



Workshop on Discrimination

Belgrade

3 June 2013



Strategic litigation and building
strategic cases related to
discrimination of Roma in access to
birth registration and nationality

9.10 – 10

Adam Weiss, the AIRE Centre



Objectives

- Familiarise you with the work of the AIRE Centre
- Familiarise you with the AIRE Centre's work on strategic litigation
- Propose the elements of a litigation strategy around documentation and nationality in relation to Roma
- Discuss the limits of strategic litigation and the need for a broader strategy



The AIRE Centre

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

Activities:

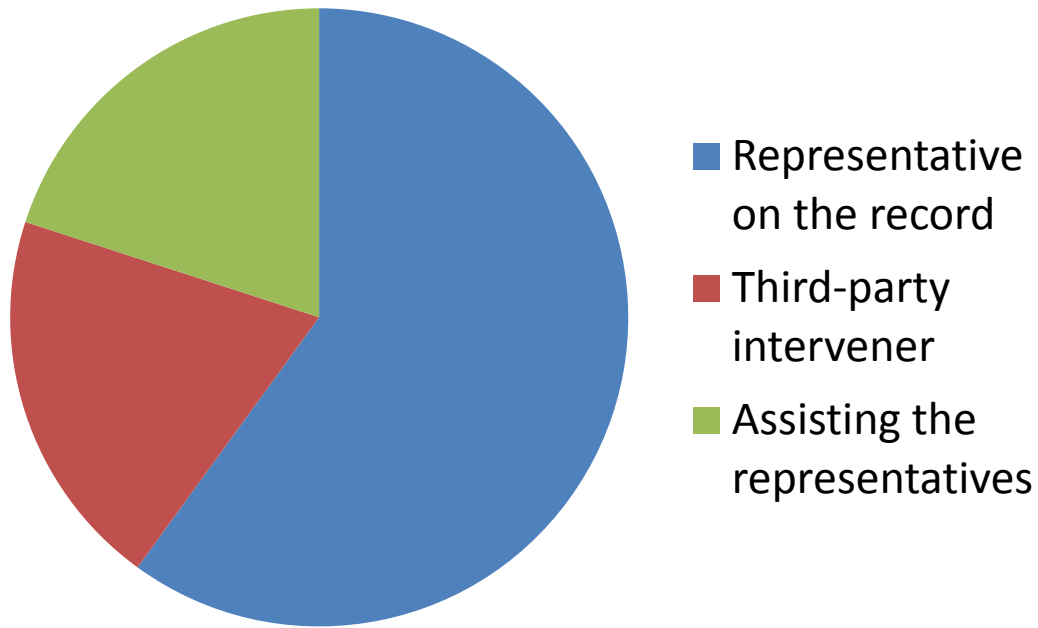
- Litigate cases before the European Court of Human Rights
- Provide free legal advice on EU migration law
- Third-party interventions and some litigation in the UK courts and the Court of Justice of the EU



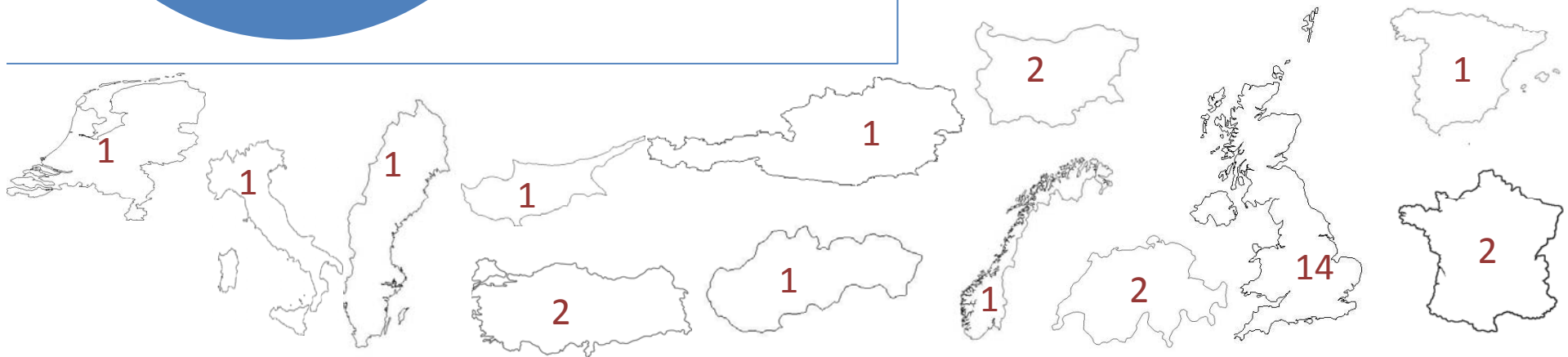
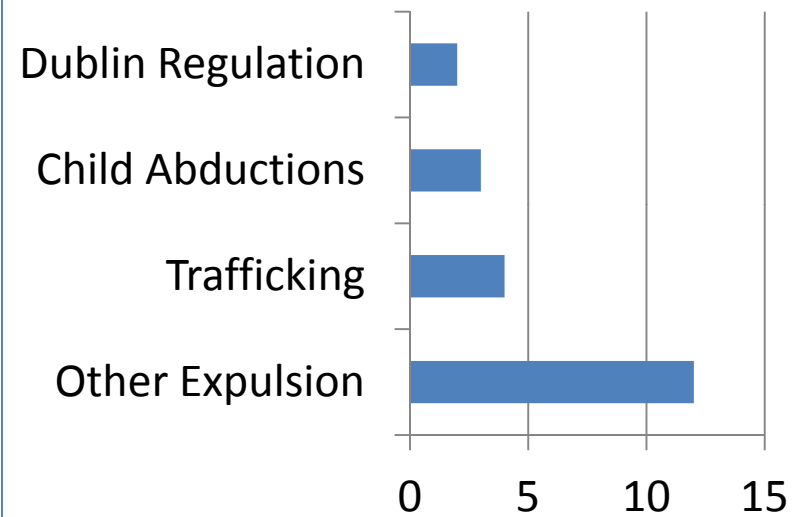
AIRE's Current Case Load in Strasbourg

Total cases in which we are involved: 30

Our Involvement



Subject Matter





Some Thoughts on Strategic Litigation at European Level

- You don't find strategic cases – they find you (if you leave yourself open to them).
- Winning isn't everything (or sometimes even anything). It is possible to win the case but lose the strategy. It is possible to lose or settle the case and draw attention to the issue or otherwise effect change.



Three Case Studies of Strategic Litigation

- Human trafficking
- Restricted access to social assistance benefits for EU migrants (including Roma) in the United Kingdom
- National Insurance Numbers for Roma living in Luton (England)



Case Study of Strategic Litigation: Human Trafficking

- Situation in 2007: very little case law at European level (*Siliadin v France*), huge problems in the UK with victims in the immigration/asylum process.
- Approach: leave ourselves open to any and all cases, with a particular focus on the UK. Although we did not work with victims ourselves, we made ourselves constantly available to those working directly with victims.



Human Trafficking

TPIs

- Rantsev v Cyprus and Russia – good result, little change in Cyprus
- C.N. v UK, C.N. & V. v France – good results
- V.F. & B.M. v France – bad result
- Kawogo v UK – still waiting

Immigration cases

- M v United Kingdom – friendly settlement
- L.R. v United Kingdom – friendly settlement
- O.G.O. v United Kingdom – still pending

Criminalisation cases

- A.N. v United Kingdom – just lodged

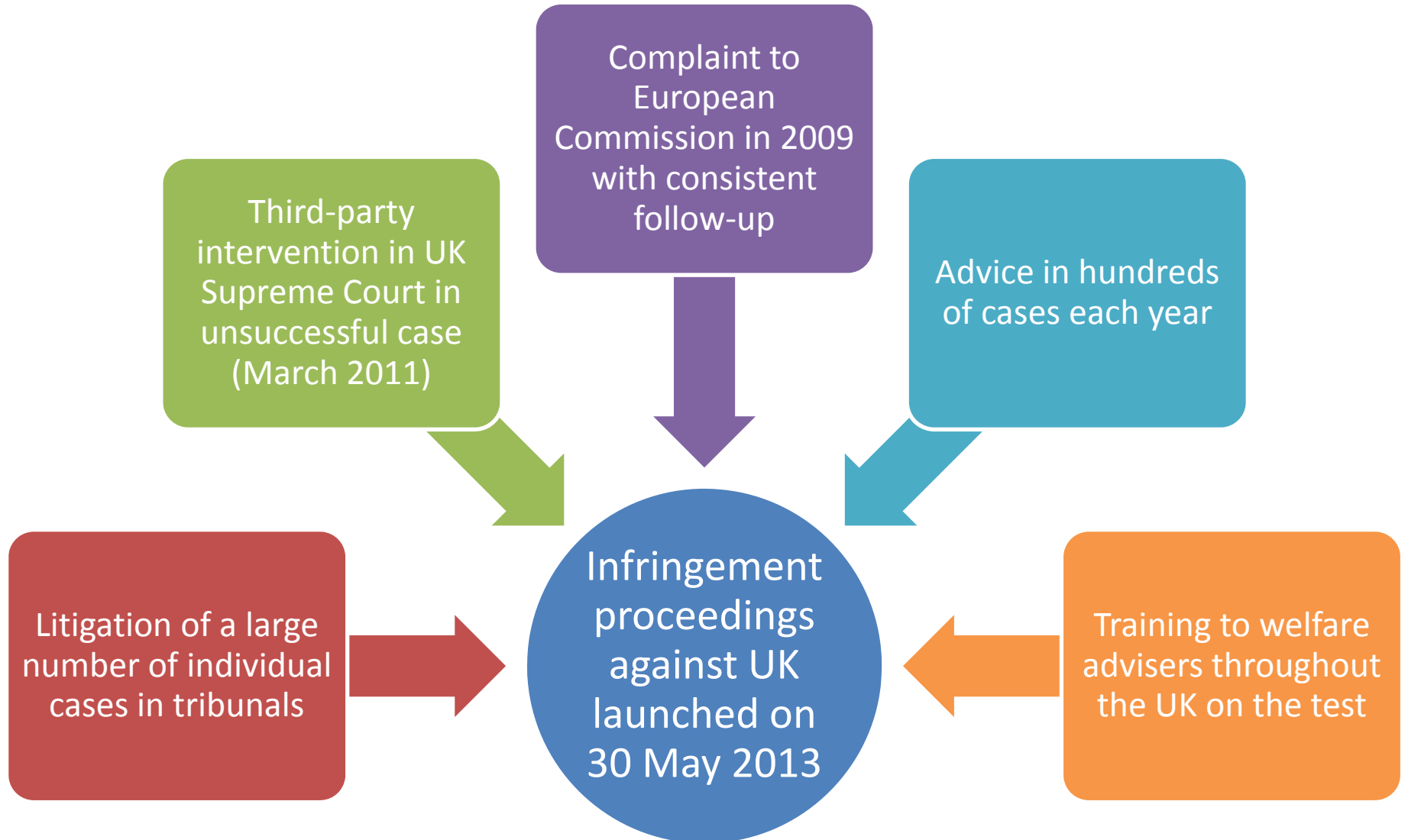


Right-to-reside test

- Situation in 2007: in response to the accession of new EU Member States from Central and Eastern Europe, the UK introduced a test restricting access to welfare benefits to EU citizens by imposing a 'right to reside' test that British and Irish citizens always pass.
- The English courts found that the test was generally lawful.
- In many cases, the courts applied the test incorrectly.



Right-to-reside test





National Insurance Numbers for Roma in Luton

- Problem in 2012: Bulgarian and Romanian Roma in Luton (and many other 'A2s' in the UK) are refused National Insurance Numbers

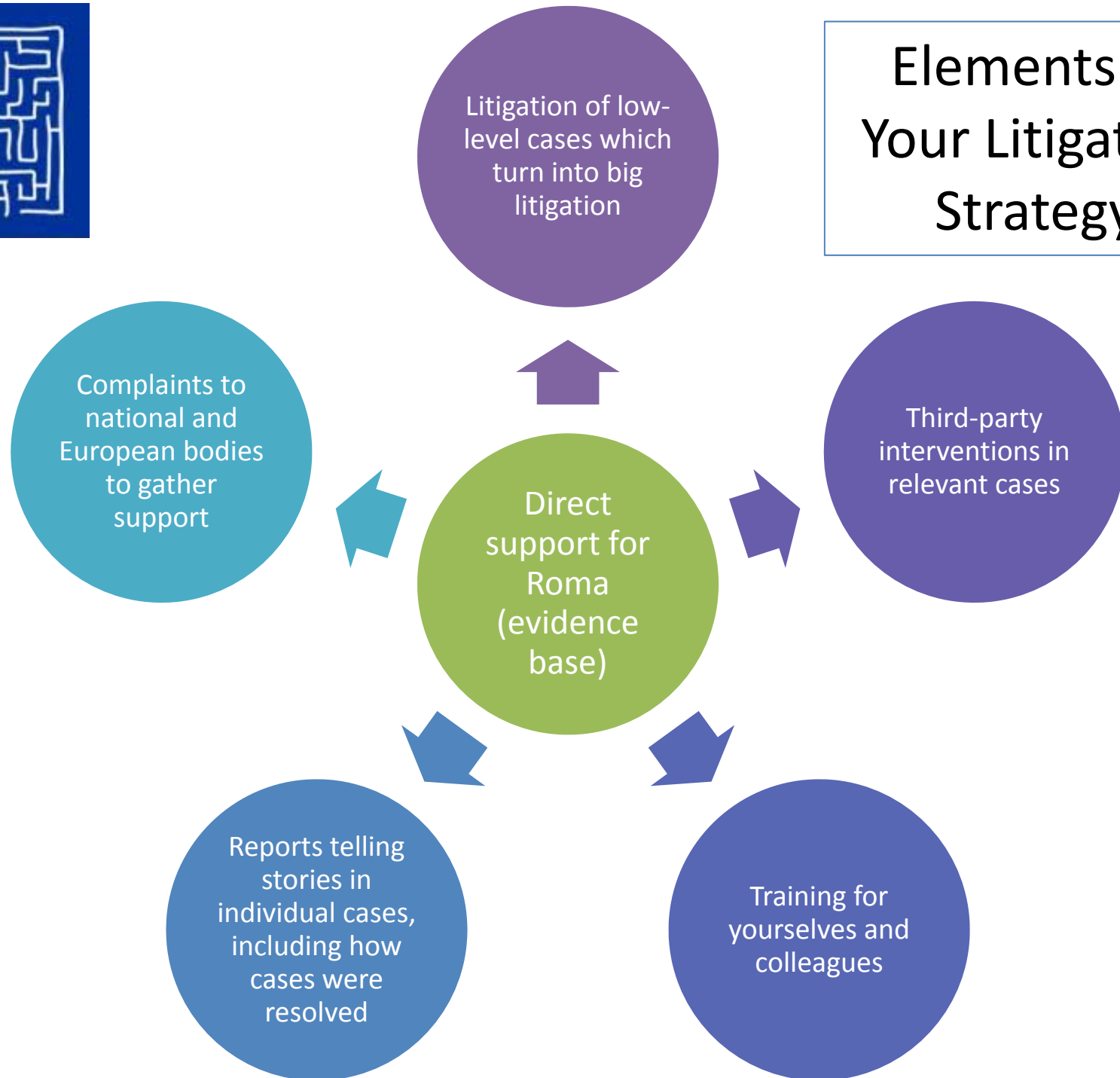
AIRE provides face-to-face advice

AIRE drafts letters to Jobcentre Plus

AIRE organises a judicial review with legal aid and a solicitor



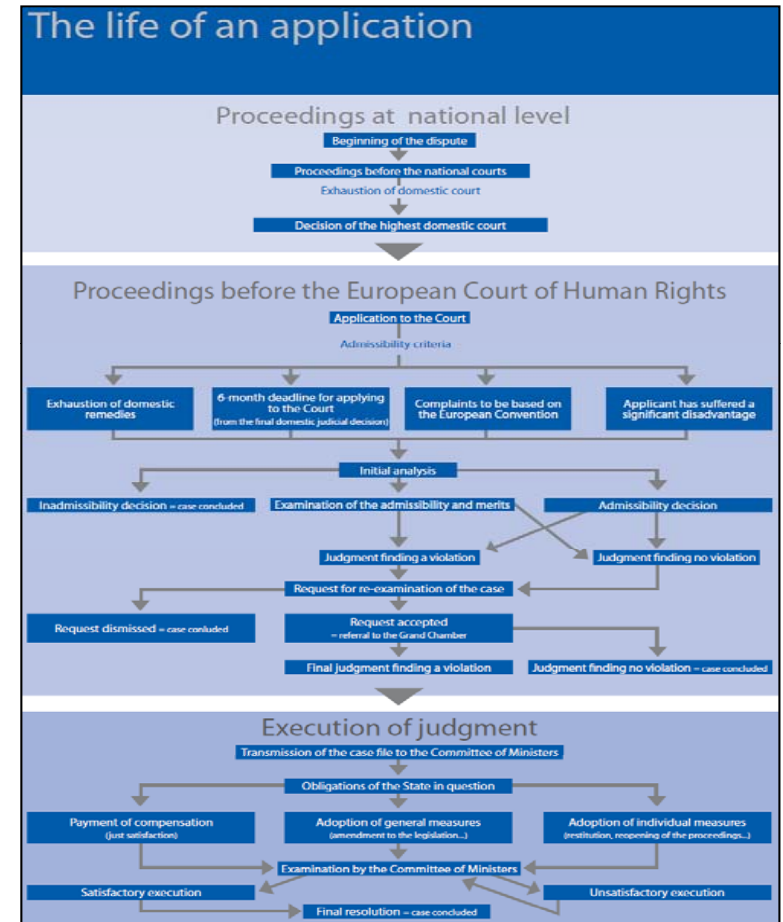
Elements of Your Litigation Strategy





Sampanis & Sampani

- *Sampanis and others v Greece* (2009) – litigation about segregation of Roma, helpful language about discrimination when the source of the discrimination is in the community. Committee of Ministers closed its consideration in 2011.
- *Sampani and others v Greece* (2013) – Court finds a new violation resulting from the way the last judgment was executed.





Case C-394/11 *Belov* (Court of Justice of the EU)



LUXEMBOURG

- Case involving the placement of electricity meters in Roma neighbourhoods at a height of seven metres (as opposed to making them accessible as they normally are).
- The Commission for the Protection Against Discrimination in Bulgaria, in the course of considering a complaint, referred the matter to the CJEU.
- The CJEU decided that the Commission was not a court or tribunal and so could not make such a reference.
- **Conclusion:** the CJEU dismissed the case, but the Commission raised awareness around Europe about discrimination practised against Roma in Bulgaria.



ECtHR case law that can be used to
assert the rights of Roma in cases
before the national courts and the
ECtHR

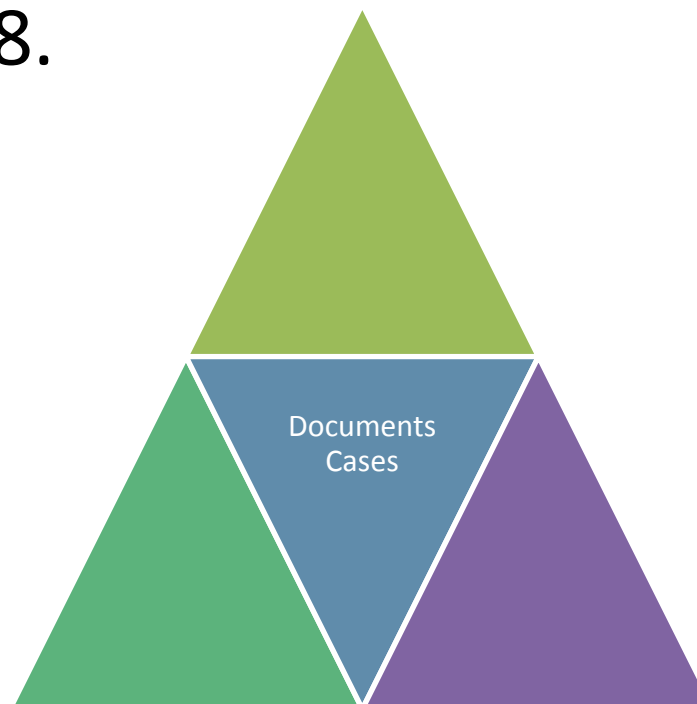
11.20 – 12.30

Adam Weiss, the AIRE Centre



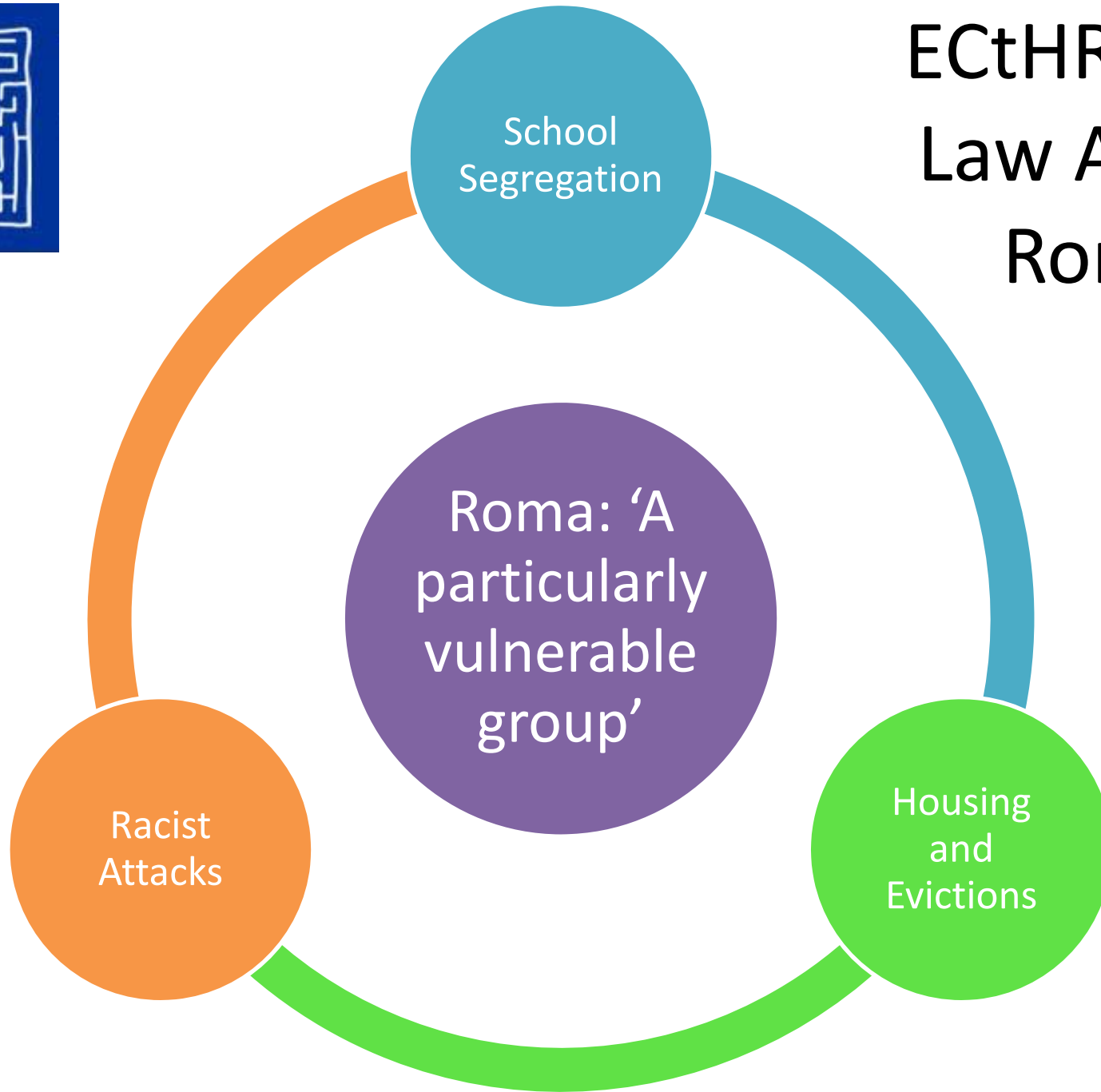
Objective

Familiarise you with the case law of the European Court of Human Rights relevant to litigating Roma rights cases, particularly cases concerning residence/identity documentation and nationality under Article 8.





ECtHR Case Law About Roma





Racist Attacks

- *Moldovan and others v Romania*
- *Nachova v Bulgaria*
- *Sečić v Croatia*



- *Yordanova and others v Bulgaria*
- *Connors v UK*



School Segregation

- *D.H. v Czech Republic*
- *Sampanis v Greece*
- *Oršuš v Croatia* – helpful language on statistics and indirect discrimination (particularly helpful if the Government try to claim that not all Roma are adversely affected by a policy)
- *Sampani v Greece* – helpful language on violations resulting from an attempt to rectify past discrimination

ECtHR Case Law: What We Are Up Against

- *Ponomaryov v Bulgaria* (2009) – ‘Article 8 cannot be construed as guaranteeing, as such, the right to a particular type of residence permit’

ECtHR Case Law: What we are building up to:

- *Nunez v Norway* (2011)
- *A.A. v UK* (2011): ‘Thus while the fact that the applicant was a minor when he committed the offence does not preclude his deportation given the seriousness of the offence in question, the latter consideration must be carefully weighed against the applicant’s exemplary conduct and, as the evidence before the Court demonstrates, commendable efforts to rehabilitate himself and to reintegrate into society over a period of seven years.’

- *Aristimuño Mendizabal v France* (2005)
- *Smirnova v Russia* (2003) – ‘The Court finds it established that in their everyday life Russian citizens have to prove their identity unusually often, even when performing such mundane tasks as exchanging currency or buying train tickets. The internal passport is also required for more crucial needs, for example, finding employment or receiving medical care. The deprivation of the passport therefore represented a continuing interference with the applicant’s private life.’

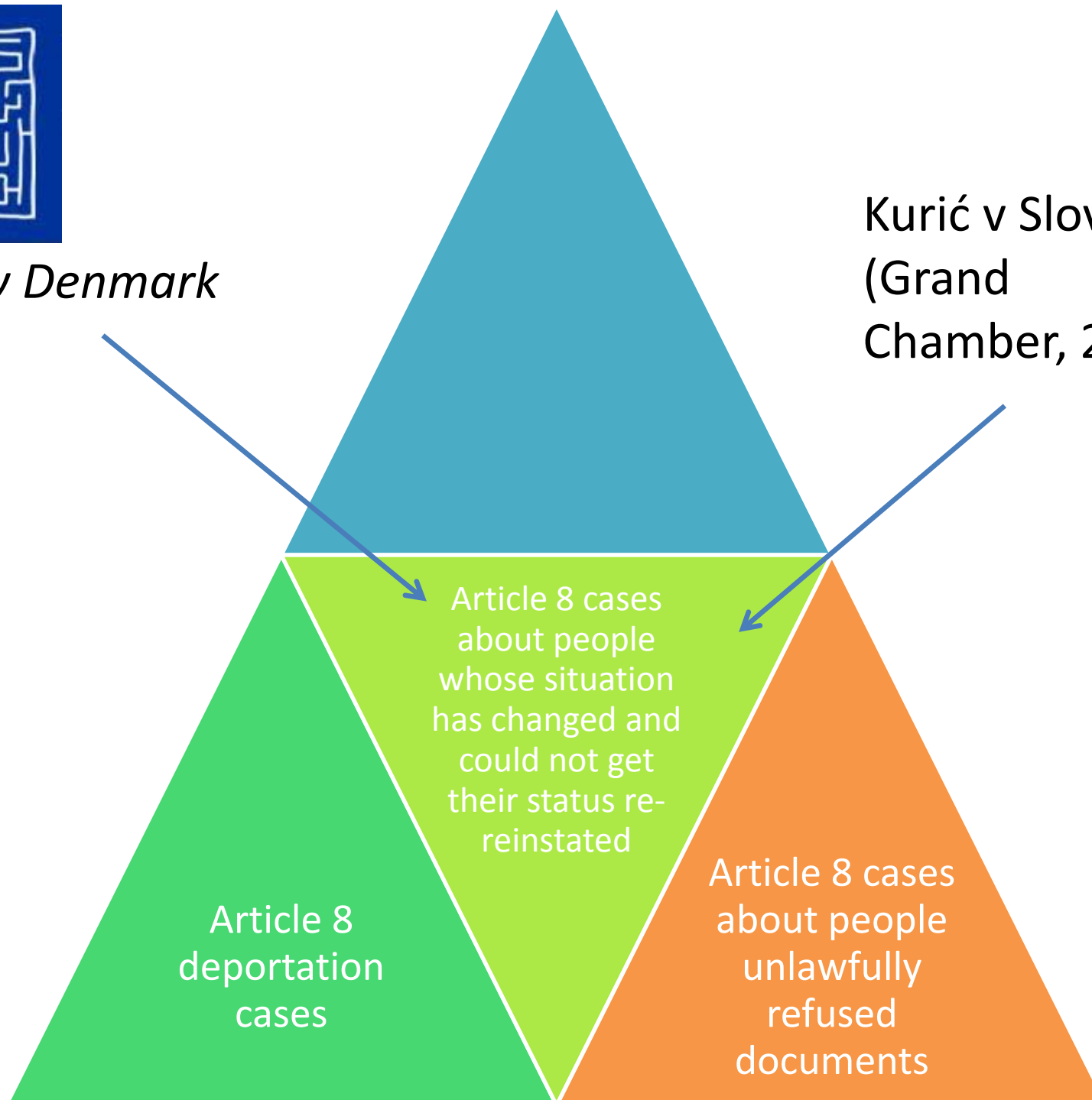
Article 8
expulsion
cases

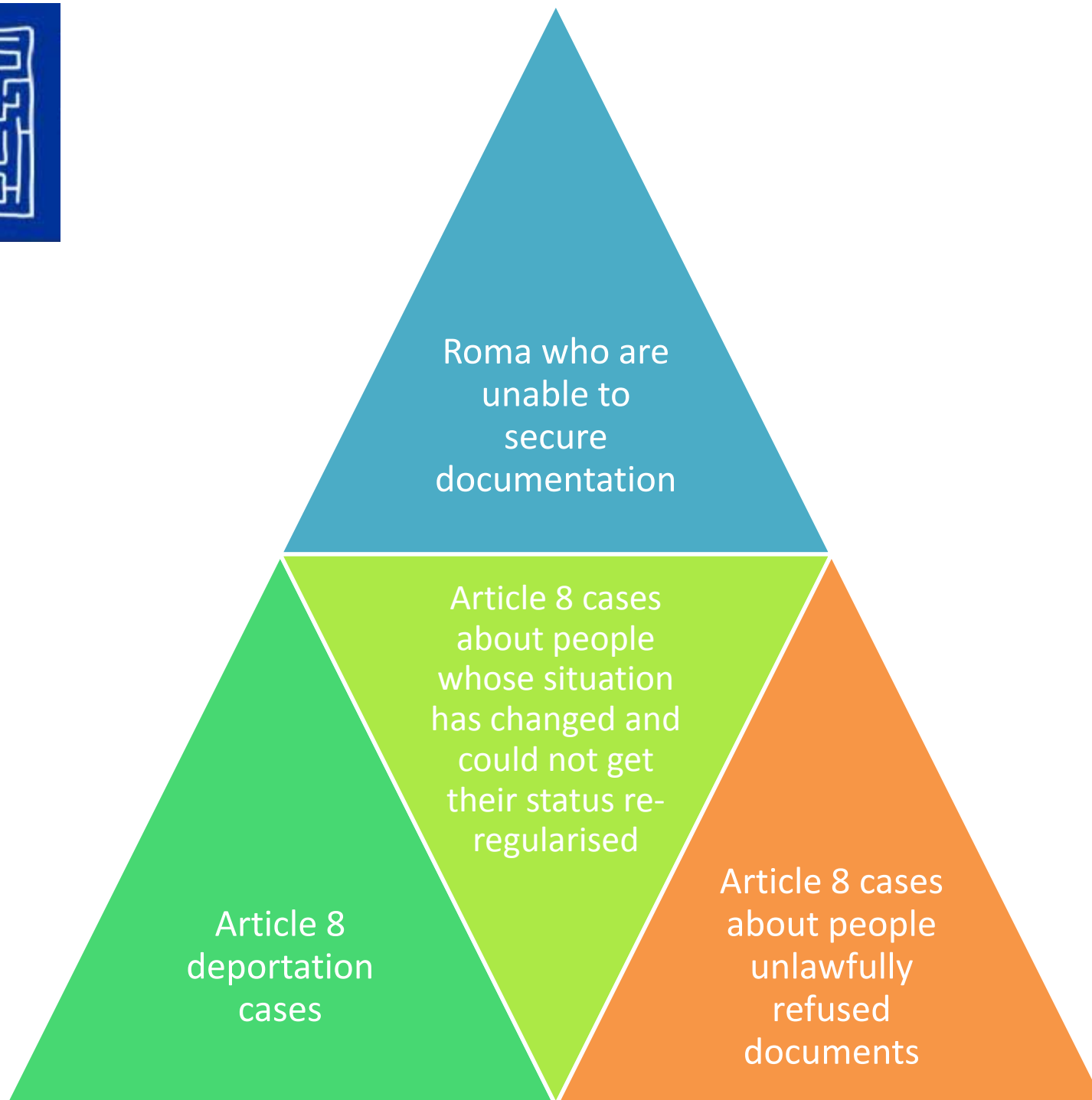
Article 8
cases about
people
unlawfully
refused
documents



Osman v Denmark
(2011)

Kurić v Slovenia
(Grand
Chamber, 2012)







The Article 8 Questions

- Is there a protected right at stake? **YES – we know now that residence documentation engages private life.**
- Is there an interference or a positive obligation? **YES – we can rely on the ‘particularly vulnerable group’ status of Roma to assert positive obligations.**
- Is the interference in accordance with the law? **You have to be experts on domestic law here. There are two possibilities:**
 - Domestic law is not being followed.
 - Domestic law is not sufficiently clear and therefore lacks the ‘quality of law’ that Article 8 requires.
- Does the interference pursue a legitimate aim? **The ECtHR rarely calls this into question, but this provides an opportunity to question what aim is being achieved here.**
- Is the interference necessary in a democratic society? **The question is whether the refusal is proportionate to the legitimate aim pursued. This again is an opportunity to rely on the ‘particularly vulnerable group’ status of Roma and to tell individual stories.**



Outline for Submissions to a National Court under Article 8

- Set out the text of Article 8.
- Set out the five Article 8 questions and make that the structure of your submission.
- Quote ECHR case law at each stage. Weave in helpful language from other Roma cases.
- Demonstrate failures to follow domestic law and procedure, or the lack of the ‘quality’ of the law (‘not in accordance with the law’).
- Assert that there is no legitimate aim and require the Government’s lawyers to produce a legitimate aim.
- Dwell on the question of proportionality – tell stories of people’s lives.