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

Lydia Giannakopoulou

The European framework (EU, CoE) for vulnerable migrants

Athens, 22 April 2024

Co-funded the European Union

VULNERABLE MIGRANTS

- Refugees
- Asylum Seekers
- Unaccompanied Minors
- Women and Girls
- Elderly Migrants
- Persons with Disabilities
- LGBTQ+ Migrants
- Trafficking Victims
- Economic Migrants

PART 1: The EU legal framework and the role of CJEU regarding vulnerable migrants

A) The EU legal framework:

1. **Asylum and Refugee Law**: The Common European Asylum System (CEAS), Asylum Procedures Directive (2013/32/EU recast), Qualification Directive (2011/95/EU recast), Reception Conditions Directive (2013/33/EU recast), Dublin Regulation (No 604/2013 recast)
2. **Protection of Human Rights**: Charter of Fundamental Rights of the European Union (CFREU), European Convention on Human Rights (ECHR) -not an EU instrument
3. **Integration and Social Inclusion**: European Agenda for the Integration of Third-Country Nationals, the Action Plan on Integration and Inclusion, European Social Fund (ESF)
4. **Fight Against Trafficking and Exploitation**: Anti-Trafficking Directive (2011/36 /EU)
5. **Child Protection**: EU Action Plan on Unaccompanied Minors (Communication)
6. **Non-Discrimination and Equal Treatment**: The Race Equality Directive (Directive 2000/43/EC)
7. **Border Management and Security**: Schengen Borders Code (Regulation (EU) 2016/399)

B) INTRINSIC VULNERABILITY OF MIGRANTS AND CERTAIN GROUPS OF VULNERABLE MIGRANTS

Intrinsic vulnerability of migrants refers to their vulnerability as a group (meaning because they are migrants)

Intrinsic vulnerability of migrants in the EU legal framework:

- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on **standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection**, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) **"Qualifications Directive".**
- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 **on common procedures for granting and withdrawing international protection** (recast) **"Asylum Procedures Directive"**
- Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down **standards for the reception of applicants for international protection** (recast) **" Reception Conditions Directive"**

Vulnerability of **certain groups** within the population of migrants in the EU legal framework:

There are migrants that can be:

- “Vulnerable”
- “in need of special procedural guarantees”
- Or “with special reception needs”

“Applicant in need of special procedural guarantees”

- **Article 2(d) of the Asylum Procedures Directive** refers to an “applicant in need of special procedural guarantees” defining him/her as an applicant whose **ability to benefit from the rights and comply with the obligations** provided for in this Directive **is limited due to personal circumstances**.

- **Recital 29 of the Asylum Procedures Directive** justifies why these applicants need procedural guarantees stating that,
- “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. Those applicants should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection”.

“Applicant with special reception needs”

- **Article 2(k) of the Reception Conditions Directive** defines an “applicant with special reception needs” as a vulnerable person, in accordance with Article 21, who is in need of special guarantees in order to benefit from the rights and comply with the obligations provided for in this Directive.

- **Article 21 of the Reception Conditions Directive** provides us with a non-exhaustive list of people who are deemed vulnerable covering “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”.

Assessment procedures as envisaged by both Directives regarding “Applicants in need of special procedural guarantees” and “Applicants with special reception needs”

- **Article 24 of the Asylum Procedures Directive** requires EU Member States to assess if an asylum seeker is in need of special procedural guarantees and if so, provide him or her with adequate support during the asylum procedure.

- **Article 22 of the Reception Conditions Directive** requires EU member states to assess whether or not vulnerable persons have special reception needs whilst also indicating the nature of such needs.

Safeguards to be respected when dealing with Unaccompanied minors within the Asylum Procedures Directive

Article 25

Guarantees for unaccompanied minors

1. With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 14 to 17, Member States shall:

- (a) **take measures** as soon as possible **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 a representative. **The representative shall perform his or her duties in accordance with the principle of the best interests of the child** and shall have the necessary expertise to that end. The person acting as representative shall be changed only when necessary. Organizations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives. The representative may also be the representative referred to in Directive 2013/33/EU;

- (b) **ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and**, where appropriate, **how to prepare himself or herself for the personal interview**. **Member States shall ensure that a representative and/or a legal adviser or other counsellor** admitted or permitted as such under national law **are present at that interview and have an opportunity to ask questions or make comments**, within the framework set by the person who conducts the interview.

  Member States may require the presence of the unaccompanied minor at the personal interview, even if the representative is present.

Safeguards as to the use of medical examination to determine the age of Unaccompanied Minors within the framework of the examination of an application for international protection (Article 25, paragraph (5) of the Asylum Procedures Directive).

5. **Member States may use medical examinations to determine the age of unaccompanied minors** within the framework of the examination of an application for international protection where, following general statements or other relevant indications, Member States have doubts concerning the applicant's age. If, thereafter, Member States are still in doubt concerning the applicant's age, they shall assume that the applicant is a minor.

   Any medical examination shall be performed with **full respect for the individual's dignity**, shall be **the least invasive examination** and shall be **carried out by qualified medical professionals** allowing, to the extent possible, for a reliable result.

   Where medical examinations are used, Member States shall ensure that:

- (a) **unaccompanied minors are informed** prior to the examination of their application for international protection, and in a language that they understand or are reasonably supposed to understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for international protection, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination;

- (b) unaccompanied minors and/or their representatives **consent to a medical examination** being carried out to determine the age of the minors concerned; and

- (c) **the decision to reject an application for international protection by an unaccompanied minor who refused to undergo a medical examination shall not be based solely on that refusal.**

The fact that an unaccompanied minor has refused to undergo a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.

The EU legal framework regarding migrants who are Victims of Trafficking in Human Beings

- **Article 21** of the Reception Conditions Directive

- **Article 1** of the Directive 2011/36/EU (Anti-Trafficking Directive)

- **Article 2, paragraph (1)** of the Anti-Trafficking Directive seeks to define offenses concerning trafficking in human beings namely it covers

  "The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those 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**".

- **Article 11, paragraph (3)** of the Anti-Trafficking Directive

"Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial..."

The conditions of the residence of the victims of trafficking in human beings in the territory of the Member States (linking thus the victims of trafficking in human beings with the migrant status)

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

Article 3

Scope

1. Member States shall apply this Directive **to the third-country nationals who are, or have been victims of offences related to the trafficking in human beings, even if they have illegally entered the territory of the Member States**.
2. Member States may apply this Directive to the third-country nationals **who have been the subject of an action to facilitate illegal immigratio**n.
3. This Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned.

   By way of derogation, Member States may decide to apply this Directive to minors under the conditions laid down in their national law.

C. The Court of Justice of the European Union

CJEU – C-233/18 Haqbin, 12 November 2019

The CJEU found that:

- A sanction imposed in response of serious breaches of the rules of the accommodation centre or of seriously violent behaviour by the applicant of international protection **cannot include withdrawal of material reception conditions relating to housing, food or clothing, even if it is temporary**. (Article 20(4) and (5) of the Reception Conditions Directive (2013/33/EU), read in the light of Article 1 of the Charter of Fundamental Rights of the European Union (Human dignity).
- In the case of an unaccompanied minor, those sanctions must, in the light of **Article 24** of the Charter of Fundamental Rights (The rights of the child), be determined by taking into particular account the **best interests of the child**.

CJEU - C-578/16 PPU, C.K. and others

The CJEU found that:

- Even where there are no substantial grounds for believing that there are systemic flaws in the Member State responsible, a Dublin transfer can only be carried out in conditions which exclude the possibility that that **transfer might result in a real and proven risk of the person concerned suffering inhuman or degrading treatment within the meaning of Article 4 CFR EU**.
- If there is a real and proven risk that the **state of health** of an applicant who suffers from a **serious mental or physical illness** would significantly and permanently deteriorate, that transfer would constitute a violation of Article 4 CFR EU.

<u>PART 2:</u> The legal framework of the COE and the role of ECtHR regarding vulnerable migrants

A) The COE legal framework

1. **European Convention on Human Rights (ECHR)**

2. **European Social Charter** (revised)

3. **European Convention on Action against Trafficking in Human Being**s

4. **European Code of Social Security**: The Council of Europe has developed various instruments related to social security, namely the European Code of Social Security, its Protocol and the European Code of Social Security (revised).

5. **Recommendations and Resolutions**

6. **Monitoring Mechanisms**

7. **Capacity Building and Assistance**

B. INTRINSIC VULNERABILITY OF MIGRANTS AND CERTAIN GROUPS OF VULNERABLE MIGRANTS

Resolution 1509 (2006) of the Council of Europe Parliamentary Assembly - Human rights of irregular migrants

- "Irregular migrants, as they are often in a vulnerable situation, **have a particular need** for the protection of their human rights including basic civil, political, economic and social rights".

- "A large number of irregular migrants perish when seeking to enter Europe. For those that make it, many live in dangerous and inhuman conditions. A great number are exploited and many live in fear of being arrested and sent back to their country of origin".

The Council of Europe Conventions aim at protecting distinct categories of vulnerable migrants. The categories we shall focus on below are Unaccompanied minors and victims of gender based violence.

ESC regarding migrants that are Minors/Unaccompanied Minors

The Charter firstly **treats children as individual rights' holders** since human dignity inherent in each child fully entitles him/her to all fundamental rights granted to adults. Additionally, the specific situation of children, which combines vulnerability, limited autonomy and potential adulthood, requires States to grant them specific rights, such as those enshrined in the following provisions of the Charter:

- Right to shelter (Article 31, para. 2)
- Right to health (Articles 8, 11, 7, 19 para. 2)
- Right to education (Articles 9, 10, 15, 17, 19 para.11-12)
- Protection of the Family and Right to family reunion (Articles 16, 27, 19 para.6)
- Protection against danger and abuse (Articles 7 para. 1, 17)
- Prohibition of Child Labour under the age of 15 (Article 7 para. 1 and 3)
- Specific working conditions between 15 and 18 (Article 7).

CoE Legal Framework regarding migrants that are victims of gender-based violence

- The Council of Europe adopted the Convention on Preventing and Combating Violence against Women and Domestic Violence (**Istanbul Convention**)

- **Article 4 §3** of the Istanbul Convention: "The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status".

Article 60 and 61 of the **Istanbul Convention** (strengthening the existing international protection frameworks available to asylum-seeking and migrant women)

Article 60 - Gender-based asylum claims

1.Parties shall take the necessary legislative or other measures to **ensure that gender-based violence against women may be recognised as a form of persecution** within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees **and as a form of serious harm giving rise to complementary/subsidiary protection.**

2. Parties shall ensure that a **gender-sensitive interpretation is given to each of the Convention grounds** and that where it is established that the **persecution feared is for one or more of these grounds, applicants shall be granted refugee status** according to the applicable relevant instruments.

3. Parties shall take the necessary legislative or other measures to **develop gender-sensitive reception procedures and support services** for asylum-seekers as well as **gender guidelines and gender-sensitive asylum procedures**, including refugee status determination and application for international protection.

Gender-based violence against women

- **Article 3 paragraph (d)** of the Istanbul Convention defines “gender-based violence against women” as “violence that is directed against a woman **because she is a woman** or that affects women **disproportionately**”.

- Forms of violence against women and domestic violence that should be considered as gender-based violence capable of amounting to persecution:

1. Psychological violence (Article 33)
2. Stalking (Article 34)
3. Physical Violence (Article 35)
4. Sexual Violence, including rape (Article 36)
5. Forced marriage (Article 37)
6. Female genital mutilation (Article 38)
7. Forced abortion and forced sterilization (Article 39)
8. Sexual harassment (Article 40)

Article 61- Non-Refoulement

Article 61 – Non-refoulement

1. Parties shall take the necessary legislative or other measures to respect the principle of non-refoulement in accordance with existing obligations under international law.

2 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.

C. The European Court of Human Rights (ECtHR)

Case of M.S.S. v. Belgium and Greece
(Application No. 30696/09)
The Court found that:

- There was a violation of **Article 3 ECHR (prohibition of torture and of inhuman or degrading treatment or punishment)** by the Greek State because of the applicant's conditions of detention, also violation of **Article 13 (the right to an effective remedy) taken in conjunction with Article 3 ECHR** because of the deficiencies in the asylum procedure and the risk of his expulsion to Afghanistan without any serious examination of his asylum application and without any access to an effective remedy.

- The Court also found in relation to Belgium that there was a violation of **Article 3** by sending the applicant back to Greece and exposing him to risks linked to the deficiencies in the asylum procedure in that State and living conditions incompatible with human dignity. The Court also found a violation of **Article 13 ECHR taken in conjunction with Article 3 ECHR** against Belgium.

Observations

- The Court clearly affirms that **Member States** in applying the Dublin rules **cannot presume that the applicant would be treated in conformity with ECHR obligations** but that it was up to the national authorities to first verify how the Greek authorities applied their legislation on asylum in practice before returning asylum seekers there.

- Par.342 "*States must make sure that the intermediary country's asylum procedure affords* ***sufficient guarantees*** *to avoid an asylum seeker being removed, directly or indirectly, to his country of origin without any evaluation of the risks he faces from the standpoint of Article 3 of the Convention.*"

Other points to note:

- The Court highlighted the **positive law obligation of the Member States under the Reception Conditions Directive** and took into account the State's passivity & inaction to remedy the applicant's situation.
- The Courts reasoning emphasized the **particular vulnerability of asylum seekers– broad consensus** at the international and European level concerning the need for special protection for this group.
- Par. 320, 293 – In considering the length of appeal proceedings the Court emphasizes the **importance of swift action** when there is a potential violation of Article 3.
- The judgment has implications also for the **detention conditions** of asylum seekers who are considered by the Court to be particularly vulnerable in detention **and their systematic placement there without being informed** of the reasons for their detention (par. 233).

Judgments of the ECtHR finding violations of **Article 3 ECHR** (Prohibition of torture) in regards to migrants who were **unaccompanied minors**

S.F. AND OTHERS v. BULGARIA (Application no. 8138/16)

The Court held that "*that the immigration detention of minors, whether accompanied or not, raises particular issues in that regard, since, as recognized by the Court , **children, whether accompanied or not, are extremely vulnerable and have specific needs**. Indeed, the child's extreme vulnerability is the decisive factor and takes precedence over considerations relating to the status of illegal immigrant. In recent years, the Court has in several cases examined the conditions in which accompanied minors had been kept in immigration detention*". (para.79)

➡ **Case of Abdullahi Elmi and Aweys Abubakar v. Malta** (Applications nos. 25794/13 and 28151/13)

The Court held that there was a violation of **Article 3** of the Convention, and of **Article 5 §§ 1 and 4** (Right to liberty and security)

It also stated that "*…. **the reception conditions** for children seeking asylum **must be adapted to their age**, to ensure that those conditions do not "create….for them a situation of stress and anxiety, with particularly traumatic consequences"….Otherwise, the conditions in question would attain the threshold of severity required to come within the scope of the prohibition under Article 3 of the Convention* (para. 104)".

Case of POPOV v. FRANCE (Applications nos. 39472/07 and 39474/07)

Findings - Violation of Article 3 ECHR

"in view of the children's young age, the length of their detention and the conditions of their confinement in a detention centre, the Court was of the view that **the authorities failed to take into account the inevitably harmful consequences for the children**. It found that the authorities' treatment of the children was not compatible with the provisions of the Convention and exceeded the threshold of seriousness for Article 3 of the Convention to be engaged leading at a violation of Article 3 ECHR in respect of their children". (para. 103)

Case of Rahimi v. Greece (Application no. 8687/08)

- The applicant was an unaccompanied Afghan child who had been detained in an adult detention centre and later was released without the authorities offering him any assistance with accommodation.

- The ECtHR concluded that the applicant's conditions of detention and the authorities' failure to take care of him following his release had amounted to degrading treatment proscribed by Article 3. The Court held that **respecting the best interests of the child** requires that **other placement options than detention must be explored** for unaccompanied children.

- There was also a violation of Art. 13 (Right to an effective remedy), Art. 5 § 1(f) and 5 § 4 of ECHR (Right to liberty and security).

Conclusions

Addressing the needs of vulnerable migrants contributes to....

- ✓ Social cohesion
- ✓ Economic growth and development
- ✓ Global Responsibility
- ✓ Promotion of Shared Values

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

Marina Kanta

Migrants with individual types of vulnerability

Athens, 22 April 2024

Co-funded the European Union

STRUCTURE OF THE PRESENTATION

1) Vulnerability under CEAS documents
2) Vulnerability under the European Courts
3) Individual cases: VOTs and Medical cases, case law
4) Reflections

VULNERABILITY-NOT A CLEAR DEFINION

The concept of vulnerability has become central in European asylum and refugee law and policy in recent years. The adoption of special measures designed to offer greater protection to vulnerable asylum seekers might be seen as a positive step. However, the way in which vulnerability has been defined is open to question.

►THE CEAS INSTRUMENTS ESPECIALLY IN THE APD, QD, RCD PROVIDE FOR A NON-EXHAUSTIVE LIST OF FREQUENTLY OCCURRING **PERSONAL CHARACTERISTICS THAT GIVE RISE TO SITUATIONS OF VULNERABILITY.**

►THE GOAL IS TO ENSURE <u>EQUALITY BEFORE THE LAW AND NON DISCRIMINATION.</u>

► LEGAL OBLIGATION OF EU MEMBER STATES TO ESTABLISH SPECIFIC MECHANISMS TO IDENTIFY VULNERABLE APPLICANTS IN THE ASYLUM PROCESS

THE CEAS INSTRUMENTS USE DIFFERENT TERMINOLOGY:

VULNERABILITY
SPECIAL NEEDS
SPECIAL RECEPTION NEEDS
SPECIAL PROCEDURAL GUARANTEES

The idea is that identification of vulnerabilities is a process that should begin as soon as possible and continues throughout all the stages of the asylum procedures and reception process

THE RCD OFFERS THE MOST ELABORATE EXEMPLATIVE LIST, WHICH INCLUDES:

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 (Dir. 2013/33/EU, Art. 21).

WE OBSERVE AND QUESTIONS ARISE

-Category based approach

-Tricking box test

-Does the list create the impulse to enter in a vulnerability marathon to get preferential treatment or “fast ticket”.

-Is this response individualised enough and does is take into account the personal circumstances ?

-Can a single definition depict all the complexities of the human nature and experiences?

WHAT IS THE APPROACH OF ECJ AND ECHR?

The decisions highlight the **duty of states** to consider the **individual circumstances** and **protection needs** of vulnerable persons, particularly in asylum and deportation proceedings.

ECHR RELIED ON VULNERABILITY ASSESSMENTS IN CASES CONCERNING

the **deprivation of liberty in view of the deportation**, or pending the examination of the asylum application

the **deprivation of liberty** of asylum applicants and migrants

the **reception conditions of asylum applicants pending a decision on their asylum application**.

(e.g., App. 13178/03 Mubilanzila vs. Belgium ECHR 12 October 2006 and App. 8687/08 Rahimi vs. Greece ECHR 5 April 2011–detention of a minor child; App. 36760/06 Stanev vs. Bulgaria ECHR GC 17 January 2012–detention of a mentally disabled individual; App. 16483/12 Khlaifia and Others vs. Italy ECHR GC 15 December 2016)

M.S.S. VS. BELGIUM AND GREECE

In the landmark ruling M.S.S. vs. Belgium and Greece (App. 30696/09 M.S.S. vs. Belgium and Greece ECHR GC 21 January 2011), the ECtHR held that the applicant, an Afghan adult man who was left to live on the streets in Greece without any kind of state support or assistance, suffered inhuman and degrading treatment in violation of the ECHR. The ECtHR then noted that it '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' (M.S.S., at para. 251). In the M.S.S. ruling, 'vulnerability' was used as an explicit criterion that justified expanding the protection of the ECHR, which generally does not protect against material deprivation in such a way that it requires states to set in place social policies. It served to justify why such policies must be established for asylum applicants, who must benefit from adequate reception conditions.

TARAKHEL V. SWITZERLAND (APPLICATION NO. 29217/12):

In this case, the ECtHR addressed the treatment of a family of Afghan asylum seekers, including several young children, by Swiss authorities. The family faced deportation to Italy, where they risked being subjected to inhumane and degrading treatment due to deficiencies in the Italian asylum system. The ECtHR ruled that Switzerland's deportation of the family to Italy would violate Article 3 of the European Convention on Human Rights, given their vulnerability and the risk of harm they would face. The decision underscored the importance of considering the vulnerability of asylum seekers, especially families with children, in deportation proceedings.

THE PACT ON ASYLUM AND MIGRATION

- New developments include:
- -establishing a border screening procedure, which would involve a systematic vulnerability assessment to better address special needs,
- -and an accelerated asylum border procedure, which would allow the member states to fast-track the asylum applications made at the border. If deemed necessary, the asylum authorities will refrain from examining the asylum application made at the border, thus giving access to the regular asylum procedure for 'vulnerable' applicants.
- -The **effective identification of vulnerable applicants** and the possibility **to cater for the special needs** of the individuals remain the main challenges

THE EXAMPLE OF E (Gender considerations)

VICTIMS OF TORTURE

According to **Article 21 RCD (recast),** 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, are vulnerable persons. Article 25 RCD (recast) sets out specific guarantees for victims of torture and violence.

Article 25(1) RCD (recast)

Member States shall ensure that persons who have been subjected to torture, rape or other serious acts of violence receive the **necessary treatment** for the damage caused by such acts, in particular access to **appropriate medical and psychological treatment or care.**

With regard to the CAT, **Article 14(1)** requires States Parties to provide redress and 'an enforceable right to fair and adequate **compensation**, including the means for as full **rehabilitation** as possible'. The Committee against Torture (CAT Committee) has defined **rehabilitation** as including 'medical and psychological care as well as legal and social services'. It has also stated that specialist services must be '**available, appropriate and promptly accessible'** and must take 'into account victims [sic] culture, personality, history and background'. **Rehabilitation** must be 'accessible to all victims without discrimination and regardless of a victim's identity or status within a marginalised or vulnerable group … including asylum seekers and refugees'

Once an applicant has been identified as a potential VoT, the necessary referrals are made to certified professionals authorised to conduct medico legal assessments.

CHALLENGES:

- the insufficient number of to conduct medico-legal assessments.

THE GREEK CHALLENGE:

In the specific case of VoTs, Article 67(1) of Law 4939/2022 provides that their recognition must be certified by a **medical opinion from a public hospital,** military hospital or appropriately trained practitioners of public health service providers (including forensic doctors). Despite national law, the certification of VoTs systematically does not occur. Article 67(1) of Law 4939/2022 imposes that **only public authorities are competent** to provide certification.

INDIVIDUALS WITH SEVERE HEALTH ISSUES

Article 3 of the European Convention on Human Rights (ECHR) states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

CAN WE INVOKE A BREACH OF ARTICLE 3 IN MEDICAL TREATMENT CASES?

THE PAPOSHVILI TEST

IN 2016 THE ECHR found that Article 3 thus confers a right to protection if:

- there is a **real risk** of a
- **seriously ill** person
- suffering a **serious, rapid and irreversible decline** in his or her state of health,
- resulting in either **intense suffering** or a **significant reduction in life expectancy** if returned to his or her home country, on account of the **absence** of appropriate **treatment** in the receiving country or the **lack** of access to such treatment.

2023-E.F. V. GREECE

E.F. was an HIV-positive woman who developed highly aggressive HIV-related blood cancer. E.F. was forced to remain on the island under the measure of "geographical restriction". The Court found that the 6-month delay in ensuring E.F.'s access to treatment as required by her state of health must be considered as entirely attributable to the Greek authorities, which have therefore, exposed her to inhuman and degrading treatment, in violation of Art. 3 of the European Convention on Human Rights.

2024- W.A. V. GREECE, NO. 21997/20

The applicant suffered form chronic hepatitis B and was living in Samos RIC. There is no evidence in the case-file that during the above period he received any treatment – beyond paracetamol – for the viral infection or the symptoms.

The Court finds it incompatible with the Convention guarantees that at least for ten months the applicant was left without suitable medical supervision and proper treatment for his serious medical condition known to the authorities.

OTHER CANCER PATIENT CASES AT ASC

We supported an Albanian national who had second instance rejection from the Appeals Committee and suffered from cancer. In support of her case, we applied to the Administrative Court of First Instance to annul the second instance decision and asked also for its suspension. The court (decision 80/2024), held that **disrupting the medical protocol of the cancer patient would result in irreparable damage to her health** and suspended the execution of the second instance decision.

IF YOU WERE POLICY MAKERS HOW WOULD YOU SHAPE THE CONCEPT OF "VULNERABILITY"?

REFLECTIONS 1:

-Anyone, whatever their identity or status, may at sometimes be rendered vulnerable.

-We want to address the **actual experiences** of vulnerabilities that cannot all fit in a definition.

-We want to avoid the **trap of labelling.**

REFLECTIONS 2:

-Emphasis should be placed on the fact that **particular contexts create vulnerabilities** and not on just labeling.

-We need to allow the **contribution of empirical knowledge** when making vulnerability determinations.

-Vulnerability to be transformed to an **empowerment tool** towards resilience rather than an immobilizing factor.

SOURCES

https://asylumineurope.org/wp-content/uploads/2020/11/aida_vulnerability_in_asylum_procedures.pdf

https://euaa.europa.eu/sites/default/files/publications/2023-12/EUAA_Vulnerability_Strategy.pdf

https://www.mdpi.com/2075-471X/11/3/45

https://reliefweb.int/report/greece/unrecognised-vulnerability-greeces-systematic-failure-identify-and-certify-victims-torture-enel

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

Elena Hernandez

Migrant children and migrant families

Athens, 22 April 2024

Co-funded the European Union

Overview

I. Introduction: concepts

II. Children

III. Migrant Families

IV. New EU pact on Immigration

I. Introduction

- **A child** means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. (Art 1 of the Convention on the Rights of the Child,1989)

- **Vulnerable children**: Unaccompanied minors: children under 18 without a legal or primary caregiver

- **Vulnerable Families**: With EU law are any single parents along with those who are pregnant

INTRODUCTION

Children constitute over 40 per cent of forcibly displaced and stateless persons. Situations of forced displacement and statelessness can have a lifelong, devastating impact on the lives and development of children.

Conflict and persecution expose children and their families to violence, abuse and exploitation and cause families and children to flee. As a result, forcibly displaced and stateless children face a wide range of child protection risks which include diverse forms of violence, abuse, exploitation and neglect. Below is a repository of documents related to the protection of forcibly displaced and stateless children, including legal, policy and background information* (UNHCR)

II. Children

- International legislation related to Children
- European legislation related to Migrant Children
  - European Union
- The Role of the European Union Asylum Agency on Issues related to Children
- The Best Interest of the child
- Unaccompanied minors
  - Identification: age assessments
  - Case law: EUCJ and ECtHR jurisprudence in relation to Unaccompanied minors

INTERNATIONAL LEGISLATION

Convention

Convention on the Rights of the Child, UN General Assembly, 20 November 1989

Protocols

i. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, UN General Assembly,15 November 2000 **(The Palermo Protocol)**

I. Optional Protocol on the Involvement of Children in Armed Conflict, UN General Assembly, 25 May 2000

II. Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, UN General Assembly, 25 May 2000

EUROPEAN LEGISLATION

Recast Reception Directive (2013/33/EU)

CHAPTER IV Provisions for vulnerable persons

Article 24 Unaccompanied minors

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.

Article 24 (2)

Unaccompanied minors who make an application for international protection shall, from the moment they are admitted to the territory until the moment when they are obliged to leave the Member State in which the application for international protection was made or is being examined, be placed:

- (a) with adult relatives;
- with a foster family;
- (c) in accommodation centres with special provisions for minors;
- (d) in other accommodation suitable for minors.

The role of the EU asylum Agency

The EUAA provides support and develops practical cooperation among EU and associated countries and other relevant experts on issues relating to children, including unaccompanied children. The agency focuses on addressing issues such as **age assessment, family tracing, the best interests of the child,** child marriage, female genital mutilation/cutting and the trafficking of children.

The role of the EU asylum Agency

The EUAA released dedicated publications and practical tools on child-related topic:

- Age assessment practices in EU+ countries: updated findings
- Report on Asylum Procedures for Children
- Practical Guide on the Best Interests of the Child in Asylum Procedures
- Practical Guide on Age Assessment
- Practical Guide on Family Tracing
- Age Assessment Practice in Europe
- Age Assessment for Children
- **Guidance on Reception Conditions for Unaccompanied Children: Operational standards and indicators (2018)**

UNCHR Policy documents

- **Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child, May 2021**

- **Technical Guidance: Child Friendly Procedures, 2021**

- **Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, HCR/GIP/09/08, December 2009**

European Union Policy Documents

- Guardianship for children deprived of parental care : A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, European Agency for Fundamental Rights, June 2014

- EASO Age assessment practice in Europe, European Asylum Support Office (EASO), December 2013

- Report on the situation of unaccompanied minors in the EU (2012/2263(INI)) : Committee on Civil Liberties, Justice and Home Affairs, European Parliament, A7-0251/2013, 26 August 2013

THE BEST INTEREST OF THE CHILD

Put simply, the best interests of the child are whatever is best for that individual child. The UNCRC expressly recognises the role of parents and carers (including extended family, guardians and others with legal responsibility) in protecting and promoting the best interests of the Child is aimed at ensuring the full and effective enjoyment of all the rights recognised in the United Nations Convention on the Rights of the Child (UNCRC) and of which the primary consideration is to ensure the holistic development of the child.

THE BEST INTEREST OF THE CHILD

- The holistic development of the child refers to the well-being of a child in a broad sense which includes their basic material, physical, educational and emotional needs as well as needs for affection and safety.

- The best interests principle applies to all children without discrimination, to children not only as individuals, but also in general or as a group.

- Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child, May 2021 UNHCR

Identification: Age Assessment and Age disputed minors or deemed adults

- Process by which authorities seek to establish the chronological age, or range of age, of a person in order to determine whether an individual is a child or not in the absence of identity documents

- Examination to establish the age of the applicant it may involve an interview by a government official trained in identification of children or other independent assessment like dental screening, Bone density screening or a medical assessment

- If the applicant is identified as being over 18 years old, he/she becomes an aged disputed minor and the provisions for minors do not apply

CASE LAW

Reception Conditions

ECtHR judgments on inadequate conditions for unaccompanied minors

ECtHR, O.R. v Greece, No 24650/19,23 January 2024

Due to poor living conditions and the absence of a designated legal guardian, the ECtHR found Greece in violation of Article 3 of the ECHR in a case concerning an Afghan unaccompanied minor

CASE LAW

Reception conditions

ECtHR judgments on inadequate conditions for unaccompanied minors

ECtHR, T.K v Greece, No 16112/20, 18 January 2024

The ECtHR found Greece in violation of Articles 3 and 8, separately and jointly with Article 13 of the ECHR, in a case concerning an unaccompanied minor from Sierra Leone who was accommodated in the vicinity of the Samos camp from 25 October 2019

CASE LAW

Age Assessment

Placement of minors in an adult reception centre

ECtHR, In Darbore and Camara v Italy, No 5797/17, 21 July 2022

The ECtHR found a violation of Article 3, and Article 8 of the ECHR alone and taken in conjunction with Article 13 when minor applicants were placed in an adult reception centre, where the facility was overcrowded and the conditions inadequate . The court also concluded that national authorities failed to ensure the minimum procedural safeguards in the age assessment procedure.

CASE LAW

Unlawful detention of a minor Applicant

ECtHR, A.D. v Malta, No 12427/22, 17 October 2023.

The ECtHR found Malta in violation of Article 3 of the ECHR for the conditions of detention of a minor asylum applicant, Article 5 for illegal detention and Article 13 for the lack of effective remedies.

CASE LAW

Detention

ECtHR judgment on detention of minors and age assessments

ECtHR, M.H. and S.B. v Hungary, Nos 10940/17 and 15977/17, 22 February 2024.

The ECtHR found Hungary in violation of Article 5(1) of the ECHR for the arbitrary detention of two minors, as the authorities failed to act expeditiously in ordering their age assessments or to consider alternative measures and the children's best interest

CASE LAW

Content of protection

CJEU judgment on family reunification

- **CJEU, CR, GF, TY v Landeshauptmann von Wien, C-560/20, 30 January 2024.**

The CJEU ruled that an unaccompanied minor refugee has the right to family reunification with the parents, and exceptionally with the vulnerable sibling in need of permanent assistance from the parents on account of a serious illness, even if the unaccompanied minor reached the age of majority during the family reunification procedure

III. Migrant families

- Accompanied Minors & Vulnerable Migrant Families
- Legal Framework on assessment of vulnerability
  - The Recast Reception conditions directive 2013/33/EU
  - Identification: Vulnerability Assessments
  - Case law: EUCJ and ECtHR jurisprudence in relation to Access to territory

Accompanied Minors & Vulnerable Migrant Families

In the International Protection context

- **Accompanied Minors** are those who are accompanied by either one or both parents
- **Separated children** are those separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members
- **Vulnerable migrant families** are single parents along with those who are pregnant

Legal Framework on the assessment of vulnerability

In accordance with Directive 2013/33/EU (RCD (recast)) (5) and Directive 2013/32/EU(APD (recast)), the Member State must conduct an **individual assessment of whether the applicant has special reception needs and/or is in need of special procedural guarantees.** Identification and assessment of special needs as well as the provision of adequate support to applicants in a vulnerable situation is an obligation for Member States.

Legal Framework on the assessment of vulnerability

In particular, under the EU asylum acquis:

- the identification and the assessment of the special needs of the applicants have to be done within a reasonable period after an application for international protection is made and should be ongoing
- Member States must ensure that where applicants have been identified with special needs, they are provided adequate support
- Member States must take into account the specific situation of applicants in need of special reception support and special procedural guarantees (9)

The Recast Reception conditions directive

The Council of the European Union and the representatives of the governments of the MS adopted the Conclusions on the protection of children in migration (16) to reaffirm that children in migration have the right to be protected, in line with relevant provisions of EU law, including the EU Charter, and with international law on the rights of the child.

The Recast Reception conditions directive

Reception Directive (2013/33/EU) CHAPTER IV Provisions for vulnerable persons			
Article 21 General principle	Article 22 Assessment of the special reception needs of vulnerable persons	Article 23 Minors	Article 24 Unaccompanied minor

Figure 2. Legal framework under the RCD.

The Recast Reception conditions directive 2013/33/EU Chapter IV

Article 21 Provisions for 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

The Recast Reception conditions directive 2013/33/EU Chapter IV

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

Article 23(5) Accompanied Minors

Member States shall ensure that minor children of applicants or applicants who are minors are lodged with their parents, their unmarried minor siblings or with the adult responsible for them whether by law or by the practice of the Member State concerned, provided it is in the best interests of the minors concerned

The Recast Reception conditions directive

The Communication on the Protection of Children in Migration sets out a range of actions to be taken into account or better implemented by the EU and its MS in order to ensure effective protection of all migrant children and calls for the need to step up actions cutting across all stages of migration(17). MS are encouraged to, inter alia:

The Recast Reception conditions directive

- Ensure that individual gender- and age-sensitive vulnerability and needs assessments of children are carried out upon arrival and taken into account in all subsequent procedures;

- Ensure that all children have timely access to healthcare (including preventive care) and psychosocial support, as well as to inclusive formal education, regardless of status;

The Recast Reception conditions directive

- ensure that a range of alternative care options for unaccompanied children, including foster/family-based care, are provided;
- integrate child protection policies in all reception facilities hosting children, including by appointing a person responsible for child protection;
- ensure that an appropriate and effective monitoring system is in place with regard to reception of children in migration.

Identification: Vulnerability assessments

Identification: Vulnerability assessments

EU STRATEGY ON VULNERABILITY

- All applicants in a vulnerable situation are identified, their needs assessed on an ongoing basis, and adequate and timely support is provided throughout the entire reception and asylum pathways.

- The early identification of applicants in a vulnerable situation and the provision of adequate support are key to preventing the aggravation of the applicant's pre-existing condition(s) or the emergence of new risk factors or vulnerabilities. Prevention refers to activities aiming to stop the emergence of new situations of vulnerability and the deterioration of existing ones.

Identification: Vulnerability assessments

- The identification of vulnerabilities is a process that should begin as soon as possible and continues throughout all the stages of the asylum procedures and reception process.

- It is essential that when needs are identified, the appropriate response and follow-up are carried out.

- Therefore, specific responsibilities and adequate response timelines should be assigned based on the resources allocated in the standard operating procedures linking the identification phase and the appropriate response

Identification: Vulnerability assessments

- The assessment of special needs is the systematic evaluation of the situation of the applicant.

- A vulnerability assessment considers the complex intersection of vulnerabilities, risks and harm factors. It also highlights protective factors and the resilience of an individual and any social and/or family network on which the applicant may be able to rely.

- A comprehensive and continuous assessment aims at understanding the vulnerabilities and special needs of the applicants and the ways in which they can holistically be addressed.

CASE LAW

Violation of Article 3 of Reception Conditions Confinement in transit zone

M.A v Hungary ECtHR No 58680/18, 5 October 2023

In the case of M.A. and Others v. Hungary the European Court of Human Rights found that Hungary violated the applicants' rights under the European Convention on Human Rights due to the conditions they experienced in the Röszke transit zone at the Serbian-Hungarian border. The Court determined that Hungary failed to ensure that the applicants were treated with dignity and humanity, and it ordered Hungary to pay compensation to the applicants. The Court found that the child applicants suffered Art 3. (reception conditions) breach but parents did not.

CASE LAW

M.A v Hungary is related to:

R.R and others (Iran and Afghanistan V Hungary) ECtHR No 36037/17, 5 July 2021

The ECtHR held that Hungary violated the rights under the ECHR, Article 3 and 5 for a family of applicants in the Röszke transit zone.

CASE LAW

ECtHR - Tarakhel v. Switzerland, Application no. 29217/12, November 2014

The judgment concerns the threatened expulsion to Italy under Dublin II Regulation of a family of Afghan nationals seeking asylum.

"The requirement of “special protection” of asylum-seekers is particularly important when the persons concerned are children, in view of their specific needs and their extreme vulnerability. This applies even when the children seeking asylum are accompanied by their parents. National authorities intending to issue a removal order under the Dublin II Regulation must therefore obtain assurances that on arrival in the requested State the persons concerned will be received in facilities and in conditions adapted to the age of the children and that the family unit will be kept together; otherwise, the removal order is liable to be in breach of Article 3 of the Convention (see paragraphs 119-20 of the judgment)."

CASE LAW

Inadequate conditions for pregnant women

ECtHR, M.B. v Greece (No 8389/20) and M.L. v Greece (No 8386/20), 23 November 2023.

The ECtHR found Greece in violation of Article 3 of the ECHR for inadequate living conditions provided to pregnant women in the Samos RIC in 2020.

IV. New EU Pact on Immigration and Asylum

How will the New Pact ensure protection of vulnerable groups and children?

- The new rules will ensure that the best interest of the child are the primary consideration in decision-making. During the screening, an individual assessment will take into account their specific needs.
- Families with children under 12 and unaccompanied children will be exempt from border procedures. Representatives for unaccompanied minors should be appointed quickly and have access to sufficient resources. Tailored processes should reflect the particular needs of children at every stage. The role of the European Network on Guardianship should be strengthened.

New EU Pact on Immigration and Asylum

- Family reunification will be strengthened by enlarging the definition of family members to include siblings and families formed in transit countries.

- Under the solidarity mechanism established by the AMR, relocation of unaccompanied children will always be given priority and Member States will receive a higher financial contribution from the EU budget – which has for years already and will continue to support relocation and resettlement with lump sums. In specific circumstances, the solidarity pool established for search and rescue operations may be used for relocation of vulnerable persons.

CONCLUSIONS

- Asylum seekers are "particularly vulnerable and underprivileged population in General" (Tarakel)
- Moreover, Migrant children are always vulnerable whether accompanied or unaccompanied
- Families are a specially identified group within this subset of asylum seekers in general with the vulnerability that carries being in charge or minors
- Pregnant single or married women should be assessed for vulnerability always and received specific needs Assessment as soon as they arrive to the reception country
- https://www.europarl.europa.eu/thinktank/infographics/childrenmigration/index.html?lang=en

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

Evanthia Savvopoulou

The actions of UNHCR Greece

Athens, 22 April 2024

Co-funded the European Union

UNHCR IN GREECE

TRALVU Training, 22 April 2024

Masoma with her 3-year-old son, refugees from Afghanistan, at a Women's Safe Space near the site on Lesvos island. © UNHCR/Socrates Baltagiannis.

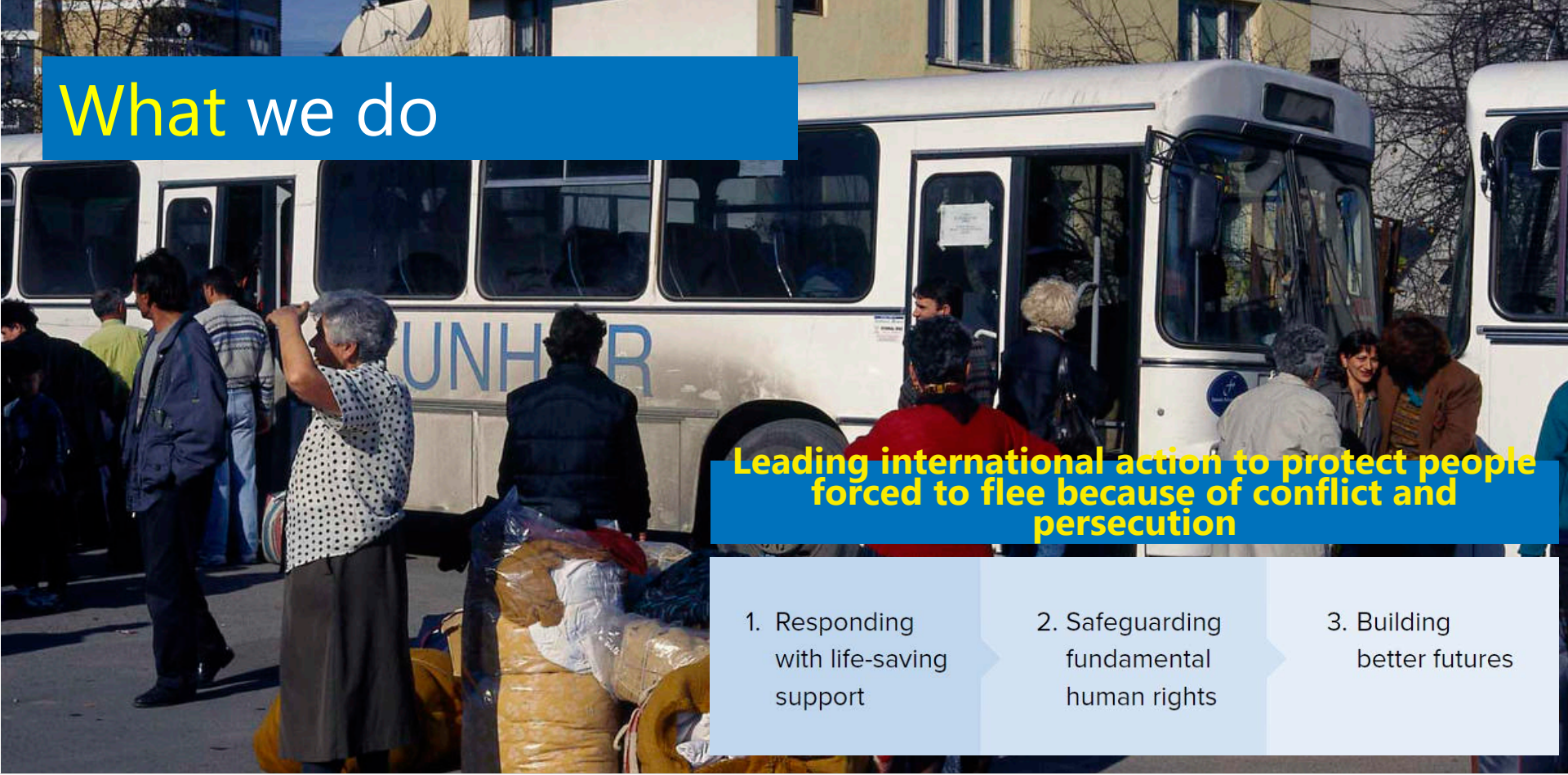
UNHCR
The UN Refugee Agency

Who are we?

- Created by UN in 1950
- Geneva-based; field-focused; people oriented
- 20,739 staff in more than 135 countries, over 91% based in the field
- Multicultural and diverse, but one shared goal
- Putting people first

UNHCR
The UN Refugee Agency

What we do



Leading international action to protect people forced to flee because of conflict and persecution

1. Responding with life-saving support
2. Safeguarding fundamental human rights
3. Building better futures

UNHCR
The UN Refugee Agency

UNHCR Mandate

- refugees
- asylum-seekers,
- stateless persons
- returnees
- internally displaced people

A UNHCR staff member holds a young refugee boy in a blanket, after his boat landed on the Greek island of Lesvos. © UNHCR/Hereward Holland

UNHCR
The UN Refugee Agency

Refugees in Greece

110 MILLION FORCIBLY DISPLACED WORLDWIDE

By the end of June as a result of persecution, conflict, violence, human rights violations or events seriously disturbing public order.

36.4 million refugees[1]
- **30.5** million refugees under UNHCR's mandate[1]
- **5.9** million Palestine refugees under UNRWA's mandate

62.5 million internally displaced people at end-2022[2]

6.1 million asylum-seekers

5.3 million other people in need of international protection[3]

74,172
refugees including from Ukraine

31,548
asylum-seekers

1,890
stateless

Top 5 Nationalities

Ukraine 25%
Syria 16%
Afghanistan 16%
State of Palestine 7%
Iraq 7%

A young Afghan refugee queues for a food distribution with her family near the Kara Tepe accommodation site in Lesvos, after the Moria reception and identification centre was destroyed by fires. © UNHCR/Achilleas Zavallis

UNHCR
The UN Refugee Agency

UNHCR in Greece

Presence since 1952

- ✓ **Supports national authorities in ensuring a favourable protection space for forcibly displaced people**
- ✓ **Provides information on rights, procedures and obligations**
- ✓ **Supports refugees and asylum-seekers with legal aid, referrals to specialized services, access to rights**
- ✓ **Supports the state with advice and expertise on asylum, reception and durable solutions**

A member of UNHCR staff helps an asylum-seeker prepare for a job interview during a job fair held in Malakasa site. © UNHCR/Socrates Baltagiannis

UNHCR
The UN Refugee Agency

In 2015 - 2016 over a million people passed through Greece seeking safety in Europe

UNHCR supported the State response with immediate and long-term solutions

A group of Syrian refugees arrive on the island of Lesvos after traveling in an inflatable raft from Turkey, near Skala Sykaminias, Greece. © UNHCR/Andrew McConnell

UNHCR
The UN Refugee Agency

Operational engagement during the emergency in 2015 – 2016

Refugees arrive at the village of Skala Sikamineas, on the Greek island of Lesvos, after crossing on a dinghy the Aegean sea from Turkey. © Ritzau Scanpix

Immediate response:

- Relief items
- Shoreline response
- Protection activities
- Construction/shelter support across Greece

UNHCR
The UN Refugee Agency

Operational engagement after the emergency in 2015 – 2021

Reception:

- ESTIA accommodation –25,000 places at the peak
- Cash assistance – to 100,000 monthly at the peak
- Capacity building for transition

Syrian asylum-seeker Jad poses with his family for a portrait outside their ESTIA apartment on Samos island. © UNHCR/Achilleas Zavallis

UNHCR
The UN Refugee Agency

Emergency response: COVID-19 quarantine and isolation infrastructure on the islands

Young asylum-seekers have their temperature taken by a teacher before being allowed into a non-formal education school on Chios island. © UNICEF/ Andreas Sawas

Protecting vulnerable population

2,180 people moved to safer accommodation

1,519 children removed out of precarious conditions

Medical Assistance

✓ planning and set up of triage areas

147 containers and tents provided for screening/treatment/isolation

1,200 equipment for examination and isolation

972k protective equipment for frontline workers

Water, Sanitation & Hygiene

31.5k refugees got cash top-up for hygiene needs

219k hygiene items provided

684 repairs or installation of taps, portable sinks, ,etc

246 toilets, showers and sinks provided

Core Relief Items

151k blankets, sleeping bags, jerrycans, etc

13k solar lamps provided

Communicating with Communities

✓ dedicated website, helplines, posters and interpreters

92k refugees got cash top-up for mobile connectivity and better access to information on COVID-19

WHAT WE DO IN GREECE TODAY

Two priorities

Access to protection

Integration & Solutions

One cross-cutting focus

Protection of vulnerable people

Staff member of the UNHCR Protection team on Lesvos with a refugee child from Cameroon at Mavrovouni camp on Lesvos island. ©UNHCR/ Socrates Baltagiannis

UNHCR
The UN Refugee Agency

Child Protection

1. Work to the best interest of vulnerable refugee children

2. Empower unaccompanied children reaching adulthood to achieve self-reliance

3. Support foster care for younger refugee children

4. Strengthen the work of the authorities

Refugee child at Mavrovouni camp on Lesvos island. ©UNHCR/Achilleas Zavallis

General Secretariat for Vulnerable Persons & Institutional Protection

icmc International Catholic Migration Commission

RESCUE

METAdrasi ACTION FOR MIGRATION & DEVELOPMENT

PRAKSIS

UNHCR The UN Refugee Agency

Gender-Based Violence

1. Provide assistance to gender-based violence survivors

2. Promote community awareness and empowerment

3. Strengthen the work of the authorities

Refugee women participate in awareness and empowerment sessions. ©UNHCR/Socrates Baltagiannis

General Secretariat for Equality and Human Rights

ΔΙΟΤΙΜΑ CENTRE FOR GENDER RIGHTS & EQUALITY

icmc International Catholic Migration Commission

UNHCR The UN Refugee Agency

Protecting people with specific needs

1. Offer peer-to-peer psychosocial support

2. Assist people with disabilities

Kadija (R), refugee from Somalia works as Community Psychosocial Worker at a peer-to-peer programme. Here during a session with Esther and her daughter, refugees from the Democratic Republic of Congo. ©UNHCR/Socrates Baltagiannis

Ε.Π.Α.Ψ.Υ.
ΕΤΑΙΡΕΙΑ ΠΕΡΙΦΕΡΕΙΑΚΗΣ ΑΝΑΠΤΥΞΗΣ ΚΑΙ ΨΥΧΙΚΗΣ ΥΓΕΙΑΣ

UNHCR
The UN Refugee Agency

Access to Protection

1. Access to territory
2. Asylum
3. Legal aid

Shawqi and his cousin Walid, both asylum-seekers from Gaza, Palestine, arrived in Greece in February 2023 in search of peace and safety. © UNHCR/Socrates Baltagiannis

GREEK COUNCIL FOR REFUGEES
icmc International Catholic Migration Commission
METAdrasi ACTION FOR MIGRATION & DEVELOPMENT
UNHCR The UN Refugee Agency

Communicating with refugees

1. National Helpline & online portals

2. Refugee Led Organizations (RLOs)

3. Outreach in urban and field settings

4. Interpretation

Jawad, refugee from Afghanistan, is now supporting other refugees, as part of the UNHCR Protection Helpdesk team in Greece. © UNHCR/Socrates Baltagiannis

icmc International Catholic Migration Commission

METAdrasi ACTION FOR MIGRATION & DEVELOPMENT

UNHCR The UN Refugee Agency

Integration & Solutions

1. Employability & livelihood partners
2. Municipal support
3. Job Fairs
4. Greek language classes
5. Engaging the private sector
6. Raising awareness

Emanuel works in the room service of "Summer Palace" hotel on Kos island. © UNHCR/Socrates Baltagiannis

Why integration?

For refugees:
- ✓ Sense of belonging
- ✓ Self-reliance & dignity
- ✓ Heals trauma & gives hope

For the economy:
- ✓ Diverse pool of skills and experiences
- ✓ Multi-cultural work environments
- ✓ Income that will further fuel the economy

For the society:
- ✓ Peaceful co-existence
- ✓ Cultural exchange

© UNHCR/ Socrates Baltagiannis

Generating livelihoods opportunities

© UNHCR/ Socrates Baltagiannis

Employability

4,192 refugees and asylum-seekers received employability services.

Hiring

1,114 refugees and asylum-seekers hired.

Upskilling

2,128 adult asylum-seekers country-wide attended language classes.

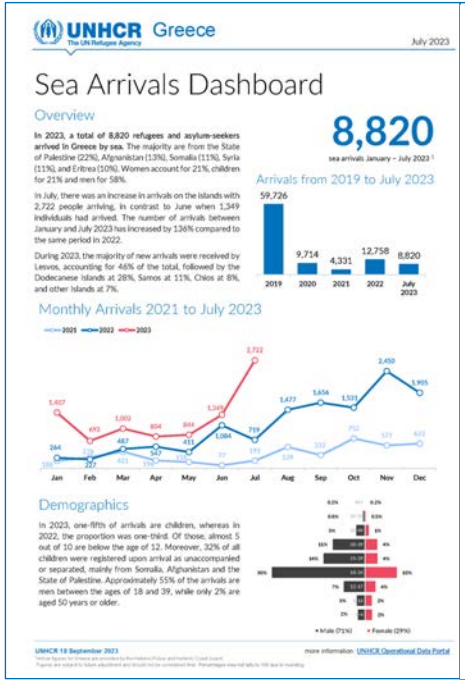
53 refugees obtained a driving licence.

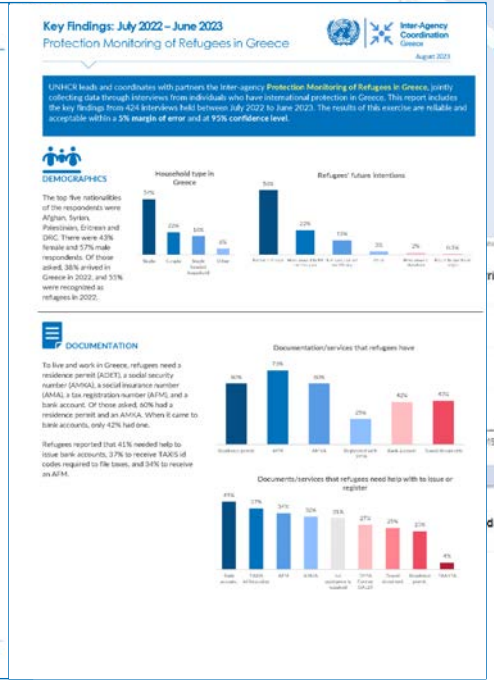
Private sector

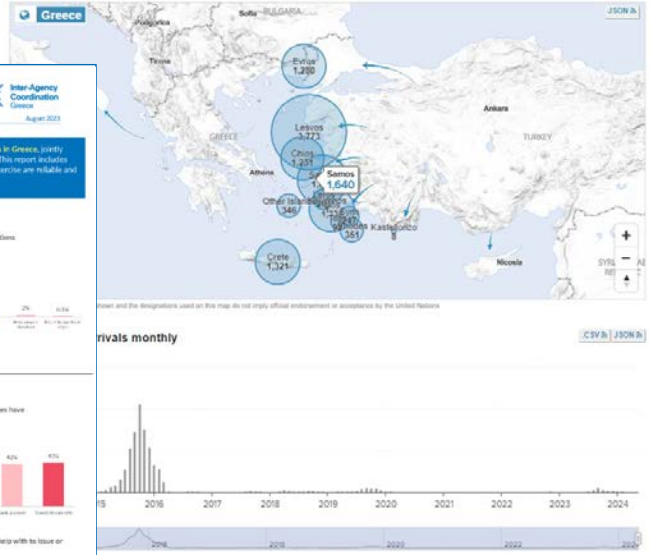
231 collaborations with employers across Greece.

UNHCR
The UN Refugee Agency

Data analysis on flows, refugees and needs







Total arrivals in 2024

11,889

Last updated 14 Apr 2024

Sea arrivals in 2024

10,609

Last updated 14 Apr 2024

Land arrivals in 2024

1,280

Last updated 14 Apr 2024

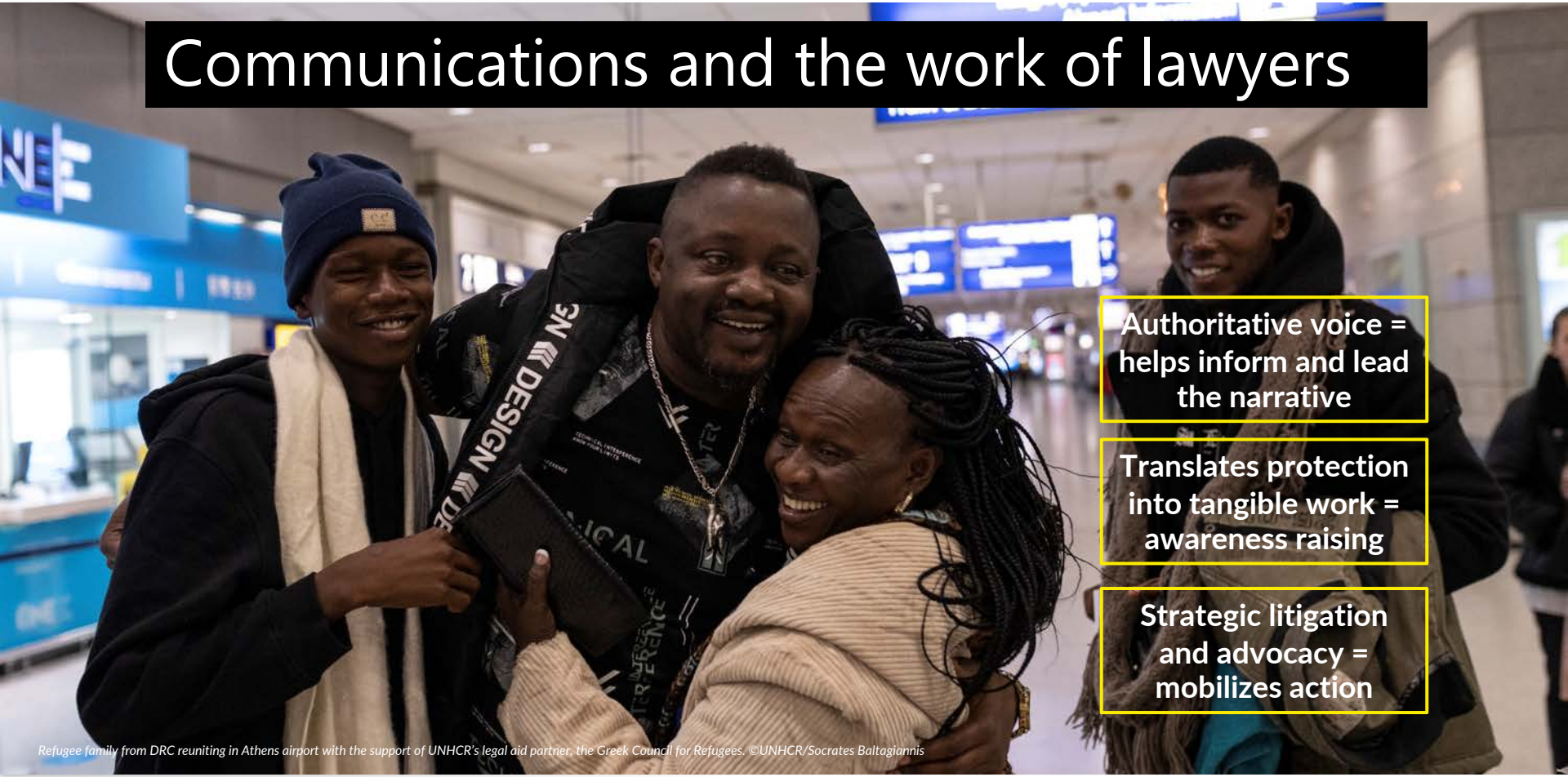
Previous years	Sea arrivals	Land arrivals	*Dead and missing
2023	41,561	7,160	799
2022	12,758	6,022	343
2021	4,331	4,826	115
2020	9,714	5,982	105
2019	59,726	14,887	71
2018	32,494	18,014	187
2017	29,718	6,592	56
2016	173,450	3,784	441
2015	856,723	4,907	799
2014	41,038	2,280	405

*The dead and missing figures correspond to the entire Eastern Mediterranean route.

https://data.unhcr.org

UNHCR The UN Refugee Agency

Communications and the work of lawyers



Authoritative voice = helps inform and lead the narrative

Translates protection into tangible work = awareness raising

Strategic litigation and advocacy = mobilizes action

Refugee family from DRC reuniting in Athens airport with the support of UNHCR's legal aid partner, the Greek Council for Refugees. ©UNHCR/Socrates Baltagiannis

UNHCR
The UN Refugee Agency

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

Angeliki Serafeim

Migrant women and migrant LGBTI+

Athens, 22 April 2024

Co-funded the European Union

RELEVANT INTERNATIONAL LEGAL INSTRUMENTS

- ***Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979***
- ***Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) 2011***
- ***Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) 2000***
- ***Convention on the Rights of the Child (CRC)***
- ***Universal Declaration of Human Rights (UDHR) 1948***
- ***International Covenant on Civil and Political Rights 1976***

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 not signed by EU countries and generally countries of destination

RELEVANT EU LEGAL INSTRUMENTS

- ***EU Charter for Fundamental Rights***
- ***EU directives on gender equality and gbv***
- ***Framework Decision on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law (2008/913/JHA)***
- ***Victims' rights directive***
- ***Reception Conditions Directive***
- ***EU Gender Equality Strategy***

Some info on the Istanbul convention

- It was signed at Istanbul, Türkiye, at 2011
- Official title: Council of Europe Convention on preventing and combating violence against women and domestic violence

COUNCIL OF EUROPE

www.coe.int

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

DEFINITIONS

for the purpose of the Convention, **violence against women** shall be understood to constitute a violation of human rights and a form of discrimination.

gender-based violence refers to any harm that is perpetrated against a woman and that is both the cause and the result of unequal power relations based on perceived differences between women and men that lead to women's subordinate status in both the private and public spheres. This type of violence is deeply rooted in the social and cultural structures, norms and values that govern society, and is often perpetuated by a culture of denial and silence

4 PILLARS

PREVENTION

PROTECTION

PROSECUTION

CO-ORDINATED POLICIES

PREVENTION

Encourage the media and the private sector

In setting standards that enhance respectful gender roles and challenge attitudes that excuse violence against women

Awareness-raising campaigns

Raise awareness of the different forms of violence, their devastating nature and the impact that they have on women and children

Education in non-violence and equality between women and men

Include teaching material on gender equality, gender-based violence, non-violent conflict resolution and right to personal integrity in the formal curricula at all levels of education

Challenging gender stereotypes

Promote changes in the social and cultural patterns of behaviour of women and men

PREVENTION

Promoting women's empowerment

Introduce programmes and activities for the empowerment of women, and address the specific needs of people in vulnerable situations from a human rights standpoint

PREVENTION

Programmes for perpetrators

Establish programmes to teach perpetrators of domestic violence to adopt non-violent behaviour and sex offenders to avoid re-offending

Role of men and boys

Encourage active engagement and contribution from men and boys in the prevention of violence

Training of professionals

Train professionals working with victims or perpetrators to recognise and respond to violence and make appropriate referrals

PROTECTION

Information on their rights

Victims must be informed of their rights and know where and how to get help in a language they understand

Support services

Victims should have access to specialist women's support services, which are often women-to-women and dedicated to a specific type of violence. Victims should also have access to general services such as legal advice/aid, psychological counselling, financial assistance, housing, education, healthcare, social services and assistance in finding employment

Regional and international complaints mechanisms

Victims must be informed of and have access to relevant regional and international complaints mechanisms

Shelters

Victims must have access to a local, easily accessible shelter for women and children

Rape crisis or sexual violence centres

Victims must have access to a nearby easily accessible centre providing immediate medical counselling, trauma care and forensic services

Reporting violence to authorities

Everyone must be encouraged to report acts of violence to relevant authorities to prevent further incidents, and confidentiality rules should not prevent professionals from doing so, where justified

Emergency barring orders

These will grant police the power to remove a perpetrator of domestic violence from their home for a specific period of time and order them to stay away from the victim

Protection or restraining orders

They should be easily accessible for immediate protection to the victim without any cost

PROTECTION

Safe custody and visitation rights for children

If there is a history of violence, custody and visitation decisions must prioritise the rights and safety of the child and the victim

Free telephone helplines 24/7

Victims must have access to a state-wide 24/7 free and confidential telephone helpline offering them expert advice and pointing them towards relevant services

Rights and needs of child witnesses

The best interest of child witnesses of violence must be taken into account and age-appropriate psychosocial counselling provided

PROTECTION

Legislation criminalising violence against women

Introduce laws criminalising physical, psychological and sexual violence, sexual harassment, stalking, female genital mutilation, forced marriage, forced abortion and forced sterilisation. States parties will ensure that culture, tradition or so-called 'honour' are not regarded as a justification for violence

PROSECUTION

Effective police investigation

Law enforcement agencies will have to respond immediately to calls for assistance, manage dangerous situations appropriately, and investigate all allegations of violence against women

Protection of child victims and witnesses

- Children will be provided with appropriate special protection measures
- Child victims of sexual violence, forced marriage, female genital mutilation and forced abortion or sterilisation will be able to initiate legal action for a sufficient amount of time after they have reached adulthood

Dissuasive Sanctions for perpetrators

Ensure that criminal offences and breaches of protection orders will be subject to proportionate criminal or legal sanctions including imprisonment, extradition, monitoring and supervision, and withdrawal of parental rights

Effective public prosecution

Investigation or prosecution of violent offences against women will take into account that women are disproportionately affected by violence; will not be dependent upon a report or complaint by the victim and may even continue if the victim withdraws their statement or complaint

Consideration of aggravating circumstances

Ensure that aggravating circumstances are taken into account, including the victim being an intimate or close relation, crimes against a vulnerable person or in the presence of a child, in collusion with other people, extreme levels of violence or psychological harm, threat of weapons, or previous convictions for crimes of a similar nature

PROSECUTION

PROSECUTION

Co-ordinated risk assessments

Will be carried out in co-operation with relevant agencies and institutions, taking repeat offences and access to firearms into account, as well as any new information the investigation may bring to light

No victim-blaming

Investigations and judicial proceedings will respect victims at all stages and refrain from showing attitudes, behaviours and practices which blame victims and cause them additional distress

Victims' right to privacy

- Ensure that the privacy and image of the victim is protected, and that contact between them and the alleged perpetrator is avoided where possible
- Victims will be enabled to supply evidence and have their needs and concerns presented directly or through an intermediary
- Victims will be enabled to testify in the courtroom through communication technologies, or at least without the alleged perpetrator present
- The sexual history of a victim will only be permitted in civil or criminal proceedings where it is relevant and necessary

PROSECUTION

Victims' right to information and support

- To be kept informed of the progress and outcome of their case
- Access to information on victim's rights, and appropriate support services to help them represent those rights and interests
- Support and assistance from governmental and non-governmental organisations and domestic violence counsellors during the investigation and judicial proceedings
- Right to legal assistance and free legal aid
- Provision of independent and competent interpreters if needed
- Supported by law to claim compensation from perpetrators of violence and to sue state authorities if they have failed in their preventative and protective duties

Victims' protection during investigation and judicial proceedings

- Victims of violence and their families will be protected at all stages of investigation and judicial proceedings from intimidation, retaliation and repeat victimisation
- Alternative options to resolve disputes such as mediation between victim and perpetrator will not be mandatory
- The victim will be informed of any escape or release of a perpetrator

CO-ORDINATED POLICIES

Inter-agency co-operation

Ensure that there are appropriate mechanisms in place that provide for effective co-operation among the judiciary, public prosecutors, law-enforcement agencies, local and regional authorities and NGOs

Support and work with civil society and NGOs

They should be included alongside state bodies as valued partners in the implementation of the Istanbul Convention

Co-ordinate action and monitor implementation

Create or designate a state body to oversee the co-ordination, implementation, monitoring and evaluation of the Istanbul Convention

Research and data collection

Collect and collate data and conduct research into the prevalence of all forms of violence against women and the effectiveness of their measures, which shall be shared with the public, and similar agencies in other countries, for comparison and to encourage co-operation

CO-ORDINATED POLICIES

Human rights-based policies

Put in place victim-focussed laws to prevent and combat all forms of violence against women

Whole societal response

The Istanbul Convention sends a clear message to society as a whole. Everybody must understand that violence against women and domestic violence will not be tolerated

Funding for policies and services

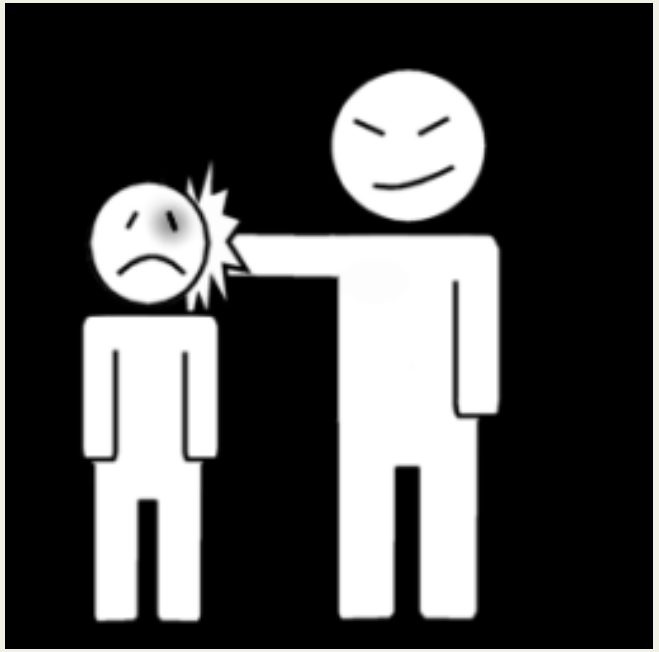
Adequately fund all partners involved in the implementation of the Istanbul Convention, including non-governmental organisations

Comprehensive legislation and gender-sensitive policies

Introduce laws and supporting measures to prevent all types of violence covered in this convention

FORMS OF DOMESTIC VIOLENCE

Physical



FORMS OF DOMESTIC VIOLENCE

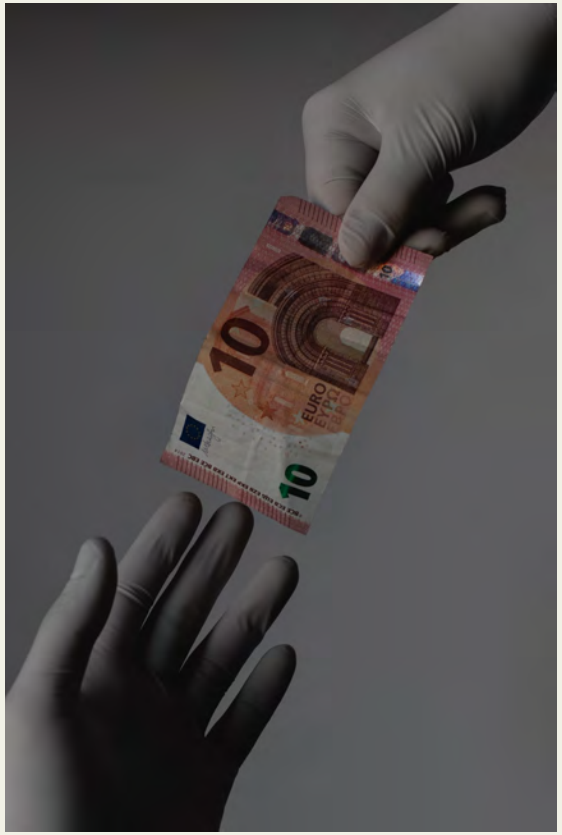
Sexual

FORMS OF DOMESTIC VIOLENCE

Psychological

FORMS OF DOMESTIC VIOLENCE

Economic



DOMESTIC VIOLENCE

Who might be the perpetrators of domestic violence?

- Former spouses*, **
- Former partners*, **
- Current spouses*, **
- Current partners*, **
- Parents*
- Children*

* Common residence is not necessary
** Same gender couples are covered by the Convention

DOMESTIC VIOLENCE

Where children are concerned, it is acknowledged that they do not need to be directly affected by the violence to be considered victims but that witnessing domestic violence is also traumatising and therefore sufficient to victimise them.

“domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim

GENDER-BASED VIOLENCE

What about the access to protection services?

- The provision of services shall not depend on the victim’s willingness to press charges or testify against any perpetrator.
- The victim shall be entitled to protection services, on the condition that they file a complaint against the perpetrator(s).

What if a migrant woman – victim of domestic violence wants to go to the police?

- The states are obliged to protect migrant women – gbv victims
- Whether the victim meets the personal situation requirement is to be decided on account of factors such as the victim's safety, state of health, family situation, or the situation in their country of origin among others. Secondly, it establishes the requirement of the co-operation with the competent authorities in cases where investigation or criminal proceedings have been initiated against the perpetrator. This means that a residence permit may be granted to the victim if the co-operation and testimony of the victim are necessary in investigation and criminal proceedings.

Ex officio criminal proceedings

The proceedings may continue even if the victim withdraws her or his statement or complaint.

Stricter sentences

- When the victim is a pregnant women
- Victim unable to resist
- In front of a minor

...avoiding secondary victimisation

What could entail secondary victimisation?

Penal Arbitration – not mandatory!

Victims of such violence can never enter the alternative dispute resolution processes on a level equal to that of the perpetrator. It is in the nature of such offences that such victims are invariably left with a feeling of shame, helplessness and vulnerability, while the perpetrator exudes a sense of power and dominance. To avoid the re-privatisation of domestic violence and violence against women and to enable the victim to seek justice, it is the responsibility of the state to provide access to adversarial court proceedings presided over by a neutral judge and which are carried out on the basis of the national laws in force.

GREVIO

The Convention sets up a Group of experts on action against violence against women and domestic violence (hereafter “GREVIO”) which is an expert body, composed of independent and highly qualified experts in the fields of human rights, gender equality, violence against women and domestic violence, criminal law and in assistance to and protection of victims of violence against women and domestic violence, with the task of “monitoring the implementation of this Convention by the Parties”.

Gbv among refugee population

- Same standards of response
- Specific SOPs
- Gender-related asylum claims

ADDED VALUE OF THE ISTANBUL CONVENTION

- Defines gender
- Recognises the systemic nature of the gender-based violence
- Recognises the nexus between the discrimination against women and the GBV
- Sets binding standards for the states

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

Piotr Turowicz

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

Athens, 22 April 2024

Co-funded the European Union

General approach

- difference between refugee and migrant
- those who have been forced and those have chosen to move
- different legal approach (Geneva Convention and subseuent regulations)
- does that difference really matter?
- nowadays this is hard to ascertain what was a reason of move
- majority of migrants have been traumatized
- saw war, ethnical crimes, experienced homelessness

General approach

- the rules of care must:
- apply immediately
- be flexible, be different in each and every case
- take care about other members of the family/accompanying people
- be co-ordinated by the authorities
- be in force from the very begining till the „full recovery”

General approach

- access to:
  - social rights
  - health and support services (with a distinction between proposed services, home help services, nursing homes)
  - information and knowledge of available rights
  - services
  - housing
- noticing culture difference is a must
  - if ignored – may lead to unethical practice and discrimination

Indentify needs

- medical treatment
- difficult economic and social conditions
- family situation
- inducing isolation
- poor communication

  translators/activists
- organisation of time

  to feel occupied
- legal, administrative or ‘de facto’ obstacles causing direct or indirect discrimination

Practice and procedures

- ➢ problems at the border
- the way how the migrants are perceived in total
- lack of any documents/proofs

  - in case of visibly disability

- ➢ push back practice
- against domestic and international law
- condemned by NGOs but nothing has been changed since

Okręgowa
Izba
Radców
Prawnych
w Warszawie

Practice and procedures

- why elderly, disabled or migrants with trauma/diseases are migraiting?
- no choice
- lack of any assistance/help
- their health worsened during migration
  - approach of the authorities
    - „state of war” vs. human rights
    - transferring all migrants to the detention camps
  - need of immediate help
    - no dedicated assistants around
    - lack of any help
    - longevity of procedures

Obstacles

- lack of information about services adapted to people with other languages, often with little education
- no policy of integration developed
- distrust of many immigrant communities
- bureaucracy
- months instead of weeks to obtain administrative shield due to
  - lack of documentation
  - not enough of qualified translators
  - longevity of correspondence circulation
- low degree of attention from mainstream institutions to elderly/traumatised or migrants with diseases immigrants
- scenes in media vs. reality

Obstacles

- culture shock of elderly/traumatized migrants
- physical
  - climate, light intensity
  - micro-organisms, food
  - rhythm of life, intensity and type of visual and audio effects
- psychological
  - increase in stress and decrease in coping effectiveness
  - new negative emotions/inadequacy of previous defence mechanisms
- social
  - change of role and social status (often to a lower one)
  - change from adult to child role (or vice versa)
  - lack of social support network - changes in family demands

Further steps – for future

- training in multicultural approaches to health and social work
- role of the state and international approach and policies
- this is not a war, the state should treat migrants as people
- role of NGOs and their cooperation with the state
- activists are closer, are perceived as more trustworthy
- need of:
- overcoming any possible communication misunderstanding
- reverting to specific needs and differencies
  - between elderly men and women
  - traumatized
  - disabled
- social policies and work
- role of regional/local authorities

Plans – Pact on immigration and asylum

- border detentions with no exceptions for families with children of all ages
- accelerated and discriminatory procedures for assessing applications for international protection and an emphasis on return procedures with reduced security guarantees
- increase the risk of human rights violations and pushbacks justified by “threat to national security or public order”
- by extending the 'safe third country' principle, Member States will be able to directly deport persons to third countries deemed safe only on the basis of bilateral agreements. In the past, this has been done on the basis of such agts. as that between the EU and Turkey
- in the absence of safe and regular migration routes, people seeking protection or livelihoods are forced to take increasingly dangerous routes
- iinvigilation

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

Vasileios Kerasiotis

Migrants workers: trafficking and labour exploitation

Athens, 22 April 2024

Co-funded the European Union

ECHR case Chowdury and 42 others vs Greece (2017)

- First case of trafficking for the purposes of labour exploitation under the scope of article 4 par. 2 echr (prohibition of forced labour)
- Violation of positive obligations of prevention, protection, identification of victims and punishment of perpetrators as the authorities did not prevent the situation of trafficking for 42 Bangladeshi nationals who were working in strawberry farms in Manolada and in particular did not protect the victims, did not effectively investigate the crimes committed and did not punish those responsible for the trafficking.
- Article 4 requires Greece to put in place a legislative and administrative framework to safeguard against forced labor and trafficking. This includes regulating businesses, training law enforcement officers, and investigating and penalizing both forced labor and trafficking.
- Authorities ought to have been aware of the situation given that ombudsman had made intervention from 2008
- 3 major challenges (initial oral consent/it was considered crucial that the applicants started working while in a state of weakness, as irregular migrants who had no resources and were at risk of arrest, detention and deportation and that they realized that if they stopped working, they would never collect what they were owed of their wages, the amount of which did not cease to increase day by day/no other option than to surrender to the imposed labour conditions of non payment
- de facto appeal of supreme court's decision not to review the case (4th instance court) Narrow interpretation of national courts/ confusion of the notions of slavery/human trrafficking (freedom of movement/playing cricket in the strawberry farm

Migrant workers in agriculture

- - Between 2008-2022 majority of migrant workers in agriculture were rejected asylum seekers or non registered asylum seekers
- -10% have received work permit and postponement of removal from 2016-2023, a special, tied workers scheme (ART 13 A OF IMMIGRATION CODE)
- -special economic zones around Greek agricultural sites (crete, skala lakonias, manolada, karditsa, evoia, filiatra etc
- -migration enforcement measures rarely applicable
- -labour exploitation, bad health conditions, in situ work, factors connected to trafficking
- -increasing labour shortages during and post COVID-19

A landmark judgment on forced labour (art.4 echr)

- -prohibition of forced labour
- -violation of positive obligation to prevent, protect, investigate and punish
- -all the circumstances of the case and in particular the nature and of work provided by the applicants in order to assess it as coercive

Execution of judgment

- Enhanced supervision/shameful conviction
- Rule 9 par. 1 significant intervention of Greek national commission of human rights (2018) about systematic failure of all relevant mechanisms and especially labour inspectorate to implement the legal framework
- 2016 Legal framework of hybrid work permit for 6 months without residence permit is de facto postponed deportation with the right to work de jure in the agricultural economy for 6 months. GNCHR emphasizes that this practice legitimizes the d facto absolute dependence of farm workers on their employers under the tolerance of police authorities and icreases their vulnerability
- Supreme court appeal in favour of the law judgment 2/2019 plenary clarified further the article 323 a of Greek criminal code and mainly the threshold of trafficking and the fact that consent is irrelevant in trafficking situations
- Rule 9 par.2 intervention hias Greece regarding amendment of the migration law
- Manolada case no 2 :Labour inspectorate initiated a case against 36 strawberry producers after a disastrous fire for violation of employers sanction directive (282 victims of particularly exploitative working conditions)
- Resolution committee of ministers September 2020.

Rule 9 par.2 intervention

- The immigration rules of Greece ensure that most farmworkers in Greece have irregular immigration status. The entry quotas established by the Greek Government in common Ministerial decisions remain consistently below the real market demand for migrant farm labour. These quotas prevent employers in Greece from recruiting migrant workers while they are still in their country of origin.
- Absolute need for the creation of legal labor scheme in the agricultural economy through regularization mechanism/ census
- Clear lack of vision in migration policy since before covid the agricultural economy was based in the undocumented labour force
- legal pathway to decrease the marginalized labour force is the creation of legal scheme

The Roadmap from the ECHR to the MoU

Ombudsman intervention 2018

a.the inability of labour inspection to carry out effective, extensive checks for compliance with labor legislation by employers of seasonal staff in agricultural crops and mainly

Article 13a-fire incident

b) the non-implementation of the legislation that requires the provision of suitable accommodation, which meets health and safety standards, to the seasonal agricultural workers of Nea Manolada, a situation that is judged to be particularly onerous and dangerous and seems to be perpetuated in the area for at least fifteen years

Covid era

- Major labor shortages from 2020 in the agricultural economy
- Article 13a only applicable to 10% of the labour force
- Starting of negotiations between Greece and Bangladesh for a labour mobility agreement during first lockdown
- Seasonal workers directive is not applicable to those already in the territory
- Abolishment of article 13 a on 30.9.2022
- According to MoU (law 4959/2022), up to 15,000 irregular Bangladeshi are eligible for regularization for seasonal work (5 years residence permit/9 months in Greece each year/ratification with law 4959/2022
- Admistrative implementation 11.1.2023 through on line platform

GRETA REPORT 2023

- Regularization not enough but a positive step
- In the wake of the *Chowdury* judgment of the European Court of Human Rights, the Greek authorities have taken a number of measures, including the regularisation of undocumented Bangladeshi workers. GRETA calls for further improvements, such as increasing the number of labour inspectors and training them to detect cases of human trafficking and exploitation.