

Recommendation (No.9) on combating documentary fraud with respect to civil status

adopted in Strasbourg on 17 March 2005

The International Commission on Civil Status,

considering that the member States' authorities are confronted with an increasing number of foreign civil-status documents attesting events affecting civil status that do not correspond to reality, on account notably of defects in the keeping of registers or of fraudulent manoeuvres,

considering that those fraudulent manoeuvres are often aimed at procuring unwarranted advantages, such as access to the territory, acquisition or recognition of nationality or various social rights,

considering that what is important for the member States is to be able to identify defective, erroneous or fraudulent documents, so as to combat the improper or unwarranted use thereof,

Addresses the following Recommendation to the member States:

1° Member States should remind their civil-status, administrative and other competent authorities that, when an extract from a civil-status register is required to prove civil status, the only acceptable extracts are those that are signed and dated by, and if appropriate bear the seal of, the competent authority and also indicate the register from which they are derived.

2° Member States should draw the attention of the same authorities, as addressees of foreign civil-status documents, even those that have been legalised, to pointers, such as those listed below, that may show that a civil-status record or a document produced is defective, erroneous or fraudulent:

(a) Pointers revealed by the conditions in which the record or document was drawn up:

- a very long interval between the date when the record was drawn up and the date of the event it relates;
- the record was drawn up belatedly in light of the date of the event it relates and very shortly before the step for which the document was produced was taken;
- comparison of the various data in the record or document reveals contradictions or improbabilities;
- the record was drawn up solely on the strength of a declaration made by the person directly concerned thereby;
- the record was drawn up with no objective data guaranteeing the reality of the event it relates;
- the document was drawn up by an authority that did not hold or have access to the original record.

(b) Pointers revealed by matters external to the document:

- comparison of the data in the document produced with data appearing in other records or documents brought to the knowledge of or held by the authority dealing with the case reveals contradictions or improbabilities;
- the data in the document produced do not seem to correspond to the person concerned;
- the existence of previous frauds or irregularities that are attributable to the person concerned and have been brought officially to the knowledge of the authority dealing with the case;

- numerous irregularities in the keeping of civil-status registers or the issuing of extracts therefrom in the State of origin of the document produced, that have been brought officially to the knowledge of the authority dealing with the case.

3° When pointers raise doubts as to the correctness of the data in the document produced or as to the authenticity of the signatures, the seal or the document, the authority dealing with the case should carry out all the checks that may be useful, notably with the person concerned. If appropriate, it should, as far as possible and with the agreement of the local authorities, take steps to verify that the record exists in the registers of the State of origin and corresponds to the document produced.

4° (a) If the matters found establish that the document produced is fraudulent, the authority dealing with the case should refuse to attribute any effect to it.

(b) If the matters found establish that the document produced is defective or erroneous, the authority dealing with the case should assess whether some effect can be given thereto, notwithstanding the defect or error it contains.

5° If the authority dealing with the case refuses to give effect in whole or in part to the document, it should inform the person concerned that it is open to him or her to appeal, either to the superior authority in the first place or directly to the court, and to submit on that occasion observations and, if appropriate, additional evidence.

6° Member States should collaborate together to pool their information and the means of identifying defective, erroneous or fraudulent records and documents. In particular, they should take into consideration the result of checks already carried out by the authorities of another member State.

Explanatory report

General remarks

The International Commission on Civil Status (ICCS) has for a long time been paying special attention to the ever-increasing phenomenon of fraud with respect to civil status, as is evidenced by the study published in 1996 and up-dated in 2000.

In recent years discussions in a working group have shown that the ICCS member States' authorities are confronted with more and more foreign civil-status documents lacking the requisite guarantees or relating events affecting civil status that do not correspond to reality, for example because of the poor organisation or functioning of the local civil-registration system or because of falsification.

This Recommendation is a response to the member States' wish to give a more concrete form to the information exchanged in the working group concerning foreign civil-status extracts and documents whose form and/or contents are such as to raise problems when they are produced in the member States, for instance with a view to obtaining the recognition of rights or procuring various advantages in those States. The Recommendation does not touch on other kinds of fraud which are likewise more and more frequent, such as false acknowledgments of paternity or adoptions and marriages of convenience; the latter were notably the object of a Resolution, dated 4 December 1997, of the Council of the European Union on measures to be adopted on the combating of marriages of convenience.

Although the Recommendation is not confined to fraudulent manoeuvres, the expression "documentary fraud" was nonetheless retained in its title, for the sake of brevity and because it is the most frequently used. The aims of fraudulent manoeuvres, cited in the preamble, are given only by way of example.

This Recommendation seeks, on the one hand, to draw the attention of the member States' authorities to pointers that make it possible to identify defective, erroneous or fraudulent civil-status documents and, on the other hand, is designed to further collaboration between the member States with a view to such identification.

For this purpose the ICCS made an inventory of the most frequent cases of documents whose form and/or contents give rise to doubts, classifying them in three separate categories:

- (a) documents that are irregular as to their form but correct as to their contents;*
- (b) documents, regular or irregular as to their form, whose contents are erroneous but which do not involve any question of fraudulent intent;*
- (c) documents, regular or irregular as to their form, which have been intentionally created or falsified in order to avail of an event affecting civil status that is non-existent or incorrect.*

Taking as its starting point the facts that fraudulent intent is often difficult to prove and that what is important for authorities receiving documents is to know whether or not the event or situation affecting civil status related in the document produced is correct, the Recommendation:

- recalls the material components in the absence of which the authenticity of any extract derived from a civil-status register cannot be guaranteed;*
- draws attention to a certain number of pointers revealed by the conditions in which a document was drawn up or by matters external thereto that may show that it is defective, erroneous or fraudulent;*
- specifies the ways of conducting the checks to be carried out and the follow-up action to be taken if they reveal that a document attests events affecting civil status which do not correspond to reality, whether or not the intention be fraudulent.*

Commentary on the various points in the Recommendation

Point 1

Point 1 specifies the minimum conditions which any extract from a civil-status register must satisfy to be admissible as proof of a person's civil status, where the production of such an extract is required for that

purpose. Point 1 sets out the most elementary material components from which it must be possible to identify the authority issuing the document, the competence of that authority (signature, seal and date) and the register from which that document is derived. However, in certain States, such as the United Kingdom, the seal may sometimes take the place of a signature. Although an extract from a civil-status register normally gives as well the number under which the record containing the information reproduced in the extract was entered in a given register, this item has not been mentioned amongst the elementary components because the practice as regards numbering can vary from country to country. The requirement of date, signature and, if appropriate, seal applies for identical reasons to certificates and other civil-status documents that are not extracts, properly so-called (for example, a certificate of matrimonial capacity, a certificate of celibacy or a life certificate).

The word "extract" used in point 1 covers any document (including one drawn up by means of a computerised system) that reproduces data entered in civil-status registers and is issued by the competent authority, namely extracts in a more or less abridged form and full copies of the records entered in those registers.

Points 1 and 2 draw attention to the fact that civil-status documents may be presented to numerous national authorities in the member States (such as prefectures, courts, police, departments dealing with aliens, etc.) which, unlike civil-status practitioners, probably have less occasion to be confronted with foreign civil-status documents. In the opinion of the ICCS, it would be appropriate for the member States, in addition to taking the positive step of drawing the contents of the Recommendation to the attention of all the authorities concerned, to give thought to means whereby those authorities could be trained in the detection of defective, erroneous or fraudulent civil-status documents: examples could be the presentation of a collection of specimens of foreign records or the promotion of more extensive co-operation between domestic authorities, notably as regards procedures for detecting counterfeit civil-status documents.

Point 2

Point 2 supplements the elementary components specified in point 1 by giving a non-exhaustive list of pointers that may raise doubts as to the regularity and/or the correctness of the contents of a foreign document and lead to checks in accordance with the procedures referred to in point 3. It is, of course, only a question of pointers which, taken on their own, are not conclusive but whose existence, especially in combination with others, must induce vigilance on the part of the authority dealing with the case.

It should be noted that point 2 applies even to legalised documents, since legalisation extends only to verifying the formal aspects of a document (genuineness of the signature, capacity of the signatory, identity of the seal affixed) without certifying the correctness of the information in the legalised document.

Most of the pointers listed do not call for any special comment. However, it should be noted that:

- the word "record" in point 2 and in the remainder of the Recommendation denotes the original record entered in the registers of the State of origin of the document produced;
- the first two indents of paragraph (a) cover, amongst other things, supplementary judgments;
- the fourth indent of paragraph (a) covers notably the procedure of self-certification, in which there is no supporting declaration by a third party;
- the fifth indent of paragraph (a) covers, for example, a record of birth drawn up without a medical certificate;
- the sixth indent of paragraph (a) refers to cases where an authority draws up a document without holding or having direct access to the original record, for example on the strength of an extract or a photocopy;
- assessment of the matters referred to in the last two indents of paragraph (b) should not be based on subjective impressions, mere rumours or isolated incidents: those matters must have been brought officially to the knowledge of the authority dealing with the case, for example by means of an administrative note or an instruction.

Point 3

Point 3 describes the checking procedures that should be implemented if pointers raise doubts as to the correctness or the regularity of a document.

The text is drafted so as to leave a broad margin of appreciation to the authority to which the document relied on is presented. That authority must, depending on the possibilities open to it under its domestic law, choose the procedure it considers to be the most appropriate in the instant case, taking all the circumstances into account. Thus, in certain cases, where the document presented or the circumstances clearly reveal that the document is erroneous or fraudulent, an in-depth enquiry will be hardly or not at all necessary. In other cases, it may appear necessary to carry out checks with the person concerned or in the foreign country. In some instances, it may also be appropriate to have the document produced analysed in a specialised laboratory.

However that may be, the ICCS considers that, for certain States, it is important to review their domestic law so as to satisfy themselves that it permits checks of sufficient scope (for example, verification of the contents, and not just of the form, of a document) and that it confers sufficiently broad powers of investigation on the body entrusted with an enquiry. Some States already provide for recourse to scientific investigation procedures. A fair balance must be sought between the general principle that foreign civil-status documents are presumed to be valid, the general interest in the reliability of civil-status information and the fundamental rights of the individual concerned.

The text does not specify the manner in which the various checks should be carried out, since that too depends on the circumstances of the particular case. However, this being a tricky task that requires experience, it could be useful to provide for a supervisory mechanism which would authorise and harmonise steps taken at a lower level, ensure that the information collected and the experience gained are disseminated to all the bodies concerned and see to it that similar situations are not treated differently.

Checks with the person concerned can be carried out in writing (for example, by requesting additional documents) or by means of an interview. Where it proves indispensable to carry out checks in the foreign State to make sure that a record exists in the local registers and that the details therein correspond to those in the document presented, the assistance of the local authorities is, of course, a precondition. For enquiries on the spot, the member State concerned will have recourse in the first place to its consular services, which may decide to carry out the investigations themselves or –as the authorities of some member States do already – to entrust this task to a lawyer in whom they have special confidence (avocat de confiance) or to another specialist having the requisite practical and legal experience. In the latter event, it is recommended not to reveal the agent's identity to private individuals and not to utilise the same specialist for every operation. In any event, it is important to ensure that all enquiries are conducted expeditiously, given that fundamental rights of the person concerned may be at stake (for example, civil-status documents produced for the purposes of family reunification).

Point 3 does not deal with the expenses of the checking procedures and their possible reimbursement by the person concerned. This issue is left to the decision of the member State concerned.

Point 4

This point specifies the follow-up action to be taken if it is established that the document produced is defective, erroneous or fraudulent. Whilst a fraudulent document should always be deprived of any effect (a), the same does not necessarily apply to a document that is only defective or erroneous (b). Thus, the authority dealing with the case may take the view that some (not necessarily full) effect should be given to a document of the latter kind, for example if it proves possible to remedy the defect by the production of additional documents, a rectification procedure or some other means. That could be the case with a full copy of a record of birth bearing various marginal or subsequent annotations which was accepted as proof of the birth but not of the other events affecting civil status related therein.

Point 5

This point deals with the guarantees that must be afforded to the individual whose foreign document is wholly or partly deprived of effect. It is drafted so as to take account of the differences existing between the member States in the matter of appeals against administrative decisions. What is important, in order to satisfy the requirements of Article 6 of the European Convention on Human Rights, is that the person concerned be entitled to appeal to a court at least at the end of the procedure. This is because, as the European Court of Human Rights has stated, the status of persons falls under "civil rights" within the meaning of Article 6 (Mustafa v. France judgment of 17 June 2003, § 14).

Given that the checks advocated by the Recommendation can have the result that no effect is given to a document produced by someone who is but the passive victim of the poor functioning of the civil-registration system in his or her country, the possibility of furnishing proof of an event affecting civil status by other means should be afforded in such a case.

Point 6

Even though the impugned documents come from various countries and the ICCS member States do not all encounter difficulties with the same foreign countries, it remains true that identifying defective, erroneous or fraudulent foreign civil-status documents is a matter of concern common to all those States, such as to warrant the ICCS's advocating the establishment of closer co-operation in this area. Measures that could be envisaged as a means of strengthening such collaboration between the member States include the following:

- *the systematic exchange, through the ICCS Secretariat General or a working group, of information on the cases of documentary fraud encountered and the measures implemented to combat fraud;*
- *making an inventory of experience gained from checking procedures;*
- *setting-up a data-base including specimens of records or documents originating from countries that are not ICCS members;*
- *collaboration, as regards checks, between the member States' consular services, including recourse by several States to the same specialist or avocat de confiance for the purpose of investigations in a foreign country.*

The text recommends that the results of enquiries made by another member State be taken into account, but it leaves the authority dealing with the case free to decide what use should be made of those results. Thus, the authority might be satisfied with the review already conducted in or by another member State or, on the other hand, it might carry out further checks, should it hold different and more reliable information or take the view that it has better knowledge of the functioning of the foreign civil-status department than had that other member State.