documents.

In order to gather more precise information on the issues raised by the presence of these persons, often known as 'undocumented immigrants', a questionnaire was prepared and sent to the national Sections of the ICCS in June 2004. The responses to this questionnaire were compiled into a first memorandum in 2006. It was then decided to continue the study, concentrating more specifically on the question of persons who are devoid of all civil-status documents, whether they hold travel or identity papers or not, except for persons having obtained refugee status and whose civil status is most often reconstituted. Several successive drafts of the memorandum were written by the ICCS Secretariat General, gradually including the new elements received.

In September 2009, the General Assembly of the ICCS decided to publish the study on the ICCS Internet site, giving the national Sections until the end of the year to reread and validate their responses, amend them, or add to them. The present memorandum gathers the whole of the data collected, the note being based on the state of the legislation as at 31 December 2009.

Introduction

By way of introduction, an attempt has been made to refine the definition of 'undocumented immigrants' as much as possible, to evaluate the numbers of people concerned, and to list their countries of origin.

The expression 'undocumented immigrant', very generally, describes a person who resides within a State's territory without a valid residency permit. It might refer to persons who have resided legally within a State's territory but whose residency documents are no longer valid (expired visa or residency documents…). It might also refer to persons who may not have any identity or travel documents (identity card, passport…) and/or no civil-status documents, who may or may not have contacted the authorities of the host State in order to regularise their status.

1. Member States : Belgium, Croatia, France, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain, Switzerland, Turkey and the United Kingdom. ICCS Headquarters are located in Strasbourg (France), 3 Place Arnold, where the premises of the Secretariat General are situated. The only official language of the ICCS is French, but most of its publications are translated into English and other languages. More information on the ICCS and its activities is available on the ICCS Internet site at : http://www.ciec1.org.

In a general manner, a person might need to prove his identity and/or his personal or family status for his everyday needs, for instance in order to obtain social security benefits or for tax-related reasons.

*In **Germany**, there are no general rules on proving a person's civil status for everyday needs: self-certification is generally not allowed but, depending on the situation, identity or travel documents or an extract of the population register may be accepted, and for the celebration of a marriage, legislation on civil status does not exclude the possibility, as a last resort, of accepting statements made under oath.*

*In **Belgium**, depending on the situation, an identity document or an extract of the population register may suffice, or else a copy or an extract of a civil-status record may be required (for instance to declare an intention to marry, it is necessary to produce a copy of one's birth record). However, the identification data entered in the population registers constitute a basis for administrative action in various areas (for instance, the electoral roll, local tax collection, registration to pay income tax, and so on). Certificates may be issued from these registers.*

*In **Croatia**, for everyday needs, a person may prove his civil status using his identity card (which mentions his name, his date and place of birth, his citizenship and his home address), or his passport (which contains the same information apart from residency), or even his driving licence.*

*In **Spain**, a person's civil status is certified by a civil registrar; his existence will be certified by appearing in person before authorities or by a notary's report; his status as single, widowed or divorced will be certified by his personal statements or by a notary's report.*

*In **France**, in order to make users' lives easier, a decree of 26 December 2000 provides that, unless otherwise specified, a person may, in his relations with administrative authorities or associated services, justify his civil status, if need be, with a legible photocopy of his family record booklet, national identity card or passport, or of an extract of his birth record. Furthermore, in proceedings for a court declaration supplementing facts relating to civil status may be proved by any means when no registers have existed or they have been lost (Article 46 of the Civil Code).*

*In **Hungary**, excepting in cases of legal derogation, identity may be proven using an identity card, passport or driver's licence. Hungarian nationality is proven using a passport, identity card or nationality certificate. Foreign nationality is proven using a passport or any other travel document recognised by the Hungarian State and, for nationals of the European Economic Area, identity cards and drivers' licences are also accepted. Generally speaking, it is possible to justify one's name and family situation only by way of civil-status documents and extracts, self-certification being considered unacceptable. An extract of the population register may be used to establish one's name, place and date of birth, mother's name, marital status, place of residence and identification number.*

*In **Italy**, a person's civil status may be proven using an identity document, an extract of a marriage record and, before public administrative authorities, by self-certification.*

*In **Luxembourg**, an identity document or an extract of the population register may suffice for informative purposes (for instance for school registration), whereas for a benefits application or for tax purposes, administrative authorities usually require civil-status documents such as a copy of the birth record.*

*In the **Netherlands**, depending on the purpose, a person may justify his civil status using identity or travel documents, or extracts of the population register, or even other means.*

*In **Poland**, one's civil status is generally proven using a civil-status record.*

*In the **United Kingdom**, each administrative body decides which proofs are to be provided; some accept travel documents, others require a birth or marriage record or a solemn statement of the reality of the status of the person concerned.*

*In **Switzerland**, each authority determines the documents required to establish a person's identity and, in general, as well as civil-status documents, national identity papers or booklets are accepted for foreign nationals.*

*In **Turkey**, it is permitted to justify one's identity in the context of everyday needs using identity or travel documents, or using an extract of the population register, or by any other means, including self-certification.*

When a person is devoid of identity and/or civil-status documents, this entails specific problems. It is, then, relevant to examine the procedures for identifying and registering persons who are devoid of identity papers (1) and those provided for the registration of civil-status events concerning persons who are devoid of civil-status documents in case of a birth, marriage or death within the territory of an ICCS member State (2).

1 – Persons devoid of identity papers

All of the States mention that undocumented immigrants cannot, due to their clandestine status, be accurately counted, so it is generally only possible to estimate a figure (for instance, the Netherlands estimate their numbers at 25,000, and Luxembourg at 1,000).

However, numbers are mentioned when official procedures are carried out. In Belgium, approximately 70% of asylum seekers are not in possession of any official identity papers. In Croatia, according to the data provided by services in charge of illegal immigration, the number of 'undocumented immigrants' is apparently precisely determined (1981 in 2002, 1908 in 2003, 1325 in 2004 and 635 for the first six months of 2005). In France, the OFPRA [Office français de protection des réfugiés et apatrides, French office for the protection of refugees and stateless persons] established 13,621 documents in lieu of civil-status records for persons granted refugee status in 2003. Hungary indicates that, among the information held by Immigration Services, the only reliable figure is the number of foreign nationals whose identity has been established in the course of the administrative asylum application procedure: this figure is 1,605 persons in 2000, 1,068 in 2001, 681 in 2002, 449 in 2003 and 167 for the first semester of 2004. In Switzerland, despite the clandestine status and mobility of the populations concerned, numbers have been provided relating to undeclared workers, fluctuating between 50,000 and 300,000; according to a study carried out by Professor Schneider of the University of Linz, there were approximately 90,000 undeclared foreign workers in Switzerland in 2004.

Much like their numbers, the origins of undocumented immigrants may be precisely estimated only where the persons concerned have contacted the authorities in order to legalise their situation. In any other case, their origin may be discovered only while searching for their identity or when they are apprehended by the police. Taking this into account, the origins of undocumented immigrants are very variable as between the States that responded to the questionnaire: they can be affected by the geographic proximity of the host State, and vary depending on the time and recent events.

*In **Germany**, although the presence of undocumented immigrants within the national territory is a well-known fact, their number and geographical origin cannot be reliably determined.*

*In **Belgium**, asylum seekers without any valid identity or travel documents mainly come from the African or Asian continents or from Eastern Europe. Persons who are found to be illegally residing in Belgium are most often Romanians, Bulgarians, Algerians or Moroccans. As for persons intercepted at the border, they are most often Indian or Afghan in origin.*

*In **Croatia**, the situation is special because of the dissolution of the former Yugoslavia. Thus, the top three countries of origin, between 2002 and the first half of 2005, are Serbia and Montenegro (1,093 persons, particularly Albanians from Kosovo), Albania (333 persons) and Bosnia Herzegovina (1,020 persons). Among the other undocumented immigrants, the Croatian Section mentions Iraqis (123), Iranians (39), Macedonians (277), Moldovans (683), Romanians (657) and Turks (476), and 1,148 foreigners of various nationalities, that is to say a total of 5,849 persons counted between 2002 and 2005.*

*In **Spain**, the main countries of origin for foreign nationals residing illegally in the country are Algeria, Morocco, Nigeria, Ecuador, Columbia, Bolivia, Romania, Bulgaria and Ukraine.*

*In **France**, undocumented immigrants mainly come from Algeria, sub-Saharan Africa, Asia, and certain former Soviet Union countries.*

*In **Greece**, while undocumented immigrants were for a time mainly Kurds from Iraq, lately, they have mainly come from Afghanistan, Pakistan, Egypt and Sudan.*

*In **Hungary**, between January and July 2004, asylum seekers originated from Turkey, Vietnam, Serbia, Montenegro and Nigeria, while undocumented immigrants intercepted by Immigration Services were from Bangladesh, Vietnam, China, Turkey and Ecuador.*

*In **Italy**, there are two currents of clandestine immigration: the traditional one, from Mediterranean Africa, the middle and far East and Latin America, and another, from Eastern Europe, particularly Ukraine and Romania.*

*In **Luxembourg**, foreign nationals who have remained within Luxembourg territory despite the expiry of their visa are mainly from China, Cape Verde and Brazil. As for those who, devoid of visas when entering the territory, have applied for asylum which has been denied, they mostly originate from Serbia and Montenegro (including Kosovo), Bosnia, Albania and West African countries.*

*In the **Netherlands**, undocumented immigrants presently mainly come from Afghanistan, Iraq and Somalia.*

*In **Poland**, the problem of undocumented immigrants mainly concerns persons from Asia, particularly Vietnam, India and Pakistan. A large number of foreign nationals devoid of documents is detected by border guards in the exercise of their activities controlling access to the national territory. Furthermore, many foreign nationals, when applying for refugee status, have no documents to prove their identity. The same applies mainly to nationals of Vietnam, Mongolia, Afghanistan and China. This absence of documents is also frequent for nationals of certain African countries **and**, even when they produce them, their authenticity is often in doubt.*

*In **Portugal**, foreign nationals whose situation has been brought in line with the law have mainly come from Angola and Cape Verde, but since 1996, many have been arriving from Central or Eastern Europe, particularly Russia, Ukraine or Moldova.*

*In the **United Kingdom**, studies on the geographical origins of undocumented immigrants are being carried out, but as yet there is no information available in the matter.*

*In **Switzerland**, a study in this area reveals that undocumented immigrants mainly come from the South American continent (Bolivia, Columbia, Ecuador and Brazil), the former Yugoslavia, and a few African countries. They generally hold identity papers (passport, identity card). In general, whether immigrants are there illegally or not, their identity is a problem where the African continent is concerned (particularly Ethiopia, Somalia, Sudan, Eritrea), as it is difficult for the persons concerned to obtain identity papers in their countries.*

*In **Turkey**, illegal immigrants mainly come from Iraq, Iran and China, although the Turkish Section also mentioned that the main country of origin for stateless persons is Greece.*

After this brief overview of undocumented immigrants in ICCS member States, who are, as a result, confronted with immigration and residency control problems, it is relevant to look into the procedures for identifying and registering them (1.1), and then to examine the question of the use of medical and scientific procedures in order to establish the truth (1.2) and the question of foreign documents as well as the practical scope of international agreements (1.3).

1.1. Identification and registration of persons devoid of documents

1.1.1. Identification

Generally speaking, the competent authorities base their identification process sometimes on the foreign national's personal statements, other times on an exchange of information and checks with the diplomatic or consular authorities of the presumed State of origin, or any other elements that have been ascertained, or on a combination of several of these elements. For instance, in Poland, in the context of the administrative procedure for expelling people from Polish territory, border guards take measures on several fronts: the search for the foreign national's identity is carried out in collaboration between the competent border-guard authorities and consular authorities on the basis of readmission agreements, particularly through visits from experts from the foreign nationals' countries of origin.

*In **Germany**, in principle, authorities proceed with interviews in order to determine the origin and nationality of undocumented immigrants and, for cases where the asylum procedure is not relevant, a request for information addressed directly to the authorities of the country of origin. If foreign nationals who have illegally entered German territory without any identity papers do not apply for asylum, and cannot be immediately escorted back to the border, they are assigned to Länder under Article 15a of the law on the residency of foreign nationals in Germany, after the authorities have attempted to establish their identity using identification methods (such as taking identity photos and fingerprints, or having a doctor establish age as well as carry out physical*

examinations on persons aged 14 and over) under Article 49, paragraphs 4 and 5 of the law relating to the residency of foreign nationals in Germany where identity cannot be established in any other way (such as an interview in the mother tongue of the person concerned). A foreign national may also be searched if any elements lead to believe that he holds identity papers.

Requests for information usually originate from immigration authorities or from the police, not from civil-status departments. In order to establish the identity of an undocumented immigrant, the federal police, like the Länder police authorities, may ask the person concerned to produce all documents or information proving his identity and proceed with an examination, which may include resorting to searching the person and his personal effects, conducting a detailed interview of the person or of third parties (for instance, people accompanying him), requesting information from national or foreign authorities, or appearing before a diplomatic authority of the presumed country of origin. If it is still not possible, or at least not within a reasonable period of time or following considerable efforts, to establish the identity of a person, it is possible to resort to taking photographs, fingerprints, or other similar measurements in accordance with Article 49, paragraph 6 of the law relating to the residency of foreign nationals in Germany.

*In **Belgium**, when a person who is devoid of any identity and/or travel documents applies for asylum, the identity that he declares before the Department of the Foreign Office will be held to be his 'official' identity, and diplomatic authorities will not be contacted in order to verify it; this identity will be indicated in the residency documents issued by the Belgian authorities, with the reference 'the person who claims to be named…'. However, if refugee status is not granted to an asylum seeker and a pass needs to be issued in order to repatriate him, the Foreign Office identification department may contact the embassy of the State of which the person concerned claims to be a national in order to proceed with his identification and, in addition to this measure, he may also be interviewed. The diplomatic authorities of this country, in this case, are not informed that the person concerned has applied for asylum in Belgium. The same methods of identification are applied to illegal immigrants. In the case of an unaccompanied minor, the Guardianship Services are responsible for the person's identification in order to implement specific guardianship measures. The statements of the interested party concerning his name, age and nationality are verified by this department using official documents or information obtained from consular or diplomatic authorities. Furthermore, the Guardianship Services have established collaboration with the Personal Law department and the Federal Public Department of Foreign Affairs in order to establish the authenticity of the documents provided by the minor.*

*In **Croatia**, the administrative bodies competent for administrative or judicial actions proceed with the identification of undocumented immigrants in collaboration with the diplomatic or consular authorities of the country of origin.*

*In **Spain**, central police management attempts to establish the identity of undocumented immigrants during an interview with the person concerned, and then confirms the information thus received by contacting a consular agent of the supposed country of origin.*

*In **France**, specialised police forces or the OFPRA attempt to establish the identity of a foreign national using any relevant document, or by interview or enquiry. Furthermore, when it is necessary to establish the age of an alleged minor, these authorities may resort to a bone examination.*

*In **Greece**, police services identify undocumented immigrants by way of an interview, which is systematically carried out in the case of asylum seekers. Law 2910/2001 has created, within the Ministry of the Interior, Administration and Decentralisation, an aliens and immigration department which is, in particular, responsible for these questions.*

*In **Hungary**, the authority responsible for refugees bases its assessment on the statements of the person concerned and proceeds with investigations in case there is any doubt. Immigration Services also base their assessment on the statements of the person concerned and may resort to fingerprints or photographs or proceed with checks in various registers, and sometimes, exceptionally, may carry out anthropological investigations. They may also contact the diplomatic or consular authorities of the interested party's State of origin in order to establish his identity.*

*In **Italy**, the necessary checks are carried out by the border police, which checks the travel documents produced and may, in case of any doubt, resort to interviews. In the absence of valid documents, the identity of the foreign national may be established by any appropriate means. The identity of illegal immigrants applying for asylum is established during interviews conducted by the competent territorial Commissions, chaired by an official of the Ministry of the Interior and made up of police authorities, a representative of the UNHCR and a representative of the Ministry of Foreign Affairs.*

*In **Luxembourg**, when a person produces identity papers of doubtful authenticity, the immigration authorities carry out checks with the embassy of the person's country of origin. If identity papers cannot be produced, the immigration authorities take a statement from the person in order to establish his identity and the police take fingerprints and photographs.*

*In the **Netherlands**, the identity of undocumented immigrants is established by the immigration services using data provided by the person concerned during an interview. If he is allowed to reside in the Netherlands, an identity document will be issued to him and his fingerprints will be taken at that moment.*

*In **Poland**, according to Article 28, paragraphs 1-4 of the law of 13 June 2003 on the protection of foreign nationals in the territory of the Republic of Poland, the responsibility for processing applications for refugee status lies with the President of the Foreign Office. The application is addressed to him via the head of the division of border guards which is territorially competent for the area where the foreign national devoid of valid documents to enter Polish territory attempted to cross the border, or through the head of the division of border guards which is territorially competent for the city of Warsaw, if the applicant remains in Polish territory, or through the head of the division of border guards territorially competent for the place of detention, if the applicant is in custody or detained in a prison or a detention centre. The application may be formulated in the name of the applicant himself and in the name of the minor children accompanying him (Article 23, paragraph 1 and Article 24, paragraph 1). The application requires the personal attendance of the applicant and the person in whose name the applicant is appearing (Article 28, paragraph 1). Article 23 of the aforementioned law obliges the agency receiving the application to establish the identity of the applicant and of the person in whose name he is applying. An undocumented immigrant's personal data will be established on the basis of statements made by him.*

*In **Portugal**, the identity of undocumented immigrants is established using any appropriate document. In the absence of a document, it may be established following the rules of civil identification, in particular by obtaining photographs, taking fingerprints, or carrying out expert investigations or DNA tests. In the case of extraordinary regularisation procedures, the issuing of identity papers to undocumented immigrants has been co-ordinated by Portuguese Immigration Services [Serviço de Estrangeiros e Fronteiras (SEF)].*

*In the **United Kingdom**, the situation varies depending on the moment when the foreign national who is in breach of immigration regulation is identified by the authorities: previously to his entrance into British territory, at the moment of entry or after the date of entry. In the first case, the person must prove that he meets the conditions required for his admission and this check is carried out by British officials before his departure. If he does not meet the requirements, he will not be allowed to leave for the United Kingdom. If the foreigner reaches the United Kingdom, he will not be allowed to enter United Kingdom territory unless he meets the conditions set out by the legislation in force; he will be refused entry, and will be notified of refusal by a head officer of Immigration Services. An undocumented immigrant who spontaneously appears before the immigration official at the control point will be subject to the same regulations. As for foreign nationals who have entered the United Kingdom in breach of the rules in force and are discovered later, and those who have been discovered during the course of an application for a residency permit, they are dealt with on a case-by-case basis. Depending on the circumstances, the person concerned may be deported. Special provisions exist in order to pronounce a deportation order following a criminal conviction or in the interest of public safety.*

*In **Switzerland**, the presentation of an identity document is mandatory for obtaining the right to entry into and residency within Swiss territory. This obligation is explicitly set out in immigration legislation.*

*In **Turkey**, the police immigration department identifies undocumented immigrants on the basis of their statements and of the information gathered from diplomatic authorities.*

1.1.2. Registration

*In **Germany**, if a foreign national is entered in a register (such as the resident register, the central register of foreign nationals or the Federal Office of migrations and refugees), the initial lack of documents or the former illegality of his situation will not be indicated, but if he is issued with a German document, which acts as an identity document, it will be mentioned in this document that 'the registered information is based on the statements of the applicant' and when they are based solely on spoken statements, their probative value is very limited. This document may be confiscated if new identification elements are found, or modified in order to include the newly obtained data.*

*In **Belgium**, asylum seekers are registered in the 'waiting register' and foreign nationals having obtained refugee status are registered in the 'foreign nationals' register'. The data featuring in these registers concern civil status and any related procedure that has been engaged; they may be consulted by officials from the Foreign Office. In both cases, a registration attestation is issued by the municipal administration to the person concerned, allowing the foreign national to reside legally in Belgian territory for the duration indicated in the document. This document may be revoked in certain cases, or modified in function of the foreign national's change of status. Thus, the attestation of registration in the waiting register is revoked when an asylum seeker does not obtain refugee status, and he is then served with an order to leave the territory; if he does obtain refugee status, it is also revoked, but replaced with a certificate of registration in the foreign nationals' register.*

*In **Croatia**, foreigners who have applied for asylum or refugee status are registered in the foreign nationals' and refugees' register, where the following personal data are included: forename, surname, gender, nationality, profession, address in Croatia, as well as any other known data. They are issued with a 'foreign national's identity card' which proves their identity and their status (foreign national, asylum seeker, refugee). If an event takes place in Croatia affecting the subject's civil status, it will be entered in the Croatian civil-status registers and will have probative value in consequence. If a foreign national obtains Croatian nationality, he will be entered in the birth register.*

*In **Spain**, foreign nationals in illegal situations may register with their hometown's municipal census, which contains their forename, surname, gender, nationality, place and date of birth, residence and educational details. They will then receive a foreign national's identity number in the cases set out in regulations.*

*In **France**, prefectural services give asylum seekers a form, which they fill in indicating their nationality and civil status (surnames, forenames, gender, place of birth, date of birth; father's and mother's names; family situation (current and former, where relevant), partner or spouse's identity; children born of the current marriage or partnership, and if relevant of previous marriages (composition of the applicant's family)). Some of these civil-status data are registered in the OFPRA's internal computer database. If the application for refugee status is rejected by the OFPRA and by the appeal panel, the registered information remains. But if refugee status is granted or the benefits of subsidiary protection are awarded, the OFPRA may issue to refugees or stateless persons, following an enquiry if need be, documents that have the quality of civil-status records that are registered in a computer file. This file is not quite a civil-status register in the strict sense of the term. Records established by the OFPRA have the value of authentic records; they may be rectified only by instruction from a prosecutor or by a legal decision, but they are updated regularly after advice of additional marginal notes is communicated by the public prosecutor or mayors. The reconstituted documents also contain notes on the person's civil obligations and the composition of his family even if no family members are present in France. As for foreign nationals whose application for asylum has been turned down, the elements recorded by the OFPRA are the result of the interested parties' statements and are not subject to checks.*

*In **Greece**, Article 51 of Law n° 2910 of 2 May 2001 forbids public authorities and administrative bodies from making their services available to foreigners who have no identity or travel documents or residency permits or who cannot, in general, prove that they reside legally in Greece, except for hospitals and clinics in case of emergency or for minor children. These persons are not entered in any register. If they obtain a residency permit, they may reside in the country until the time period indicated expires. If they are applying for asylum, their personal data are registered based on their own statements made electronically: this mainly concerns their name, age, country of origin, family situation, and the circumstances having motivated their application. Asylum seekers receive a temporary, numbered residency permit.*

*In **Hungary**, registers are kept by the Ministry of the Interior's Office of Immigration and Nationality. The authority in charge of refugees keeps the refugee registry containing the following:*

- *elements relating to the foreign national (current name and former name if relevant, appellation, current and former nationality, gender, place and date of birth as well as, if the person is a refugee, his personal identification number; his mother's name; a photo and, if he is aged 14 or over, fingerprints; legal capacity to marry, profession and qualifications; current accommodation, place of residence and domicile; the name of the country he is a national of or, for a stateless person, the name of the country where he usually resided beforehand; data relating to his national, ethnic and religious affiliations, which the foreign national refers to in the asylum application; information relating to documents proving identity and travel permits*

(nature and identification number, duration of validity, date and place of establishment and the issuing authority);

- *personal identification data of close relatives who have arrived with the foreign national, as well as the reason for their residency.*

According to the law on entry into the country and residence of foreign nationals, a humanitarian residency permit will be issued to the asylum seeker during the course of the procedure. This residency permit is temporary; it contains: the document identification number; the name(s), forename(s), nationality (or statelessness), gender, a photo, the date and place of issue of the permit, the validity of the permit, the reason for the residency, the date and place of birth, current residence, signature, and other observations. The humanitarian residency permit is an authentic record which is authoritative concerning the data it contains until proven otherwise. If a foreign national obtains refugee status, the authority in charge of refugees informs the Central Service which registers the beneficiary's personal data, issues to him an identity card and attributes to him a personal identification number. Elements relating to the civil status of undocumented immigrants are entered in Hungarian civil-status registers only if they have occurred in Hungary.

*In **Italy**, undocumented immigrants do not feature in any registers. But once they have obtained refugee status, they are entered into the population register with an indication of their surname, forename, date and place of birth, place of residence, number of the residency permit and issuing authority, and an indication of the travel document issued at that point. The documents thus issued have the same value as documents issued to Italian nationals; they cannot be altered, but may be replaced with new documents.*

*In **Luxembourg**, asylum seekers and persons who have obtained refugee status are registered in a database managed by the Immigration Department and in a database administered by Social Security. They are also entered in civil-status registers when a civil-status event concerning them takes place in Luxembourg, giving rise to the establishment of a civil-status record (birth, marriage, death), as well as being registered in the municipal population register. As for illegal immigrants, who are illegal either because they have remained within Luxembourg territory in spite of their visa expiring or because their asylum application has been turned down, they remain registered in the Immigration Services and Social Security databases, along with their identification number. Birth and death records concerning them are registered in Luxembourg civil-status registers when these events have taken place in Luxembourg. When civil-status records are established in Luxembourg registers, they are authoritative unless proven otherwise and may be rectified according to the rules of common law.*

*In the **Netherlands**, discussions are taking place on the possibility of creating a new civil-status record for undocumented immigrants who have been allowed into the Netherlands but, currently, these persons are registered within six months in the basic municipal administrative register (an electronic population register) in their town of residence and civil-status records are issued only if a civil-status event concerning them occurs in the Netherlands. Immigration Services issue to the interested parties an identity document based on their statements and after taking their fingerprints.*

*In **Poland**, there are several registers which are all computerised, where foreign nationals benefitting from protection are registered, for instance the register of applicants for refugee status and of applicants for subsidiary protection, as well as persons having refugee status, the register of asylum seekers, the register of residency applicants, and the register of applicants for subsidiary protection, and in any case, if the application has been successful, the register of fingerprints. In the various computerised records concerning the aforementioned persons, the following information is recorded: personal data (surname, forename, date and place of birth, nationality…), administrative and judicial decisions relating to the applicant and the persons concerned by the asylum procedure and any identity or travel documents issued. The register of fingerprints also contains information relating to their obtaining (legal basis, date and any other information entered in fingerprint cards). The documents issued by the President of the Foreign Office have the value of authentic records and can be rectified by virtue of an administrative decision or a judgment. Civil-status records are established only when a civil-status event takes place in Poland.*

*In **Portugal**, undocumented immigrants are not registered by an immigration authority, but Immigration Services (SEF) issue a temporary residency permit to asylum seekers, which is valid until the decision. If the foreign national obtains refugee status, the SEF will issue an identity document. If they take place in Portugal, civil-status events concerning undocumented immigrants are registered by civil registrars in their registers, but with the reference 'unknown information'*

where the foreign national's identity has not been verified. Civil-status extracts issued have the value of authentic records and are considered authoritative until proven otherwise. They may be rectified, if appropriate, by virtue of an administrative decision or a judgment.

*In the **United Kingdom**, the Home Office keeps a database of the information relating to foreign nationals who have entered legally into the territory. A specific division of this database is devoted to asylum seekers; it contains the person's status, the status of his application and various mandatory personal data; other data may be found there depending on the case. The foreign national may justify his right to residency using a numbered label printed on secure paper, which is inserted into his official travel documents. This label provides information on the permit that has been granted (type, date, reasons for granting it, duration of its validity and delivery authority), and includes security features in order to reduce the possibilities for fraud, which may be read and checked by the emitting services.*

*In **Switzerland**, as long as an illegal immigrant has not manifested himself to the immigration authority of the canton where he resides, he will not feature in the SYMIC system (a central register for foreign nationals, asylum seekers, persons who have been temporarily admitted). It should be noted that foreign nationals without residency permits may pay taxes, make social insurance contributions and send their children to school. Until recently, there was no institutionalised exchange of information between the different competent authorities. The law on foreign nationals, in force since 1 January 2008, has remedied this problem by instituting administrative assistance and the communication of data (Article 97 LEtr). A foreign national allowed to reside and work in Switzerland will obtain a residency permit issued by the Canton where he resides. Once this residency permit is obtained, his situation will no longer be considered illegal and he will no longer count as an undocumented immigrant. When a person's identity cannot be established, his civil status must in principle be verified by the court. However, the death of an undocumented immigrant or the birth of a child in Switzerland is registered in Swiss civil-status registers, but since his identity cannot be verified, the civil registrar will add the reference 'unknown information'. Civil-status records established in this way can be modified only if an error is proven by decision of the Canton surveillance authority or by virtue of a judgment. The Swiss Parliament is currently examining a parliamentary initiative aiming to authorise the celebration of a marriage only if the foreign national is legally residing or has legalised his residence in Switzerland.*

*In **Turkey**, undocumented immigrants are registered in the foreign nationals' register on the basis of information held by the Immigration Department of the Police. If such immigrants obtain refugee status, their identity data are recorded as well as the length of time they have been authorised to stay and any indications relating to residency in their State of origin.*

1.2. Use of medical and scientific techniques to establish identity or verify filiation

1.2.1. Use of biometrics to establish identity

Excepting Greece (where current legislation makes no provision for the use of biometrics) and Spain (where the use of medical techniques only seems to apply to checking the age of an alleged minor), all member States make use of biometric techniques.

In most countries, the use of biometrics is limited to taking fingerprints: this is the case in Croatia, in France in the context of identifications carried out by special police forces or of visa applications, in Luxembourg where police services take fingerprints from all asylum seekers and undocumented immigrants detected during controls, in Hungary, in Italy, in the Netherlands and in Poland. In the United Kingdom, the Immigration and Asylum Act 2004 (Section 15) provides that fingerprints should be taken immediately, but asylum seekers also receive an identity card (ARC) containing a biometric chip with the holder's fingerprints. In Switzerland, the legislation provides that border posts and Swiss representations abroad may take foreign nationals' fingerprints when their identity is not certain and an immigration services procedure demands it, in particular when controlling the conditions of entry and to avoid abuses, or when the person has entered Switzerland illegally. This taking of fingerprints is combined with the issuing of a Swiss entry visa in certain African, Asian or Middle-Eastern countries.

Croatia, the United Kingdom and Switzerland all mention projects aiming to introduce the possibility of retinal scans, but several countries (Germany, Belgium and Portugal) already combine the taking of fingerprints with other identification procedures. In Germany, the identity of asylum

seekers is established by identification procedures and their fingerprints are compared in order to avoid multiple applications by a single person. The identity of undocumented immigrants is also established using identification measures and photography, and the data are transferred to the Federal Office of Criminal Police. In Belgium, according to Article 5/13 of the Law of 15 December 1980 on access to the territory, residency, settlement and repatriation of foreign nationals, fingerprints will be systematically taken, in the case of asylum seekers, to check that the person is not already known in Belgium under another name or that he has not already applied for asylum in another European Union State. In Belgium, it is also possible to take photographs when a foreign national applies for a visa or equivalent authorisation, or a residency permit from a diplomatic representative of Belgium, or a residency authorisation of more or less than three months except in certain cases, or if entry is refused or the person has received the order to leave the territory or has been deported. The same applies if an undocumented immigrant finds himself in one of the above situations. In the case of minors intercepted by the police, it is possible to take fingerprints, though this is not done systematically. In Portugal, the law provides for the possibility of resorting to photographs, fingerprints, enquiries and DNA tests.

1.2.2. Use of DNA tests to establish the reality of filial relationships in the context of a family reunification procedure

In certain countries, DNA tests are not carried out in this case (Greece, Hungary, Luxembourg, Poland; in the United Kingdom DNA tests are not used, but a pilot project is currently underway and when the results of a DNA test are produced by a foreign national or his legal representative, they are taken into account in the decision-making process concerning him).

In other countries, they may be proposed or be ordered by a court decision.

*In **Germany**, a DNA analysis is not mandatory to prove the filial link of a minor to foreign parents who have entered the territory without any identity papers, but it is possible, on a voluntary basis and in particular cases. Such a procedure was resorted to in the context of family reunifications when the relationship of family members of an asylum seeker or of a foreign national who had been granted refugee status could not be proven using official civil-status documents from the country of origin. A DNA test may, in this individual case, be requested by the person in question when doubts persist concerning identity, filiation and membership of a certain family and there are no other means to remove such doubts due to the total lack or unreliability, in the State of origin, of a system for registering civil status or certifying it.*

*In **Belgium**, DNA tests are proposed if civil-status registers in the country of origin have been destroyed or if the civil-status documents produced have no probative value and the Belgian embassy or consulate is equipped with means to carry out this test if the interested parties wish it. The test is proposed in the following cases: in the context of a family reunification procedure; for the children of asylum seekers who are already present within the territory or, independently of an asylum procedure, for children who are residing legally in Belgium; or for children in an illegal situation who are joining a relative in Belgium. Genetic tests make it possible to determine the existence of a family relationship between the subjects who have been submitted to the test (parental, fraternal, avuncular relationships) but such tests may not take the place of a birth record. Their results do not constitute a legal means of establishing filiation, but they may be used as proof in a procedure aiming to establish such filiation in conformity with Article 331-h of the Civil Code, allowing the courts to order, even ex officio, a blood test or any other test following proven scientific methods.*

*In **Croatia**, the proof falls to the parents and may be made by any means. DNA tests seem only to be used in the case of court proceedings aiming to prove a Croatian national's paternity.*

*In **France**, Article L. 111-6 of the code of entry and residency of foreign nationals and the right to asylum, resulting from law n° 2007-1631 of 20 November 2007 relating to immigration control, integration and asylum, allows French consular authorities to offer the possibility of identification by genetic profiling to applicants for long-term visas, nationals of countries where civil-status registration is insufficient, with the aim of allowing them, in the case of a family reunification procedure, to supply an element of proof of the maternal filiation they have declared. Such an identification, however, may only be used following a court decision. This very limited possibility was made available only experimentally and in strictly controlled conditions by decision of the Constitutional Council n° 2007-557 DC of 15 November 2007 (a decision which may be found on*

the Constitutional Council website (http://www.conseil-constitutionnel.fr/) in German, English and Spanish translations).

A decree by the Conseil d'état, made following advice from the National Ethical Consultative Committee, is to define:

> *« 1° the conditions of implementation of methods of identifying persons through their genetic profiles prior to a visa application;*
>
> *2° the list of countries where these measures are implemented experimentally;*
>
> *3° the duration of this experiment, which may not exceed 18 months from the publication of the decree, ending at the latest on 31 December 2009;*
>
> *4° the procedures for empowering authorised persons to proceed with these measures.»*

*In **Italy**, DNA tests are used only in exceptional cases, Italian authorities usually resorting to other methods such as, for instance, witness statements or examinations.*

*In the **Netherlands**, in the absence of any documents proving filiation, interested parties are offered the possibility of resorting to DNA tests. 584 tests have thus been carried out over the last five years, taking on a particular importance in the case of family reunification procedures.*

*In **Portugal**, in the context of family reunification, the competent service for issuing a residency permit may require further proof of family relationships using medical and legal tests, including DNA tests.*

*In **Switzerland**, DNA tests may be used with the interested party's consent if there are any doubts about the person or the documents provided. If a civil-status record is of doubtful accuracy or cannot be produced, a DNA test may be demanded. A law on human genetic analysis exhaustively sets out the conditions under which DNA profiling may be demanded in the context of an administrative procedure.*

1.2.3. Doubts on the age of an alleged minor

In the particular case where an undocumented immigrant alleges that he is a minor in order to benefit from the protection granted in this situation and not be expelled, but this allegation is in doubt, tests may be carried out in all States excepting Greece. Most of the time, these tests consist of expert medical enquiries carried out on bones, teeth or DNA or genital examinations. But other informative elements may be taken into account, such as photographs, enquiry results or fingerprinting (Portugal).

Where the interested party appears to be of adult age, he may be treated as such until proof of his real age is obtained (in the United Kingdom), any doubt being interpreted against the interested party, who has the burden of proof concerning his minority (Germany: Article 49, §6, second sentence of the law relating to the residency of foreign nationals in Germany). In Poland, if a foreign national alleges that he is a minor and there are any doubts regarding his age, he may undergo, with his own consent or the consent of his legal representative, a medical examination in order to determine his real age (for instance with X-rays of his wrist bones); if he does not consent to undergo such a medical examination, he is considered to be adult.

1.2.4. Effectiveness of the medical and scientific techniques used

On the subject of the effectiveness of the procedures used, the responses to the questionnaire do not provide any indications, except from the Luxembourg section, who mention the fact that these procedures make it possible to avoid the situation where a person who has been denied asylum can make several more attempts under different identities, and the Netherlands section, who believe that, for the admission of immigrants in the context of family reunification, the very precise procedure used for DNA testing makes it possible to establish with almost absolute certainty whether a family relationship exists or not. Furthermore, certain States provided indications in the form of figures. In Hungary, Immigration Services have counted 854 people since the last trimester of 2000 and the first semester of 2004. The Netherlands specify that DNA tests took place in 584 cases between 1999 and 2004. Although Switzerland provided no estimation of the number of undocumented immigrants having obtained civil-status documents, the Swiss section mentioned that federal officials counted the number of persons whose residency was legalised by the issue of a permit or a temporary authorisation to stay in Switzerland: as of the beginning of July 2004, 575

people had obtained a residency permit and 569 had received an authorisation to stay, representing a total of 1,144 people for all of Switzerland.

1.3. Foreign documents and the practical scope of international agreements

For civil-status records and foreign judgments presented to the authorities of a member State, it seems, judging by the responses given by the member States that, in theory, the rules applied are those of common law on the recognition of foreign documents: they are recognised if their authenticity is not in doubt, after proceeding with possible checks (Germany, Belgium, France, Greece, Hungary, Italy, Luxembourg, the Netherlands, Poland, Portugal, the United Kingdom and Switzerland). Some national sections took care to specify that the documents in question must not be in breach of national laws or public order (Croatia, Italy, the Netherlands); others mentioned that a foreign residency permit is not sufficient and that the person concerned must apply, in the ICCS member State hosting him, for a new residency permit (Belgium and Greece).

If the documents established by the authorities of the country of origin are produced after the identification and registration of the undocumented immigrant and the data contained in them is inconsistent, all States proceed with checks and may, if appropriate, change false indications (for example, in Luxembourg, the database managed by Immigration Management will be modified, and the person will be sent back to his country of origin), or even cancel documents established beforehand.

Furthermore, whenever the authority in charge of refugees has made a decision based on inaccurate data following a fraudulent manoeuvre on the part of the applicant, this authority may reverse its decision. Other sanctions, in particular penal sanctions, may affect the perpetrator of the fraud if he used a fake identity.

Otherwise, it is relevant to mention that all ICCS member States are a party to the Geneva Convention of 28 July 1951 relating to the status of refugees. By virtue of Articles 25 (administrative assistance), 27 (identity papers) and 28 (travel documents) of this instrument, they are in principle bound to provide administrative assistance to foreign nationals who have been granted this status and the State of residence must, in particular, issue to them or have issued to them documents and certificates which they would obtain from their national authorities or through them; these documents are considered authoritative until proven otherwise. However, it is to be noted that the United Kingdom has formulated a reservation according to which it does not agree to respect the provisions of paragraphs 1 to 3 of Article 25, as 'there exist in the United Kingdom no provisions relating to the administrative assistance referred to at Article 25… and statements under oath will take its place' when relevant.

As for the ICCS, it has elaborated a Convention and several Recommendations. Convention n°22, on international co-operation in the matter of administrative assistance to refugees, was signed in Basel on 3 September 1985. In force since 1 March 1987, it is applicable in six States: Austria, Belgium, Spain, France, Italy and the Netherlands. It has also been signed, but not ratified, by three more States: Greece, Luxembourg and Switzerland. There are four Recommendations: Recommendation n° 1 on the issue and recognition of documents issued to refugees under the Geneva Convention of 28 July 1951, adopted in Luxembourg on 8 September 1967; Recommendation n°3 on the identification of refugees from South-East Asia, adopted in Munich on 3 September 1980; Recommendation n° 6 relating to international co-operation in the matter of administrative assistance to asylum seekers and Recommendation n° 9 adopted in Strasbourg on 17 March 2005, which addresses wider preoccupations and relates to combating documentary fraud with respect to civil status.

No statistics are available concerning the practical scope of ICCS instruments. Italy indicates that these instruments seem very useful. France specifies that, in practice, it is mainly the Dublin II Community Regulation, adopted in February 2003, which serves the purpose of regulating interstate collaboration in terms of administrative assistance to asylum seekers. As for Hungary, which has not signed the Convention, it mentions the usefulness of the agreement signed in Berlin on 21 March 2000 by eleven European States to recognise in all States one document for entering into one of their territories. Portugal also mentions that Recommendation n° 6 facilitates relations between the member States in order to obtain information, but most often the difficulties involve a third-party State.

2. – Persons devoid of civil-status documents

Foreign nationals who cannot produce any civil-status documents raise particular problems when it comes to establishing records in relation to events concerning their civil status, whether it is a birth (2.1), a marriage (2.2) or a death (2.3) occurring in the territory of one of the ICCS member States.

Generally, any birth or death occurring within the territory of an ICCS member State must be declared and registered there (except for Turkey, where such a statement is optional when it concerns a foreign national, unless he holds a residency permit of six months at least: Article 8 L. Pop.), but it should be noted that few countries have specific provisions covering the situation of undocumented immigrants. As for the celebration of a marriage by local authorities, in this case the rules of common law are applicable.

2.1. Registering a birth and a child's civil status

Except for Turkey where a statement is not mandatory in all cases, when a woman who is devoid of any civil-status documents gives birth in one of the ICCS member States, the birth must be declared to civil-status authorities and a birth record must be established by the civil registrar following the rules in force under national legislation; the inability to produce civil-status documents for the mother and/or the father must not constitute an obstacle. If no civil-status document is provided by the mother and/or the father, the record is drafted with entries relating to the date and place of birth based on the indications provided by the declarer(s), generally supported by a document certifying that the birth took place. The name of the mother and/or the father will be indicated in the record according to the indications provided by them which will be reproduced in the record, most of the time with no particular observation in this regard. As for the child's name, it is usually subject to the child's personal law and linked to the legal establishment of the child's filiation. The civil registrar may also receive an acknowledgment of paternity, the validity of which depends on the legal presumption of paternity not applying. The implementation of these rules relating to filiation and the child's name, however, seems difficult in the absence of proof of the mother's marital situation. The absence of civil-status documents relating to the mother and/or the father when the birth record is established does not affect the birth record's validity, and extracts or copies of this record and, where relevant, a family record booklet, will generally be obtainable in the conditions of common law.

*In **Germany**, any birth taking place within German territory must be entered in the civil-status register of the place of birth. The registration is carried out based on statements by the parents, the midwife or the doctor and, in order to register information relating to the child's filiation and nationality, it is in principle necessary to produce the parents' birth records, their marriage record where relevant, and their identity papers (Article 25 of the decree on applying the law relating to civil status). If the documents which are necessary to prove the parents' identity and civil status cannot be produced, the civil registrar may not refuse to register the birth (Article 35 of the regulations relating to civil status), but he will have to draw up the birth record on the basis of known information, indicating within it the reasons for the restricted basis of the registration. If the mother's civil status is only declared, the child's birth record will contain a qualification stating that the mother's civil status is not proven. If, later on, the mother's civil status is proven by the documents required for a registration with no reservations, the birth record must, if applicable, be rectified. In the absence of civil-status documents, the child will be registered with the name that is legally deduced from the known data on his parents' civil status and nationality. If the marital situation of the mother is not established, acknowledgment of paternity is allowed in the absence of indications that the mother is married. If the birth record contains a reservation indicating that all or some data remain unproven, only an integral copy of the record may be issued; given that the reservation calls attention to the restricted probative value of the document, such a copy cannot be accepted in view of the marriage of the person concerned without any further enquiries. German courts are not competent to pronounce a supplementary judgment concerning a birth record pertaining to a birth abroad. However, in the case of a German national or a foreign national with a German personal status, the Berlin civil-status services (Standesamt I) are competent to establish a record for a birth that has occurred abroad (§41, PStG). For a person whose civil status is unknown and who resides in Germany, a birth record may be established based on a decision by the competent administrative authority, even if it is evident that the birth occurred abroad (§26, PStG); in practice, this possibility remains rather theoretical in view of the competence of the country of origin to issue civil-status documents.*

*In **Belgium**, a birth record must list all information relating to the child, to the mother whose name must necessarily be indicated, to the father when filiation is established concerning him and to the declarer when he is a third party. The civil registrar must proceed with the necessary checks in this regard, including the consultation of population registers. In the absence of all civil-status documents, he will take into account any identity papers or any other document and, failing this, statements made to him. He will notify the Crown Prosecutor of any refusal to provide the required information, in particular the mother's name. If it becomes apparent subsequently that the record contains errors other than purely clerical errors, the rectification may only take place following a court decision (Articles 1383 to 1385, C. Jud.). The operative provisions of the rectifying judgment carried out by the Court of First Instance are transmitted to the civil registrar, who will then transcribe them into the registers by entering them into the margins of the record, which can then only be issued with the correction thus made. However, a material error may be rectified by the civil registrar in the margins of the record, once authorised by the Crown Prosecutor (law of 15 May 2007 modifying the civil code and the judicial code). The civil registrar may establish a record of acknowledgment of paternity despite the absence of documents establishing the mother's marital status if the documents produced make it possible to record the indications mentioned in Article 62 of the Civil Code, including the mother's name, and after checking that the conditions in Belgian domestic and private international law for such acknowledgment are met.*

The name attributed to the child in his birth record is determined by his national law. If he is Belgian, his name depends on his filiation: a child whose filiation is established with regard only to his father or with regard to both parents simultaneously will acquire his father's name; a child for whom only maternal filiation is established will take his mother's name; finally, if maternal filiation is established after paternal filiation, the child will not change names, unless the father and mother make an agreement within a year and before the child reaches adulthood or becomes emancipated. From the moment when the child's birth record has been established and in spite of the absence of civil-status documents concerning the parents or one of them, any person may, under common law, have extracts issued which do not mention the identity of the father and mother; only the child, his legal representative, his spouse or surviving spouse, his ascendants or descendants, his heirs, their notary, their lawyer and the public authorities may obtain an integral copy of a record that is less than a hundred years old or an extract mentioning filiation; however, any person with a family-related, scientific, or otherwise legitimate interest in view of carrying out specific research may have an integral copy or an extract mentioning filiation issued to him upon authorisation from the Presiding Judge of the Court of First Instance. The Belgian courts are competent to pronounce a supplementary judgment regarding a birth record for a person with Belgian nationality or usually residing in Belgium at the date of application, and if it is a record that was or should have been drafted abroad and could then have been transcribed in Belgium. Needs arising in practice have led also to allowing the 'rectification' by a State's courts of a record relating to its nationals after transcription into its registers where it had been made by a foreign authority.

*In **Croatia**, any birth occurring within the territory is entered in the civil-status register of the place of birth; the registration is based on oral or written statements in the 15 days following the birth. The statement will be made by the medical institution where the birth took place or, if the birth took place outside of such an institution, it will be made by one of the persons mentioned in Article 11, paragraph 2 of the Law on civil-status registers. After having proceeded with ex officio verifications, the civil registrar will record the data thus declared and, if some of the information is missing, the corresponding entries will be left blank. No distinctions are drawn in the case of registering the birth of the child of a woman who is devoid of civil-status documents; if new elements come to light, the data recorded may be added to; in case of any errors, they may be rectified by a decision arrived at following an administrative procedure, unless the new information calls into question maternal or paternal filiation, in which case a court procedure is engaged. As far as filiation is concerned, the civil registrar must check the mother's personal status and, as regards the application of the presumption of paternity, whether she is married or not. If she is not married and has indicated the name of the father, an acknowledgment of paternity procedure may be carried out before the civil registrar or at the welfare centre, or by statement. The family name attributed to the child depends on his parents' civil status and nationality; according to Croatian law on personal names, the name given to the child is chosen in common by the mother or father, who may give him one of their names or each of their names. Once the birth record has been established, extracts and copies of it may be issued. All annexed documents are kept. A copy of this record may be accepted in view of the child's wedding, without any further formalities, even if the record was established in the absence of civil-status documents of one or both parents. In the case of a birth abroad, the administrative authorities may make a suppletive decision concerning the birth record.*

*In **Spain**, all births are entered in the registers of the place of birth (Article 16 of the law relating to civil-status services) by virtue of a statement made by a person who has knowledge of the birth and a certificate established by a person who witnessed the delivery (Articles 42 and 44, LRC). If, at the time of registration, all entries cannot be mentioned in the record, they may be added later. There is no mention of the father and mother when they are not known, but no distinction is made according to whether the mother's civil status, if it is known, is proven or is registered only on the basis of the statements of a person who has knowledge of the birth. Extracts of this record may be issued, as well as a family record booklet. The civil registrar may establish a record of acknowledgment of paternity even in the absence of documents proving the mother's marital status, after checking that there is no cause to apply the legal presumption of paternity to the child (Article 185, RRC). The name of a foreign child is determined by the personal law of his country of origin (Article 9.1 of the Civil Code and Article 219, RRC). If he is Spanish, the child takes his father's first name followed by his mother's first name, even if she is of foreign nationality (Article 53, LRC and 194.1, RRC), unless the parents have agreed a different order when declaring the birth. If filiation is established only with regard to one of his parents, the child will take that parent's names in the order indicated by the parent (Article 55, LRC). The procedure for delivering copies or extracts of the birth record is not affected by the lack of civil-status documents concerning the parents when the birth record is established, since extracts do not prove filiation (Article 29, RRC) and full copies are necessary only for cases requiring proof of the filial relationship (Article 30, RRC). The civil-status department is competent to register events concerning Spanish nationals or foreign nationals if they have taken place in Spain (Article 15, LRC) and no other proof of those events is in principle admissible except in case of lack of registration or if it is impossible to issue an extract from the register (Article 2, LRC).*

*In **France**, a civil registrar may not refuse to establish a birth record when a medical certificate of delivery is given to him; he must, however, inform the public prosecutor of any difficulties encountered when establishing the record. The civil registrar enters the information into the birth record regarding the identity and the age of the father and mother based on documents produced by them (identity papers, foreign records, and so on) or statements that are made to him. The birth record established under these circumstances does not have diminished probative value and bears no mention of the fact that it has been established simply on the basis of statements. However, if elements discovered after the birth record has been established contradict any of the information entered initially, proceedings must be instituted in order to rectify this. The name attributed to the child in his birth record depends on his national law and is linked to the child's filiation, and any failure by the parents to produce civil-status documents does not affect this principle: if filiation is established only with regard to one parent, the child will take that parent's name; if it is proven with regard to both parents at the latest at the moment of declaring the birth, the child will take his father's name or the name of the parent with regard to whom filiation was first established unless the parents give the civil registrar a joint statement of choice of name or this statement is not accepted. The absence of civil-status documents relating to the parents when the birth record is established also has no effect on the extracts or copies of this record, whose indications concerning the father and mother are reproduced without any further observations. In general, all documents issued on presentation of the record may be obtained; in particular, a family record booklet is given to the parents whether they are married or not. French courts may pronounce a supplementary judgment concerning a birth abroad when the record has been established but cannot be produced and on the condition that the person concerned resides in France; furthermore, in certain cases, the impossibility of obtaining such a judgment from the foreign authorities must be established.*

*In **Greece**, Article 21 of law 344/1976 on civil-status records provides that the persons responsible for declaring a birth are the father, the midwife, the doctor, as well as any other person having witnessed the delivery. The statement may also be made by the mother or by a representative duly delegated to this end by power of attorney certified by a notary. If a child is born of a woman devoid of civil-status documents, and if the birth has not taken place before the civil registrar, the civil registrar may establish the child's birth record if the child's mother or the civil registrar himself finds two adult witnesses. As for the child's name in the birth record, it follows from a combination of the rules of Article 24 of law 344/1976 and legislative decree 2573/1953 as well as ministerial decision 42301/12167/28-6-1995, that the prefect may establish a fictitious surname and forename for the father and/or the mother for a child whose parents are unknown, if the civil registrar has omitted these elements when establishing the record.*

*In **Hungary**, a civil registrar establishes the birth record based on known data, gathered if need be from statements made to him. If the identity of the mother is subsequently in doubt, maternal filiation may be contested before the court. No distinction is made based on whether the mother's*

civil status is proven or only declared, but if an error becomes evident later on, a rectification must be carried out without delay. In the absence of civil-status documents justifying the mother's marital status, a record of an acknowledgment of paternity may be established only after checking that the legal presumption of paternity is not applicable to the child. The name attributed to the child in his birth record depends on his national law. The name declared for the child is entered in his birth record; depending on the case, it will be the father's name or the mother's name. The absence of civil-status documents concerning the parents when establishing the birth record has no effect on the extracts or copies of this record, the indications concerning these being reproduced, and a copy will be accepted according to common law.

*In **Italy**, the civil registrar may not refuse to record a birth for the reason that the documents relating to the identity of the father and mother cannot be shown to him; he will establish the record based on the indications of two witnesses who guarantee the identity of the declarer (this latter being, in principle, the father or mother). No distinctions are drawn based on whether the mother's civil status is proven or only declared, no proof being required in support of the establishment of a birth record. In the absence of civil-status documents justifying the mother's marital status, a record of an acknowledgment of paternity may be established. The name attributed to the child in his birth record is dependent on his national law. The child will acquire his father's name if this is indicated or if the parents have declared that they are or are known to be cohabiting; if the father's name is not declared, he will take his mother's name. A copy or extract of the birth record thus established is delivered in the usual conditions. Italian courts have the competence to pronounce a supplementary judgment concerning a birth record when the birth has occurred abroad and the child is born of Italian nationals residing abroad or of persons who have acquired Italian nationality. But the courts of the State of the place of birth are competent if the parents are foreign nationals.*

*In **Luxembourg**, a civil registrar enters the information relating to the identity and age of the father and mother into the birth record on the basis of identity papers or any other document they are able to produce, and the civil registrar may not refuse to record the birth on the pretext that none of these documents has been produced. In this case, he will base his work on the statements made to him. There is no distinction drawn in relation to whether the mother is devoid of civil-status documents and the probative value of the birth record thus established is not affected. However, if any elements coming to light should contradict the information contained in the record after it has been established, an action must be initiated in order to rectify the inconsistencies. In the absence of civil-status documents justifying the mother's marital status, an acknowledgment of paternity may be accepted by the civil registrar and made legitimately by a third party if the child is not covered by the legal presumption of paternity with respect to the husband. The attribution of the child's name takes place in accordance with his national law. If he is a Luxemburger and born since 1 May 2006, he will acquire the name of the only parent with regard to whom his filiation is established. He will take the name indicated by his father and mother (which may be one of their names or a double name made up of both their names in the order chosen by them) if both his maternal and paternal filiation are established at the latest at the moment of declaring the birth. In case of parental disagreement, a double name composed of both of their names is also attributed, but the order will be randomly drawn. The lack of civil-status documents relating to the father and mother when establishing the birth record has no effect on the extracts or copies of this record, the indications concerning them being reproduced with no observations and in general, any documents issued on presentation of the birth record may still be obtained. Luxembourg courts are competent to pronounce a supplementary judgment concerning a birth record if the child was born abroad.*

*In the **Netherlands**, if a doctor or midwife has delivered the baby, he will establish a certificate confirming that the child was born of the woman indicated as being the mother; if that is not the case, the certificate may be established later on. The birth record is drawn up based on these indications. In the absence of such a certificate, if the surname and forename of the mother are unknown, the birth record is established according to the instructions of the public prosecutor (Article 19b, Book 1, BW), but it may be modified on the basis of another civil-status record or by a court decision; the rectification will lead to the information being added to the record (Article 24, Book 1, BW). In the absence of civil-status documents relating to the parents, the civil registrar may establish their identity using other documents and, if applicable, carry out checks; if he is in any doubt concerning the identity of the father, he will not mention this in the birth record. In the absence of civil-status documents justifying the mother's marital status, he may draw up a record of an acknowledgment of paternity if the mother consents to this and after checking whether or not she is married; if she is, he will establish the birth record registering the husband as father and will refuse to record an acknowledgment of the child by a third party. The name attributed to the child*

depends on the law relating to his personal status. A copy of the child's birth record, established without any civil-status documents being produced by the father and mother, is issued by reproducing the indications contained in it concerning the parents, whereas an extract never mentions filiation. Such a copy has the same probative value as any copy. The Hague Court is exclusively competent to decide, concerning certain categories of people, the data necessary in order to establish a birth record if it has not been established abroad, or if it has been but was lost or destroyed (Article 25c, Book 1, BW); on this basis, the civil registrar in The Hague will then establish the record.

*In **Poland**, the birth record is based on a medical certificate containing the mother's personal data. This certificate is established on the basis of documents produced by the mother, and if some information is missing, her spoken statements. The birth must be declared within 14 days of the date of birth. The birth record must be established by the end of the day following the announcement of the birth. If the mother of the child was married at the moment of giving birth, her husband is entered into the birth record as the father of the child, if the registrar has seen the marriage record. In the absence of the parents' marriage record, the registrar will enter in the birth record, by way of the father's details, the mother's surname and a forename chosen by the child's legal representative (Article 42, Pasc), and the basis for this entry will be indicated in the 'remarks' section. If the parents' marriage or the establishment of paternal filiation, whether by acknowledgment or by court decision, occur after the establishment of the birth record, these later events, as well as the change of the child's name, will be entered in the birth record as a supplementary entry.*

*In the **United Kingdom**, if a birth has not been declared in accordance with legal prescriptions, the Registrar General may authorise a late registration carried out on the basis of pertinent proof of the date and place of birth, for instance a certificate from the medical institution where the birth took place, issued by one of the persons qualified to declare the birth. The absence of civil-status documents pertaining to the father or mother does not necessarily present any obstacle. Making false statements to the civil registrar constitutes a criminal offence. The lack of civil-status documents justifying the mother's marital status does not prevent the civil registrar from establishing a record of an acknowledgment of paternity based on the common statements of the father and the mother if she says she is not married to him, and the information relating to each of them will then be then entered into the birth record. However, he must enter the husband and the mother as parents if she indicates that they are married to each other, even if they do not produce any civil-status documents justifying the marriage. The absence of civil-status documents regarding the parents does not affect the attribution of the child's name, who may take his mother's or father's name or a double name made up of both of their respective names, or an entirely different name. A copy or extract with or without indication of filiation may be issued even if the birth record was established without any proof of the parents' civil status and was based on the sole indications of the declarant. British courts are not competent to pronounce a supplementary judgment concerning the birth record if the child is born overseas.*

*In **Switzerland**, the registration of a birth is in principle impossible if the parents do not provide civil-status documents, simple statements being insufficient. However, as long as the data are not litigious, the Canton surveillance authority may authorise the interested party or parties to make a substitutive declaration to the civil-status department based on elements found in other files, such as those kept by the immigration authorities. If an error in the record were to be found subsequently, the rectification in the birth register could take place only following a court decision. If a substitutive declaration was not authorised, the identity of the parent or parents must be verified by the court. A substitutive declaration to the civil-status services is subject to verification, in particular to check that there are no contradictions, for instance, in the files kept by immigration authorities: Articles 41 of the Civil Code and 17 of the Order on civil status are applicable. The birth record in that case will not contain any particular observations on the fact that the documents provided were incomplete. The mother's civil status must be clearly defined, since her details must appear in the record and, if she is married, the presumed paternity of the husband applies (Article 244, paragraph 1 of the Civil Code). If the mother has been single or widowed for more than three hundred days and no man is already registered as the father in the birth record, a record of an acknowledgment of paternity may be established (Article 260 of the Civil Code). As for the name attributed to the child, federal law on private international law makes it possible for foreign parents to opt in favour of their own national law (Article 37 LDIP and Article 14, OEC). Failing this, the name attributed to the child in Swiss law most often depends on his mother's civil status: if she is married he will take the spouses' family name, which most often is the husband's name; if she is not married to the father, the child will take her name (Article 270 of the Civil Code); in any case, Swiss law does not allow a double name, made up of the mother's family name and the father's, to*

be passed on to the child. An extract of the birth register, termed 'birth record', may be issued from the electronic register, incomplete if necessary (for instance, with no indication of the child's filiation or the nationality of his parents).

*In **Turkey**, the civil-status department receives the birth declaration and establishes the record on the basis of the certificate made at the moment of the birth, mentioning the child's forename, the identity of the father and mother and the place of their registration in the family register. In the absence of such a document, a verbal statement from the parents is taken, registered, signed by the civil registrar and by the declarant, and a copy is issued to the interested parties (Articles 15 and 21 of Law 5490). If an error is noticed later on, the court must be informed. If a person's Turkish nationality is not proven, it will be registered in a special register and the child will be registered in the part of this register where his father is also registered. If the father's Turkish nationality is established later on, the father and the child will be registered in the family register and a national identity card will be issued to them. If the father and mother are not Turkish nationals and the father has no other nationality, the child will acquire Turkish nationality by virtue of the fact that he was born in Turkey (Article 46 of the Regulations). A man may not make a valid acknowledgment of paternity if a third party's paternity has already been established and as long as it has not been annulled. However, the acknowledgment will be received and the Public Prosecutor will be appraised of the situation (Article 295, last § of the law on civil status; Article 190 of the Instruction relating to the establishment of the mission and work of civil-status services). The name is determined according to filiation: the child will take the father's name if he was born within marriage or within the 300 days following the end of the marriage, and he will take his mother's name in the case of a birth outside of marriage or if the father and mother are not married to one another. A family record booklet may not be issued in the absence of civil-status documents relating to the mother, the father, or each of them. Turkish courts are not competent to pronounce a supplementary judgment concerning a birth record if the child is born abroad.*

2.2 Celebrating a marriage and the issue of documents by civil-status authorities

If two people state that they wish to contract a marriage, they have to produce to civil-status services various documents justifying their identity and their status. This poses the problem of finding out how the situation is handled when the birth record of one of the spouses or both spouses has been established in the absence of civil-status documents pertaining to the father and/or mother in the State of the celebration of the proposed marriage, or what is the situation of future spouses who are themselves devoid of all civil-status documents.

*In **Germany**, as a general rule, in order to set in motion the preliminary procedure for marriage, the two future spouses must produce all the documents proving their identity, their civil status and their nationality. If they have not produced these documents, the civil registrar cannot determine their legal capacity to marry, which is governed by each spouse's personal law. If, in the absence of the parents' civil-status documents, the future spouse's birth record, issued in Germany, contains a qualification indicating that all or some of the data contained therein are unproven, the copy of this record will have a lesser probative value and will not be accepted without further enquiry for the celebration of the marriage of the person concerned. The marriage record contains the spouses' personal data, their mode of identification (e.g. passports) as well as the date and place of marriage, and if identity is not clearly established, the celebration of the marriage is in principle not possible. However, the law on civil status does not exclude the possibility of making do, as a last extremity, with statements under oath. In practice, it often happens that, if a foreign future spouse wishes to obtain a residency permit in view of marrying, he holds the necessary documents. If the marriage has been celebrated, there are no particular rules, and the marriage record is registered in the marriage register and an integral copy or an extract of it may be issued. Unlike the birth record which contains a qualification if the data contained in it are unproven, the marriage record does not mention that, if applicable, it has been established on the basis of declarations under oath.*

*In **Belgium**, when declaring a proposed marriage, the couple must give the civil registrar various documents provided by Article 64 of the Civil Code. The registrar himself proceeds with certain checks concerning the persons registered on that date in the population register and in the foreigners register and will obtain an integral certified copy of their birth records as well as any necessary records pertaining to them that have been established or transcribed in Belgium; once the birth record has been established in spite of the absence of the civil-status documents of one or both of the parents, the civil registrar will be able to obtain a full copy of that birth record. He will also consult the National Register in order to obtain proof of the nationality, legal capacity to marry*

and the registration in the population or foreign nationals' register. As for the identity of the future spouses, any document proving this may be accepted (identity card, passport, or failing these, any other document such as a driver's licence or any other photo ID may be considered acceptable). If the civil registrar considers himself to be insufficiently informed, he may ask the interested parties for any further proof. The Civil Code provides that a future spouse who cannot produce a copy of his birth certificate may instead obtain an affidavit issued on his request on the basis of his statements made under oath by the justice of the peace of his place of birth or his place of residence, then subjected to the control and approval of the court at the place of the proposed marriage, the public prosecutor having been heard. Furthermore, a law enacted on 9 May 2007 (M.B. 15 June 2007) has modified certain provisions of the Civil Code in order to make it easier to prove people's status in the absence of civil-status documents. In particular, it provides that in case of serious difficulties in obtaining a copy of his birth record, a future spouse may replace it with an affidavit issued by the justice of the peace at his place of birth or residence. However, if he was born abroad, he must produce an equivalent document delivered by the diplomatic or consular authorities of his country of birth; if this is then impossible or poses serious difficulties, he may produce instead of the copy of his birth record an affidavit from the judge of the peace at his place of residence. The law also provides that any person having obtained an affidavit or having been authorised by the court to make a statement and who establishes that he remains unable to provide a copy of his birth record may replace it with this affidavit or authorisation as long as the exactitude of the data contained therein is not in any doubt.

If, in spite of these provisions, the future spouses cannot produce the documents required by Article 64 of the Civil Code, the civil registrar will refuse to establish a record of the proposed marriage declaration. The future spouses may then appeal to the Court of First Instance within the month following the notification that their application has been denied. If one of the spouses is a refugee or a stateless person, the General Commissioner for Refugees and Stateless Persons is competent to issue the necessary documents that the interested party cannot obtain from his country. From the moment when the union was celebrated, the marriage record is established and contains all the data mentioned in by Article 76 of the Civil Code. A family record book or booklet may be issued to the spouses in order to register their births and deaths there as well as those of any children they have in common.

*In **Croatia**, all the documents necessary in order to celebrate a marriage are determined by law, and the marriage may not be celebrated if they are not provided.*

*In **Spain**, a proposed marriage means that a written document is drawn up containing the identity of the future spouses (Article 240 RRC) whose birth is proven using an extract of the spouse's birth record or a family record booklet, failing which other means of proof are admissible. When the future spouse's birth record could be established in Spain in the absence of civil-status documents pertaining to both or one of his parents, an extract of that record will be accepted with a view to his marriage, his legal capacity to marry not being affected by the certification of his parents' civil status. In the absence of civil-status documents for a spouse born abroad, only a procedure carried out by the civil registrar of the hometown may remedy this (Article 96 LRC). As for a foreigner's legal capacity to marry, it is determined by the personal law of his country ad he must in principle provide an extract or a copy of his birth record , but other proofs are admissible (for instance, consular extracts). If the marriage has been celebrated, the marriage record is established and full copies or extracts and a family booklet may be issued under normal conditions.*

*In **France**, the celebration of a marriage is possible only after completion of a procedure involving the constitution of a file, an interview of the future spouses, and the publication of banns unless the necessity for this has been waived. Under these conditions, the future spouse must, in principle, provide a certified copy of his birth record. When his birth record could be established in France in the absence of civil-status documents pertaining to both or one of his parents, according to common law an extract of this record is admissible in view of marriage. In the absence of civil-status documents relating to the future spouse, he must prove that a birth record was established in accordance with the law in his country of origin and that he is unable to obtain a copy of it. He may then instead produce an affidavit issued by the district judge based on the statements of three witnesses. The marriage may then be celebrated, and the marriage record will be established without mentioning on which of these bases this was accomplished. Failing this, the celebration of the marriage is impossible.*

*In **Hungary**, if the identity of the future spouses is not established, the preliminary procedure for marriage may not be set in motion. If a future spouse's birth record was established in Hungary in the absence of civil-status documents relating to both or one of his parents, an extract of this record is accepted in view of celebrating a marriage. If a foreign national is unable to produce such*

a birth record, for instance because one has not been drawn up in his country or because the record has been damaged, he may instead provide a statement. As for the marital status of the interested party, it is in principle proven by a certificate of legal capacity to marry established by his national authorities; if the situation requires it (for instance, if there is a war or this document is unknown in his country), the interested party may be dispensed from the necessity of producing it. When the marriage has been celebrated, the marriage record will be established according to common law. An extract may be delivered on request from the interested party or a competent authority and other documents may be established on its basis. However, a family record booklet will not be issued, this document being unknown to Hungarian law.

*In **Italy**, the preliminary procedure for marriage may not be set in motion if one of the future spouses is unable to provide the necessary civil-status documents or the document proving the legality of his residency in Italy. When his birth record could be established in Italy in the absence of civil-status documents relating to both or one of his parents, an extract of this record is admissible in view of marriage. A foreign national who cannot produce a birth record cannot replace it by an affidavit, so it will then not be possible to celebrate the marriage.*

*In **Luxembourg**, the future spouse must in principle provide a full copy of his birth record. When his birth record could to be drafted in Luxembourg despite the absence of civil-status documents relating to both or one of his parents, according to common law a copy of this record will be considered acceptable in order to contract a marriage. In the absence of civil-status documents for the future spouse, it is considered acceptable to produce instead an affidavit issued by the justice of the peace of his place of birth or residence in order to obtain approval by the district court of the place where the marriage is to be celebrated; however, neither the affidavit nor the refusal thereof is subject to appeal. The marriage may then be celebrated and the record established in this way will make no mention of the bases on which it was established; it will contain the data set out in Article 76 of the Civil Code and copies and extracts of it, as well as a family record booklet, may be issued.*

*In the **Netherlands**, a civil registrar must check that future spouses have the legal capacity to marry. When a spouse's birth record could be established in the Netherlands in the absence of civil-status documents relating to both or one of his parents, according to common law a copy of this record is considered acceptable in view of marriage. If a future spouse is unable to provide a copy of his birth record, he may contact the district judge in order to obtain an affidavit containing the information relating to his birth and drafted on the basis of statements from four adult witnesses, made if appropriate under oath during the celebration. The future spouses may also state their birth information under oath before the civil registrar during the celebration of the marriage (Article 45, book 1, BW). But if the civil registrar has any doubts regarding the identity or the legal capacity to marry of one of the spouses, he will refuse to celebrate the marriage. If the marriage takes place, a marriage record is established and has probative value as set out by common law. Copies or extracts may be issued as may a family record booklet, but this latter document will have no probative value. These solutions also apply to registered partnerships.*

*In **Poland**, the head of the civil-status department may not accept a marriage declaration if the future spouses do not provide him with the required documents. If it is not possible to determine the identity of one of the future spouses, the celebration of the marriage will be refused. In a particular situation, a court decision may dispense one of the future spouses from producing a certificate of legal capacity to marry or any other document he may not have in his possession; in this case, the marriage declaration will be received after the spouses have stated that they do not know of any circumstances preventing their marriage and after the expiry of a one-month period prior to the celebration of the marriage.*

*In the **United Kingdom**, when it has been possible to establish a birth record in the absence of civil-status documents relating to both or one of the parents, according to common law a copy of this record may be issued and will be accepted in view of marriage. If one of the future spouses cannot produce a civil-status document, the civil registrar will enquire about the reasons and may require him to produce letters or attestations from relatives or friends corroborating the interested party's statements on which the marriage will be based, since proof by affidavit is not possible. Communicating false information to the civil registrar is considered to be a criminal offence. The marriage being celebrated on this basis, the marriage record will contain information provided by the spouses, without any repercussions due to the absence of civil-status documents. An extract will be issued to the spouses once the marriage has been celebrated and registered.*

*In **Switzerland**, as a general rule, all documents required for the marriage-preparation procedure must be produced (Article 64 OEC). When it has been possible for a birth record to be established in Switzerland despite the absence of civil-status documents relating to both or one of one's*

parents but on the basis of a court finding, a copy of this record will be accepted in view of concluding a marriage. If a birth record cannot be produced, it has been possible since 1 January 2000 for the surveillance authority to accept a substitution declaration if the data to be proven are not litigious and after examination of all the information collected from interested parties and other authorities and in view of the circumstances making it impossible to produce the required documents (Articles 41 and 42 of the Civil Code and Article 17, OEC); If it is granted, such an authorisation will be given before the competent civil registrar, who will make the interested parties aware of the penalties they may be liable for if they make any false statements. On the contrary, if the documents or the information provided are incomplete or incoherent or if no documents are produced, the future spouses must have their status determined by the competent court. However, since that date, affidavits established by other agencies (for instance notaries) are no longer admissible for the purposes of registration in Swiss registers. When the union is celebrated, which presupposes that the identities of the two spouses have been determined, the extract of the marriage register, termed 'marriage record', is in principle complete and only the data featuring in the register will be entered into it if it has not been possible to verify certain elements (for instance, the exact birth date of one of the spouses). An extract of the register may be issued to the interested parties, as well as a family certificate.

*In **Turkey**, a marriage is celebrated on the basis of a certificate of legal capacity to marry, issued by the General Population and Nationality Department of the Ministry for the Interior if the interested parties' family record booklet is kept in Turkey. A marriage may not be celebrated without such a certificate, indicating that there is no obstacle to the proposed marriage (Article 136 of the Civil Code and Article 13 of the By-law) and a marriage record may not be established if no civil-status document is produced. No provision is made for the possibility of replacing the absent documents with an affidavit.*

2.3. Registering a death

Excepting Turkey where the declaration is not obligatory in all cases, death must be declared to the civil-status services and a death record must be established by the civil registrar according to the rules set out by national legislation, the non-production of civil-status documents relating to the deceased presenting no obstacle.

*In **Germany**, if the identity and civil status of the deceased are not proven, the death record will be established on the basis of known data, mentioning the reasons why there are so few data provided in the record. If the deceased's person's civil status cannot be included, the death record will be established as it is for the death of an unknown person (man, woman, boy or girl).*

*In **Belgium**, the record is established by the civil registrar of the place of death based on a death attestation established by the doctor who confirmed the death and transmitted to the civil registrar by a relative or any third party able to provide the necessary data (Article 79, Civil Code). In the case of a death occurring in a public health institution, the management must inform the civil registrar within twenty-four hours so that he may establish the record from the information transmitted or obtained. The declarant must, insofar as it is possible, provide all documents relating to the deceased's civil status and place of residence as well as, if relevant, his pension statements, aristocratic titles and driver's licence. The registrar may also acquire all of the required information from the population register of the deceased's place of residence or any other municipality. If any data are missing, the phrase 'no other information' or 'the additional information is missing' will be noted on the record.*

*In **Croatia**, any death is declared verbally or in writing within a limit of three days to the registrar of the place where the death occurred or the place where the body was found. The death record is established on the basis of a death attestation made by a doctor or any other person who is competent to confirm the death or on the basis of a record of the discovery of the body. In the case of a person who has disappeared, court proceedings are initiated in order to declare that person deceased and confirm his death.*

*In **Spain**, according to common law, the registration of a death is made on the basis of the statements of any person who has certain knowledge of the death (Article 82, LRC) and a medical certificate confirming it (Article 85, LRC).*

*In **France**, the death record is established by the civil registrar of the district where it occurred on the basis of the declaration of a relative or a person who is able to provide the most complete and exact information (Article 78, Civil Code). If the deceased was devoid of civil-status documents, the record reproduces the civil status under which the deceased was known by the declarant. Finally, if*

it was not possible to identify the deceased or if he was unknown, the record will include the most complete description possible (Article 87, paragraph 2, Civil Code).

*In **Hungary**, in the absence of civil-status documents relating to the deceased, he will be described in the death record as an 'unknown body'; the sections that are not filled will be crossed out and he will be noted as being of 'unknown nationality'.*

*In **Italy**, the death record is established from a statement by a relative or a third party delegated by a relative on the basis of a certificate confirming the death.*

*In **Luxembourg**, the death is declared by a close relative, a neighbour, or the person in whose home the death occurred (Article 78 of the Civil Code). If the deceased is devoid of civil-status documents, the death record will contain all of the information communicated to the civil registrar. If he cannot be identified or has no known civil status, the death record must contain a description that is as complete as possible; if he is identified later on, the record will be rectified in accordance with Article 99 of the Civil Code.*

*In the **Netherlands**, in the absence of civil-status documents revealing the identity of the deceased, the record will be established on the basis of elements taken from other documents (such as identity papers), witness statements, biometric verifications or DNA tests.*

*In **Poland**, the establishment of a death record does not imply the production of the deceased's civil-status documents. The record must be established the day following the declaration of death on the basis of a medical certificate and an identity document belonging to the deceased. If the deceased is an unknown person, the circumstances under which the body was discovered must be indicated as well as the gender and presumed age of the deceased and a description of his distinguishing marks, clothes, or any other objects found with him. If, later on, the civil status agency discovers the person's identity, a new death record will be established ex officio, replacing the previous one which will be cancelled.*

*In the **United Kingdom**, the declarant need not provide any document justifying the deceased's identity; he signs the statements made, confirming their exactitude to the extent of his knowledge, false statements constituting a criminal offence. The record will be established on the basis of the elements thus provided.*

*In **Switzerland**, the requirements concerning the documents to be provided are less stringent for the registration of a death than they are for the registration of a birth: the declarant provides any information of which he has knowledge and the death record is established on the basis of the documents provided or the data indicated, which may be incomplete.*

*In **Turkey**, death records established on the basis of statements by persons competent in the matter and communicated to the civil-status department within the legal time-limit are registered in the family register when they have been derived from the indications provided by public health institutions and official documents. If the deceased is not identified, the death record will be established by the civil-status department of the place where the death occurred or the body was found if this place is situated in Turkey. If the Turkish nationality of the deceased is not confirmed, the death is registered in a special register; if it later turns out that the deceased was a Turkish national, the registration in the special register is cancelled and a birth record is drawn up ex officio from the death record, and the deceased will be registered in the family register.*

In conclusion, it is possible to note that the rules of common law in each State are applicable concerning the storage of annexed documents when it is provided for as well as rectifications of incomplete or inexact records.

Conclusion

Excepting the special features of Turkish law, which does not make a declaration obligatory in all cases, it is possible to note that a death record is always established and that a birth record is most of the time. This will be done by the civil registrar of the place where the event occurs, even if the civil-status or identity papers that are usually required are missing. However, the celebration of a marriage is not always allowed when one of the future spouses cannot produce one of these documents or when a document is not accepted.

If a record is established in a certain country, in principle it has the same probative value as any record established by the civil registrars of that country and it may be rectified and updated under the same conditions.

If a civil registrar refuses to accept a document or establish a record, it is then necessary to specify the rights of the person concerned. In general, in the absence of specific provisions, the rules of common law are applicable: an appeal to court is most often available and it is often possible to follow a procedure for providing replacement proof.

If the interested party has been granted refugee status, the States parties to the Geneva Convention of 28 July 1951, excepting the United Kingdom which formulated a reservation concerning Article 25, are obliged to provide any administrative assistance and issue any documents and certificates which would normally be delivered by their national authorities or through them (Article 25 of the Convention) and which will be authoritative until proven otherwise.

*In **Germany**, aside from the obligation to establish a birth record based on a decision by the competent administrative authority for a child who has been found and which can be applied, if relevant, to a person whose civil status is unknown and resides in Germany, even if it is self-evident that the birth occurred abroad (§25 PStG), there are no legal provisions forcing the German authorities to create a person's civil status when he is devoid of civil-status documents. The law on civil status does not provide that an affidavit may form the basis of a registration in a civil-status register. If the legal conditions are met, the civil registrar is obliged to establish the civil-status record and issue extracts of it (except for birth records containing reservations, of which only an integral copy may be issued); he will keep all documents forming the basis of the registration in special files (Sammelakten); if the record was established with a reservation, it may mention annexed documents. In the case of any refusal by the civil registrar, the person concerned may appeal and obtain a court decision. If new elements come to light, the record will be rectified in accordance with the general rules of German law on civil status (§§ 47 and subsequent, PStG); depending on the case, the rectification is made either directly by the civil registrar or on the basis of a court decision.*

*In **Belgium**, there are no legal provisions forcing the Belgian authorities to create a civil status for a person who is devoid of any civil status documents, but the interested party may appeal to the court and, if he is successful, the court will order the civil registrar to comply. There are also procedures allowing civil-status records of Belgians and foreigners to be replaced by other means of proof, such as affidavits; or, if a register has not been established or is destroyed or incomplete, a judgment declarative of civil status or a supplementary judgment rendered in favour of a person who is unable to prove his civil status for reasons of force majeure (Article 46, Civil Code). Furthermore, a law enacted on 9 May 2007 modified certain provisions of the civil code in order to facilitate proof of the status of persons devoid of civil-status documents: any person whose adoption was pronounced or recognised in Belgium and who cannot provide a birth record may produce the transcribed record of the operative provisions of the adoption judgment. If the data are insufficient, it is the responsibility of the authority requiring the document to proceed with an enquiry within three months in order to gather the necessary additional information; if these data remain insufficient or have not been obtained, this authority may then require that the interested party provide other forms of proof. The law also provides that as soon as it has become final, the suppletive, but non-declarative judgment of civil status may be produced to any authority requiring it by any person demonstrating that he remains unable to produce the required record, if the data it contains have not been refuted.*

*In **Croatia**, the authorities are not required to create a civil status for a person who cannot produce the necessary documents and no affidavit may be substituted for them, this possibility being unknown to Croatian law.*

*In **Spain**, the civil status of a foreigner who is resident or domiciled within the territory may be declared with the value of a presumption through a procedure carried out by the civil registrar when it is impossible to obtain certificates or the other usual means of proof (Article 337 RRC).*

*In **France**, no specific text formulates the obligation to create a civil status for a person who is devoid of one, but it is in the interest of public order for each French person or each person habitually residing in France to be provided with a regular civil status, in particular through a judgment declaring birth or a suppletive civil-status judgment, which may however be called into question when there are new elements resulting from additional witness statements or obtained after a police enquiry.*

*In **Hungary**, any refusal by a civil registrar to establish a civil-status record may be appealed against by the interested party. It should be noted that for foreign nationals, the Office of Immigration and Nationality has the competence to clarify the identity of a foreign national devoid of civil-status documents.*

*In **Italy**, there is no law making it mandatory to create a civil status for a person who is devoid of documents and resides in Italy; police authorities are competent to check the civil-status data of foreign nationals who hold a residency permit.*

*In **Luxembourg**, a civil registrar may not refuse to establish a civil-status record if the conditions for establishing it are met. No specific law makes it mandatory to create a civil status for a person who is devoid of one, but an affidavit or a suppletive judgment may be substituted for the records of Luxemburgers or foreigners.*

*In the **Netherlands**, any refusal to establish a civil-status record entitles the interested party to appeal to the High Court (Article 27, Book 1, BW). Furthermore, if a civil-status document has not been accepted, the interested party may in principle prove his identity through other means (for instance, a court decision or identity or travel documents). Any person who has settled within the territory must be registered on the basis of identity and civil-status documents in the basic municipal register (electronic population register) of the place where he resides. If he cannot produce any such documents, the registration is made based on a solemn statement under oath by the interested party. It has been envisaged to introduce into the civil code a new civil-status record for foreign nationals who are devoid of identity and civil-status documents; the record would be established, at the time of registering the person concerned in the basic municipal register, and would be on his statements and on reports from Immigration and Naturalisation Services which may also proceed with checks. It could be modified only on the basis of another civil-status record in the absence of contradictions, or by virtue of a court decision.*

*In **Poland**, any refusal entitles the interested party to appeal; if he is a foreign national and illegally resident, his civil status may be proven by any means such as travel documents or his own statements. But there is no law obliging the Polish authorities to create a civil status for a person who has none.*

*In the **United Kingdom**, the authorities are not obliged to create a civil status for persons who are devoid of one, and only events occurring in England and Wales, Scotland or Northern Ireland are registered.*

*In **Switzerland**, any refusal to establish a civil-status record entitles the interested parties to appeal, as a last resort, to the Federal Tribunal. In principle, Swiss authorities are not obliged to create a civil status for individuals who are devoid of one, but the persons concerned may then prove their identity through administrative or court procedures: if it is impossible to produce the required documents or if they cannot reasonably be demanded, the surveillance authority may authorise the interested party to make a substitutive declaration of civil status if the data are not litigious; failing this, the person will need to prove his civil status before the competent court (Article 41 s., Civil Code) and if the documents provided are incoherent or if there are no documents, status will be determined by a court decision. The judge will search ex officio for relevant proof and will have sole authority to determine its validity, and he will hear the canton surveillance authority. This authority may provide any document it holds, suggest the production of information held by other authorities (for instance, files held by immigration services, asylum applications, social security files, and so on) or else propose that a report be established by the competent diplomatic authority on the authenticity of the documents produced and the truth of the concerned person's allegations. That person will be encouraged to confirm his civil status by filling out a questionnaire – a model of which is available online – in view of a check by the competent diplomatic or consular authorities, with the help of a lawyer appointed at the place concerned, with guarantees of confidentiality (Memorandum from the federal office of civil status, 30 September 1998). To meet the legislature's objective to solve the problem of persons who are devoid of civil-status documents, the judge must, insofar as it is possible, render a judgment declaring civil status, and to this end, he may rely on strong probability in the absence of certainty.*

*In **Turkey**, a refusal opens up the possibility of appeal. In the absence of documents, additional information may be requested and investigations carried out in order to confirm the event, which will then be entered into the registers. If the record is entered in the registers, the database of the computer system will enable civil-status services to consult it online; the documents forming the basis of the registration are kept to one side, in special files which are closed annually (Article 16 of the by-law and Article 12 of Law 5490); if necessary, a rectification may be carried out by court decision. The registration of events is obligatory only for foreign nationals residing in Turkey for more than six months, but the Turkish authorities are obliged to create a civil status for persons who are devoid of one (Law 5688 relating to the residency of foreign nationals).*

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