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

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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 12*bis* CBN
- Family migration and family reunification
- A few examples: parental authority, civil registrar,...

Evolutions in opposite direction

- Nationality law and family reunification rules
 - Migration context - more and more restricted rules
 - Nuclear/traditional family model
 - The issue of fraud
- Family law
 - New family models
 - 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 31 *6bis* 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