Family law and access to territory and nationality: evolutions in opposite directions

ACCA (Conference for Research Assistants) – 25 May 2018
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Overview

• Interactions between family law and access to nationality and to territory

• Evolutions in opposite directions

• Inconsistency in the parallel application of the rules

• Roots of the problem

• Solutions
Interactions

- Acquisition of nationality through family relationships
  - filiation – Article 8 CBN
  - marriage – Article 12bis CBN

- Family migration and family reunification

- A few examples: parental authority, civil registrar, …
Evolutions in opposite direction

• Nationality law and family reunification rules
  o Migration context - more and more restricted rules
  o Nuclear/traditional family model
  o The issue of fraud

• Family law
  o New family models
  o Inclusion of new medical advancements (surrogated mother, ART,…)

→ Fight against ‘marriages of convenience’ and ‘fraudulent recognitions’
Inconsistency in the application of the law

- Marriages of convenience – Article 23/1 CBN
- Presumption of paternity – Article 316bis Civil Code
- Parental link established after the birth of the child
- Automatic assignment of nationality under article 12 CBN
Roots of the problem

- Evolutions in opposite directions
- Different objectives
- Inadequate legislative framework
Solutions?

• Specific rules in nationality/migration law dedicated to family relationships

• Harmonization

• Solutions borrowed in family law

• Human Rights law and ECHR