

National Practices on Removing the Obstacles Preventing Access to Basic Rights and Services

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Skopje – 11 April 2012



The AIRE Centre



Mission: To promote awareness of European law rights and assist marginalised individuals and those in vulnerable circumstances to assert those rights.

Activities:

- Take cases to the European Court of Human Rights.
- Provide free legal advice to individuals and their advisers on their rights under EU law.
- Intervene in legal cases.
- Train judges, prosecutors, lawyers and other NGOs.



Objective of This Discussion

Improve your familiarity with the context in Western Europe in removing obstacles to registration, including the context of EU law and ECHR case law.



Topics Covered

1. National Example from Western Europe: England and Wales
2. European Union law: mutual recognition & the requirements of EU citizenship
3. The European Convention on Human Rights
4. Recommendations



1. National Example from Western Europe: England and Wales

Basic Principles:

- Requirement to register the birth within 42 days
- Sanctions for state officials who fail to comply with registration
- No need to produce immigration/residence documentation

Logic of information over documentation.



England and Wales

Requirements depending on period of registration

- Within 42 days
- From 42 days to one year
- After one year



2. EU Law

Free Movement of EU Citizens

- Fundamental right of EU citizenship
- Need for States and the EU to take positive measures to overcome obstacles to this right

Basic principles:

- Mutual recognition
- Mutual trust
- Non-discrimination based on nationality



European Commission Proposal: Mutual Recognition of Civil Status Documents

Currently a green paper.

Kind of problem the Commission is dealing with:

A couple consisting of partners of German and Spanish nationality settle in Spain with their child. The parents need the child's birth certificate in order to apply for family allowances and to register the child in a Spanish school. The parents could ask the civil registrar in Germany (Member State of birth) to issue a European birth certificate in order to present it to the competent authorities in Spain. The certificate could be issued in Spanish. When presenting it to the Spanish authorities, the certificate would not have to be translated, which would avoid the considerable translation costs. The parents could also ask for a national birth certificate, in other words a German certificate. In this case, the Spanish authorities would probably ask for it to be translated.



EU Citizenship

Article 20(1) of the Treaty on the Functioning of the European Union:

Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.



Statelessness and EU Citizenship

Case C-135/08 *Rottman*

Having regard to the importance which primary law attaches to the status of citizen of the Union, when examining a decision withdrawing naturalisation it is necessary, therefore, to take into account the consequences that the decision entails for the person concerned and, if relevant, for the members of his family with regard to the loss of the rights enjoyed by every citizen of the Union. In this respect it is necessary to establish, in particular, whether that loss is justified in relation to the gravity of the offence committed by that person, to the lapse of time between the naturalisation decision and the withdrawal decision and to whether it is possible for that person to recover his original nationality. (paragraph 56)



3. European Convention on Human Rights

Article 8 ECHR:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.



Aristimuño Mendizabal v France (2005)

The Applicant claims – and the Government have not denied – that her insecure status and her uncertainty about her future had important financial and psychological consequences for her (insecure jobs for which she was overqualified, social and financial difficulties, inability to rent premises and exercise her professional activity because of a lack of residence documentation). (paragraph 71)



Sisojeva and Others v Latvia (2007)

The interference with the right to respect for family life was remedied by the creation of a procedure to allow the applicants to regularise their status.



Osman v Denmark (2011)

Violation of Article 8 due to a refusal to regularise the status of a child who had been taken out of Denmark by a parent.

'[I]n respecting parental rights, the authorities cannot ignore the child's interest including its own right to respect for private and family life' (paragraph 73).



Kurić v Slovenia (pending)

Situation of ‘erased’ persons – failure of the authorities to follow a Constitutional Court judgment.

Lesson for the region: although a procedure for regularisation existed, it was not accessible to everyone, leaving many people legally invisible.



Situation of Roma as Vulnerable Persons

Oršuš v Croatia (2010)

As the Court has noted in previous cases that as a result of their history, the Roma have become a specific type of disadvantaged and vulnerable minority.... They therefore require special protection. (paragraph 147)



Recommendations

- Focus on information over documentation
- Place responsibility on the authorities, not the individuals.
- Bear in mind mutual recognition, mutual trust and free movement: how will these systems work in the EU?
- Article 8 –
 - Is this lawful?
 - Is this proportionate?
 - What alternatives are available?



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