

Recommendation (No.4) relating to the accessibility to the public of civil status registers and records

adopted in Rome on 5 September 1984

The International Commission on Civil Status,

Considering that the degree to which the records contained in civil status registers are accessible to the public differs from State to State and that this should be harmonised;

Considering that Article 8, paragraph 1, of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, stipulates that everyone has the right to respect for his private and family life;

Considering that the steps taken by States to make civil status records accessible to the public must not infringe the right guaranteed by that Article;

Recommends that in their legislation the member States apply the following principles, approved by the General Assembly of the International Commission on Civil Status at its meeting on 5 September 1984:

1. Any extracts from civil status records that are obtainable by any person on request shall contain no indication concerning filiation, religion, the grounds for divorce, separation or annulment of a marriage or the causes of death, nor any other indication likely to infringe the respect due to the private life of the persons concerned.
2. Reproductions and full copies of civil status records and also extracts containing one of the items of information listed under 1 above may be issued only to the public authorities, to the persons whom they concern or their agents, ascendants, descendants, heirs, spouses and legal representatives, and to persons establishing a legitimate interest and holding a special authorisation granted by the competent authority.
3. Civil status registers may be directly consulted only by the public authorities prescribed by law or, in exceptional cases, with the express authorisation of the court or of the authority responsible for supervising civil status.
4. Persons to whom the issue of a reproduction, copy or extract has been refused must be afforded the possibility of appealing to a court.
5. Records shall, whenever possible, be made on forms which can be reproduced in part.
6. This recommendation shall not apply to records and registers that are more than 100 years old.

EXPLANATORY REPORT

I. GENERAL REMARKS AND PREAMBLE

The main object of this recommendation is to ensure that the accessibility to the public of civil status registers and records does not infringe the respect for private and family life to which everyone has the right under Article 8, paragraph 1, of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, but nevertheless is not excessively restricted, having regard to the fact that civil registration is a public service.

It is very much in the interests of the member States of the ICCS, all of which have signed the Rome Convention, that the accessibility to the public of civil status materials be subjected to the rule in the above-mentioned Article 8, paragraph 1, and regulated in a uniform fashion.

It was with this aim in mind that the ICCS considered that it should draw up a set of principles which can serve as guidelines for the member States and even non-member States in order to take into account in their domestic law the restrictions on the accessibility to the public of civil status registers and records that flow from the obligation to protect the respect due to private and family life.

Whilst all the member States of the ICCS agree with the spirit of the Rome Convention, their laws differ as regards the principles and the legal technique applicable to their respective civil registration departments.

The reason for this is that these States have recourse to two different systems. In some, such as the Netherlands and, in general, countries following the Napoleonic Code, accessibility to the public is the rule, restrictions thereon having been imposed only afterwards and always by way of exceptions. In others, such as Austria, such accessibility does not exist and the cases in which information can be obtained about a civil status record are exhaustively listed. The current situation is also related to the fact that the contents of records vary from State to State. It is for this reason that it was not possible to draft a convention on accessibility, but only a recommendation which should enable the various States to steer their legislative reforms on this matter in the direction it indicates and thus to achieve a gradual alignment of their laws in this undeniably important area. By advocating standardisation of the different systems of accessibility to the public of civil status materials, the recommendation is in line with other ICCS activities that seek to achieve a minimum degree of harmonisation of civil status records. The ICCS is thereby fulfilling its task of furthering the essentially practical purposes of civil registration, especially as regards persons holding different nationalities.

II. COMMENTARY ON THE ARTICLES

Article 1

Accessibility to the public of civil status records is provided, at a first level, by the issue of extracts that contain no items of information that could be classified as confidential, namely indications concerning filiation, religion, the grounds for divorce, separation or annulment of a marriage or the causes of death, nor any other indication likely to infringe the secrecy of the private life of the persons concerned.

It is in fact accepted that there is, as a general rule, no need to protect those indications found in civil status records that relate to the surname and forenames of the persons concerned and the dates of events affecting their civil status (birth, marriage, death). These indications are, so to speak, in the public domain and there should be therefore be no restrictions on making them known.

It is for each State to determine how the phrase "infringe the respect due to the private life" is to be interpreted, in such a way as to comply both with the spirit of the recommendation on the one hand and with Article 8, paragraph 1, of the Rome Convention on the other.

The extracts referred to in Article 1 can be issued to all applicants, subject to the limits laid down by the domestic law of each State.

Article 2

Only the public authorities and the persons concerned or their ascendants, descendants, heirs, spouses, legal representatives or agents are entitled to have full access to civil status records or even partial access to records containing items of information labelled as confidential. This list is, of course, intended to set a maximum for the States, so that each of them retains the option of prescribing in its domestic law to which of these persons and in which circumstances data labelled as confidential may be communicated in full.

Again, drawing up the list of persons entitled to have access to items of information labelled as confidential may lead to narrower or broader interpretations according to the meaning attributed in each law to the terms used, notably the expression "person concerned". Thus, for example, if this expression is applied to the record of birth, it may refer only to the new-born child or also, if they are named in the record, to the person declaring the birth or other members of the family. This flexibility allows the interpretation of Article 2 to be adapted to the legal system of each country whilst adhering to the overall direction set by the recommendation.

It must also be underlined that the text allows these extracts to be issued to any person who establishes a legitimate interest and holds an authorisation granted by the competent authority.

Article 3

Providing the public with access by allowing them to consult the records in civil status registers must be seen as involving serious risks of deterioration, tearing or falsification of the registers. Since this means that special supervision on the part of civil registrars is called for during direct consultations, this kind of access, notably for individuals, should be limited and confined to exceptional cases, with the rules on this subject being left to the national law of the various States. Such consultation must always be conditional on express authorisation by the court or by the authority responsible for supervising civil registration.

Consultation by public authorities is allowed only in the cases expressly prescribed by the domestic law of each State.

Article 4

The various systems for providing access must, on the one hand, comply with the limits on the accessibility to the public of civil status records imposed by the present recommendation but, on the other, nevertheless guarantee such accessibility, given that everyone may have a legitimate interest in knowing someone else's civil status.

This is why, in all cases where the authorities responsible in each country for civil registration refuse to supply a given item of civil status information, the applicant must be afforded a possibility of appealing so that a ruling can be given on the merits of his or her request. In this way it will be ensured that accessibility complies with rules on the subject that are based on the principles set out in the recommendation.

Article 5

This Article relates to changes in the mechanism for the physical issue of extracts that may be brought about by technological innovations such as xerography, electronic data storage and other methods that may be invented in the future. Very often – and this is notably true of photocopying – these innovations make it easier to issue extracts, but they make it very difficult not to reproduce information labelled as confidential and they hardly enable partial copies to be made. In the light of these considerations, Article 5 draws attention to the importance attaching in the different systems of accessibility to the format of records; it has particularly in view civil status records that are made up of several parts, the first containing data to which everyone has access, the second information labelled as confidential and the third data for internal use, varying from one country to another. This question of the physical layout of civil status records is closely linked to the idea of harmonising such records in all the ICCS member countries, a matter which the Organisation is also studying.

Article 6

The reason why this Article states that the recommendation does not apply to records or registers that are more than 100 years old is that in a number of States these items are no longer in the custody of the civil registrars who drew them up or their supervisory authorities, but are deposited in the respective national archives. Consultation thereof is thus no longer a matter for the officials who prepared them in the first place, but rather for the authorities responsible for the archives; it will be governed by the rules relating to archives, which in turn generally make provision for special protection of the records in question.

III. SCOPE OF THE RECOMMENDATION

Attention should be drawn to the fact that, beyond the specific scope of the present recommendation and the flexibility which it permits, each State is free to extend in its domestic law the domain of the protection of private and family life in accordance with its principles and its system of accessibility. Thus, a State could take the age of the persons concerned into account and protect, for example, the private life of persons more than 100 years old, such protection not being envisaged by Article 2.