



Training of lawyers on European Law relating to vulnerable groups of migrants (TRALVU)

Mirentxu Jordana

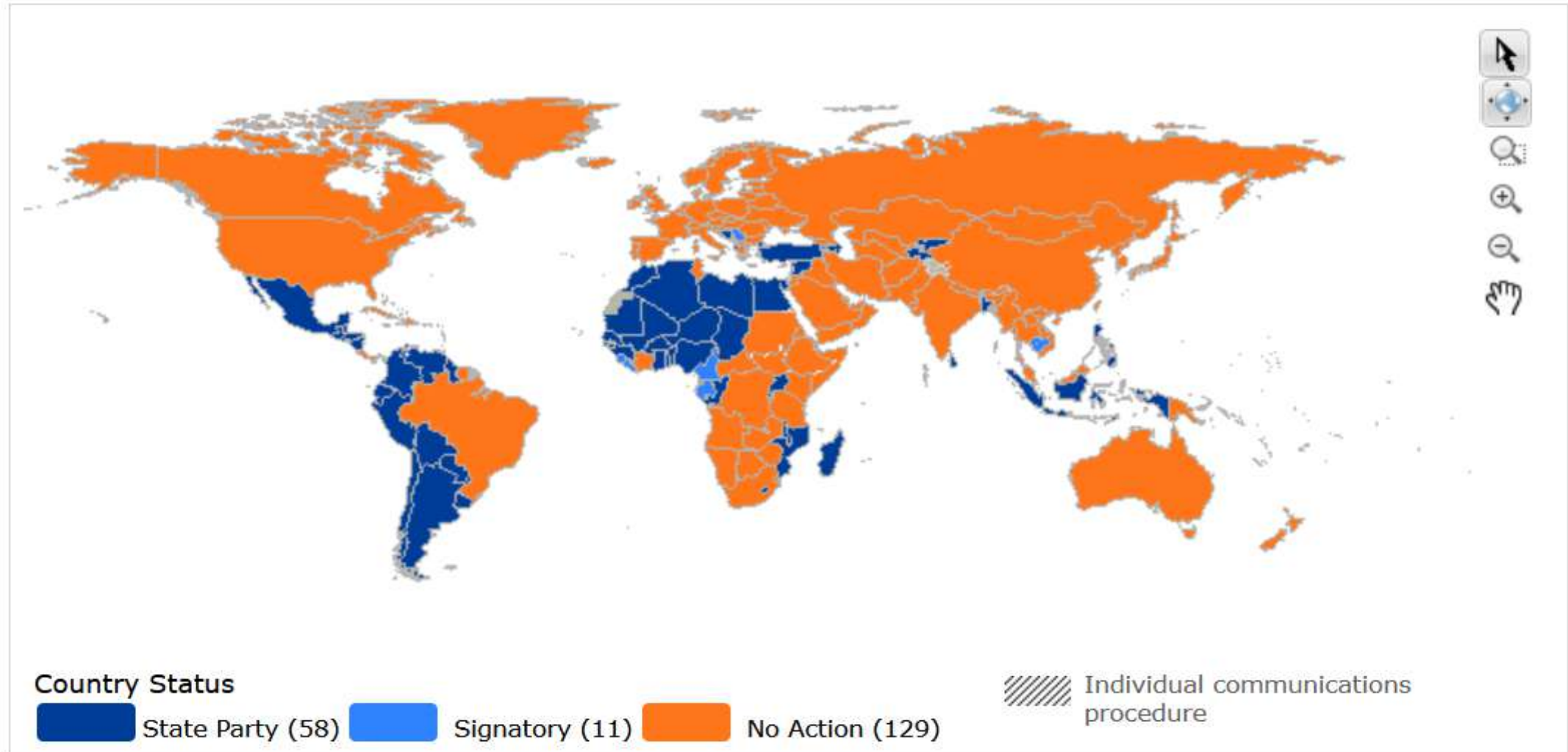
**The European framework (EU, CoE, ECtHR) in
relation with vulnerable migrants**

Barcelona, 10 November 2023

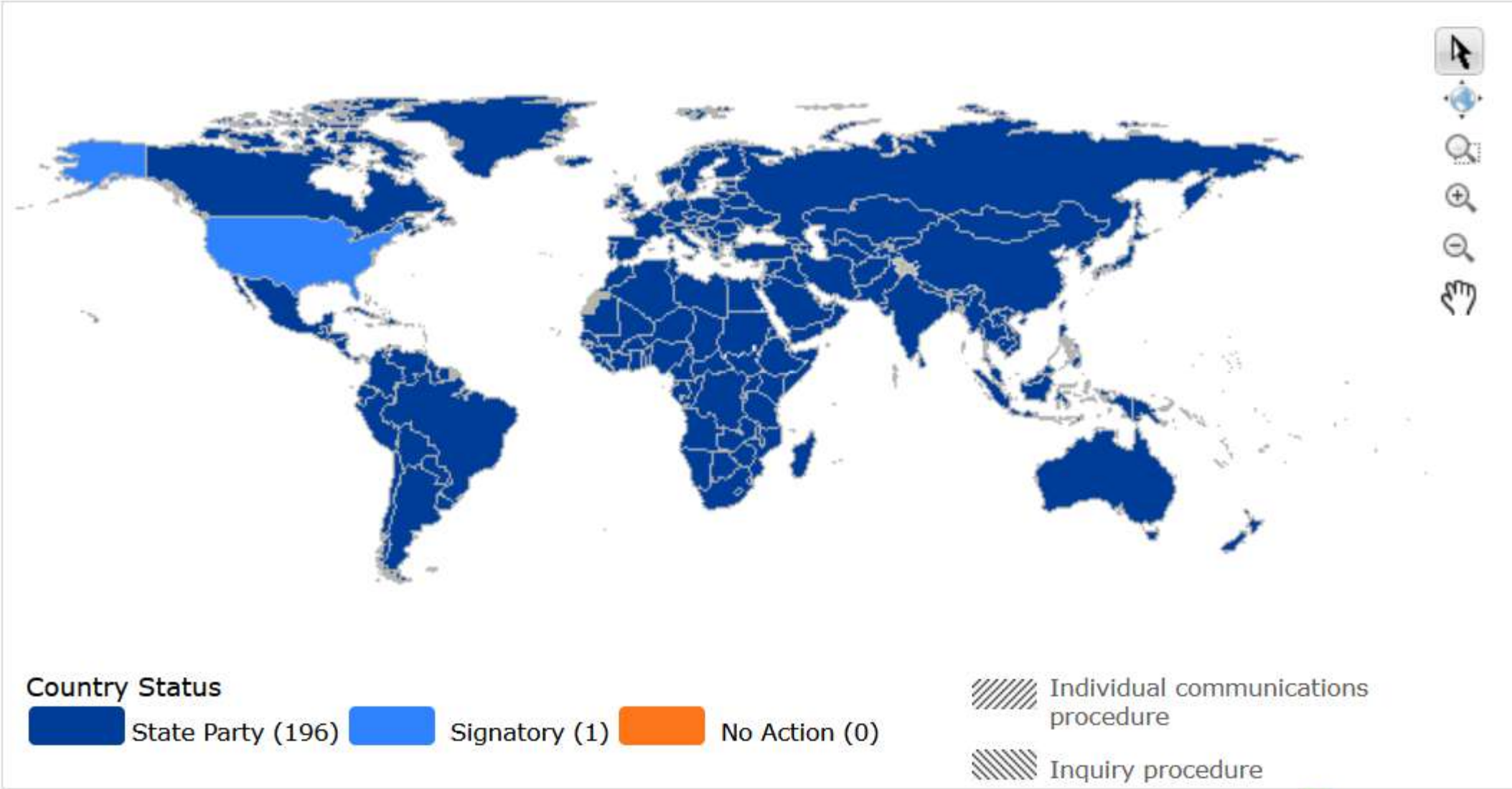


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International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families



Convention on the Rights of the Child



Council of Europe

European Convention on the Legal Status of Migrant Workers [CETS No. 093]
Strasbourg, opened for signature : 24 November 1977
Entry in force : 1 May 1983

<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatyenum=093>

European Convention on Action against Trafficking in Human Beings [CETS No. 197]
Warsaw, opened for signature: 16 May 2005
Entry in force: 01/02/2008

<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatyenum=197>

- European Agreement on the Abolition of Visas for Refugees (ETS No. 31), open for signature. Entry into force: 4 September 1960.
- Protocol to the European Convention on Consular Functions concerning the Protection of Refugees (ETS No. 61A), open for signature, in Paris, on 11 December 1967. Entry into force: The Protocol will enter into force following the fifth ratification.
- European Agreement on Transfer of Responsibility for Refugees (ETS No. 107), open for signature, in Strasbourg, on 16 October 1980. Entry into force: 1 December 1980.

- European Interim Agreements on Social Security Schemes relating to Old Age, Invalidity and Survivors (ETS No. 12 and 13) and its Protocols (ETS No. 12A and 13A), opened for signature, in Paris, on 11 December 1953. Entry into force: 1 July 1954.
- European Convention on Social and Medical Assistance (ETS No. 14) and its Protocol (ETS No. 14A), open for signature, in Paris, on 11 December 1953. Entry into force: 1 July 1954.

Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), open for signature, in Rome, on 4 November 1950. Entry into force: 3 September 1953.

Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (ETS No. 46), open for signature, in Strasbourg, on 16 September 1963. Entry into force: 2 May 1968.

Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 117), open for signature, in Strasbourg, on 22 November 1984. Entry into force: 1 November 1988.

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 177), open for signature, in Rome, on 4 November 2000. Entry into force: 1 April 2005.

The European Union

- Treaty on European Union (TEU)
- Treaty on the Functioning of the European Union (TFEU)
- ‘secondary EU law’ > directives and regulations
- EU Charter of Fundamental Rights

- Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC
- Directive (EU) 2016/801 of the European Parliament and of the Council, of 11 May 2016, on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing
- Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers

- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification
- Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)
- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)
- Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)
- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof

- Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)
- Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention

- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

Court of Justice of the European Union (CJEU)

- Article 263 (4) TFEU > access to individuals is relatively restricted
- Article 267 TFEU > preliminary rulings

The EU Charter of fundamental rights

- art. 6 TEU > legally binding with the same legal value as the Treaties
- art. 51 EU Charter > EU institutions + EU MS 'when implementing EU law'
- art. 18 EU Charter > right to asylum

The Family reunification

ECtHR

- Schalk i Kopf v. Austria, 30141/04, 2010.
- X, Y i Z v. United Kingdom, 21830/93, 1997.
- Bronda v. Itàlia, 40/1997/824/1030, 1998.
- Pini i altres v. Romania, 78028/01, 2004.
- Moretti i Benedetti v. Italy, 16318/07, 2010.
- Sen v. The Netherlands, 31465/96, 2001.
- Abdulaziz, Cabales i Balkandali v. United Kingdom, 9214/80, 1985.
- Mibilanzila Mayeka and Kaniki Mitunga v. Belgium, 13178/03, 2006.

CJEU

- C. and A., C-257/17, ECLI:EU:C:2018:876.
- Maahanmuuttovirasto, C-356/11 y 357/11, ECLI:EU:C:2012:776.

The Return of non-nationals

ECtHR

- Nunez v. Norway, 55597/09, 2011.
- Sharifi v. Austria, 60104/08, 2013.
- Ünér v. The Netherlands, 46410/99, 2006.
- Maslov v. Àustria, 1638/03, 2008.
- I.M. v. Switzerland, 23887/16, 2019.
- Svaran c. Dinamarca, núm. 57467/15, 2021.
- Butt c. Noruega, núm. 47017/09, 2012.

CJEU

- Tsakouridis, C-145/09, ECLI:EU:C:2010:708.
- K and H.F., C-331/16 i C-366/16, ECLI:EU:2018:296.

Detention pending deportation

ECtHR

- M and others v. Bulgaria, 41416/08, 2011.
- Rahimi v. Grece, 8687/08, 2011.
- H.A. v. Grece, 19951/16, 2019.
- Muskhadzhiyeva and others v. Belgium, 41442/07, 2010.
- Abdullahi Elmi and Aweys Abubakar v. Malta, 25794/13 i 28151/13, 2017.

Pushbacks

ECtHR

- N.T. and N.D. v. Spain, 8675/15 and 8697/15, 2020.

“There are alarming trends in the treatment of asylum seekers and refugees, as well as of irregular migrants in all parts of Europe. States are engaging ever more intensely in extensive border patrols, trying to deter the entry of migrants into their territory. Migrants, including asylum seekers, who do manage to enter irregularly Council of Europe member states are often criminalised, locked up in prison-like conditions, and expelled as quickly as possible – even to countries where they risk persecution and torture. However, irregular migration is not a criminal act and irregular migrants also enjoy certain rights under international law, which need to be respected.”



Training of lawyers on European Law relating to vulnerable groups of migrants (TRALVU)

Montserrat Salvador

Migrant workers: trafficking and labour exploitation

Barcelona, 10 November 2023



Co-funded the European Union

INTRODUCTION

.- Complex and disastrous legislative evolution.

.- The crime of human trafficking bursts into criminal law with this name in the reform of the criminal code of 2010 (vs illegal trafficking people).

NOT TO BE CONFUSED
WITH THE CRIMINAL
TYPE OF ART. 318 BIS CP:
CLANDESTINE
IMMIGRATION

Reserve and caution with
sentences and
jurisprudential doctrine
before 2015

**REGULATION
ART. 218 BIS CP
VS ART. 177 BIS
CP**

Art. 318 bis CP:

The passive person/victims must necessarily be a foreigner.

It is a crime of a transnational nature and involves contravention of the State's foreignness rules.

The consent of the victim and the migration decision is free.

The subjective element: helping the immigrant to enter, circulate or stay.

Legal asset: migration flows and integrity and security borders

Art. 177 bis CP:

The passive person/victims can be foreigner or Spanish people.

It requires the concurrence of commissive means and the purpose of exploitation

NOT a crime of transnational nature since internal trafficking is accepted.

The consent of the victim and the decision is forced or vitiated.

The subjective element: subjecting victim to exploitation.

Legal asset: the protection of human dignity and freedom.

LEGISLATION:

1. PROTOCOLO DE PALERMO 15.12.2000
2. CONVENIO DE VARSOVIA 16.05.2005 (BOE 10.09.2009)
3. DIRECTIVA 2011/36/UE DEL PARLAMENTO EUROPEO Y DEL CONSEJO, DE 5 DE ABRIL DE 2011
4. LEY ORGÁNICA 2/2009, DE LOS DERECHOS Y LIBERTADES DE LOS EXTRANJEROS EN ESPAÑA
5. REAL DECRETO 557/2011, LOEX
6. LEY ORGÁNICA 19/1994, DE PROTECCIÓN A TESTIGOS Y PERITOS EN CAUSAS CRIMINALES
7. CÓDIGO PENAL (art. 177 bis CP)
8. LEI 4/2015, DEL ESTATUTO DE LA VÍCTIMA DEL DELITO
9. PROTOCOLO MARCO PROTECCIÓN VTSH

LEGAL GOODS PROTECTED AND CONSEQUENCES

.- The dignity and freedom of victims.(legal good not supra-individual or collective, but very personal).

.- The location of the precept: following crimes of torture and other crimes against moral integrity

.- As many crimes as victims of human trafficking.

.- It is a malicious crime of “purpose or tendency”. (the purpose pursued by the trafficker is part of the subjective type of injustice).

.- So, crime of early consummation (there is when any of the typical behaviours have been carried out, even if the effective exploitation of the victim has not been achieved)

ELEMENTS OF THE BASIC TYPE OF THE CRIME

Intentional crime that is consummated with the performance of

0.- In adult people (18 years old).

1.- ALTERNATIVE BEHAVIORS: CAPTURE, TRANSPORT, TRANSFER, HOST, RECEIVE, EXCHANGE OR TRANSFER THE CONTROL OF THE PERSON.

2.- COMMISSIONAL MODALITIES USED IN ITS EXECUTION: violence, intimidation, deception, abuse of situation of superiority o need, or vulnerability of the victim, or delivery-reception of payments o benefits)

3.- WITH THE PURPOSE OF EXPLOITATION OF THE VICTIM (tendency crime): in any of the modalities included: imposition of forced work or services, slavery o practices similar to slavery, servitude r begging, sexual exploitation – including pornography-, exploitation to carry out criminal activities, removal of their body organs and the celebration of forced marriages.

BEHAVIOURS

Capture
Transport
Transfer
Host
Receive
Exchange or transfer
control of the person

COMMISSIONAL MODALITIES

Violence
Intimidation
Deception
Abuse of situation of
superiority or need
Vulnerability of the
victim
Delivery-reception of
payments or benefits

PURPOSE

Sexual exploitation
Laboral exploitation
Begging
Forced marriages
Slavery a similar slavery
Servitude
Exploitation to carry out
criminal activities
Body organs trafficking

SUBJECTIVE TYPE/ELEMENT AND TRAFFICKING MINORS AND AGGRAVATED MODALITIES

The subjective element is specified in one of the specified purposes.

AUTHORSHIP AND COMPLICITY: All forms of participation (art. 28 CP). Also, necessary collaborators and accomplices.

Victim under 18 years old: crimes occurs even if the commissive means of the basic type are not present. Consent of the victim or his parents is irrelevant. It is also the change of marital status due to having married.

Prohibition of *bis in idem*: to apply the aggravations, situations determining vulnerability will have to be different from that have been appreciated in the basic type.

AGGRAVATED MODALITIES:

- Put in danger the life or physical or mental integrity of the victims.: The victim's vulnerability may be determinate by illness, gestational status, disability or by being a minor.
- By the condition of the active subject: authority, agent o official
- Because the offender is a membership in an organization o association that is dedicated to carrying on such activities.

COMPENSATION FOR DAMAGES

PHASES OR MODUS OPERANDI CRIME OF HUMAN TRAFFICKING

There is typical elements of the criminal behaviours in every phases:

RECRUITMENT PHASE : attraction to control the will for exploitation: Deception, coercion (force, violence, intimidation)

TRANSFER PHASE: moving the victim, uprooting.

EXPLOITATION PHASE: obtaining financial, commercial or other benefits, including pornography (acts and materials).

THE VICTIMS



PROCES WITH A PRESUMED VICTIM

DETECTION:

Investigations undertake by the police

Employment inspection

At the border upon entry the country

At public or private organisation

At the application for international protection

Report to the police

IDENTIFICATION:

Only by police units with specific training

Adoption the necessary measures in order to protect the victim.

Interview

Determination of the existence of reasonable grounds or evidence: Indicators of the Protocol

Report to the Public Prosecution Office

Suspended any expulsion or repatriation for not to have appropriate legal papers

Initiate process of rehabilitation and reflection period (at least 90 days)

RIGHTS OF THE VICTIMS:

Arts. 109 and
110 LECR

Stop deportation
and exemption of
responsability for
being irregular .

Provisional
residence and
work (too for
children)

Witness status in
the criminal
proces

Protection
measures.

Voluntary
repatriation

Information

Traslators

Accompaniment
during the
process by
professional

Public aids

Secure
accommodation

Psychological and
healthcar



TRAFFICKING IN PERSONS: VICTIMS RIGHTS

RIGHTS IN CRIMINAL PROCEDURES

Legal representation starting from the criminal investigation

Accompaniment during testimony procedures

Not punishment principle

Protected witness status in the process

Early Testimony

Testifying NOT in face of the defendant

As part of the sentence: traffickers must compensate the victims

Translators and information

EXEMPTION FROM CRIMINAL LIABILITY

Not to prosecute or impose penalties to the victims for their participation in illicit activities

For preventing further victimization and encouraging the report.

Necessary the infractions has been a direct consequence of the situation.

Proporcionality

IN THE PROCES

Testifical evidence: testimony evaluation as a key point

PROVA PRE-CONSTITUÏDA:
Art. 777 LECR in the abbreviated process art. 448 LECR en Sumari (STS 738/2015, STS 438/2016, STS 270/2016...)

Requisits: subjective credibility, objective credibility and persistence in incrimination (dissociation and post-traumatic stress disorders)

THE VICTIM IS ALWAYS QUESTIONED: the dissociation and post-traumatic stress disorder.

Need of peripheral evidentiary elements

ADDITIONAL PROOFS:

.- SPECIALITIES SERVICES – PSYCHOLOGICAL REPORTS

.- INDICATORS

.- FORENSIC MEDICAL REPORTS

.- ASSESSMENT AND AFTERMATH PSYCHIATRIC IMPACT REPORT

.- VICTIM CREDIBILITY REPORT

.- TELEPHONE LISTENINGS

.- POLICE FOLLOWINGS

.- MONEY

.- IDENTIFICATION PARADES

GUIES PER L'ACTUACIÓ JUDICIAL

GUIA DE CRITERIS D'ACTUACIÓ JUDICIAL FRONT AL TRÀFIC D'ESSERS HUMANS DEL CONSELL GENERAL DEL PODER JUDICIAL (novembre 2018)

[C.G.P.J - Guías del Consejo en la materia \(poderjudicial.es\)](https://www.poderjudicial.es/cgpj/guias-del-consejo-en-la-materia)

GUIA DE BONES PRÀCTIQUES EN LA INSTRUCCIÓ I L'ENJUDICIAMENT DELS DELICTES DE TRÀFIC D'ESSERS HUMANS (2021)

[Guia de bones pràctiques en la instrucció i l'enjudiciament dels delictes de tràfic d'èssers humans \(gencat.cat\)](https://www.gencat.cat/guia-de-bones-practiques-en-la-instruccio-i-lenjudiciament-dels-delictes-de-trafic-d-essers-humans)

INFORME JURIDIC "Víctimas de trata para delinquir, entre la protección y el castigo" (març 2022)

[C.G.P.J - Guías del Consejo en la materia \(poderjudicial.es\)](https://www.poderjudicial.es/cgpj/guias-del-consejo-en-la-materia)

GUIA PRÀCTICA DE DETECCIÓ I DEFENSA DE VÍCTIMES DE TRÀFIC D'ÉSSERS HUMANS

[GUIA-VICTIMA-DE-TRATA-VERSION-FINAL.pdf \(abogacia.es\)](https://www.abogacia.es/guia-victima-de-trata-version-final.pdf)

GOOD PRACTICES

1. Guarantee from the beginning the accompaniment of the victim by public services

2. Respect the recovery and reflection period for the victim's mental health

3. At declaration's time, consider:

3.1. Victim's moment

3.2. Having a pleasant environment

3.3. Present to lawyers the hearing situation

3.4. Having qualified interpreters

3.5. Offer breaks for the victim

4. Protect the witness during the whole process though the deprotection degree

5. Always pre-constituted test and videoconferences avoiding traffickers

GOOD PRACTICES

6. Rely on expert evidence and forensic tests with qualified supports. We can make support reports.

7. Take into account reports on detection indications

8. Accompany when the victim wants a private prosecution by lawyers with guarantees.

9. Personation popular accusations: allow

10. Competitive investigations with peripheral tests

11. Collaboration from the beginning between the agents involved. It gives a more global and complete view about what is being judged



THANK YOU SO MUCH!



Training of lawyers on European Law relating to vulnerable groups of migrants (TRALVU)

Andrés Ceballos

Migrant children and migrant families

Barcelona, 10 November 2023



Co-funded the European Union

RIGHT TO FAMILY REUNIFICATION

Free movement of persons.

- Directive 2004/58/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004.

Third country nationals.

- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

Asylum and International Protection.

- DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011,



FREE MOVEMENT OF PERSONS



MEMBERS OF THE FAMILY (Free movement)

- TFEU: ARTICLES 18-21 and 45-55
- DIRECTIVE 2004/58/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC.
- Scope of application. The requirement of free movement.



CONCEPT

- ▶ Right of a citizen of moving and establishing in another EU country.
 - ▶ Not only workers or economical agents.
 - ▶ Includes the right of having his/her family with him/her.
- ▶ The requisite of free movement.
 - ▶ Sentence of 27, October, 1982, 35 and 36/82, Morson and Jhanjan.
 - ▶ Sentence of 5, may, 2011, C-434/09 Shirley McCarthy.



MEMBERS OF THE FAMILY (Free movement) (Art. 2)

- ▶ (a) the spouse;
- ▶ (b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;
- ▶ (c) the direct descendants who are under the age of 21 or are dependents and those of the spouse or partner as defined in point (b);
- ▶ (d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);



OTHER SITUATIONS ART 3

- ▶ 2. Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:
 - ▶ (a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;
 - ▶ (b) the partner with whom the Union citizen has a durable relationship, duly attested.
- ▶ The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.



MEMBERS OF THE FAMILY (Free movement)

- ▶ Rights:

- ▶ All based as companions of the EU national.

- ▶ Right of exit: Art. 4.

- ▶ Right of entry: Art 5.

- ▶ Right of residence: Art.6 and 7. Less and more than 3 months.

- ▶ Right to come back: Case law

MEMBERS OF THE FAMILY (Free movement)

► Formalities:

- Need of a residence card.

- Proof of relationship.

- Proof of sufficient resources. this amount shall not be higher than the threshold below which nationals of the host Member State become eligible for social assistance, or, where this criterion is not applicable, higher than the minimum social security pension paid by the host Member State.

- Sentence 27, february, 2020, C-836/18, RH.



MEMBERS OF THE FAMILY (Free movement)

- ▶ Retention of the residence:
 - ▶ Breach of marriage after three years.
 - ▶ Custody of a citizen of the EU State.
 - ▶ Domestic violence or difficult circumstances.
 - ▶ Access to a minor who because a judicial sentence is a resident in a EU State.



MEMBERS OF THE FAMILY (Free movement)

- ▶ Permanent residence: Five years in any case.

THE RIGHT TO COME BACK.

- ▶ The right of an EU citizen to return to his own country in the same conditions as he was in the other EU State. (Surinder Singh Route)
 - ▶ Sentence of 7 July 1992, C-370/90, Surinder Singh.
 - ▶ Sentence of 12 March 2014, C-456/12, O. v Minister voor Immigratie, Integratie en Asiel and Minister voor Immigratie, Integratie en Asiel v B.
 - ▶ Judgement of 26 July 2016 E-28/15 Yankuba Jabbi.



CONDITIONS OF APPLICATION

- ▶ 1. A genuine residence period of at least three months is required.
- ▶ 2. Weekend visits and holidays do not count as residence for this purpose.
- ▶ 3. Any citizen of the Union can potentially benefit from this right, not just workers and the self employed.
- ▶ 4. During the period of residence family life must have been “created or strengthened”.
- ▶ 5. Abuse is impermissible.



CONSEQUENCES

- ▶ Same sex marriage
 - ▶ Sentence 5, june, 2018, C-673/16, Relu Adrian Coman and others.

- ▶ Children of couples of same sex.
 - ▶ Sentence 14, december, C-490/20, VMA.

RESIDENCE BASED IN ARTS 20 AND 21 OF TFEU.

- ▶ The right of an adult person based in its relation with an EU citizen who has a right to stay in the EU, without the existence of free movement of persons. (Based in arts 20 and 21 of TFEU.)
 - ▶ Sentence of 19, October, 2004, C-200/02, Chen.
 - ▶ Sentence of 8, March, 2011, C-34/09, Ruiz Zambrano.
 - ▶ Sentence of 10, May 2017, C-133/15, Chavez-Vilchez and Others.

BENEFICIARIES

- ▶ THE PARENTS OR TUTORS.
 - ▶ Sentences Ruiz Zambrano and Chavez-Vilchez.
- ▶ NOT THE WIFE.
 - ▶ Sentence 27, february, 2020, C-836/18, RH.
- ▶ BROTHERS AND SISTERS.
 - ▶ ????



FAMILY REUNIFICATION BY NATIONALS OF THIRD COUNTRIES





MEMBERS OF THE FAMILY (Migration)

- ▶ COUNCIL DIRECTIVE 2003/86/EC of 22 September 2003 on the right to family reunification

MEMBERS OF THE FAMILY (Migration) (shall)

- ▶ (a) the sponsor's spouse;
- ▶ (b) the minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognized in accordance with international obligations;
- ▶ (c) (d) the minor children including adopted children of the sponsor (spouse) where the sponsor (spouse) has custody and the children are dependent on him or her. Member States may authorize the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement;
- ▶ The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.
- ▶ By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorizing entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive.

MEMBERS OF THE FAMILY (Migration) (may)

- ▶ (a) first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin.
- ▶ (b) the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.
- ▶ Non married couples
- ▶ Others (Kafala)

MEMBERS OF THE FAMILY (Migration)

- ▶ Exceptions.
 - ▶ Polygamous marriage.
 - ▶ Possible limits to reunification of minor children of a further spouse and the sponsor.
 - ▶ Option for states for limiting the reunification of minors over 15 years old.
 - ▶ Rejection on grounds of public policy, public security or public health.
- ▶ Requirements
 - ▶ Accommodation.
 - ▶ Sickness insurance.
 - ▶ Stable and regular resources.
 - ▶ Period of previous staying of the sponsor (not more than 2/3 years).

MEMBERS OF THE FAMILY (Migration)

► Proceedings

- Person who submits the application (Depends on the MS)

- Documents needed.

- Application should be done while the family member is resident outside the territory of the MS. (Exceptions).

MEMBERS OF THE FAMILY (Migration)

- ▶ Penalties and redress. (Possibilities of reject, not renew and withdraw)
 - ▶ Non-fulfillment of the conditions
 - ▶ End of the relation.
 - ▶ Marriage (relation) with another persons.
 - ▶ Fraud
- ▶ Possibility of legal challenge of the rejection or withdraw.
- ▶ Devolution of the sponsor and his/her family.

MEMBERS OF THE FAMILY (Migration)

- ▶ DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. Art. 17.
 - ▶ 1. Unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time.
 - ▶ 2. Families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy.
 - ▶ 3. Minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education.
 - ▶ 4. Unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.
 - ▶ 5. The best interests of the child shall be a primary consideration in the context of the detention of minors pending removal



ASYLUM AND
INTERNATIONAL
PROTECTION.

ASYLUM AND INTERNATIONAL PROTECTION.

- ▶ DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.
Art. 23
- ▶ COUNCIL DIRECTIVE 2003/86/EC of 22 September 2003 on the right to family reunification.
Arts 9 to 12.



SITUATIONS

- ▶ FAMILY OF REFUGEES
 - ▶ THE FAMILY ASK TO ASYLUM OR IP TOGETHER
- ▶ FAMILY REUNIFICATION OF A REFUGEE.
 - ▶ A REFUGEE ASKS FOR FAMILY REUNIFICATION
- ▶ UNACCOMPANIED MINORS
 - ▶ Third-country nationals below the age of eighteen, who arrive on the territory of the Member State unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member State.



FAMILY OF REFUGEES

- ▶ 1. Member States shall ensure that family unity can be maintained.
- ▶ 2. Member States shall ensure that family members of the beneficiary of international protection who do not individually qualify for such protection are entitled to claim the benefits referred to in Articles 24 to 35, in accordance with national procedures and as far as is compatible with the personal legal status of the family member.
- ▶ 3. Paragraphs 1 and 2 are not applicable where the family member is or would be excluded from international protection pursuant to Chapters III and V.
- ▶ 4. Notwithstanding paragraphs 1 and 2, Member States may refuse, reduce or withdraw the benefits referred to therein for reasons of national security or public order.
- ▶ 5. Member States may decide that this Article also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of international protection at that time.

FAMILY REUNIFICATION.(ARTS 9-12)

- ▶ ADVANTAGES IN RELATION WITH ORDINARY REUNIFICATION.
 - ▶ The Member States may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee.
 - ▶ Where a refugee cannot provide official documentary evidence of the family relationship, the Member States shall take into account other evidence, to be assessed in accordance with national law, of the existence of such relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.
 - ▶ By way of derogation from Article 8, the Member States shall not require the refugee to have resided in their territory for a certain period of time, before having his/her family members join him/her.

UNACCOMPANIED MINORS

- ▶ 1. As soon as possible after the granting of international protection Member States shall take the necessary measures to ensure the representation of unaccompanied minors by a legal guardian or, where necessary, by an organisation responsible for the care and well-being of minors, or by any other appropriate representation including that based on legislation or court order.
- ▶ 2. Member States shall ensure that the minor's needs are duly met in the implementation of this Directive by the appointed guardian or representative. The appropriate authorities shall make regular assessments.
- ▶ 3. Member States shall ensure that unaccompanied minors are placed either:
 - ▶ (a) with adult relatives; or
 - ▶ (b) with a foster family; or
 - ▶ (c) in centres specialised in accommodation for minors; or
 - ▶ (d) in other accommodation suitable for minors.
- ▶ In this context, the views of the child shall be taken into account in accordance with his or her age and degree of maturity.

UNACCOMPANIED MINORS

- ▶ 4. As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.
- ▶ 5. If an unaccompanied minor is granted international protection and the tracing of his or her family members has not already started, Member States shall start tracing them as soon as possible after the granting of international protection, whilst protecting the minor's best interests. If the tracing has already started, Member States shall continue the tracing process where appropriate. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis.
- ▶ 6. Those working with unaccompanied minors shall have had and continue to receive appropriate training concerning their needs.



UNACCOMPANIED MINORS

- ▶ If the refugee is an unaccompanied minor, the Member States:
 - ▶ (a) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a);
 - ▶ (b) may authorise the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.

PRACTICAL CASES

EDUCATION AND PRACTICE OF SPORT. (Melilla)

- ▶ FACTS:
 - ▶ About 250 children between 6-16 with no right to schooling in Melilla.
 - ▶ Spanish sport Law does recognize only the right of practice sport for Spanish citizens and legal residents.

- ▶ POSSIBLE ACTIONS.
 - ▶ Demands before Courts.
 - ▶ Complain before the EU Commission.
 - ▶ Complain EU and National Ombudsmen.
 - ▶ Complain before CRC (UN).



PRACTICAL CASES

► DETERMINATION OF AGE

- **FACTS:** Determination of the age by the wrist of the minor. Considered non valid by experts. Migrants born January 1st.

POSSIBLE ACTIONS.

- Demand before Court.
- Decisions of the CRC.



13 noviembre 2023

EXTRANJERISTAS EN RED

ENCUENTRO VIRTUAL 17 HS a 19:30 HS



SESION 17 HS

"LUCES Y SOMBRAS DE LA PROTECCIÓN TEMPORAL DE LOS UCRANIANOS"

**LYLIYA
MYKOLAVIV KMIT**

**ABOGADA
PRESIDENTE DE LA
ASOCIACIÓN CON
UCRAINA**

SESION 18HS

"LA SITUACIÓN EN EL ESPACIO SCHENGEN"

**FRANCISCO JAVIER
CONDE MARTINEZ DE
IRUJO**

**SUBDIRECTOR GENERAL
DE ASUNTOS DE JUSTICIA
E INTERIOR**

→ **ENTRAR ZOOM REUNIÓN**

[HTTPS://US02WEB.ZOOM.US/J/86774321233?](https://us02web.zoom.us/j/86774321233?pwd=ALLFBEQ5ETJXTODMB2LNUZMYUOGRDZ09)

PWD=ALLFBEQ5ETJXTODMB2LNUZMYUOGRDZ09

ID DE REUNIÓN: 867 7432 1233

CÓDIGO DE ACCESO: 183863



THANK YOU VERY MUCH



Training of lawyers on European Law relating to vulnerable groups of migrants (TRALVU)

Yolanda Nieves

Migrant women and migrant LGBTI+

Barcelona, 10 November 2023



Co-funded the European Union



LGBTI asylum seekers are often at **risk of additional danger** because of their SOGIESC during their journey and upon arrival in the country where they seek asylum, which can take the form of **harassment, exclusion, sexual violence, or other forms of violence.**

Often but not always, they qualify as **vulnerable persons with specific needs in legal assistance, reception conditions, healthcare,** and others throughout the asylum process..

ILGA EUROPE



- At least **one in three women have been beaten, forced** to have sex or otherwise **abused**
- **More than half of women's murders** have been committed by their **partners**
- **More than 90 million** women have undergone **FGM**
- **60 million girls would have been born** in Asia if they had not had selective abortions.
- The **mass rape of women as a weapon of war.** DRC, Rwanda, Bosnia.

UN WOMEN

WOMEN AND LGTBI PEOPLE AS PARTICULAR SOCIAL GROUP

Group of persons who share a **common characteristic** which is **innate, unchangeable**, or which is otherwise **fundamental** to identity, conscience or the exercise of one's human rights, or **who are perceived as group by society** (UNHCR , Guidelines n° 2 · Membership of a Particular Social group)

EU QUALIFICATION DIRECTIVE

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

Particular Social Group: Innate Characteristic or a common background and distinct identity in the relevant country

Art 10 1.d) a particular social group might include a group **based on a common characteristic of sexual orientation.**

Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or **identifying a characteristic of such a group;**

Recital 30. For the purposes of defining a particular social group, issues arising from an **applicant's gender, including gender identity and sexual orientation,** which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation or forced abortion, **should be given due consideration** in so far as they are related to the applicant's well-founded fear of persecution.

EU LAW ASYLUM PROCEDURES DIRECTIVE

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection

ART 15(3) (a)

ensure that the person who conducts the interview is competent to **take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability;**

ART 24 According to which applicants for international Protection might be in **need of special procedural guarantees.**

Recital n.29: (Not limited) **gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence.**

EU RECEPTION DIRECTIVE

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection

Includes several provisions focusing on the **special reception needs of vulnerable asylum-seekers**



Committee of Ministers Recommendation CM/Rec(2010)5 to member states on measures to combat discrimination based on sexual orientation or gender identity: Contains specific recommendations on the right to seek asylum

Yogyakarta Principles (2006, YP +10 2017) Principle 23 - The right to seek asylum

YP+10 have extended the right to asylum to sex characteristics and gender expression

UNHCR Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity



Istanbul Convention ensures that its provisions are implemented without discrimination on the grounds of migrant status, refugee status or other status (Article 4, paragraph 3), gender-based asylum claims (art. 60 & 61)

UNHCR Guidelines on International Protection No. 1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/02/01)

GENDER

‘gender the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for men and women’ (Art 3(c) Istanbul Convention)

GENDER SENSITIVE

Policies and programmes that take into account the particularities pertaining to the lives of both women and men, while aiming to eliminate inequalities and promote gender equality, including an equal distribution of resources, therefore addressing and taking into account the gender dimension European Commission (1998). 100 Words for Equality: A Glossary of Terms on Equality between Women and Men.

CONVENTION TO PREVENT AND COMBAT VAW/DV (ISTANBUL CONVENTION)

Asylum seekers

- **Gender-based VAW recognised ground** for claiming asylum;
- **Gender-sensitive interpretation** of Refugee Convention grounds
- **Gender-sensitive reception conditions**
- **Gender-sensitive procedures**

Criminalises the following forms of VAW:

- Domestic violence: physical, sexual and psychological
- Sexual assault and rape
- Stalking
- Sexual harassment
- Forced marriage
- Female genital mutilation
- Forced abortion and forced sterilisation
- Tackles crimes in the name of so-called “honour”

Assessing Asylum Claims



Interview

Credibility

Evidence

Effective Remedy

Non Refoulement

PERSECUTION

LGBTI people flee their countries of origin for reasons unrelated or precisely because of their **SOGIESC**

Women may be persecuted:

- **as a woman** (e.g. raped) but for **reasons unrelated to her gender** (e.g. her membership of a political party),
- **not** persecuted in a manner **specific to her female identity** (e.g. beaten) but **because of her gender** (e.g. not wearing a veil),
- **as and because she is a woman** (e.g. female genital mutilation)

Grounds for persecution can be actual or imputed.

INTERVIEW

- Interviews must take account **cultural origin, gender, sexual orientation, gender identity or vulnerability**
- Maintain an **objective** approach / **no stereotypical**
- Use of **appropriate terminology**
- Ensure that **childcare** is also **available** during interviews.
- Ensure reports of human rights abuses are **not viewed through the lens of male experiences**
- Ensure the **presence of female asylum officers /interpreters**
- **Separate interviews** for women and men
- **Detect cases of gender-based** violence and **use gender-specific information about countries of origin**

CREDIBILITY

Late disclosure ≠ lack of credibility.

- **Fear** or distrust of authorities
- **Unawareness** of the possibility of claiming asylum
- **Language** barriers
- **Intimate nature** of many types of violence
- **Fear of the consequences** of such a disclosure
- Internalised feelings of **shame and stigma**;
- Effect of **post-traumatic stress** disorder or other mental health difficulty
- Being **tired or traumatised**

EVIDENCE

- Statement
- **NO medical testing**
- **NO detailed questioning as to the sexual practices**
- Focus on the real risk of persecution **not stereotypes**
- **COI lacking:** no automatic decision to deny the claim. LGBTI organisations question their quality, indicating that the sources often lack LGBTI-specific country information or that information is outdated.

NGOs COI key resource

- ILGA WORLD
- ILGA-EUROPE
- TGEU
- AI
- HRW
- LOCAL NGOS

- Women are more likely than men to have claims based on **persecution suffered in the private sphere**

EFFECTIVE REMEDIES

Effective remedies to contest the decision

- the decision must be adequately **motivated and respectful** of the specific procedural guarantees
- challenge the decision by way of effective remedies available at national level as well as of remedies available at the European level.



NON-REFOULEMENT

- Recognise **difficulties in fully disclosing** claims,
- **Ensure accelerated and non-suspensive procedures do not result in refoulement;**
- **Not be returned under any circumstances to any country life at risk or torture or inhuman or degrading treatment or punishment**

Specific needs

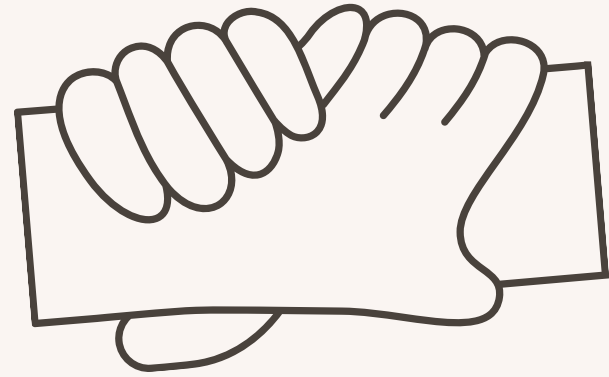


Safe Space

Health Care

Detention
Facilities /
Reception Centers

Access to justice



SAFE SPACE

- Ensure **access to asylum**
- Ensure **gender sensitive:**
- Ensure the **presence of female** asylum officers and trained, competent female interpreters
- No fear to reveal SOGIESC. Ask for **preferred pronouns**



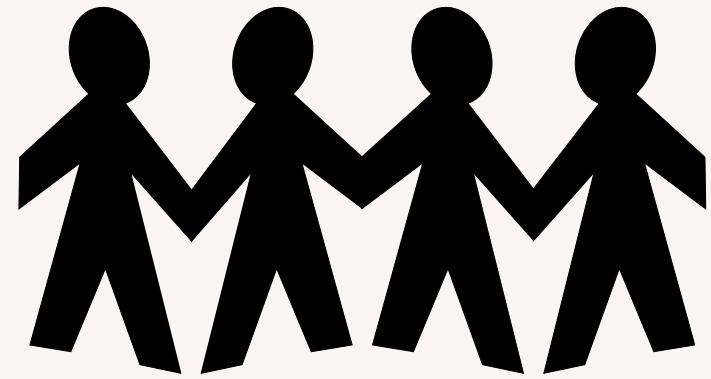
HEALTH CARE

- Provide **counselling, psychological and social support** and **health** care
- **Sexual and reproductive** health care and specific postrape care
- Ensure the same access for all women and girls as for the **general population**,
- Ensure girls are **free to decide** for themselves, **informed consent** is always obtained, and that they do **not require authorisation to access sexual and reproductive health services**;
- **Stigma free** access to medical treatment
- **Hormone Treatment** and **post-surgical care**



DETENTION FACILITIES/RECEPTION CENTERS

- Particular **risk of torture or ill- treatment**
- **Avoid** situations which may reproduce the **plight that forced the persons to flee**
- Ensure there are **sufficient and adequate reception and screening arrangements**
- Ensure **centres** are **located in areas where women are safe**
- **Relevant special needs:** mobility mental and physical health, alternative housing,
- Ensure the **presence of female** social workers, interpreters, police officers and guards in these facilities,



FAMILY LIFE

- Staying **together**
- Stable **same-sex couples to be treated as family**



ACCESS TO JUSTICE

- In accordance with the United Nations High Commissioner for Refugees' Comprehensive Protection Framework on Access to Justice for Sexual and Gender-Based Violence Victims and Survivors,
https://www.ohchr.org/sites/default/files/documents/HRBodies/CEDAW/AccessstoJustice/UNHCR_Annex.pdf
- Ensure that **sexual assaults are investigated and prosecuted**

BIBLIOGRAPHY

- Convention Relating to the Status of Refugees (1951) and its Protocol (1967) <https://www.unhcr.org/about-unhcr/who-we-are/1951-refugee-convention>
- Guidelines on International Protection: “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees <https://www.unhcr.org/media/guidelines-international-protection-no-2-membership-particular-social-group-within-context>
- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (the “Asylum Procedures Directive”); <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013L0032>
- Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (the “Reception Conditions Directive”); <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>
- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (the “Qualification Directive”); <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>
- Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210); <https://rm.coe.int/168008482e>
- Gender-based asylum claims and non-refoulement: Articles 60 and 61 of the Istanbul Convention (2019) - Louise Hooper <https://edoc.coe.int/en/violence-against-women/8301-gender-based-asylum-claims-and-non-refoulement-articles-60-and-61-of-the-istanbul-convention.html>
- Guidelines on International Protection No. 1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/02/01) ; <https://www.unhcr.org/media/guidelines-international-protection-no-1-gender-related-persecution-within-context-article-1a>
- European Council :EU measures to end violence against women <https://www.consilium.europa.eu/en/policies/eu-measures-end-violence-against-women/>
- Protecting women and girls in the asylum procedure <https://euaa.europa.eu/publications/protecting-women-and-girls-asylum-procedure-1>
- LGBTIQ applicants in asylum systems <https://euaa.europa.eu/publications/lgbtiq-applicants-asylum-systems>
- Jurisprudence on LGBTIQ applicants in international protection <https://euaa.europa.eu/publications/jurisprudence-lgbtiq-applicants-international-protection>
- Guide on the case-law of the European Convention on Human Rights – Rights of LGBTI persons https://www.echr.coe.int/documents/d/echr/Guide_LGBTI_rights_ENG
- Yogyakarta Principles (2006, YP +10 2017) <https://yogyakartaprinciples.org/>
- UNHCR Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity <https://www.unhcr.org/media/unhcr-guidelines-international-protection-no-9-claims-refugee-status-based-sexual-orientation>
- Committee of Ministers («CM») Recommendation CM/Rec (2010)5 to member states on measures to combat discrimination based on sexual orientation or gender identity, and the second comprehensive review of its implementation; <https://www.coe.int/en/web/sogi/rec-2010-5>
- PACE: Resolution 2048 (2015) - Discrimination against transgender people in Europe; <https://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=21736>
- PACE: Resolution 2191 (2017) - Promoting the human rights of and eliminating discrimination against intersex people; <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24232>
- PACE: Resolution 1728 (2010) - Discrimination on the basis of sexual orientation and gender identity; <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17853>
- PACE: Resolution 2417 (2022) - Combating rising hate against LGBTI people in Europe. <https://pace.coe.int/en/files/29712/html>

THANK YOU

CEA(R)
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al Refugiat a Catalunya

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Training of lawyers on European Law relating to vulnerable groups of migrants (TRALVU)

Natacha Fauveau Ivanovic

**Migrants with disability, elderly migrants and
migrants with diseases and trauma**

Barcelona, 10 November 2023



Co-funded the European Union

UN Convention on the Rights of Persons with Disabilities

Article 1

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

UN Convention on the Rights of Persons with Disabilities

Article 2

Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation

Elderly persons

No established definition of an elderly person within international law

According to UNHCR (2021 Emergency Handbook on Older Persons):

« An older person is defined by the United Nations as a person who is over 60 years of age »

Directive 2013/33/EU

Article 21 – Vulnerable Persons

Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the national law implementing this Directive.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Human Dignity (Article 1)

Human dignity is inviolable. It must be respected and protected.

Human dignity is mentioned:

- in Point 16 of the **Qualification Directive** ;
- in Point 60, Article 13.2 (d) and Article 25.5 of the **Procedure Directive** ;
- In Points 18 and 35 of the **Reception Standards Directive** ;
- In Point 24 and Article 29 of **Dublin Regulation**

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Article 21.1

Non-discrimination

Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

Non - Discrimination

Point 17 of the Qualification Directive:

With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party, including in particular those that prohibit discrimination.

Non-Discrimination is inherent to Asylum Law

Directive 2011/95/EU

Article 10 – Reasons for Persecution

d) Social Group

- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
- that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

Persons with Disability – Social Group

According to European Union Agency for Asylum (EUAA), persons with disabilities or diseases or any genetic disorder may constitute a social group

(EASO Guidance on Membership of a particular social group

https://euaa.europa.eu/sites/default/files/publications/EASO-Guidance-on_MPSG-EN.pdf)

Persons with Disability – Social Group

Innate characteristic

Persons living with a disease, a disability or a genetic disorder may be considered alternatively as sharing an innate characteristic or a common background that cannot be changed, depending on their individual circumstances.

Persons with Disability – Social Group

Distinct Identity

Discrimination and stigmatisation of persons living with disabilities or certain illnesses can take different forms, and result from laws, customs, traditions or myths. Depending on personal circumstances, discrimination may apply to all areas of social life, including access to education, employment or health, and more generally to the exercise of a wide range of civic, political, economic, social and cultural rights.

Directive 2011/95/EU

Article 20.3 – Content of International Protection

When implementing this Chapter, Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

Directive 2013/32/EU

Point 29

Certain applicants may be in need of special procedural guarantees due, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence. Member States should endeavour to identify applicants in need of special procedural guarantees before a first instance decision is taken.

Directive 2013/32/EU

Article 2 (d)

‘Applicant in need of special procedural guarantees’ means an applicant whose ability to benefit from the rights and comply with the obligations provided for in this Directive is limited due to individual circumstances.

Directive 2013/33/EU

Article 22

Assessment of the special reception needs of vulnerable persons

In order to effectively implement Article 21, Member States shall assess whether the applicant is an applicant with special reception needs. Member States shall also indicate the nature of such needs.

Persons with Special Needs

According to European Union Agency for Asylum (EUAA), persons with disabilities or diseases or any genetic disorder as well as elderly persons or persons who suffered serious trauma may have special needs

EASO Practical Guide: Personal interview

<https://euaa.europa.eu/sites/default/files/publications/EASO-Practical-Guide-Personal-Interview-EN.pdf>

Persons with Special Needs

Persons with Disabilities

The case officer should consider whether special care and support is required. The case officer should take into account the nature of the disability and act accordingly as different disabilities require different arrangements.

Persons with Special Needs

Elderly Persons

The case officer should consider whether special care and support is required. For example, the interviewing officer should consider whether special assistance can be provided to help the applicant if they have limited mobility. The case officer should use appropriate questioning techniques and where necessary offer regular breaks.

Persons with Special Needs

Persons with Mental Disorder

The case officer should consider whether the applicant has the necessary mental capacity to participate in an interview. in a situation where the applicant is unfit to be interviewed for any reason, the scheduled interview should be postponed or should not take place.

If the applicant is deemed to be fit and able to be interviewed, consideration should then be afforded as to whether any special practical measures can be taken in order to sensitively address the applicant's special needs.

Persons with Special Needs

Persons who suffered serious trauma

The case officer should be aware that a victim of such traumatic experiences may experience particular difficulties in recounting his/her application for international protection.

The case officer should be aware and accept that for some traumatic events the applicant may not be able or willing to provide details.

Directive n°2008/115/EC

Article 5

Non-refoulement, best interests of the child, family life and state of health

When implementing this Directive, Member States shall take due account of:

- a) Best interest of the child**
 - b) Family life**
 - c) the state of health of the third-country national concerned,**
- and respect the principle of non-refoulement.**

Lack of Health Care May Amount to Article 4 Violation

CJUE, 16 February 2017, n°C-578/16

In that context, it must be held that, in circumstances in which the transfer of an asylum seeker with a particularly serious mental or physical illness would result in a real and proven risk of a significant and permanent deterioration in his state of health, that transfer would constitute inhuman and degrading treatment, within the meaning of that article (par.74)

ECtHR Cases

Violations of Article 3 of the ECHR

D. v. United Kingdom, Application No. 30240/96, 2 May 1997

Paposhvili v. Belgium, Application no. 41738/10, 13 December 2016

UN Committee on the Rights of Persons with Disabilities (CRPD)

Z.H. v. Sweden, No. 58/2019, 6 September 2021

The CRPD noted that the State had failed to dispel doubts as to the risks the applicant could face in Afghanistan. Specifically, the States continually attempted to link the applicant's ill mental health to his asylum rejection and the reports used to show the necessary medical care was available in Afghanistan revealed limited availability of psychiatric care and access to medication.

The applicant's removal to Afghanistan would violate his right under Article 15 of the Convention (freedom from torture and inhuman and degrading treatment).



Training of lawyers on European Law relating to vulnerable groups of migrants (TRALVU)

Spyros Papalexis

Migrants with individual types of vulnerability

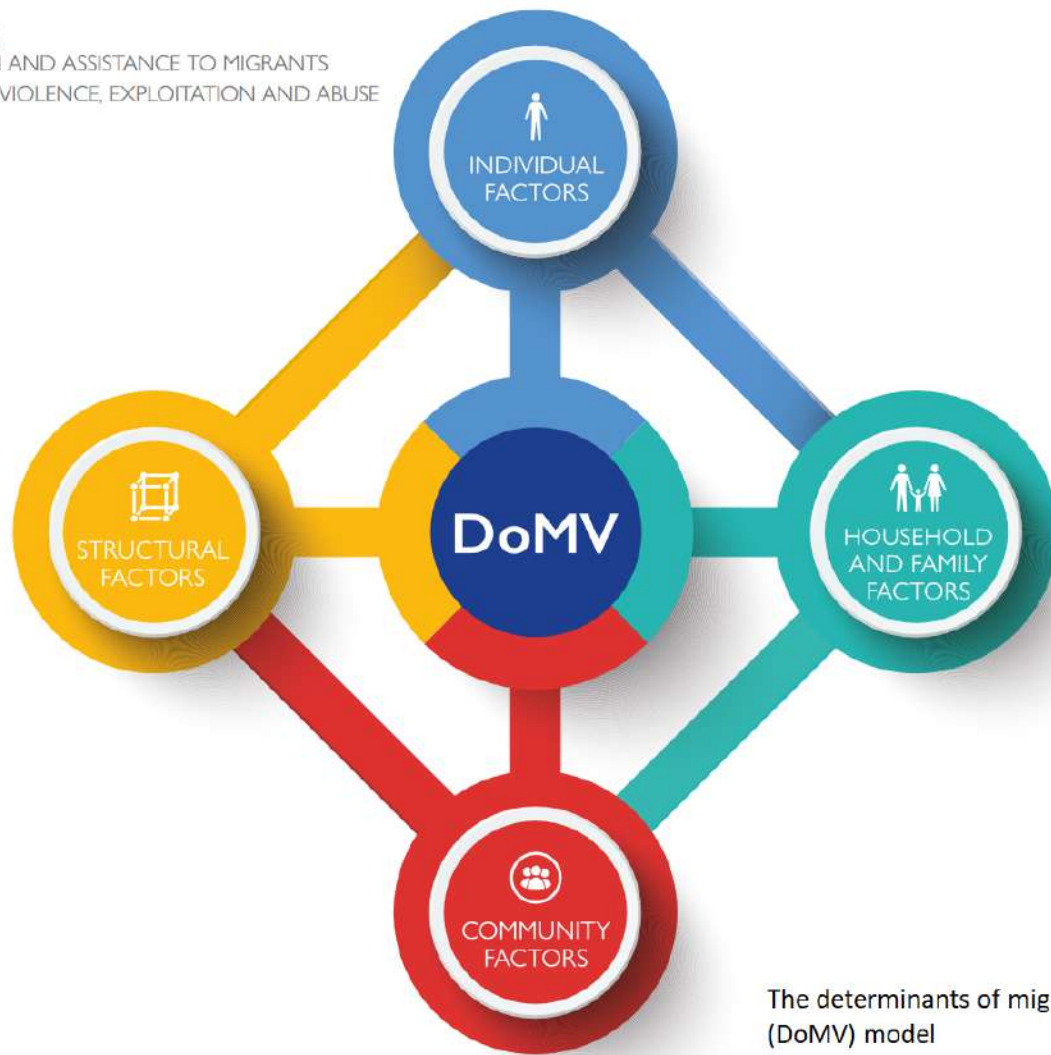
Barcelona, 10 November 2023



Co-funded the European Union

Definition

“Migrant vulnerable to violence, exploitation or abuse” means a migrant or group of migrants exposed to or with experience of violence, exploitation or abuse within a migration context and with limited capability to avoid, resist, cope or recover, as a result of the unique interaction of individual, household/family, community and structural characteristics and conditions.



The determinants of migrant vulnerability
(DoMV) model



INDIVIDUAL FACTORS

- Status in society
- Physical and biological characteristics
- Histories and experiences
- Beliefs and attitudes
- Individual emotional, psychological and Cognitive characteristics
- Physical and mental health and well-being



HOUSEHOLD & FAMILY FACTORS

- Family size
- Household structure
- Socioeconomic status
- Migration histories
- Employment
- Livelihoods
- Education levels
- Gender discrimination and family dynamics



COMMUNITY FACTORS

- Availability of quality educational opportunities
- Health care and social services
- Equal access to resources
- Livelihood and income-generating opportunities
- The natural environment
- Social norms and behaviors

STRUCTURAL FACTORS

- Histories of colonization and conflict
- Political systems
- Migration policies and governance
- Respect for human rights
- The rule of law

Interaction of Risk & Protective Factors

The overall **Vulnerability** of individual migrants and the households, families, communities and groups to which they belong is the result of the **Interaction of Multiple Risk & Protective Factors at Different Levels**

Panacea



Panacea was an anthropomorphic secondary goddess of Greek mythology, intertwined with the notion of healing (or herbal medicine) for any disease. Over time, Panacea came to be called an **ideal remedy to cure all diseases**.

Can law be a panacea for all cases?

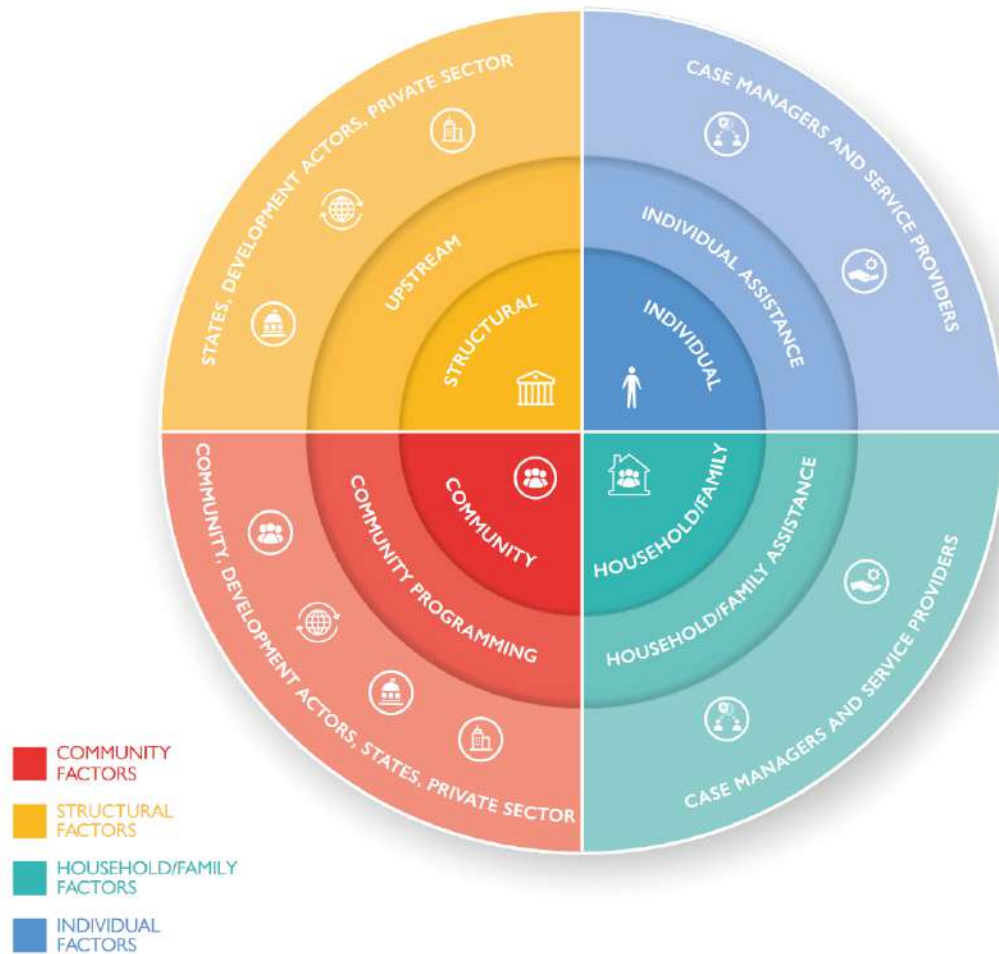


Figure 1.2

Programmatic responses and relevant players at each level



Programmatic Responses at the INDIVIDUAL LEVEL

- Safe shelter or accommodation
- Physical and mental health care
- Legal and consular assistance
- Education, skills development and training
- Livelihood and income-generating opportunities
- Opportunities for regularization of immigration status, family reunification, complementary protection, humanitarian and other legal statuses
- Challenges to immigration detention
- Return and reintegration services and support
- Counseling on safe migration practices



Programmatic Responses at the HOUSEHOLD/FAMILY LEVEL

- Family tracing and assessment
- Best interests assessments and determination for child migrants
- Alternative care arrangements for unaccompanied child migrants
- Responses to domestic or gender-based violence within the family
- Family reunification services
- Family counseling
- Livelihood and income-generating opportunities
- Education



Programmatic Responses at the COMMUNITY LEVEL

- Efforts to change community attitudes and beliefs about age, sex, race, ability, personal characteristics
- Efforts to encourage full and equal participation of boys and girls in education
- Public information campaigns about safe migration processes
- Capacity development programs
- Community development programs



Programmatic Responses at the STRUCTURAL LEVEL

- Improvements to national migration laws and policies
- The development and implementation of policies for safe and regular migration, including labor mobility
- the pursuit of pro-poor and equitable development policies
- Improvements to the rule of law and respect for human rights
- Barriers to discrimination against specific groups

PROPOSAL

for Migrants with Individual Types of Vulnerability

The setting up of a **Committee** which should:

- * Be Flexible, Broadminded, Open to challenges
- * Possess Broad Knowledge & Skills
- * Act with a Humanitarian Attitude

The Committee will be called upon, on a case-by-case basis, to cooperate with Multiple governmental and non-governmental organizations

Both the Composition of the Committee and the Number of its Members should Change to meet the requirements of each case

The members of the Committee could therefore be drawn upon lists of external partners in the appropriate specialties

PROPOSAL

for Migrants with Individual Types of Vulnerability

The submission of the relevant application could suspend the execution of administrative measures of temporary detention and forced return (deportation)

Applicants should place themselves at the absolute Disposal of the committee and remain voluntarily in Areas specially adapted for such cases

Applications for inclusion in the special Protection Regime should be examined in the Shortest possible time

THE 20 PRINCIPLES

IOM Principles and Guidelines on the human rights protection of vulnerable migrants

- 1: Ensure that human rights are at the center of efforts to address migration in all its phases, including responses to large and mixed movements.
- 2: Counter all forms of discrimination against migrants.
- 3: Ensure that migrants have access to justice.
- 4: Protect the lives and safety of migrants and ensure that all migrants facing risks to life or safety are rescued and offered immediate assistance.
- 5: Ensure that all border governance measures protect human rights.
- 6: Ensure that all returns fully respect the human rights of migrants and comply with international law.
- 7: Protect migrants from torture and all forms of violence and exploitation, whether inflicted by State or private actors.
- 8: Uphold the right of migrants to liberty and protect them from all forms of arbitrary detention. Make targeted efforts to end unlawful or arbitrary immigration detention of migrants. Never detain children because of their migration status or that of their parents.
- 9: Ensure the widest protection of the family unity of migrants; facilitate family reunification, prevent arbitrary or unlawful interference in the right of migrants to enjoy private and family life.
- 10: Guarantee the human rights of all children in the context of migration, and ensure that migrant children are treated as children first and foremost.

THE 20 PRINCIPLES

IOM Principles and Guidelines on the human rights protection of vulnerable migrants

- 11: Protect the human rights of migrant women and girls.
- 12: Ensure that all migrants enjoy the highest attainable standard of physical and mental health.
- 13: Safeguard the right of migrants to an adequate standard of living.
- 14: Guarantee the right of migrants to work in just and favourable conditions.
- 15: Protect the right of migrants to education.
- 16: Uphold migrants' right to information.
- 17: Ensure that all responses to migration, including large or mixed movements, are monitored and accountable.
- 18: Respect and support the activities of human rights defenders who promote and protect the human rights of migrants.
- 19: Improve the collection of disaggregated data on the human rights situation of migrants while protecting personal data and the right to privacy.
- 20: Ensure human rights-based and gender-responsive migration governance.



**MIGRANTS WITH INDIVIDUAL TYPES
OF VULNERABILITY**