



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

Janine Silga

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

Dublin, 26 October 2023



Co-funded the European Union

Outline

- Introduction
 - The notion of ‘vulnerability’
 - Vulnerability in the European legal context
- The participation of Ireland in EU migration law instruments
- Migrants in vulnerable groups
 - Minors
 - Women
- Conclusion: Asylum seekers as a vulnerable group?

Introduction

- Vulnerability: A key dimension of European migration law
 - European Commission, 23 September 2020, Communication on a New Pact on Migration and Asylum, COM(2020) 609 Final
 - Council of the EU, 13 June 2023 Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management (General Approach)
 - Council of the EU, 13 June 2023, Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union (General Approach)
 - European Parliament, Report on the proposal for a regulation of the European Parliament and of the Council on asylum and migration management, A9-0152/2023
 - Council of Europe, the Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025)

Introduction

- Defining vulnerability
 - ‘...[A] universal, inevitable, enduring aspect of the human condition.’ (F. Ippolito and S. Iglesias Sánchez, 2015)
 - ‘Vulnerable people are defined as those who, due to reasons of age, gender, physical or mental state, or due to social, economic, ethnic and/or cultural circumstances, **find it especially difficult to fully exercise their rights before the justice system as recognised to them by law.** The following **may** constitute causes of vulnerability: **age, disability, belonging to indigenous communities or minorities, victimisation, migration and internal displacement, poverty, gender and deprivation of liberty.**’ (F. Ippolito and S. Iglesias Sánchez, 2015)
 - An **indeterminate** and **contextualised** concept.

Introduction

- No comprehensive definition of vulnerability in EU law
- Article 21 of Directive 2013/33 ('Receptions Conditions Directive')

'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.'

Introduction

- Vulnerable migrants in the European legal framework
 - Migrants who belong to ‘vulnerable groups’ (children, disabled people, women,...)
 - Migrants who are vulnerable because of their legal status (asylum-seekers, migrant workers in an irregular situation, ...)
 - ‘State bias’ (M.-B. Dembour, 2015)
 - ‘Statist assumption’ (C. Costello, 2016)
 - Migrants falling in both categories

The participation of Ireland in EU migration law instruments

- Protocol no. 21 on the position of Ireland (Title V of the TFEU on the Area of Freedom, Security and Justice)
 - The Common European Asylum System
 - Statutory asylum
 - Subsidiary protection
 - Temporary protection
 - ‘First-phase’ instruments
 - Directive 2004/83 (first ‘Qualification’ Directive)
 - Directive 2005/85 (first ‘Procedures’ Directive)
 - Directive 2001/55 (‘Temporary Protection’ Directive)

The participation of Ireland in EU migration law instruments

- Protocol no. 21 on the position of Ireland (Title V of the TFEU on the Area of Freedom, Security and Justice)
 - ‘Second-phase’ instruments
 - **Directive 2013/33 ‘Reception Conditions’ Directive (recast)**
 - Regulation 604/2013 (‘Dublin III’)
 - Substantial relevance of ‘second-phase’ instruments?
 - CJEU, 5 October 2023, *OFPRA (French Office for the Protection of Refugees and Stateless Persons) v SW* (Refugee Status of a stateless person of Palestinian origin), C-294/22, ECLI:EU:C:2023:733 (Article 12(1) of the ‘Qualification’ Directive)

The participation of Ireland in EU migration law instruments

- Other relevant instrument
 - Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
- But not...
 - Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification
 - Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities
 - 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
 - Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

Vulnerable groups of migrants

- Minors
 - Article 24 of the Charter of Fundamental Rights of the EU
 - ‘2. In all actions relating to children, whether taken by public authorities or private institutions, **the child's best interests must be a primary consideration**’.
 - ‘3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests’.
 - Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification
 - Article 5(5) of the Family Reunification Directive requires that: ‘When examining an application [for family reunification], the Member States shall have due regard to the **best interests of minor children**.’

Vulnerable groups of migrants

- Minors
- ‘Reception conditions’ Directive
 - Article 23 (minors)
 - **‘1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. Member States shall ensure a standard of living adequate for the minor’s physical, mental, spiritual, moral and social development’.**
 - ‘2. In assessing the best interests of the child, Member States shall in particular take due account of the following factors:
 - (a) family reunification possibilities;
 - (b) the minor’s well-being and social development, taking into particular consideration the minor’s background;
 - (c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;
 - (d) the views of the minor in accordance with his or her age and maturity’.

Vulnerable groups of migrants

- Minors
- ‘Reception conditions’ Directive
 - Article 24 (unaccompanied minors)
 - ‘1. Member States shall as soon as possible take measures to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of the representative. **The representative shall perform his or her duties in accordance with the principle of the best interests of the child, as prescribed in Article 23(2), and shall have the necessary expertise to that end.**
 - CJEU (Grand Chamber) of 12 November 2019, *Zubair Haqbin v Federaal Agentschap voor de opvang van asielzoekers*, C-233/18, ECLI:EU:C:2019:956 (para. 56)

Vulnerable groups of migrants

- Minors
- ‘Reception conditions’ Directive
- Article 11 (2) and (3) (detention of minors)
 - **‘2. Minors shall be detained only as a measure of last resort** and after it having been established that other less coercive alternative measures cannot be applied effectively. Such detention shall be for the shortest period of time and all efforts shall be made to release the detained minors and place them in accommodation suitable for minors. **The minor’s best interests, as prescribed in Article 23(2), shall be a primary consideration for Member States’.**
 - **‘3. Unaccompanied minors shall be detained only in exceptional circumstances.** All efforts shall be made to release the detained unaccompanied minor as soon as possible. **Unaccompanied minors shall never be detained in prison accommodation.** As far as possible, unaccompanied minors shall be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age. **Where unaccompanied minors are detained, Member States shall ensure that they are accommodated separately from adults’.**

Vulnerable groups of migrants

- Minors
- Article 6 and 28(4) of the **‘Dublin III’ Regulation** (Guarantees for minors and reference to article 11 of the Reception Conditions Directive)
 - ECtHR, *A.C. and M.C. v. France*, 4 May 2023 (Application no 4289/21)
- Articles 5, 10, 17 of Directive 2008/115 (‘Return Directive’ – **Not applicable in Ireland**)
- Article 17(5) Directive 2005/85 on age assessment (first ‘Procedures’ Directive)
 - ECtHR, *Darboe and Camara v. Italy*, 22 July 2022, Application no. 5797/11
 - **‘States’ interest in foiling attempts to circumvent immigration rules must not deprive foreign minors, especially if unaccompanied, of the protection their status warrants.** The protection of fundamental rights and the constraints imposed by a state’s immigration policy **must** therefore be reconciled.’ (para. 152)

Vulnerable groups of migrants

- Minors
- BUT...
 - ECtHR, *X and Others v. Ireland*, 22 June 2023, (Applications nos. 23851/20 and 24360/20) : Child benefit for families in ‘direct provision’
 - ECtHR, *Alleleh and Others v. Norway*, 23 June 2022, (Application no. 569/20)
 - ‘[T]he Court accepts that the domestic authorities were faced with a balancing of interests that had to be done in a situation where particularly weighty interests in immigration control supported the first applicant’s expulsion while at the same time an expulsion would impose considerable difficulties on the other applicants. **The Court also accepts that the domestic authorities, including the Supreme Court, sought to attend to the children’s interests in so far they could be reconciled with the public interest reasons in sanctioning the first applicant’s behaviour.**’ (para. 105)
 - Compare with: ECtHR, *Unuane v. the United Kingdom*, 20 November 2020 (Application no. 80343/17)

Vulnerable groups of migrants

- Women
 - **Recommendation CM/Rec(2022)17 of the Committee of Ministers to member States on protecting the rights of migrant, refugee and asylum-seeking women and girls** (Adopted by the Committee of Ministers on 20 May 2022 at the 132nd Session of the Committee of Ministers)
 - Council of Europe Convention on preventing and combating violence against women and domestic violence (**'Istanbul Convention'**)
 - Ireland (8 March 2019)
 - The EU (28 June 2023)

Vulnerable groups of migrants

- Women
- ‘Istanbul’ Convention
 - Article 59 – Residence status (stability of residence for victims of domestic violence)
 - Article 60 – Gender-based asylum claims (gender-based violence against women as a form of persecution; gender sensitive asylum procedures)
 - Article 61 – Non-refoulement
 - ‘Parties shall take the necessary legislative or other measures to ensure that victims of violence against women who are in need of protection, **regardless of their status or residence**, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.’

Vulnerable groups of migrants

- Women
- Pending cases before the CJEU
 - C-621/21, *WS v Intervyuirasht organ na DAB pri MS* (Opinion of Advocate General Richard de la Tour delivered on 20 April 2023): Relevance of the ‘Istanbul’ Convention
 - C-646/21, *K and L v Staatssecretaris van Justitie en Veiligheid* (Opinion of Advocate General Collins delivered on 13 July 2023) : Women identifying with EU values on gender equality
 - [UN High Commissioner for Refugees (UNHCR), Submission by the Office of the United Nations High Commissioner for Refugees in case numbers 201701423/1/V2, 201704575/1/V2 and 201700575/1/V2 before the Council of State, 28 February 2018, available at: <https://www.refworld.org/docid/5c001b0a4.html>]
 - [ECtHR, 20 July 2010, *N. v. SWEDEN* (Application no. 23505/09)]

Asylum Seekers as a Vulnerable Group?

- ECtHR, *M.S.S. v. Belgium and Greece*, 21 January 2011 (Application no. 30696/09)

The Court ‘attaches **considerable importance to the applicant’s status as an asylum-seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection (...).**’ (para. 251)

Asylum Seekers as a Vulnerable Group?

- Confirmation in ECtHR, *N.H. and Others v. France*, 2 July 2020 (Applications nos. 28820/13, 75547/13 and 13114/15)
 - ‘...[A]sylum-seekers may be regarded as vulnerable on account of everything they have been through during their migration and the traumatic experiences they may have endured previously (...) requiring the need to provide them with specific protection.’ (para. 162)
- But...
 - ECtHR, *M.K. and Others v. France*, 8 December 2022 (Applications nos. 34349/18, 34638/18 and 35047/18)
 - ECtHR, *Camara v. Belgium*, 18 July 2023, (Application no. 49255/22)

THANK YOU VERY MUCH FOR YOUR
ATTENTION!

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Barbara Egan

Migrant workers: trafficking and labour exploitation

Dublin, 26 October 2023



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Legal Aid Board

- Law Centre (Smithfield)

Free-phone: 1800 23 83 43

Phone Number: 01 646 9600

slc@legalaidboard.ie

- Law Centre (Cork North)

Free-phone: 1800 20 24 20

Phone Number: 021 455 16 86

lawcentrecorknorth@legalaidboard.ie

- Law Centre (Galway)

Free-phone: 1800 50 24 00

Phone Number: 091 562 480

lawcentresevillehouse@legalaidboard.ie



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Advice Services – Potential Victims of Human Trafficking



- Employment protection legislation (advice only)
- Information and advice about criminal trial process
- Information on compensation
- Information about voluntary repatriation
- Criminal matters related to the trafficking offence



The United Nations Convention against Transnational Organized Crime 55/25 15th November 2000.

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- It was presented to Member States
Palermo, Italy, in December 2000
- Palermo Protocol: The Protocol to
Prevent, Suppress and Punish
Trafficking in Persons Especially
Women and Children



Article 3(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;



ACTION

Recruitment

Transportation

Transfer

Harbouring

Receipt of Persons

MEANS

Use of force

Coercion

Abduction

Fraud

Deception

Abuse of Power

PURPOSE

Sexual Exploitation

Forced Labour

Slavery

Removal of Organs



‘Anti Trafficking Directive’

- Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.



- Article 2 — Offences concerning trafficking in human beings
- Article 3 — Incitement, aiding and abetting, and attempt
- Article 5- Liability of Legal Persons
- Article 8 — Non-prosecution or non-application of penalties to the victim
- Article 9 — Investigation and prosecution
- Article 11 — Assistance and support for victims of trafficking in human beings
- Article 12 — Protection of victims of trafficking in human beings in criminal investigation and proceedings
- Article 17 — Compensation to victims
- Article 18 — Prevention
- Article 19 — National rapporteurs or equivalent mechanisms
- Article 20 — Coordination of the Union strategy against trafficking in human beings

Article 5

1. Member states shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 2 and 3 committed for their benefit by any person acting either individually or as part of an organ of the legal person who has a leading position within the legal person, based on:
 - a) a power of representation of the legal person;
 - b) an authority to take decisions on behalf of the legal person; or
 - c) an authority to exercise control within the legal person.

Article 8

- Member states shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Articles 2 and 3.

Article 11

1. ‘Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA and in this Directive.
2. Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3

Impact Covid - 19

- Increase in the incidence of domestic violence.
- Curtailment of victim support services
- Accessibility of law enforcement
- Less visibility of workplace
- Law enforcement resources focusing on Covid compliance

Employers' Sanctions Directive

EU Directive 2009/52/EC-minimum standards on sanctions and measures against employers

September 2022 EU Commission proposals

- prohibit products made using forced labour including child labour, on the EU market.

This would cover all products available on the EU market, manufactured in the EU and worldwide.

- **Directive 2011/93/EU (the Child Sexual Abuse Directive)**
- **Directive 2012/29/EU (the Victims' Rights Directive)**

➤ United Nations Office on Drugs and Crime (UNODC)
December 2022

‘Conflict in Ukraine: Key evidence and risks of Trafficking
in Persons and Smuggling of Migrants’

Domestic Bodies

- HTICU Human Trafficking and Coordination Unit
(An Garda Síochána)
- HSE's Anti Human Trafficking Unit
- Legal Aid Board
- NGOs
- Customs
- NERA, the National Employment Rights Authority

Domestic Legislation

- Criminal Law (Human Trafficking) Act 2008
- Child Trafficking and Pornography Act 1998
- Criminal Law (Human Trafficking)(Amendment)Act 2013

Section 1 of the Criminal Law (Human Trafficking) Act 2008 contains the following definition of trafficking:

“trafficks” means, in relation to a person (including a child)—

- a) procures, recruits, transports or harbours the person, or
 - i. transfers the person to,
 - ii. places the person in the custody, care or charge, or under the control, of, or
 - iii. otherwise delivers the person to, another person,

- b) causes a person to enter or leave the State or to travel within the State,

- c) takes custody of a person or takes a person—
 - i. into one’s care or charge, or
 - ii. under one’s control,

Or

- d) provides the person with accommodation or employment.

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The second National Action Plan aims;

- Prevent trafficking in human beings;
- Identify, assist, protect and support victims of trafficking in human beings;
- Ensure an effective criminal justice response;
- Ensure that Ireland's response to human trafficking complies with the requirements of a human rights based approach and is gender sensitive;
- Ensure effective co-ordination and co-operation between key actors, both nationally and internationally;
- Increase the level of knowledge of emerging trends in the trafficking of human beings; and
- Continue to ensure an effective response to child trafficking.

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National Rapporteur on the Trafficking of Human Beings



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- October 2020 IHREC appointed National Rapporteur on Trafficking in Human Beings
- First report June 2022
- Second report September 2023.

International Assessment

- United States Department of State TIP report 2022 Ireland Tier 2
- Council of Europe's group of experts on Action Against Trafficking in Human Beings (GRETA) Third report September 2022

National Referral Mechanism (NRM)

- Identify victims of trafficking
- Facilitate their access to advice, accommodation and support

Competent Bodies

- Department of Justice Immigration Service
- Department of Social Protection
- HSE
- Tusla
- Department of Children, Equality, Disability, Integration and Youth
- International Protection Accommodation Services (IPAS)

Indicators of Trafficking

- Belief that they must work against their will
- Not having passport or travel documents
- Being bonded by debt
- Working excessively long hours
- Not having access to their earnings
- Movement is being controlled
- Being subjected to violence
- Threatened regarding immigration status
- Unfamiliar with language or the locality
- Substandard accommodation
- No days off

An Garda Síochána designation as:

- ‘Potential’ victim of human trafficking
- Higher ranking officer designation as ‘suspected’ victim of trafficking

Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking 7 June 2008:

- Recovery and reflection period of 60 days
- Temporary residence permission: period of 6 months
- Temporary residence permission for 3 years: change of status



HIGH RISK ENVIROMENTS

- Nair/hair and beauty salons
- Construction industry
- Hospitality industry
- Fishing industry
- Domestic work



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US Department of State

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- Trafficking for labour exploitation
- Generates \$50 billion annually involving 21 million men, women and children worldwide

Irish Times 8 December 2021

Conor Lally

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- ‘silently crying out for help as they do somebody’s nails or wash somebody’s car or take care of somebody’s children.’
- ‘we are passing victims of human trafficking on our streets on a daily basis.’

THE IRISH TIMES

EU Strategy on Combatting Trafficking in Human Beings (2021-2025) focuses on:

- Reducing demand that fosters trafficking
- Breaking the business model of traffickers through effective operational means against the criminal business model, tackling the culture of impunity by building capacity for a robust criminal justice response, as well as the digital business model of traffickers
- Protecting, supporting and empowering the victims with a specific focus on women and children
- Promoting international cooperation

NATIONAL RAPPORTEUR'S RECOMMENDATIONS

- The national coordination of the Anti Trafficking response
- Gender Specific approach
- Recommendations in relation to prosecutions and further offences
- Expansion of the assistance and support of victims of trafficking
- Screening of International Protection applicants for vulnerability to trafficking
- The provision of safe and appropriate accommodation
- Improved legal assistance
- Protection of victims in legal proceedings

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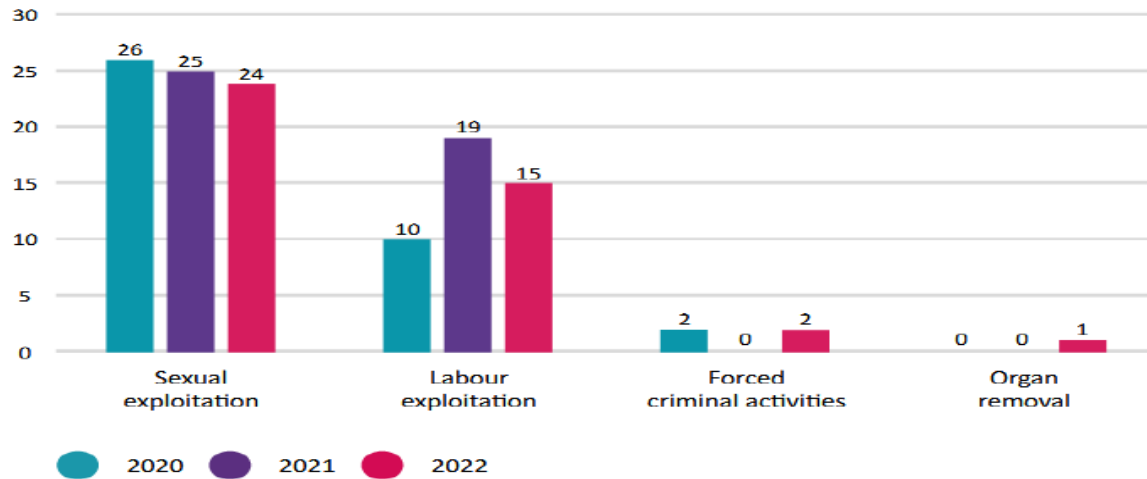
➤ **2022 : 42 cases officially reported in the National Referral Mechanism.**

15 were trafficked for labour exploitation

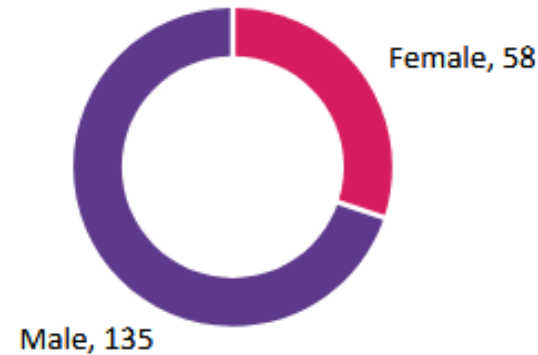
➤ **2013-2022 193 people were trafficked for Labour exploitation in Ireland**

135 were male and 58 female

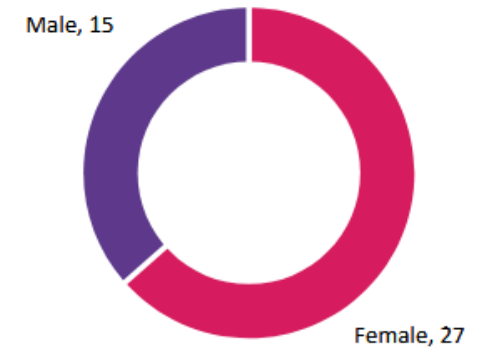
— **Diagram 12. Trends in types of exploitation over the last three years - 2020, 2021, 2022**



— **Diagram 5. Trafficking for labour exploitation in 2013-2022, by Gender**



— **Diagram 9. Victims of trafficking referred to the NRM in 2022, by gender**



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Upcoming developments which will enhance this are the -

- The Civil Legal Aid Review
- The Criminal Justice (Sexual Offences and Human Trafficking) Bill 2023
- The upcoming third National Action Plan to Combat Trafficking
- Review of the compensation for Victims of Crime

‘A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.’



Thank You





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

Liam Thornton

Migrant children and migrant families

Dublin, 26 October 2023

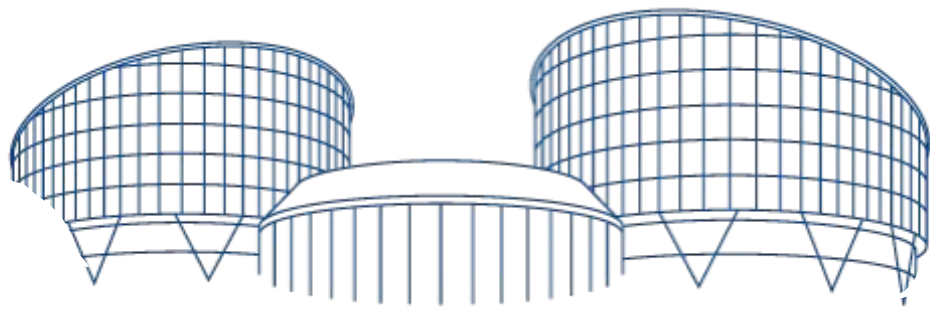


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Contribution Overview

- A. Children, Families and Vulnerability
- B. Claiming Protection: At the land borders of the European Union
- C. Reception and Rights
- D. On the (ir)relevance of European law?





AN COURT OF HUMAN RIGHTS
Tribunal des Droits de l'Homme



Interactions of differing legal systems/actors

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A. Children, Families and Vulnerability

Migrant Children and Migrant Families



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“[t]he treatment of
aliens...has become a
defining challenge to an
important aspect of the
moral identity of the
emerging European
polity and the process of
European integration.”

J.H.H. Weiler ([1992](#))

The Fragmented Concept of Vulnerability in (EU) Law

1. Accompanied Children: Child under 18 taken care of by an adult responsible for them—most often as part of biological family—but not always
2. Unaccompanied minors: Child under 18 without a legal or primary care-giver.
3. Vulnerable families: Within EU law, single parents only recognized as being vulnerable (along with those who are pregnant).



The best interests of the child & European Law

EU law uses language of minors, a person under the age of 18.

Stated to be of significance throughout the EU asylum acquis e.g. “...best interests of the child should be a primary consideration of Member States when applying...” e.g to aspects of the Dublin Reg., Procedures, Reception, Qualification Directive.

Unaccompanied children: special guarantees under EU asylum law.

Underpinned by EU Charter of Fundamental Rights

ECtHR: e.g. [Darbore v Italy](#) [132]-[157]- entry, reception (including detention), decision making etc.



Versus inherent vulnerability of person seeking asylum (ECtHR)

“...children, whether accompanied or not, are considered extremely vulnerable and have specific needs related in particular to their age and lack of independence, but also to their asylum-seeker status”

[A.D v Malta](#) (2023) [115] (references omitted).

But more broadly, asylum seekers are a “particularly vulnerable and underprivileged” population (e.g. Tarakel [97]). Families *likely* a specifically identified group within this subset, see e.g. [M.A v Hungary](#) (2023).

*In *M.A.* child applicants suffered Art. 3 (reception conditions) breach, but parents did not.





B. Claiming Protection at the Land Borders of the European Union

Migrant Children and Migrant Families



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International Refugee Law

Article 33(2) of the [Refugee Convention](#) prohibits the return (refoulement) of any refugee to a territory where his or her life was in danger on account of his or her race, religion, nationality or political opinion

[New York Declaration for Refugees and Migrants](#) (UNGA Resolution):

Persons who have crossed the border, or are seeking to cross the border are entitled “to due process in the assessment of their legal status, entry and stay”



A Human Right to Enter?

“[A] State is entitled, as a matter of well-established international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there.”

[Nunez v Norway](#) (ECtHR, 28 June 2011), para. 66.

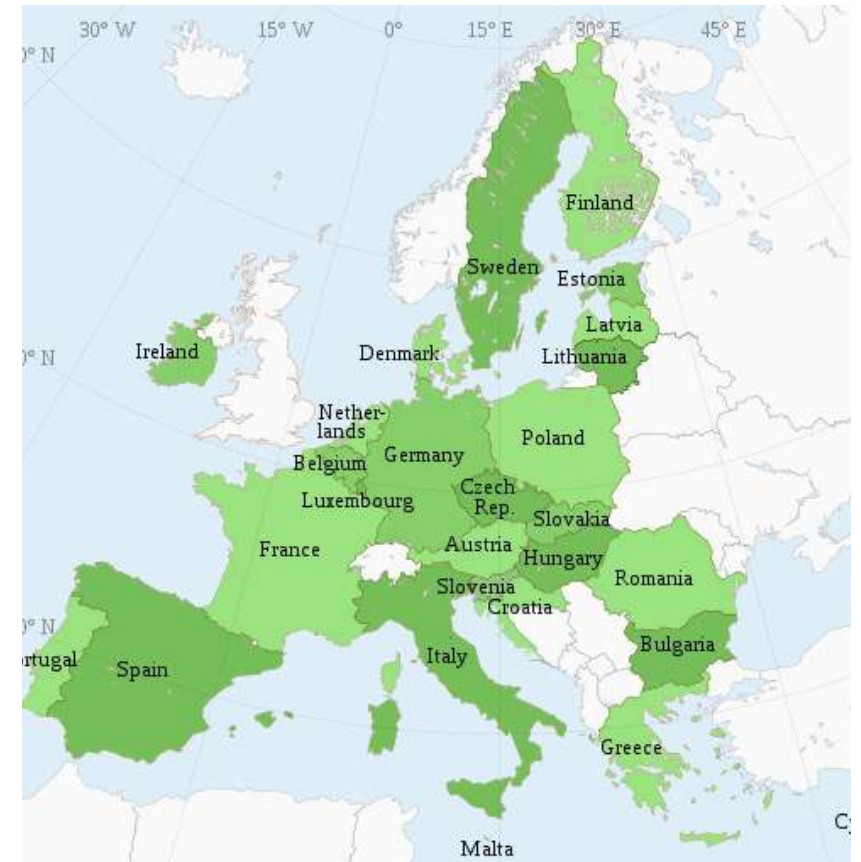


The EU Asylum Acquis

Obligations relating to non-refoulement, [Art. 19\(2\)](#) European Union Charter of Fundamental Rights, as confirmed Case C-369/17, [Shajin Ahmed](#), CJEU 2018, para 40.

At (EU) external borders and transit zones:

“...the right to an effective remedy and in the principle of non-refoulement must be guaranteed by affording the applicant for international protection the right to an effective remedy which has automatic suspensory effect, before at least one judicial body...”



EU & ECtHR Law

Procedures Directive

Border procedures

ECHR not protecting 'as such' a right to claim protection, but non-refoulement obligations emerge once application is made.

A 'right' to claim asylum? – functional jurisdiction

For a much more detailed explanation of law in this arena see, OSCE & Thornton, *Urgent Draft Opinion* ([September 2021](#)).

See e.g. [M.K. v Poland \(ECtHR\)](#)

Families sought to seek protection on Belarus-Polish border.

Main concern is to assess whether effective guarantees existed at domestic level to ensure protection against arbitrary refoulement that would breach Art. 2/3 of the Convention.

Breach of Article 3, Article 13 of the Convention, and Article 4, Protocol 4- why?

More recently, see: [T.Z and others v Poland](#) (October 2022).



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

See further:

- [*S.S and others v Hungary*](#) (ECtHR, 2023) and case-law cited therein- Removal of two migrant families to external side of Hungarian border fence with Serbia amounting to expulsion
- [*Commission v. Hungary*](#) (CJEU 2021)
- [*R.R. and others \(Iran and Afghanistan\) v Hungary*](#) (ECtHR 2021)

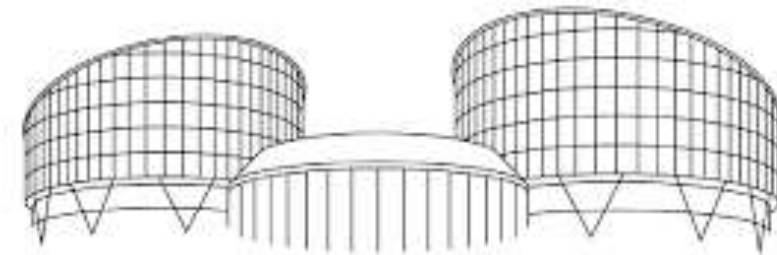
Rule 39(1) of the Rules of ECtHR

Duty judge may indicate to the parties any interim measure which they considers should be adopted in the interests of the parties or of the proper conduct of the proceedings.

State against whom interim measures are applied, are obliged to follow these measures

Select ECtHR Interim Measures granted in relation to the Belarus border situation

1. [*A.S. and others*](#): Interim measures (provision of food/water, no pushback to Belarus if on Lithuanian territory) not continued as A.S and others granted access to Lithuania status determination processes.
2. [*Ahmed and Others*](#): Six adults and five children. Interim measures (like above) not continued as A.S and others granted access to Latvian status determination processes.



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME



Collective Expulsion of Aliens

Article 4 of Protocol 4 states, 'Collective expulsion of aliens is prohibited.'

Individual expulsion measures in no way violate the Convention, unless a State has not assessed arguments relating to refoulement.

[Čonka v Belgium](#) ECtHR, 2002.

e.g. *MH and Others v. Croatia* (ECtHR 2021)

- (1) Did the applicants have access to legal pathways to enter a State to claim protection?
- (2) Did the applicants have 'cogent reasons' for entering the State irregularly?
- (3) Was there any *ordre public*/public safety issues with the applicants' entry?
- (4) If applicants did not have legal pathways to entry, and since they had 'cogent reasons' for entering a State in an irregular manner, then for State to show they did not collectively expel applicants.



Training of Lawyers on EU Law relating to Asylum and Immigration 3

Application of these tests in *M.H.*

Statements by the applicants re push-back/collective expulsions corroborated by:

- (a) the extensive reporting by civil society on the conduct of Croatian authorities concerning pushbacks at the Croatian-Serbian border;
- (b) Complete absence of evidence by Croatia refuting the applicants' claims, despite where applicants entered being covered in CCTV cameras, most which also had sound);
- (c) No issues akin to N.D. and N.T arose (public order/safety)
- (d) No effective and genuine access to legal pathways were available to the applicants.
- (e) Violation of Art. 2 (due to death of child), Art. 3 and Article 4 Protocol 4 ECHR had occurred.



C. Reception

Migrant Children and Migrant Families





“...asylum seekers should be granted a temporary status, allowing them to enjoy economic, social and cultural rights without discrimination.” (para. 11)

BUT....??????????????????

“Any distinction, exclusion, restriction or preference or other differential treatment on grounds of nationality or legal status should therefore be in accordance with the law, pursue a legitimate aim, and remain proportionate to the aim pursued. A difference in treatment that does not satisfy such conditions should be seen as unlawful discrimination prohibited under article 2, para. 2 of the Covenant.” (para. 5)

Source: [ICESCR Committee 2017](#)

European Union Law: Recast Reception Directive (2013)

Recognition of a dignified standard of living (Preamble recital 9 and 10 RRD).

Highly circumscribed freedom of movement rights (Article 7 RRD)

The right to be provided with some form of shelter (Article 18 RRD)

Material reception conditions including monetary allowances (Article 17 & 18 RRD)

A circumscribed right to education for children under 18 (Article 14 RRD).

Protection of particularly vulnerable asylum seekers (Article 21-25 RRD)

A limited right to work (Art. 15 RRD)

Restrictions on detention (Arts. 8-11).



European Union law

Synthesis of Key Legal Principles I (from EU & ECHR Case Law)-Reception Directive

- i. **Neither the ECHR nor the EUCFR** provides that every person in a State must be provided with a home or a **certain standard of living**
- ii. By their status as 'asylum seekers', such persons are **inherently vulnerable**, however special recognition of vulnerability of children and families
- iii. European Union law provides under the **Reception Conditions Directive and its Recast Directive**, that as asylum seekers, there are **certain minimum rights** that must be provided: these include, a right to basic shelter, a right to food; a right to an adequate standard of living, although not necessarily a standard of living enjoyed by citizens or other lawful residents; and a right of children to access education. The EU has decided to provide this 'high level' of socio-economic rights protection
- iv. European Union law provides under its Procedures Directive (and its Recast) that those seeking protection must have their **claims for protection determined fairly**
- v. A State **not complying** with the Reception Conditions Directive (or its Recast) or the Procedures Directive (or its Recast) does **not automatically mean that an asylum seeker is being or will be subject to inhuman and degrading treatment** if returned to the first EU country of entry

Synthesis of Key Legal Principles II

- vii. That 'real risk' may emerge from **systemic deficiencies** in reception systems in States and/or a real risk of an Art 3 ECHR/Article 4 EUCFR breach if returned under Dublin
- viii. What is needed to prevent removal, is for an asylum seeker to show that she **faces a real risk of individual harm to their human rights under the Charter and/or ECHR**
- ix. There may be **heightened vulnerability of a particular asylum seeker**, including children and families, over and above the vulnerability of being an asylum seeker per se
- x. In a Dublin transfer situation, a State **may have to gain guarantees** on reception conditions, prior to the transfer being effected.

M.T. v The Netherlands (2021)

While Italy may not fully comply with the EU law on reception rights for persons seeking asylum (para 58), the facts of this case **did not disclose...**

“...if transferred to Italy with her children, whether looked at from a material, physical or psychological perspective, disclose a sufficiently real and imminent risk of hardship that is severe enough to fall within the scope of Article 3.”



Separation of unaccompanied minor from his siblings, in different reception centres in Greece did not breach Art 8 ECHR, as Greece has legitimate basis to segregate unaccompanied minors by age and sex- where contact had been maintained [A.J. v Greece](#) (2022)

Limited applicability of concepts of family life & rights of the child to augment reception conditions beyond minima

Via [AIDA and other reports](#), reception rights **continue to be violated** in many EU member states to varying degrees





Something to think about: The 'dark side' of the use of 'vulnerability' by States

Using vulnerability of children/families to justify breach of reception conditions under European Union/ECHR law for others e.g. [N.H. v France](#) (ECtHR, 2020), [Belgium](#) (ECtHR, Interim Measure 2022)



C. Concluding Remarks: The Ir(relevance) of European Law?

Migrant Children and Migrant Families





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

Natacha Fauveau Ivanovic

Migrant women and migrant LGBTI+

Dublin, 26 October 2023



Co-funded the European Union

Charter of Fundamental Rights

Article 1 – Human Dignity

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

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.

Article 23 - Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

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.

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 15.3 (a) – Personal Interview

Members State shall

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;**

Directive 2011/95/EU

Point 30

It is equally necessary to introduce a common concept of the persecution ground ‘membership of a particular social group’. 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.

Directive 2011/95/EU

Article 9.2 – Acts of Persecution

a) acts of physical or mental violence, including acts of sexual violence;

e) acts of a gender-specific or child-specific nature.

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.**

Directive 2011/95/EU

Article 10 – Reasons for Persecution

Depending on the circumstances in the country of origin, a particular social group might include **a group based on a common characteristic of sexual orientation**. **Sexual orientation** cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. **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;**

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.**

CJUE Case n°199/12, 200/12 &201/12 (XYZ)

In that connection, it is important to state that requiring members of a social group sharing the same sexual orientation to conceal that orientation is incompatible with the recognition of a characteristic so fundamental to a person's identity that the persons concerned cannot be required to renounce it.

Therefore, an applicant for asylum cannot be expected to conceal his homosexuality in his country of origin in order to avoid persecution.

CJUE Case n°199/12, 200/12 &201/12 (XYZ)

It follows that the person concerned must be granted refugee status, in accordance with Article 13 of the Directive, where it is established that on return to his country of origin his homosexuality would expose him to a genuine risk of persecution within the meaning of Article 9(1) thereof. **The fact that he could avoid the risk by exercising greater restraint than a heterosexual in expressing his sexual orientation is not to be taken into account in that respect.**

EUAA Guidances

Practical guide: Personal interview (2014)

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

Guidance on membership of a particular social group (2020)

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

Survey on Sexual Orientation and Gender Identity (2022)

https://euaa.europa.eu/sites/default/files/publications/2022-06/Survey_sexual_orientation_gender_identity_EN.pdf



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

Antonis Seroff

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

Dublin, 26 October 2023



Co-funded the European Union

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



Redrafting of the Refugee Law of 2000 (No. 6(I) of 2000)



OFFICE OF THE LAW COMMISSIONER
REPUBLIC OF CYPRUS

1. EU Directives
2. CoE Conventions
3. ECtHR Judgements



European Parliament

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Part I. Deconstructing the Question

Definitions



Definition of “*Migrant*”

Applicants and
Beneficiaries of
International Protection
under the 1951 Refugee
Convention

“Defines a *migrant*: as any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of

- (1) the person’s legal status;
- (2) whether the movement is voluntary or involuntary;
- (3) what the causes for the movement are;
- or (4) what the length of the stay is.”

Vulnerable Persons



Article 21 of the **Reception Conditions Directive (2013/33/EU)** provides us with a **non-exhaustive minimum catalogue** of persons which in any case have to be considered vulnerable.

*“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.”*

Persons with Disabilities

- **Article 1** Convention on the Rights of Persons with Disabilities (**CRPD**): “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”.



**United
Nations**

Elderly Persons

- No established definition of an **Elderly Person** within International Law.
 - **United Nations High Commissioner for Refugees (UNHCR) 2021 Emergency Handbook on Older Persons** states that: “An older person is defined by the United Nations as a **person who is over 60 years of age**.
 - However, the psychological and psychosocial toll of traumatic experiences, combined with poor nutrition and exposure to disease, **can cause refugees and IDPs to ‘age’ faster than settled populations**. As a consequence, many challenges associated with old age will be apparent in refugees and IDPs who are under 60.”



**EMERGENCY
HANDBOOK**

Persons with Trauma

In accordance to the American Psychological Association **trauma is** “any disturbing experience that results in significant fear, helplessness, dissociation, confusion, or other disruptive feelings intense enough to have a long-lasting negative effect on a person’s attitudes, behavior, and other aspects of functioning. Traumatic events include those caused by human behavior as well as by nature and often challenge an individual’s view of the world as a just, safe, and predictable place.”

Examples of traumatic events include exposure to **war-related violence, sexual assault, torture, incarceration, genocide** and the **threat of personal injury and annihilation.**

Persons with Trauma



1. WHO suggests that among **people who have experienced war or other conflict in the previous 10 years, one in 11 (9%)** will have a moderate or severe mental disorder.
2. One person in five (**22%**) **living in an area affected by conflict** is estimated to have depression, anxiety **post-traumatic stress disorder**, bipolar disorder or schizophrenia.
3. Long waiting times for decisions on applications for international protection and placement in detention facilities **increase the risk of prolonged problems or developing mental health problems.**

Part II. Common European Asylum System

A legal and policy framework developed to guarantee harmonised and uniform standards for people seeking international protection in the EU

- 1. Qualification
Directive (Directive
2011/95/EU)**
- 2. Asylum Procedures
Directive (Directive
2013/32/EU)**
- 3. Reception
Conditions
Directive (Directive
2013/33/EU)**

Medical Approach

versus

**Social and Human-
Rights based
approach**

- **Overarching Question**: whether the **CEAS** views disabled migrants, elderly migrants and migrants with diseases and trauma as subjects and right-holders (thus autonomous persons who participate actively in society on an equal basis with others) (***Social and Human-Rights based approach***) or if they are viewed as patients, passive welfare receivers (***Medical Approach***).
- Which approach was applied by the legislator in the following:
 - **Qualification Directive (2011/95/EU)**
 - **Reception Conditions Directive (2013/33/EU)**

**Disability Sensitive
Reading of the
Qualification
Directive
(2011/95/EU)**

Can a Migrant rely on his Disability in order to qualify as a Refugee under the Qualification Directive?

- In accordance to **Article 2 (d)** of the **Qualification Directive** to qualify for refugee status an asylum seeker must have “well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group”.

“Membership of a particular social group”

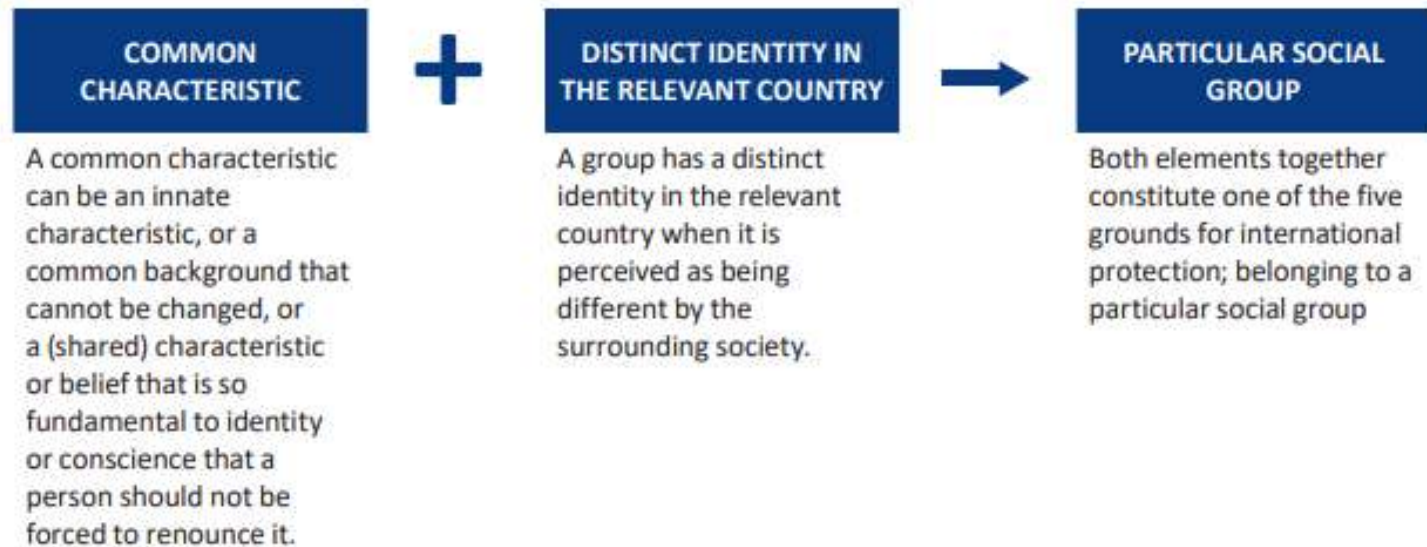
- Claims of persecution for reason of an applicant’s existing disability may fall under the ground of “membership of a particular social group”.
- Persons with disabilities are widely recognised as a protected group in international law.
- Many countries have passed legislation in which disability is recognised as a particular social group (Refugees Act 1998 in South Africa).

Article 10 (1) (d) of the Qualification Directive: A group shall be considered to form a particular social group where in particular:

1. Disability Sensitive Reading of the Qualification Directive (2011/95/EU)

2. Article 10 (1) (d) of the Qualification Directive (2011/95/EU)

3. “Membership of a particular social group”



1. Disability
Sensitive Reading
of the Qualification
Directive
(2011/95/EU)

2. Article 10 (1) (d)
of the Qualification
Directive
(2011/95/EU)

3. “Membership of
a particular social
group”

EASO Guidelines regarding the **Common Characteristic** state that “*certain mental and physical disabilities could constitute an innate characteristic. Persons who are born blind, deaf, or who have certain developmental disorders, could be some examples. Persons living with other disabilities could be understood to share a common background that cannot be changed. In particular, disabilities caused by a war or its remnants could also fall within this category*”.

Regarding the **Distinct Identity**, the **EASO Guidelines** stated that: “*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*”.

1. Disability Sensitive
Reading of the
Qualification Directive
(2011/95/EU)

2. “Membership of a
particular social group”

3. Article 10 (1) (d)
Qualification Directive
(2011/95/EU)



Cumulative Approach

- Referring to the **EASO Guidance on membership of a particular social group** it must be noted that **both such elements must be met**. Confirmed in the **CJEU judgment of the case X, Y and Z** ‘According to that definition, a group is regarded as a ‘particular social group’ **where, inter alia, two conditions are met.**
- However, certain academics argue that the requirement of meeting both elements of a particular social group cumulatively **may reduce the possibilities for asylum seekers to obtain protection.**
- Namely, it is stated that “Indeed, persons with mental and intellectual disabilities who share an innate characteristic, but are socially invisible, **may be excluded from international protection.** To the same extent, those individuals who are perceived as being different by society, but do not share an immutable or innate characteristic, **will not be considered as eligible for asylum**”.
- This, reduces the chances of disabled asylum applicants to be considered eligible for International Protection.

1. Disability Sensitive Reading of the Qualification Directive (2011/95/EU)

2. Acts of Persecution: Article 9 Qualification Directive (2011/95/EU)

3. Omission of Disability in Article 9 Qualification Directive (2011/95/EU)

- Recognition of Refugee Status can only be found if there is also a **well-founded fear of persecution**.
- **Article 9 Qualification Directive (2011/95/EU)** provides for the level of severity required regarding the act of persecution whilst also providing various forms that an act of persecution may take including amongst others: acts of physical or mental violence including acts of sexual violence; denial of judicial redress resulting in a disproportionate or discriminatory punishment; acts of a gender-specific or child-specific nature.
- It must be noted that Disability **is not expressly mentioned** in the meaning of the acts and forms of persecution:

Such omission is “contrasted with the express reference to other protected characteristics such as age and gender (acts of a gender-specific or child-specific nature)”. This express omission of disability arguably reduces the chances of disabled migrants to be considered eligible for international protection.

1. Disability Sensitive Reading of the Qualification Directive (2011/95/EU)

2. Article 30 (2) Qualification Directive (2011/95/EU)

3. Express reference of Disabled People within the Qualification Directive (Article 30 (2))

4. Qualification Directive (2011/95/EU) seems to adopt the medical approach

Article 30 (2) Qualification Directive (2011/95/EU)

- Ensuring that “Member States shall provide, adequate healthcare, including treatment of mental disorders when needed, to beneficiaries of international protection who have special needs, such as **disabled people**”.

Qualification Directive (2011/95/EU) seems to adopt the medical approach

- The express reference to disabled persons only in regards to the provision of healthcare reinforces the notion that disabled persons are treated as patients (medical approach).
- This medical approach is further reinforced as seen above by the fact that the refugee claim of disabled migrants under the Qualification Directive is compromised (finding it difficult to satisfy the criteria of “particular social group” and “well founded fear of persecution”).
- Unequal treatment of disabled migrants in contrast to other applicants of international protection, reinforcing the approach that disabled migrants are welfare receivers and not autonomous right-holders.
- Call for express recognition of disabled people in the Qualification Directive shifting from the medical approach to the social and human rights based approach.

**Reception
Conditions
Directive
(2013/33/EU)
appears to adopt
the Social and
Human-Rights
based Approach**

- In contrast, the **Reception Conditions Directive (2013/33/EU)** appears to adopt the social and human-rights based approach (equal treatment).
- This is relied on the analysis of the following provisions of the Reception Conditions Directive:
 - **Article 21** Reception Conditions Directive (2013/33/EU) (General principle).
 - **Article 22** Reception Conditions Directive (2013/33/EU) (Assessment of the special reception needs of vulnerable persons).
 - **Article 19** Reception Conditions Directive (2013/33/EU) (Health care).

Article 21 Reception Conditions Directive (2013/33/EU)

(General principle)

Social and Human-
Rights based
Approach

Article 21 Reception Conditions Directive (2013/33/EU) (General principle)

“Member States shall take into account the specific situation of vulnerable persons such as...in the national law implementing this Directive.”

1. A **non-exhaustive minimum list** of persons which in any case have to be considered vulnerable.

2. Member States shall take into account the specific situation of vulnerable persons **“in the national law”**: Expressly refers to national law not national authorities **therefore this calls for binding law**. Proactive approach recognising migrants with disability, elderly migrants and migrants with diseases and trauma, as autonomous rights holders.

3. Member States shall take into account the specific situation of vulnerable persons **“implementing this Directive”** Thus, all the rights found in the Receptions Conditions Directive are intended to be adapted on **migrants with disability, elderly migrants and migrants with diseases and trauma** treating them on an equal basis with the other right holders within the Directive, indicating towards the **social and human-rights based approach**.

Article 22 Reception Conditions Directive (2013/33/EU)

(Assessment of the
special reception
needs of vulnerable
persons)

Social and Human-
Rights based
Approach

- **Article 22** of the Qualifications Directive (2013/33/EU) requires Member States to assess whether vulnerable persons have special reception needs. Once special needs are detected and assessed, Member States have to ensure that support ‘specifically designed to meet their special reception needs’ is provided to asylum seekers (Article 22(1) and recital 14).
- **Timeframe of assessment:** it is stated in article 22 (1) that it “should be imitated within a reasonable period of time after an application for international protection is made” however this is not limited to the start of the application procedure extending the obligation to address special reception needs later on “if they become apparent at a later stage in the asylum procedure”.
- Such accommodating principles seek to catch all instances of vulnerable **persons “especially those inflicted with trauma** given that certain vulnerabilities are detected later in the process as traumatised applicants and may not be forthcoming as to the experiences they have undergone”.
- Accommodating intention of the legislator indicates a shift towards the social and human-rights approach in regards to vulnerable persons.

Article 19 (2)
Reception
Conditions
Directive
(2013/33/EU)
(Health care)

Social and Human-
Rights based
Approach

- **Article 19 (2)** of the Reception Conditions Directive (2013/33/EU) provides that “Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed.”
- **Low threshold** allowing significant discretion to MS:
 - (1) “only necessary assistance”.
 - (2) “appropriate mental health care where needed”.
- However, it enables asylum seekers who have special reception needs namely, migrants with disability, elderly migrants and migrants with diseases and trauma to access medical or other assistance.
- Other assistance: This was argued “could be interpreted expansively, enabling a disabled asylum applicant to enjoy independent living arrangements under other assistance. Dependent on the standard applied in the respective member state”.

**Concluding
remarks
regarding the social
and human-rights
based approach
adopted by the
Reception
Conditions
Directive
(2013/33/EU)**

- **The Reception Conditions Directive (2013/33/EU)** adopts a social and human-rights based approach given that it treats **migrants with disability, elderly migrants and migrants with diseases and trauma** on an equal basis with all other right holders within the said Directive. This is premised on the textual interpretation of article 19, 21 and 22 of the Directive.
- The overarching intention of the Reception Conditions Directive (2013/33/EU) namely, “the provision of reception conditions (healthcare, shelter, education etc.) for asylum seekers across the EU is in itself more towards the medical approach given it deals with the provision of welfare to vulnerable persons”.
- Calling for the social and human rights approach on legal instruments such as the Qualifications Directive that deal with the qualification of the legal status of a migrant (providing effective equal treatment of a vulnerable migrant, sending out the message that the CEAS tools are truly adopting a social and human rights approach).

Part III. The Convention on the Rights of Persons with Disabilities (CRPD)

Prominent example of the social and human rights based approach

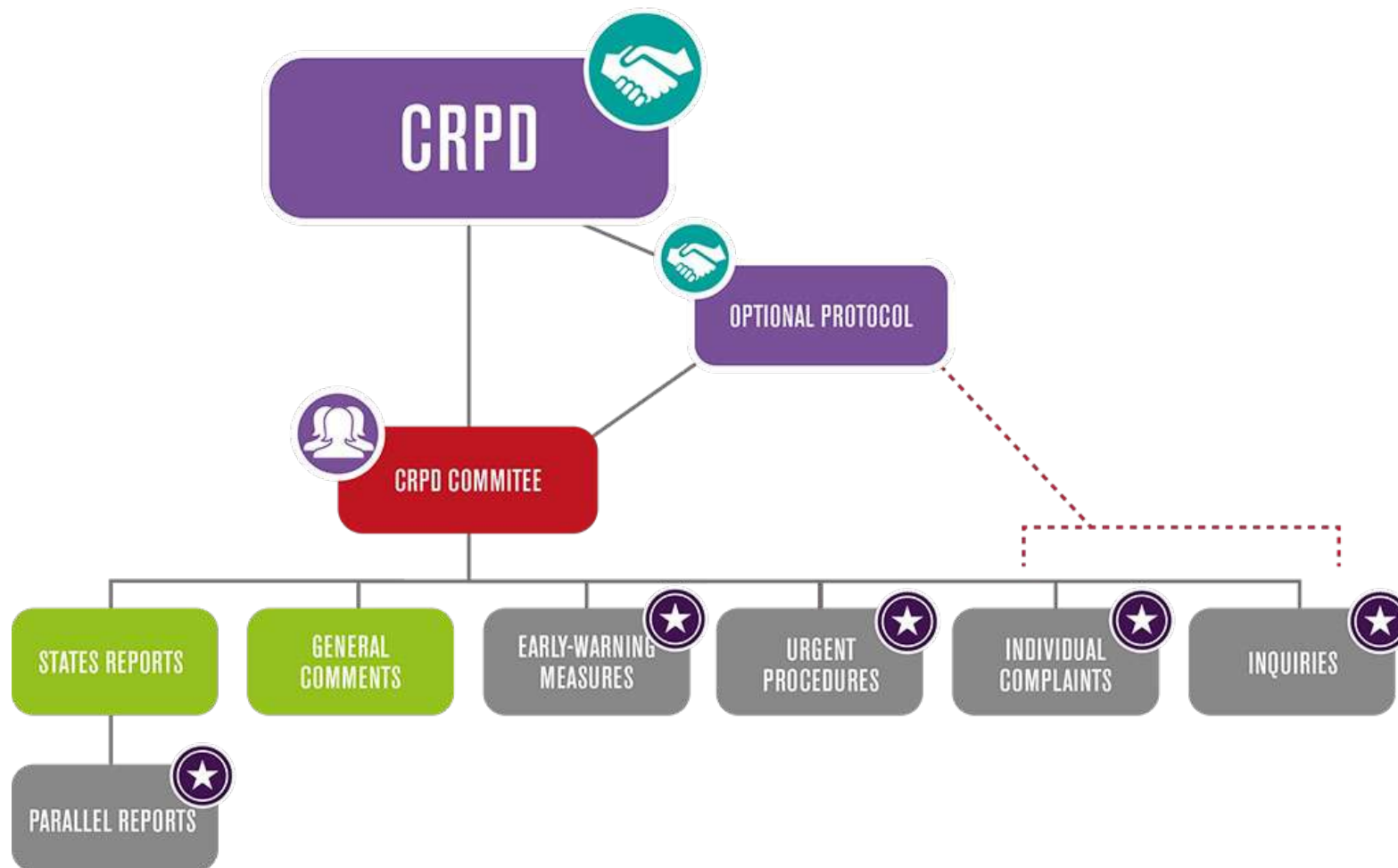
The Convention on the Rights of Persons with Disabilities (CRPD) 3 May 2008

The UN Committee on the Rights of Persons with Disabilities (Article 34 CRPD) monitoring implementation by States

State Reports (Article 35 CRPD) – giving effect to the CRPD

(Article 36 CRPD): Committee examines State reports and makes suggestions and general recommendations

CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)



The Convention on the Rights of Persons with Disabilities (CRPD):

EU Dimension

- “Mixed Agreement”: “the European Union and Member States are separate contracting parties and have concurring powers to conclude such agreements”.
- Entry into force for the EU (as a regional organisation): 22 January 2011: first time that the EU became party to an international human rights treaty.
- Furthermore, all EU Member States have signed and ratified the convention. 22 EU countries have also signed and ratified its optional protocol in January 2019.

The Convention on the Rights of Persons with Disabilities (CRPD):

Refugee Dimension

- No explicit reference to refugees and migrants with disabilities.
- Premised on the principle of universality and thus does not exclude applicants or beneficiaries of international protection or migrants in general (evinced from a textual interpretation):
- **Textual Interpretation CRPD:**
 - **Article 1 CRPD** states that the purpose of the Convention: “is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”.
 - **Preamble of the CRPD** which “Recalls the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world”.

The Convention on the Rights of Persons with Disabilities (CRPD):

Refugee Dimension

Textual Interpretation CRPD:

- **Article 4 (1) (c) of the CRPD** states that state parties must “take into account the protection and promotion **of the human rights of persons with disabilities in all policies and programmes;**”
- **Article 5 (1) of the CRPD** states that “**all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law**”.
- **Article 11 CRPD** (extension of applicability of the CRPD to applicants and beneficiaries of international protection) states that “States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities **in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.**”
- **Situations of armed conflict, humanitarian emergencies** individuals are often obliged to leave their countries in order to reach a place of safety. Such individuals enjoy the legal guarantees of the Refugee Convention.

The Convention on the Rights of Persons with Disabilities (CRPD):

Refugee Dimension

- Conclusion on refugees with disabilities and other persons with disabilities protected and assisted by UNHCR No. 110 (LXI) – 2010 where the Executive Committee emphasized the “need to apply the CRPD to asylum procedures whilst understanding the vulnerabilities and barriers that asylum seekers and refugees with disabilities face”.
- 2020 Procedural Standards for Refugee Status Determination Under UNHCR's Mandate recognized that “Asylum-seekers with mental health conditions or disabilities may have specific assistance and protection needs and may face greater hardship in the host country/country of asylum as a result of their condition or disability.”

Article 9 CRPD Accessibility

Szilvia Nyusti and Péter Takács v Hungary

- **Article 9 CRPD** ensures that persons with disabilities have access, on an equal basis with others, to various aspects of life enabling them to live independently and participate fully in all aspects of life.
- ***Szilvia Nyusti and Péter Takács v Hungary*** : here the Committee on the Rights of Persons with Disabilities “recognised that a positive obligation arises on States to identify barriers in the way of disabled persons enjoyment of their human rights and to take appropriate steps to remove them”.
- **Facts:** the authors, both **persons with severe visual impairments** and both had concluded contracts for private current accounts services **with a private credit institution** according to which they paid **certain fees in order to use banking cards**. However, **in contrast to sighted clients** they were **unable to use the ATMs without assistance**, as the keyboards of the ATMs operated by OTP were **not marked with Braille**, nor did the ATMs provide audible instructions and voice assistance for banking card operations.

Article 9 CRPD Accessibility

Szilvia Nyusti and Péter Takács v Hungary

- **Findings in *Szilvia Nyusti and Péter Takács v Hungary***: here the Committee therefore held, that the State party is under a **positive obligation** to take measures to prevent similar violations in the future, calling the State to create a legislative framework with concrete, enforceable and time-bound benchmarks for monitoring and assessing the gradual modification and adjustment by private financial institutions of previously inaccessible banking services provided by them into accessible ones.
- Positive obligation owed by the states in regards to **Article 9 CRPD** may be extended in the context of applicants of international protection and migrants with disabilities, requiring States to identify barriers in the way of disabled migrants enjoyment of their human rights and to take appropriate steps to remove them.
- **Human Rights Watch**: Reported that such barriers regarding asylum seekers and migrants with disabilities include barriers to essential services such as shelter, sanitation, medical care, and services for mental health and psychosocial support. Additionally, depending on the country, there can be differences in access to services depending on whether they are asylum-seekers, refugees, or migrants with disabilities.

The legal interconnectedness between the CRPD and the 1951 Refugee Convention

- **Article 2 CRPD** may be used in order to “mitigate the high standards and thresholds required to obtain refugee status under the Refugee Convention 1951”.
- Namely, **Article 2 CRPD** states that reasonable accommodation “ensures to persons with disabilities the enjoyment or exercise on an equal basis with others **of all human rights and fundamental freedoms**”. Such article should enable a disability sensitive reading of the 1951 Refugee Convention.
- **Article 1A(2) 1951 Refugee Convention**, as amended by the 1967 Protocol, the term refugee shall apply to any person: who owing to a **well-founded fear of being persecuted** for reasons of **race, religion, nationality, membership of a particular social group or political opinion**, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

The legal interconnectedness between the CRPD and the 1951 Refugee Convention:

Disability reading of “well-founded fear”

- **Ground of well-founded fear:** “the need to demonstrate subjective fear can present a problem for persons with mental or intellectual disabilities who lack the psychological or cognitive ability to appreciate (and fear) situations that are objectively dangerous.”
- **Duty of reasonable accommodation** should guide the interpretation of the well-founded fear of the disabled applicant of international protection. Namely, it was argued that an **eggshell skull rule** should be applied on the assessment of refugee claims of disabled persons.
- The **eggshell skull rule** is implicitly recognized in the **UNHCR Resettlement Handbook** which stated: When assessing whether a particular treatment or measures amount to persecution, decision makers consider it/them in light of the opinions, feelings and psychological make-up of the applicant. The same act may affect people differently depending on their previous history, profile and vulnerability. In each case, decision makers must determine in light of all the specific individual circumstances whether or not the threshold of persecution is reached.

The legal interconnectedness between the CRPD and the 1951 Refugee Convention:

ZH v Sweden No. 58/2019, UN Committee on the Rights of Persons with Disabilities (CRPD), 6 September 2021

ZH v Sweden No. 58/2019, UN Committee on the Rights of Persons with Disabilities (CRPD), 6 September 2021

- The case involved an Afghan national who applied for asylum in Sweden in 2008 claiming that he was receiving death threats and was subject to persecution in his home country, Afghanistan.
- His claim was eventually rejected and in 2015 he made a new application claiming that he was suffering from serious mental illnesses (PTSD, psychotic mental health symptoms) that were life-threatening due to high risk of suicide originating from the death threats he received in Afghanistan.
- **Claims brought forward by the Swedish Migration Agency**
- The Swedish Migration Agency noted that albeit the applicant's circumstances were exceptionally distressing, psychiatric treatment and medication he received in Sweden **were available in Kabul** therefore **no risk of death or ill-treatment would manifest if he returned to Afghanistan.**
- **Allegation on the premise of the CRPD:** The author claimed that he would face a real risk of irreparable harm if he were to be removed to Afghanistan leading to a violation amongst others of articles 10 and 15 CRPD.

The legal interconnectedness between the CRPD and the 1951 Refugee Convention:

ZH v Sweden No. 58/2019, UN Committee on the Rights of Persons with Disabilities (CRPD), 6 September 2021

Findings of the Committee

The Committee found that Sweden **failed** to fulfill its obligations under **Article 15 CRPD** (Freedom from torture or cruel, inhuman or degrading treatment or punishment).

Namely:

→ Sweden did not dispel any doubts about the risks the applicant would face upon his return to Afghanistan. Specifically, the Committee found evidence for a lack of trained professionals, infrastructure, awareness about mental health issues and limited resources regarding the healthcare in Afghanistan.

→ Sweden was under an obligation to consider whether the applicant would have access to the required care in Afghanistan and, if there were serious doubts on that issue, to obtain individual and sufficient assurances from that State.

The legal interconnectedness between the CRPD and the 1951 Refugee Convention:

ZH v Sweden No. 58/2019, UN Committee on the Rights of Persons with Disabilities (CRPD), 6 September 2021

Recommendations of the Committee to Sweden

→ The State party is under an obligation to take measures to prevent similar violations in the future. In that regard, the Committee requires the State party **to ensure that the rights of persons with disabilities, on an equal basis with others, are properly considered in the context of asylum decisions.**

→ The Committee appears to require the application of the CRPD and the rights afforded by it to persons with disabilities **also in the context of asylum decisions**, indicating towards the interconnectedness of the 1951 Refugee Convention and the CRPD. It also indicated on the shift towards the social and human-rights based approach **as it treats persons with disabilities on an equal standing with other migrants.**

**Part IV. Judgments of the ECtHR
finding a violation of Article 3
ECHR (Prohibition of torture) in
regards to migrants with diseases**

ECtHR Jurisprudence:

“Aliens” within the ECHR

→ Few provisions of the Convention and its Protocols explicitly concern “**aliens**” and they do not contain a **right to asylum**.

→ **General rule:** States have the right, as a matter of well-established international law and subject to their treaty obligations, to control entry, residence and expulsion of non-nationals.

→ ***Soering v. United Kingdom*:** The applicant’s extradition could raise the responsibility of the extraditing State under Article 3 ECHR which postulates that “**No one shall be subjected to torture or to inhuman or degrading treatment or punishment**”.

Judgments of
the ECtHR
finding a
violation of
Article 3 ECHR
in regards to
migrants with
diseases

1) *D. v. United Kingdom*: A migrant who was a St. Kitts national and was an AIDS sufferer.

ECtHR: Very exceptional circumstances test

→ ECtHR **held**: that in the **very exceptional circumstances** of this case and given the compelling humanitarian considerations at stake, it must be concluded that the implementation of the decision to remove the applicant back to St. Kitts would be a violation of Article 3 ECHR.

→ Very exceptional circumstances in *D. v. United Kingdom*: applicant was critically ill and appeared to be **close to death** (had reached the terminal stages of the disease), he had **no guarantee of any nursing or medical care in the country of origin** (lack of treatment with anti-HIV therapy and preventative measures for opportunistic disease) and had **no family there to care for him or provide him food, shelter or social support** (he may have a cousin in St Kitts, no evidence has been adduced to show whether this person would be willing or in a position to attend to the needs of a terminally ill man). Therefore, the implementation of the decision to remove him to St Kitts would amount to inhuman treatment by the respondent State in violation of Article 3 ECHR.

Judgments of
the ECtHR
finding a
violation of
Article 3 ECHR
in regards to
migrants with
diseases

2) *N. v. United Kingdom*: Ugandan national had applied for asylum in the UK and was an AIDS sufferer.

→ The applicant argued that her removal to Uganda would cause acute physical and mental suffering, followed by an early death, in breach of Article 3 ECHR, due to lack of necessary medical care, social support and nursing care. This

→ ECtHR ruling: N's case was **not one of "exceptional circumstances"** (such as *D. v The United Kingdom*) as the danger of imminent death, upon removal, was non-existent.

→ The ECtHR set a high threshold: Distinction between imminent death and not so imminent death.

Judgments of
the ECtHR
finding a
violation of
Article 3 ECHR
in regards to
migrants with
diseases

3) *Paposhvili v. Belgium*: Georgian national was suffering from serious illnesses including leukemia and recurrent tuberculosis.

ECtHR: Real risk test

→ The applicant argued that he would be unable to access adequate medical treatment in Georgia if removed therefore could face the risk of ill-treatment and accelerated death in violation of Article 3 ECHR.

→ ECtHR ruling: Departed from the restrictive approach found in *N. v. The United Kingdom*. The test should be whether substantial grounds have been shown for believing that he or she, **although not at imminent risk of dying**, would face a **real risk**, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy.

→ *Paposhvili* enhances protection to migrants provided under Article 3 ECHR by including as exceptional more than just cases of imminent death and protecting migrants whose condition is less critical but who are still seriously ill.

Judgments of
the ECtHR
finding a
violation of
Article 3 ECHR
in regards to
migrants with
diseases

Paposhvili set out a range of procedural rules for domestic authorities in assessing the risk of ill-treatment in the receiving country:

- 1) verify whether the care available in the receiving state is '**sufficient and appropriate** in practice for the treatment of the applicant's illness' so as to prevent him or her being exposed to treatment contrary to Article 3 ECHR' and
- 2) consider 'the extent to which the individual in question will actually **have access to this care** and these facilities in the receiving State'.

Relevant indicators related to **accessibility of care**: Cost of medication and treatment, social and family network and travelling distance to access required care.

Precondition for removal: Returning State **must obtain assurances** from Receiving State that appropriate treatment will be available and accessible to the individual.



OFFICE OF THE LAW COMMISSIONER
REPUBLIC OF CYPRUS

THANK YOU

Antonis Seroff

Legal Advisor, Office of the Law Commissioner of the Republic of Cyprus

26 October 2023



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

Katie Mannion

Migrants with individual types of vulnerability

Dublin, 26 October 2023



Co-funded the European Union

Vulnerability and international protection applicants and refugees

- Interactions with the International Protection Process
- Provision of Material Reception Conditions – access to appropriate accommodation and specialist services.

People in vulnerable circumstances

- MSS v Belgium and Greece : ECtHR: ‘vulnerability inherent in [homeless asylum-seeker] as an asylum seeker’.
- Vulnerable for legal reasons: lack right to work, precarious right to stay in country and status requires recognition.
- Embraces all international protection applicants
- “However, asylum-seekers are members of a particularly underprivileged and vulnerable population group in need of special protection and there exists a broad consensus at the international and European level concerning this need for special protection, as evidenced by the Geneva Convention, the remit and the activities of the UNHCR and the standards set out in the Reception Directive” (M.S.S. v. Belgium and Greece)

■ Asylum Procedures Directive 2005

In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention, every applicant should, subject to certain exceptions, have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his/her case and sufficient procedural guarantees to pursue his/her case throughout all stages of the procedure.

- Member States shall ensure that the person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin or vulnerability, insofar as it is possible to do so;
- Specific vulnerability of minors should be recognised.
- Need for special procedural guarantees – adequate support to benefit from their rights.

In 2022, the CFA received 597 referrals and provided placements for 350 children – up 200% on 2021 - including 191 Ukrainian children, others mainly from Afghanistan and Somalia

Section 13 International Protection Act

Initial interview

Section 14 of the International Protection Act 2015:

“(1) Where it appears to an officer referred to in section 13 that a person seeking to make an application for international protection, or who is the subject of a preliminary interview, has not attained the age of 18 years and is not accompanied by an adult who is taking responsibility for the care and protection of the person, the officer shall, as soon as practicable, notify the Child and Family Agency of that fact.

(2) After the notification referred to in subsection (1), it shall be presumed that the person concerned is a child and the Child Care Acts 1991 to 2013, the Child and Family Agency Act 2013 and other enactments relating to the care and welfare of persons who have not attained the age of 18 years shall apply accordingly.”

Age-disputed minors

- 15 (4) Subject to sections 21 and 22 , where it appears to the Child and Family Agency, on the basis of information, including legal advice, available to it, that an application for international protection should be made on behalf of a person who has not attained the age of 18 years (in this subsection referred to as a “child”) in respect of whom the Agency is providing care and protection, it shall arrange for the appointment of an employee of the Agency or such other person as it may determine to make such an application on behalf of the child and to represent and assist the child with respect to the examination of the application.

Examination to determine age of unaccompanied person

- 24. (1) The Minister, or an international protection officer, where he or she, with reasonable cause, considers it necessary to do so for the purposes of determining whether an applicant referred to in section 15 (4) has not attained the age of 18 years, may, subject to this section, arrange for the use of an examination to determine the age of the applicant.

Age-Disputed Minors

- AM (Moke) v. RAC [2006] 1 IR 476: Sets out minimum procedural requirements in respect of initial age assessment
- Child Care Acts: The CFA is obliged to “take such steps as it considers requisite to identify children who are not receiving adequate care and protection and co-ordinate information from all relevant sources relating to children”
- CFA: New Procedural Guidance and Assessment Framework for determination of Eligibility for Services under the Child Care Act 1991 for Separated Children Seeking International Protection – not considered by Tusla as age assessment under IP Act.
 - Presumption of Minority
 - Appeal mechanism
 - Advocacy service

Age-disputed minors

[Diakite v Italy](#) No. 44646/17 – 14 September 2023

- Minor applicant for international protection spent four and a half months in an adult emergency reception facility
- Court found a failure of the State to act with reasonable diligence and to comply with positive obligation pursuant to Article 8; no Article 3 breach
- Applicant had no benefit from the minimum procedural guarantee despite providing a birth certificate to show minority on arrival
- The Court highlighted that “*the principle of presumption of minor age is an inherent element of the protection of the right to respect for private life of a foreign unaccompanied individual declaring to be a minor*”

- Recast Asylum Procedures Directive 2013 (Ireland did not opt into Recast)
- Considers that some asylum-seekers need extra support in the asylum process, and some forms of procedures are not suitable for people with vulnerabilities.
- ‘Applicant in need of special procedural guarantees’: ‘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’.
- Recital 29: Factors to be taken into account include 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 are required to assess vulnerability within a reasonable time following an application for international protection.

- “On the one hand, there is a strong notion that asylum procedures must work to weed out ‘abusive’ claims. The notion of ‘abuse’ pervades the measure, but is ill defined. It seems that normal procedures are not deemed fit to deal with some abusive applications, so additional procedural mechanisms are devised. In contrast, there is also a strong acknowledgement that some asylum seekers are particularly vulnerable or have special needs (as will be seen, different terminologies are used in different contexts). Again, normal procedures are not regarded as suitable for these vulnerable souls either, so further procedural mechanisms are devised, and they are released from the rigours of the procedures devised for the abusers. As we argue, these stereotypes create complexity, and crowd out the basic notion of refugee status determination (RSD) as a process for recognising refugees, on the assumption that many (although of course not all) of those who apply will be so recognised.”
- Challenge: intensely individualized and judicialized procedures
- The Recast Asylum Procedures Directive 2013/32/EU: Caught between the Stereotypes of the Abusive Asylum Seeker and the Vulnerable Refugee, Dr Cathryn Costello and Emily Hancox, 2015

Procedural Safeguards

- Changes introduced to international protection process in November 2022
- Applicants required to complete international protection questionnaire, in English, on day of arrival
- Concerns:
 - No access to Early Legal Advice
 - No formal vulnerability assessment at preliminary interview or Questionnaire-completion stage. => Specific needs and vulnerabilities will not be identified or met.
 - No opportunity to recover from journeys.
 - No privacy or confidentiality - Required to disclose often very sensitive and intimate information regarding personal life experiences in communal space
 - Children present – may be inappropriately exposed to distressing information
 - Recounting experiences of persecution can be extremely distressing and retraumatising. In particular, victims of torture, sexual violence and rape are likely to experience feelings of shame and humiliation in disclosing their experiences. Full disclosure of experiences of torture requires support and encouragement, an environment of safety and trust, and may depend on the prior provision of psychological supports.
 - LGBTQI applicants
 - Age-disputed minors

For Written Answer on : 28/03/2023

Question Number(s): 601 Question Reference(s): 15419/23

Department: Justice

Asked by: Catherine Connolly T.D.

- **#QUESTION** To ask the Minister for Justice the number of cultural mediators employed at the International Protection Office; to outline their role and remit; and if he will make a statement on the matter.
- Cultural mediators independently assist and support the applicant in the process. This is complementary to the provision of formal legal advice offered to applicants who are encouraged to seek legal assistance at any stage of their application. Applicants are also provided with the necessary interpretation supports at each stage of the process.
- Cultural mediators support customers through the application procedure in the language of their choice, while identifying any signs of vulnerability, including unaccompanied minors, victims of domestic or gender-based and/or sexual violence and human trafficking. They are also expert in national identity document verification.
- Presently, there are 12 Cultural Mediators employed at the IPO.

- Lays down minimum standards for reception of applicants for international protection
- Aims at ensuring a harmonised and more dignified standards of living and throughout the European Union
- Ensures that applicants have access to:
 - housing,
 - food,
 - clothing,
 - health care,
 - education for minors
 - and access to employment under certain conditions.
- In 2018, Ireland opted in, following the Supreme Court decision in *NHV v Minister for Justice and Equality and Others*

Reception Conditions Regulations: Vulnerable persons

Reg 8 – Requirement to complete vulnerability assessment within 30 days of person giving indication of intention to seek international protection etc. Potential for reassessment after 30 days if necessary.

May conduct vulnerability assessment after expiry of the 30 days where Minister considers it necessary to do so to assess:

- (i) whether a recipient is a recipient with special reception needs,
- (ii) and (ii) if so, the nature of his or her special reception needs.

Vulnerable person includes a reference to a person who is

- a minor,
- an unaccompanied minor,
- a person with a disability,
- an elderly person,
- a pregnant woman,
- a single parent of a minor,
- a victim of human trafficking,
- a person with a serious illness,
- a person with a mental disorder,
- and a person who has been subjected to torture, rape or other form of serious psychological, physical or sexual violence.

Recipient with special reception needs

- A recipient who is vulnerable and who has been assessed, in accordance with Regulation 8, as being in need of special guarantees in order to benefit from his or her entitlements
- Must have regard to special reception needs of person deemed vulnerable in designation of accommodation centre and if reducing or withdrawing material reception conditions
- Designation of accommodation centre

(3) Where the recipient concerned is a minor, the Minister, in designating an accommodation centre under paragraph (1), shall, in addition to the matters specified in paragraph (2), take account of the following:

- (a) the need to lodge a minor with his or her parents, unmarried minor siblings or an adult responsible for him or her, provided it is in the best interests of the minor concerned;
 - (b) the need for the accommodation centre to be suitable to meet all of the minor's needs and to allow the minor to avail of the benefits to which he or she is entitled under these Regulations.
- (4) Where the recipient concerned is a vulnerable recipient, the Minister, in designating an accommodation centre under paragraph (1), shall, in addition to the matters specified in paragraph (2) [family unity, gender and age-specific concerns], take account of any special reception needs of the recipient, assessed in accordance with Regulation 8.

Provision of material reception conditions to recipients

Regulation 4 – entitlement of recipient to material reception conditions where person does not have sufficient means to have adequate standard of living

- Provision is subject to requirement that:
 - material reception conditions made available only at designated accommodation centre
 - Individual complies with the house rules of the accommodation centre
 - Regulation 4(5) The Minister may, exceptionally and subject to paragraph (6), provide the material reception conditions in a manner that is different to that provided for in these Regulations where—
 - (a) **an assessment of a recipient's specific needs is required to be carried out, or**
 - (b) **the accommodation capacity normally available is temporarily exhausted.**
 - (6) The provision of the material reception conditions authorised by paragraph (5) shall— (a) be for as short a period as possible, and (b) meet the recipient's basic needs.

Vulnerability Assessment

- First vulnerability assessments carried out in December 2020, following Judicial Review Proceedings.
- Pilot in place from January 2021. Initially included a two stage process, an interview with an IPAS Vulnerability Assessment officer, and a determination of a person's special needs, where necessary.
- September 2022: IPAS Vulnerability Assessment Pilot Programme Policy

New System:

- Vulnerability Assessment Questionnaires made available at accommodation centres and online on IPAS website. Applicants complete themselves.
- Referral form for service providers and third parties can be completed with applicant's consent.
- Possibility of referral for further assessment with an IPAS Social Worker.
- Forms should be returned by email or post to the Assessment Officers from the Resident Welfare Team

- “The IPAS Resident Welfare Team is a new multi-disciplinary team which focuses on residents with more complex issues including those with physical and mental health issues and persons identified through the IPAS Vulnerability Assessment Process as having special reception needs.”
- The Resident Welfare Team has four Assessment Officers and three Social Work professionals (one vacancy) seconded to it on a full time basis who can make a determination of a person’s vulnerability status and reception needs, and refer vulnerable children, young people and their families to services which may be helpful to them.
- As of October 2022, approximately 2,114 assessments were undertaken with 1,024 individuals identified as vulnerable

International Protection Accommodation Services Vulnerability Assessment Pilot Programme Policy

An Buidéal Teoranta, Coimisiún na hEilinn, Leasúcháin/Leasúcháin agus Digi
 Department of Children, Equality, Disability, Integration and Youth

PRIVATE AND CONFIDENTIAL - FOR USE BY RESIDENT WELFARE TEAM ONLY



Please answer all questions.

	Yes	No
Is the client literate?		
Does the client speak English?		
Does the client have a physical disability, for example mobility issues, blind, deaf?		
Does the client have an intellectual disability, for example unable to provide self-care?		
Is the client currently pregnant or has the client recently given birth?		
Is the client providing care for one or more children under the age of 18 here in Ireland?		
Does the client have a partner, spouse or any other family living with them?		
Does the client identify as lesbian, gay, bisexual, transgender, queer or intersex?		
Has the client experienced violence or trauma, such as female genital mutilation (FGM), rape, domestic violence, torture, imprisonment or LGBTIQ persecution?		
Does the client have any diagnosed health conditions that require prescription medication and/or ongoing treatment by a doctor, such as HIV, cancer, diabetes, heart disease or hepatitis?		
Does the client have any diagnosed mental health problems, such as clinical depression, anxiety, bipolar disorder, schizophrenia or post-traumatic stress disorder?		
Was the client trafficked to Ireland?		

I hereby confirm that I have instructed [Service Provider Name] _____
to act on my behalf and give permission to share my personal information and data.

Client Signature: _____ Person ID: _____ Date: _____

AN BUIDÉAL TEORANTA AN CHOMHAIT ÉIREANN/IRISH ASYLUM SEEKERS SUPPORT SERVICES
 INTERNATIONAL PROTECTION ACCOMMODATION SERVICES PILOT FOR FIRST RESPONDERS
 T: 081 492206
 E: asp@childrensociety.ie
 Privacy Policy: www.childrensociety.ie/privacy

LGBT +

- <https://www.gov.ie/en/publication/10bc1-lgbti-people-living-in-international-protection-accommodation-services-ipas-accommodation-best-practices-lived-experiences/>
- Although the definition of “vulnerable person” as contained in the Regulations does not include LGBTI+ persons, the Vulnerability Assessment Questionnaire includes a question as to whether the applicant identifies as lesbian, gay, bisexual, transgender, queer, or intersex.

Young refugees transitioning to adulthood

- Falling off Cliff of support – need for recommendations for 18, 19 and 20 year olds who may experience vulnerability.
- If international protection application has not concluded, unaccompanied minors returning to adult IPAS accommodation on turning 18.

- Letter confirming that client is “deemed to be a recipient with special reception needs as defined in Regulation 8”, and category under which they meet the criteria – e.g. has been subjected to torture, rape or other forms of serious psychological, physical or sexual violence.
- Reviewed by HSE medical officers with other relevant medical documentation submitted.
- What might special needs require?
 - Access to medical care.
 - Access to appropriate accommodation e.g. reasonable in terms of ability to access specialised care without major transport issues.
 - Single room
 - Reception needs that can be addressed within the currently available national resources.

- [PQ, 26th September 2023](#)
- Questionnaires are available to applicants in a number of languages in all International Protection Accommodation Services (IPAS) accommodation centres, and via the IPAS website.
- Resident Welfare Team Assessment Officers determine a person's vulnerability status and reception needs.
- Not every vulnerability requires special intervention – for example, every child or pregnant woman is identified by default as 'vulnerable' under the Regulations, but their needs are routinely met in IPAS accommodation or through referral to other relevant public services.
- Where a vulnerability is identified which may require special intervention, and consent is given by the applicant, the Assessment Officer may contact them to discuss their vulnerabilities and reception needs further by scheduling a telephone appointment for the next available date.

Meeting Special Reception Needs

- [PQ, 26 September 2023](#)
- Given the ongoing challenges faced by IPAS with sourcing accommodation, the RWT has been working closely with the IPAS Customer Service and Centre Management teams, as well as centre staff and NGOs, to ensure that any special reception needs can be addressed **in the person's centre through the provision of relevant training and guidance for centre staff and advice and support for those who require it.**
- In cases where significant vulnerabilities or complex needs have been identified, the RWT may refer a person to the Intake and Reception and Resident Mobility Teams in IPAS to address specific accommodation recommendations or requirements. These teams will then **identify the most suitable accommodation** for the applicant. This is done **within the overall constraints of the accommodation available, which means that it is not always possible for IPAS to address all identified vulnerabilities optimally when allocating accommodation.** Where possible, IPAS will improve the alignment between accommodation and vulnerabilities where accommodation that is more appropriate becomes available.
- Ongoing demands on the service due to the significantly increased numbers of arrivals has resulted in wait times for assessments being affected. However the programme remains available to all IPs who wish to access it, and every effort is made to prioritise cases where a vulnerability has been identified.

Experiences of people contacting our Information and Advocacy Service

- Delays in assessment, particularly at Stage 2, despite evident and significant vulnerability
- Applicants not aware of purpose of assessment, or what information acquired will be used for.
- The lack of available information - applicants are often not properly equipped to fully communicate their circumstances, meaning that they often do not receive the required supports.
- Some positive decisions re accommodation made after vulnerability assessments conducted, but capacity constraints significantly impacting scope of impact of vulnerability assessment
- Very few people re-accommodated in more appropriate accommodation
- Some referrals to Spirasi and DRCC.

- Letter confirming that client is “deemed to be a recipient with special reception needs as defined in Regulation 8”, and category under which they meet the criteria – e.g. has been subjected to torture, rape or other forms of serious psychological, physical or sexual violence.
- Reviewed by HSE medical officers with other relevant medical documentation submitted.
- What might special needs require?
 - Access to medical care.
 - Access to appropriate accommodation e.g. reasonable in terms of ability to access specialised care without major transport issues.
 - Single room
 - Reception needs that can be addressed within the currently available national resources.

X and Y (A Minor Suing by Her Mother and Next Friend X) and The Minister for Justice and Equality 2018 88 JR

Judgment of Justice Max Barrett, 5th March 2019

The Minister acted in breach of Article 17 in failing to provide the applicants with material reception conditions from their date of application for international protection until the issuance of the decision.

Awarded Frankovich Damages for breach of EU law.

Re: Vulnerability Assessments – When the decision was made, 30 day time limit had not been reached.

Consideration of Limits of Concepts of Vulnerability

Rebecca Yeo (2020: 680) shows in her recent study of asylum seekers in the UK, the vulnerability label can obscure systemic oppression, leading to a “hegemonic acceptance that some people are worthy of support and others are not.”

Stephen Phillips, Enhanced Vulnerability of Asylum Seekers in Times of Crisis

Understanding vulnerability as **situational, contextual, and individual, deeply linked to the capacity and willingness of the state to not simply respond to vulnerability, but to not generate and exacerbate it.**

- Engström, Heikkila and Mustaniemi-Laakaso: Vulnerabilisation: Between mainstreaming and human rights overreach (2022), Vulnerability-reasoning enables selectivity and prioritisation, which can turn into exclusion and politicisation. The vulnerabilisation phenomenon also comes with compartmentalisation and potential instrumentalisation of protection. Who deserves what, who is more deserving, and whom states and communities feel obligated to assist connects to a range of factors. Vulnerability, or perceived vulnerability, plays a central role.

Recipient with special reception needs

■ Men in this case often fit into a separate category of vulnerable persons, those whose lack of apparent vulnerability increases and enhances their vulnerability, and leads to problems that may not have manifested were they seen as vulnerable enough in the first instance. A person who is not vulnerable enough today, left without access to services, will in all likelihood be vulnerable enough in a week, a month, or a year.

See: Stephen Phillips, Enhanced Vulnerability of Asylum Seekers in Times of Crisis, [Hum Rights Rev.](#) 2023 Jun 12 : 1–21.

This denial of access to services typically results in poverty, and is the source of enhanced vulnerability when comparing different groups of asylum seekers across different and overlapping crises.

An asylum seeker with no permanent or secure status remains at the whim of the state in which they have sought refuge, bringing with it an enhanced vulnerability driven by a lack of security of place that citizens are less likely to experience. This lack of security of place may manifest in areas such as vulnerability to labor exploitation, no access to secure housing, barriers to health care, and a lack of legal certainty.

Situation of Homeless International Protection Applicants

- 24th January 2023 – Department of Children announced they could no longer accommodate newly-arriving male international protection applicants due to “nationwide shortage of available accommodation for IP applicants, particularly single males”.
- Citywest, which had been providing emergency shelter while applicants were waiting to be assigned accommodation, closed to new arrivals
- Nearly 1,000 people experienced street homelessness between January and June 2023, for periods of up to 10 weeks.

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- Afghan age-disputed minor applied for international protection on 8th February 2023.
- Told there was no accommodation available. Provided with €28 Dunnes voucher and small slip of paper with details of Capuchin Centre
- Experienced Street homelessness, threatened with knife attack, robbed of €5, fear, hunger. Felt ashamed, humiliated, degraded and “hopeless that things would get better for me”.

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Findings of Mr Justice Meenan:

- (i) The Minister accepts that he has failed to provide “material reception conditions” to the applicant.
- (ii) The Minister explains his failure to provide “material reception conditions” because of a chronic shortage of available accommodation. This shortage has been caused and/or exacerbated by the numbers of people seeking international protection and those fleeing the war in Ukraine.
- (iii) The Minister is making considerable efforts to source suitable accommodation. Meanwhile, persons such as the applicant, a young single male, are being denied the accommodation to which they are entitled.

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- “Material reception conditions” not only include accommodation but also the provision of food and basic hygiene facilities. In purported compliance with the Minister’s legal obligation the applicant was given one voucher to the value of €28 for Dunnes Stores and directed towards private charities such as the Capuchin Day Centre. Clearly this does not come remotely close to what is required by law. Directing persons such as the applicant to private charities to receive supports which the Minister is obliged to give cannot be seen as anything other than completely unacceptable.
- (v) By reason of the failure of the Minister the applicant has been forced to live and sleep rough, beg for food and has been deprived of basic hygiene conditions. In addition, the applicant has been exposed to personal attack and danger and also subjected to humiliation.

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- **Conclusion: Breach of obligations under the Regulations and Charter of Fundamental Rights, in particular Article 1.**

Granted:

- (i) A Declaration that the Minister’s failure to provide to the applicant the “material reception conditions” pursuant to the European Union (Reception Conditions) Regulations 2018 is unlawful;
- (ii) A Declaration that the failure by the Minister to provide to the applicant the “material reception conditions” pursuant to European Union (Reception Conditions) Regulations 2018 is in breach of the applicant’s rights under Article 1 of the Charter of Fundamental Rights of the European Union.

- However, asylum-seekers are members of a particularly underprivileged and vulnerable population group in need of special protection and there exists a broad consensus at the international and European level concerning this need for special protection, as evidenced by the Geneva Convention, the remit and the activities of the UNHCR and the standards set out in the Reception Directive (M.S.S. v. Belgium and Greece)
- [GC], § 251). It may thus raise an issue under Article 3 if the asylum-seekers, including persons intending to lodge an asylum application, are not provided with accommodation and thus forced to live on the streets for months, with no resources or access to sanitary facilities, without any means of providing for their essential needs, in fear of assault from third parties and of expulsion

Letter from Council of Europe's Commissioner of Human Rights

- “the exposure of often traumatised and vulnerable individuals to cold, rain, hunger, and distress has serious consequences for their human rights, notably the right to health. It may very well also fall short of the minimum standards under Article 3 of the European Convention on Human Rights.
- In my view, the scale and complexity of the prevailing reception and accommodation crisis in Ireland therefore calls for a determined, whole-of-government approach, as the responsible Department for Children, Equality, Disability, Integration and Youth, owing to its limited capacities along with a broad range of functions, is not in the position to address all the issues that appear relevant to secure a holistic response alone. I therefore encourage you to continue working towards a more sustainable system of reception that firmly places the accommodation of refugees and asylum seekers within the context of the broader housing policy development and implementation.

European Commission

- Reception conditions of asylum seekers: Commission calls BELGIUM, GREECE, SPAIN, and PORTUGAL to transpose in a fully conform manner all provisions of with the Reception Conditions Directive *
- The Commission has decided to open infringement procedures by sending letters of formal notice to Belgium ([INF\(2022\)2157](#)), Greece ([INF\(2022\)2156](#)), Spain ([INF\(2022\)2158](#)) and Portugal ([INF\(2022\)2153](#)) for failing to transpose in a fully conform manner all provisions of the Directive laying down standards for the reception of applicants for international protection ([Directive 2013/33/EU](#)).
- Ensuring the full respect of the Reception Conditions Directive is an important prerequisite for the well-functioning Common European Asylum System (CEAS) and the Commission is carefully monitoring the way in which all Member States have transposed this legislation into national law.
- The Commission considers that Belgium, Greece, Spain and Portugal have incorrectly transposed certain provisions of the Directive and they have now two months to respond to the arguments raised by the Commission. In the absence of a satisfactory response, the Commission may decide to issue a reasoned opinion.

Camara v. Belgium (app. no. 49255/22)

- Situation of homeless asylum-seekers in Belgium
- On October 31, 2022, the ECtHR decided to impose an interim measure in this case.
- Guinean national applied to the Belgian authorities for international protection on 15 July 2022. He was not allocated accommodation in a reception facility by the Federal Agency for the Reception of Asylum-Seeker (Fedasil) due to saturation of available accommodation. Since then, he has experienced street homelessness.
- The Court decided to enjoin the Belgian State to enforce the order made by the Brussels Frenchlanguage Labour Court and to provide the applicant with accommodation and material assistance to meet his basic needs.
- Since Camara, the ECtHR has since granted interim measures to more than 1700 applicants facing a similar situation in Belgium

Msallem and 147 Others v. Belgium (application no. 48987/22 and 147 others)

- The applicants are 148 asylum-seekers of various nationalities. They are living in Belgium without accommodation.
- On various dates they lodged unilateral applications with the Brussels Labour Court, alleging a risk of serious and irreversible damage to human dignity and requesting that Fedasil be ordered to comply with its legal obligations under the Law of 12 January 2007 (the Law).
- In each of these cases the court ordered Fedasil to house the applicants in a reception centre, or else in a hotel or any other suitable facility should no places be available, and to ensure their reception as defined in section 6 of the Law, subject to penalties for non-compliance. Those orders were duly served and have become final but have not been enforced to date.
- Interim measure request and complaints
- On various dates between 18 October 2022 and 3 November 2022 the applicants applied to the Court for an interim measures under Rule 39.
- They relied on various Articles of the Convention including Article 3 (prohibition of inhuman or degrading treatment).

Decision of the Court:

- On 15 November 2022 the Court decided to indicate an interim measure and to enjoin the Belgian State to comply with the orders made by the Brussels Labour Court in respect of each applicant and to provide them with accommodation and material assistance to meet their basic needs for the duration of the proceedings before the Court. The decision was given by the Chamber (seven judges) to which the applications had been allocated.

- CJEU: a Member State in receipt of an application for asylum is obliged to grant the minimum conditions for reception of asylum seekers laid down in Directive 2003/9 **even to an asylum seeker in respect of whom it decides**, under Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, **to call upon another Member State, as the Member State responsible for examining his application for asylum, to take charge of or take back that applicant.**
- Those minimum reception conditions must be granted not only to asylum seekers present in the territory of the responsible Member State, but also **to those who remain pending the determination of the responsible Member State**, a procedure which can last for a number of months (paragraph 43)
- **Only the actual transfer** of the asylum seeker by the requesting Member State **brings to an end both the procedure** before that State and **its liability to bear the financial burden of the reception conditions** (paragraph 55).

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