

Regional Initiatives and the Role of International Actors

Adam Weiss
The AIRE Centre
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Topics

1. Individualised consideration of cases – how it work
2. Training registrars
3. A regional approach – overcoming the collective-action problem



Case Study 1

A (mother) and B (father) are a Roma couple. They have a child, C. Both A and B appear to be Macedonian nationals, but A only has a badly damaged identity document. B has an identity document. They want to register C in the birth register and the personal-name register.



Looking again at 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.



5 Questions Article 8 Makes You Ask

1. Is private life engaged?
2. Is there an interference with the right to respect for private life (or a positive obligation)?
3. Is the interference in accordance with the law?
4. Does the interference pursue a legitimate aim?
5. Is the interference 'necessary in a democratic society' (i.e. proportionate)?



Case Study 1 – Question 1

Is C's right to respect for private or family life engaged?

Yes! We saw this yesterday in *Osman v Denmark*, *Aristimuño Mendizabal v France*, *Sisojeva v Latvia*. See also *Mikulić v Croatia*:

'In the Court's opinion, persons in the applicant's situation have a vital interest, protected by the Convention, in receiving the information necessary to uncover the truth about an important aspect of their personal identity.'



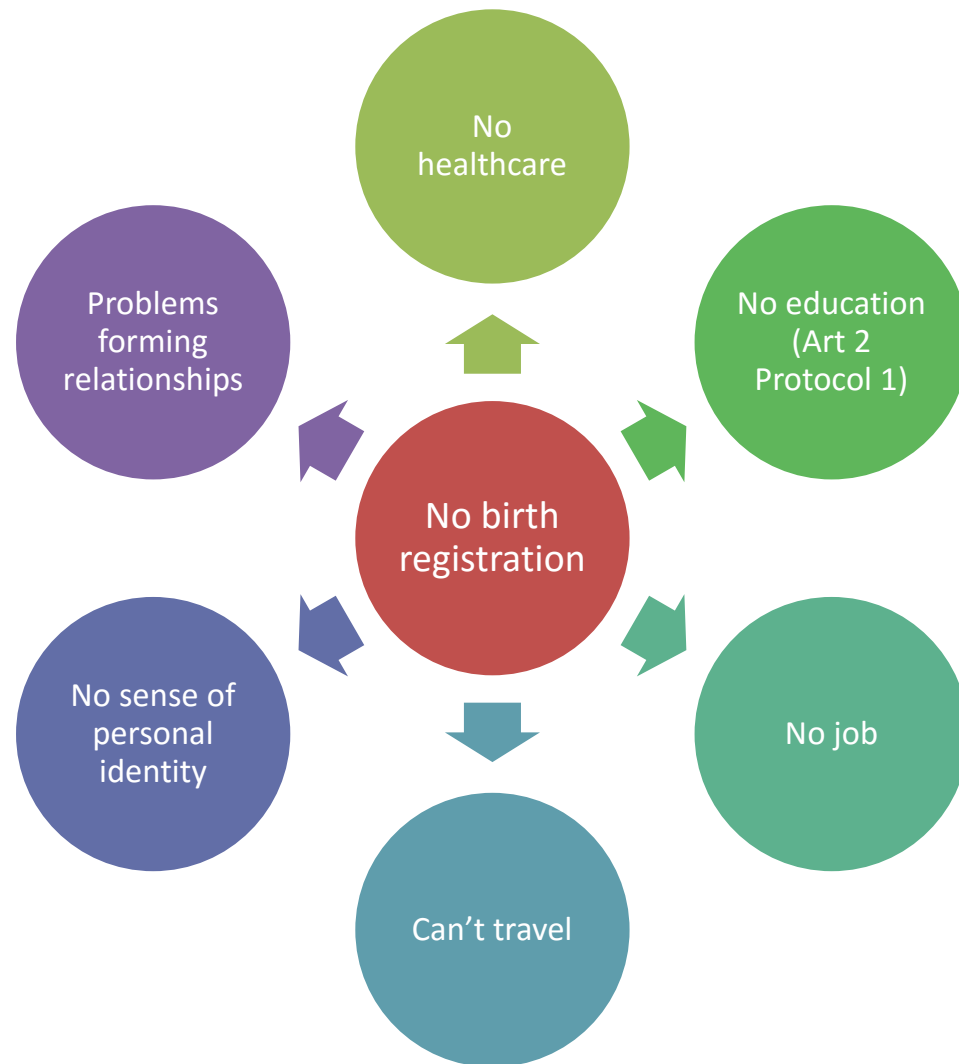
Case Study 1 – Question 2

Would the refusal to register C in the birth register constitute an interference with the right to respect for C's private and family life?

Yes! Again, see *Mikulić* . The child will not be able to establish who its parents are. The child will probably not be able to attend school.



Mapping the interference with C's right to respect for private life



Case Study 1 – Question 3

Would refusing C birth registration be in accordance with Macedonian law?

In other words, is there a legal basis for refusing to register C's birth? There probably is.



Case Study 1 – Question 4

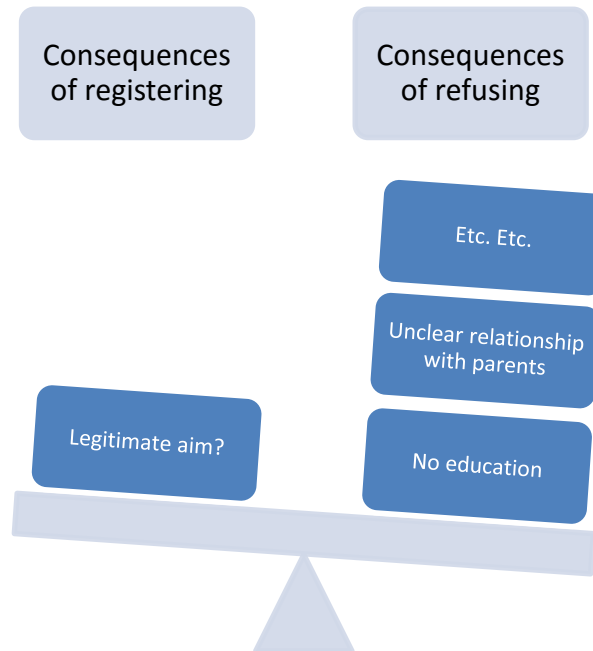
Does refusing to register C's birth correspond to a legitimate aim?

- 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



Case Study 1 – Question 5

Is refusing to register C ‘necessary in a democratic society’? In other words, is the refusal proportionate to the legitimate aim identified above?



Macedonian Registrars Must Do This Balancing Exercise Every Time

And they must be trained to do it.



Individualised Consideration of Cases

Laws on registration fall somewhere on a spectrum in terms of the discretion they allow authorities:



Macedonian law seems to fall somewhere towards the left in relation to birth and personal name registration: the parents probably need valid identification, but everything else is discretionary.



Consequences of Lack of Clarity in Macedonian Law

The lack of clarity in the law has two potential negative consequences:

- Refusals to register children will not be ‘in accordance with the law’ (especially if the law is applied arbitrarily).
- Because Macedonian law is flexible, it is even less likely that the refusal will be justified.

However, there is a potential very positive consequence: registrars have the flexibility under Macedonian law to ensure that they comply with their obligations under Article 8 ECHR by registering the child!



Case Study 2

X & Y, a couple, have a child, Z, born at home. They attempt to have the child's birth registered. However, they are refused because the couple cannot provide:

- a wedding certificate;
- a certificate from a gynaecologist;
- a certificate from a paediatrician or immunisation cards.



Case Study 2

What questions do you ask? How do you answer them?

1. _____

2. _____

3. _____

4. _____

5. _____



Training Registrars

- Take them through Article 8
- Set a default of 'yes'
- Conduct a balancing exercise in every case
- Give them case studies
- Warn them about the consequences: legal action before the Macedonian courts or the European Court of Human Rights



Collective Action

- A case-by-case approach may eliminate the need for radical changes to any one country's legal system
- EU law is likely to create mechanisms by which you will have to cooperate between States to find solutions to civil-status problems.



Contact

aweiss@airecentre.org

