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

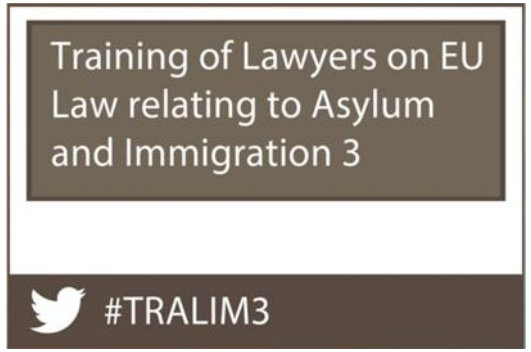
Cliodhna Murphy

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

TRALVU Dublin, 26 September 2024

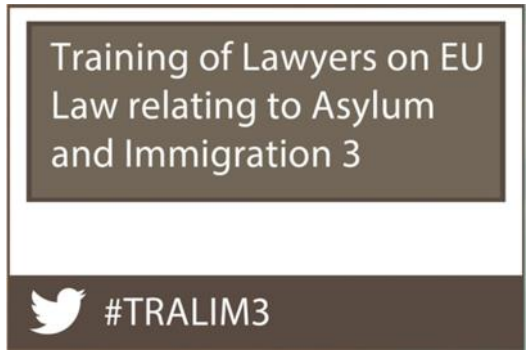
Co-funded the European Union

Introduction



1. What is vulnerability in the context of migration and asylum law?
2. Asylum seekers as a vulnerable group
3. Asylum seekers with individual vulnerabilities: key legal provisions
4. Victims of trafficking as a vulnerable group
5. Vulnerability in the context of expulsion
6. Vulnerability in the EU Pact on Migration and Asylum

What is vulnerability?



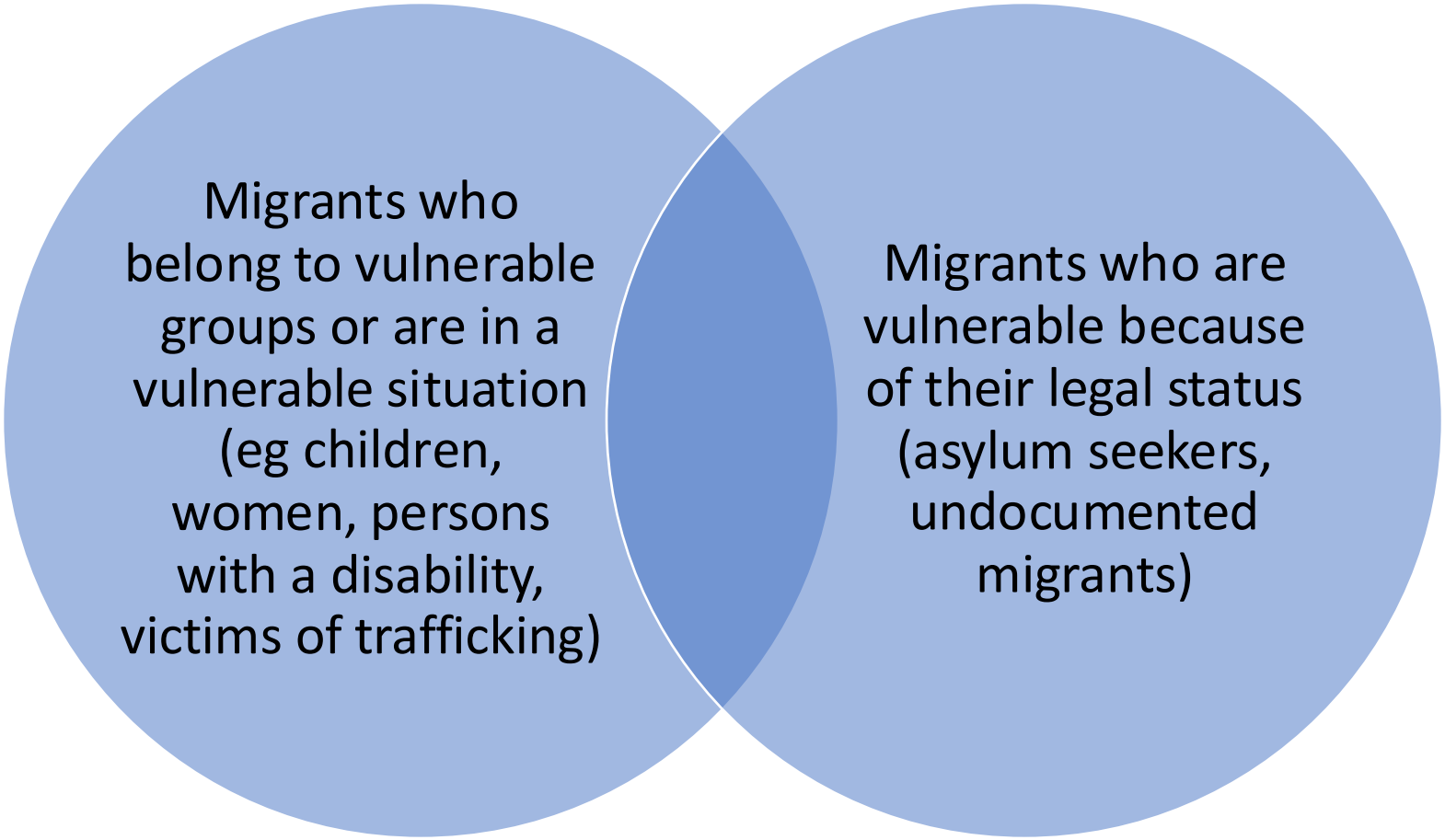
- “[V]ulnerability can be inherent, stemming from ontological factors arising from our embodiment and dependence on others. But vulnerability can also be situational and context-specific, deriving from the social, political, environmental, or economic circumstances facing us”. (Moreno-Lax and Vavoula, 2023)

- People whose rights are most at risk of being violated / require extra support to have rights effectively protected.

- Labelling - can reinforce stigmatisation and paternalistic attitudes, and encourage stereotyping?

- As a legal concept, indeterminate and even contested.

Vulnerability in the context of migration and asylum law



Focus of this presentation: How is vulnerability recognised in European legal frameworks in ways that may be relevant to your clients?

Aim: To highlight some areas in which vulnerability is particularly relevant (ie, not an exhaustive examination)

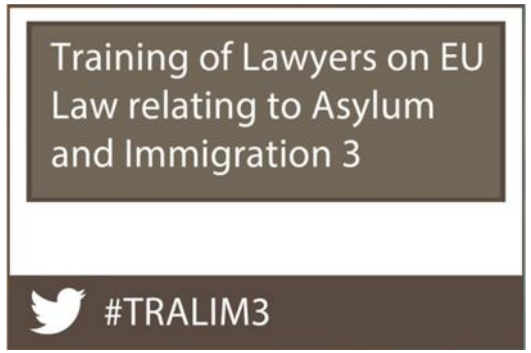
Vulnerability in the European Legal Framework

- Council of Europe, *Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe* (2021-2025)
- Case law of the European Court of Human Rights (including expulsion cases)
- Vulnerability in the Common European Asylum System
  - EU Asylum Agency, *Guidance on Vulnerability in Asylum and Reception* (May 2024)
- EU Pact on Migration and Asylum

Vulnerability in EU Law
Ireland's 'opt-in' to relevant EU law instruments

Instrument	First phase	Second phase
Qualification Directive	Directive 2004/83 Y	Directive 2011/95/EU (recast) N
Asylum Procedures Directive	Directive 2005/85/EC Y	Directive 2013/32/EU (recast) N
Temporary Protection	Directive 2001/55/EC Y	n/a
Dublin III Regulation	Dublin II Regulation 343/2003 Y	Directive 604/2013/EU Y
Reception Conditions Directive	Directive 2003/9/EC N	Directive 2013/33/EU (recast) Y
Anti-Trafficking Directive	2011/36/EU (as amended) Y	n/a

Vulnerability in EU Law contd



- No single definition of vulnerability in EU Law
  - Eg CEAS instruments use different concepts (vulnerability; special needs; special reception needs; special procedural guarantees…)
- Note relevance of Charter of Fundamental Rights of the EU
  - eg Article 24: best interests of child principle / right to maintain a relationship and direct contact with both parents
- Will look at the EU Pact on Migration and Asylum later

Asylum seekers as a vulnerable group

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

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

Asylum seekers as a vulnerable group

- Confirmed in a number of cases, including-
  - *Tarakhel v. Switzerland*, 4 November 2014 (Application no. 29217/12), "This 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".
  - *Mahamed Jama v. Malta,* 22 May 2016, (Application no. 10290/13) particular vulnerability of asylum seekers is a distinct 'state' of vulnerability that 'exists irrespective of other health concerns or age factors.

- 'Vulnerability backsliding' in recent ECtHR judgments? (Hudson, 2023)

- *M.K. and Others v. France*, 8 December 2022 (Applications nos. 34349/18, 34638/18 and 35047/18)

- *Camara v. Belgium*, 18 July 2023, (Application no. 49255/22)

Asylum seekers with individual vulnerabilities

- Particularly relevant in the context of EU Law on (1) reception conditions and (2) asylum procedures.

- MS 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 **provision of adequate support** to applicants in a situation of vulnerability is an obligation for Member States.

Asylum seekers with individual vulnerabilities: Reception Conditions Directive

- ‘applicant with special reception needs’: means 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. (Art 2(k))

- 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. (Art 21)

- (Later speakers will address the RCD in detail)

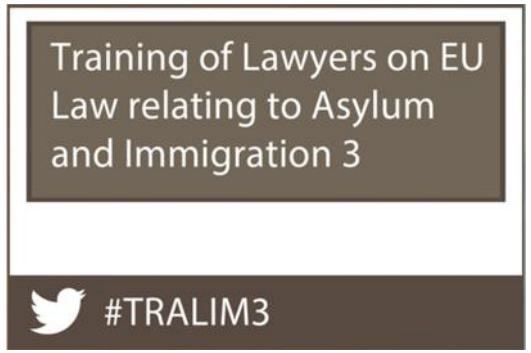
Asylum seekers with individual vulnerabilities: Asylum Procedures Directive

- NB - Ireland did not participate in the recast Directive.

- 2005 Directive:
  - Specific procedural guarantees for unaccompanied minors (Art 17) “on account of their vulnerability” (Recital 14)
  - Person who conducts personal interview must be competent to take into account vulnerability of the applicant (Art 13(3)(a))

- 2013 recast Directive expanded on this:
  - Eg, new obligation to assess within a reasonable period of time whether the applicant is in need of special procedural guarantees and to ensure that they are provided with adequate support (Article 24)
  - Guarantees for unaccompanied minors (Art 25)

Discussion



"Sometimes, vulnerability can function as a screening device, as a filter and a threshold to access (legal) protection, so that unless perceived to be vulnerable (according to law) rights become unattainable … . If individuals cannot 'prove' themselves as vulnerable, they will not be able to access their legal entitlements"

(Moreno-Lax and Vavoula, 2023)

Vulnerability and survivors of trafficking

- Vulnerability plays an important role in victim identification procedures. Impact of stereotyping?

- Victims recognised as being in a situation of vulnerability in EU asylum law instruments.

- Anti-Trafficking Directive 2011/36/EU, as amended by Directive 2024/1712/EU (transposition deadline 15 July 2026):
  - Obligation to provide specialised victim supports, taking a gender/child/disability sensitive approach (Art 11)
  - Child-friendly procedures and special provisions for child victims (Arts 13-16)

Vulnerability in the context of expulsion

- ECtHR has recognised the vulnerability of person whom it is proposed to expel as an important factor in considering whether the expulsion complies with the ECHR.

- Art 3 (extreme cases) and Art 8 ECHR
  - Health-related vulnerability - *Paposhvili v. Belgium*, 13 December 2016, (Application no. 41738/10)
  - Including mental health-related vulnerability - *Savran v. Denmark*

Vulnerability in the EU Pact on Migration and Asylum

- Ireland participating in:

1. Reception Conditions Directive (2024/1346/EU)
2. Qualification Regulation (2024/1347/EU)
3. Asylum Procedure Regulation (2024/1348)
4. Union Resettlement Framework Regulation (2024/1350)
5. Asylum and Migration Management Regulation (2024/1351/EU)
6. Eurodac Regulation (2024/1358/EU)
7. Crisis and Force Majeure Regulation (2024/1359)

*Note also stated intention to align Irish law with other instruments to which we have not opted in (eg Screening Regulation).

Vulnerability in the EU Pact
Key points

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- Idea of individual vulnerability becoming even more prominent.

- Existing approach to vulnerability replicated and expanded in the new instruments.
  - Ideas of “special reception needs”, “special procedural guarantees” retained.
  - Slight expansion: eg, lesbian, gay, bisexual, trans and intersex persons included in non-exhaustive list of people who may have special reception needs.

- New Screening Regulation 2024/1356/EU sets up uniform rules ensuring checks on and registration of migrants and asylum seekers. Channels people into asylum border procedure/ regular asylum / return border procedures.
  - Includes mandatory health and vulnerability checks

Vulnerability in the EU Pact
Key points

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- Irish Refugee Council has expressed view that: “the reforms contained within the EU Asylum and Migration Pact reflect an effort to limit access to protection for refugees in Europe. They will result in less safeguards, increased detention and destitution among people seeking protection.”

- “limited vulnerability assessments will not be sufficient to identify particularly vulnerable people. This, coupled with provision for detention, could have significant consequences for the rights and wellbeing of people seeking protection.”

IRC, “Briefing paper to Oireachtas Justice Committee members on the EU Migration and Asylum Pact” (Apr 2024) https://www.irishrefugeecouncil.ie/Handlers/Download.ashx?IDMF=2f0a47da-2a65-4f08-b1dc-336c157013ea

Useful resources

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- Moreno-Lax and Vavoula, "Vulnerability's Legal Life: An Ambivalent Force of Migration Governance" *International Journal of Law and Context* (2023) https://www.cambridge.org/core/journals/international-journal-of-law-in-context/article/vulnerabilitys-legal-life-an-ambivalent-force-of-migration-governance/AC1C556516C8A74171DDD7E3E9BF8BA0

- European Migration Network (2023) EU Asylum and Migration Legislation: Ireland's participation (emn.ie)

- Hudson, "Asylum Marginalisation Renewed: 'Vulnerability Backsliding' at the European Court of Human Rights" *International Journal of Law and Context* (2023) https://www.cambridge.org/core/services/aop-cambridge-core/content/view/B2DC7EB93144B4EABE22BAADE21E32CA/S1744552323000332a.pdf/asylum-marginalisation-renewed-vulnerability-backsliding-at-the-european-court-of-human-rights.pdf

- EU Asylum Agency, *Guidance on Vulnerability in Asylum and Reception* (May 2024) Guidance on Vulnerability in Asylum and Reception | European Union Agency for Asylum (europa.eu)

- ECtHR, "Guide on the caselaw of the ECHR: Immigration"(Feb 2024) https://ks.echr.coe.int/documents/d/echr-ks/guide_immigration_eng

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Barbara Egan

Migrant workers trafficking and labour exploitation

TRALVU Dublin, 26 September 2024

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Legal Aid Board

- Law Centre (Smithfield)

Free-phone: 1800 23 83 43
Phone Number: 01 646 9600
slc@legalaidboard.ie

- Law Centre (Cork North)

Free-phone: 1800 20 24 20
Phone Number: 021 455 16 86
lawcentrecorknorth@legalaidboard.ie

- Law Centre (Galway)

Free-phone: 1800 50 24 00
Phone Number: 091 562 480
lawcentresevillehouse@legalaidboard.ie

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Advice Services – Potential Victims of Human Trafficking

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

The United Nations Convention against Transnational Organized Crime 55/25

15th November 2000.

- It was presented to Member States Palermo, Italy, in December 2000

- Palermo Protocol: The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children

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

ACTION
Recruitment
Transportation
Transfer
Harbouring
Receipt of Persons

MEANS
Use of force
Coercion
Abduction
Fraud
Deception
Abuse of Power

PURPOSE
Sexual Exploitation
Forced Labour
Slavery
Removal of Organs

‘Anti Trafficking Directive’

- Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.
- Recast EU Directive adopted by the EU Parliament and Council on 23 April and 27 May 2024 respectively. Directive (EU) 2024/1712 (14 July 2024)

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

Article 5

1. Member states shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 2, 3 and18a (i) committed for their benefit by any person acting either individually or as part of an organ of the legal person who has a leading position within the legal person, based on:

a) a power of representation of the legal person;

b) an authority to take decisions on behalf of the legal person; or

c) an authority to exercise control within the legal person.

Article 8

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

Article 11

1. ‘Member States shall take the necessary measures to ensure that specialised assistance and support are provided to victims in a victim centred, gender, disability and child sensitive approach before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Directive 2012/29/EU and in this Directive.

2. Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3

Impact Covid - 19

- Increase in the incidence of domestic violence.
- Curtailment of victim support services
- Accessibility of law enforcement
- Less visibility of workplace
- Law enforcement resources focusing on Covid compliance
- Increased use of social media and online platforms

Employers' Sanctions Directive

EU Directive 2009/52/EC-

Prohibition of employment of non EU nationals staying illegally

Protective elements to support migrants and victims of trafficking

Article 5-Minimum standard of financial sanctions

Article 7-Additional administrative measures such as loss of public benefits and exclusion from public contracts

Articles 9 and 10-Minimum standard of criminal sanctions

➢ Criminal Justice (Victims of Crime)Act 2017

Victim support services
Information on the Criminal Justice system
Information of progress of investigation and court proceedings
Assessment of protective needs
Information on decision not to prosecute
Interpreter services

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

  ‘Conflict in Ukraine: Key evidence and risks of Trafficking in Persons and Smuggling of Migrants’
- US Department of State-trafficking in persons report 2024
- IOM ‘Human Trafficking in Times of Conflict: the case of Ukraine’ November 2023

Domestic Bodies

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

Domestic Legislation

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- Criminal Law (Human Trafficking) Act 2008
- Child Trafficking and Pornography Act 1998
- Criminal Law (Human Trafficking)(Amendment)Act 2013
- Criminal Justice (Sexual Offences and Human Trafficking) Act 2024

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

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

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

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

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

Or

d) provides the person with accommodation or employment.

The Third National Action Plan 2023-2027 aims;

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

- Actions:

- New National Referral Mechanism
- Widespread training across agencies
- Dedicated accommodation
- Expand funding and raise awareness of cultural mediators and accompaniment services
- Protection from deportation
- Focus on children

National Rapporteur on the Trafficking of Human Beings

- October 2020 IHREC appointed National Rapporteur on Trafficking in Human Beings
- First report June 2022
- Second report September 2023
- Third report September 2024 (launched 18 September 2024)

International Assessment

- United States Department of State TIP report 2022 Ireland Tier 2
- Council of Europe's group of experts on Action Against Trafficking in Human Beings (GRETA) Third report September 2022
- Follow up by GRETA on 3rd Evaluation Report 19 September 2024

National Referral Mechanism (NRM)

- Identify victims of trafficking
  Competent Authorities
- Facilitate their access to advice, accommodation and support
- Trusted Partners (to be outlined)
- Assessment as to whether Victim of Trafficking

Competent Bodies

- Department of Justice
- An Garda Siochana
- HSE
- Tusla the Child and Family Agency
- Department of Children, Equality, Disability, Integration and Youth
- Workplace Relations Commission (WRC)

Indicators of Trafficking

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

An Garda Siochana designation as:

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

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

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

HIGH RISK ENVIROMENTS

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

Car washes

Agriculture sector

US Department of State

- Trafficking for labour exploitation

- Generates $50-$150 billion annually involving 27.6 million men, women and children worldwide (September 2022)

Irish Times 8 December 2021
Conor Lally

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- ‘silently crying out for help as they do somebody’s nails or wash somebody’s car or take care of somebody’s children.’

- ‘we are passing victims of human trafficking on our streets on a daily basis.’

THE IRISH TIMES

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

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

NATIONAL RAPPORTEUR'S RECOMMENDATIONS (sample) 2024 Third report

- Early transposition of the Recast Anti Trafficking Directive
- Adherence to non punishment principle with specific defence for victims of trafficking
- Victims' rights at the centre of all efforts to combat trafficking
- Central data collection to which all competent authorities and trusted partners contribute
- WRC inspections of high risk sectors to become permanent practice
- The provision of safe and appropriate accommodation with pilot to be extended and expanded
- Measures to screen International Protection applicants for vulnerability to trafficking
- Protection of victims in legal proceedingstransposition of the Recast Anti Trafficking Directive

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- **2023 : 53 cases officially reported in the National Referral Mechanism.**

  16 were trafficked for labour exploitation

  8 male and 8 female

- **Areas of origin:**

Asia	**6**
Africa	**1**
EEA	**5**
Non EEA Europe	**2**
Latin America	**2**

- **2013-2023 209 people were trafficked for Labour exploitation in Ireland**

  143 were male (68%) and 66 female (32%)

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Upcoming developments which will enhance this are the -

- The Civil Legal Aid Review
- The Criminal Justice (Sexual Offences and Human Trafficking) Bill 2024-Enactment of trafficking provisions
- Revised NRM to Combat Trafficking with guidelines and implementation
- Review of the compensation for Victims of Crime

European Court of Human Rights cases:

Chowdury v Greece 30 March 2017

Zoletic and others v Azerbaijan 22 March 2012

‘Injustice anywhere is a threat to justice everywhere.’ Martin Luther King Jr.

‘Change will not come if we wait for some other person or some other time. We are the ones we’ve been waiting for. We are the change that we seek’ Barack Obama

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Liam Thornton

Migrant children and migrant families

TRALVU Dublin, 26 September 2024

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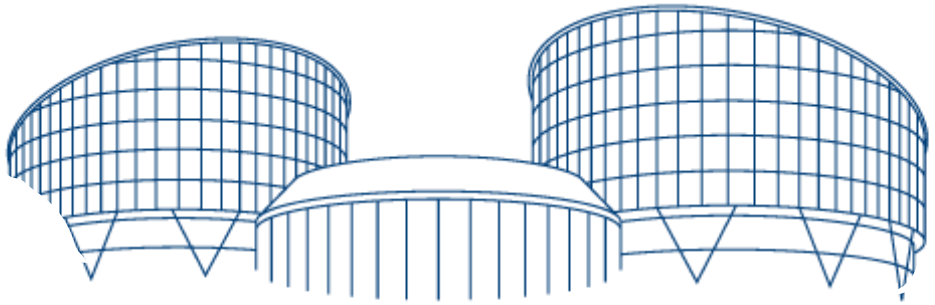
Contribution Overview

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



Interactions of differing legal systems/actors

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A. Children, Families and Vulnerability

Migrant Children and Migrant Families

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

J.H.H. Weiler (1992)

The Fragmented Concept of Vulnerability in (EU) Law

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

The best interests of the child & European Law

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

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

Unaccompanied children: special guarantees under EU asylum law.

Underpinned by EU Charter of Fundamental Rights

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

Versus inherent vulnerability of person seeking asylum (ECtHR)

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

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

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

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

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

Migrant Children and Migrant Families

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International Refugee Law

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

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

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

A Human Right to Enter?

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

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

The EU Asylum Acquis

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

At (EU) external borders and transit zones:

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

EU & ECtHR Law

Procedures Directive

Border procedures

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

A 'right' to claim asylum? – functional jurisdiction

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

See e.g. *M.K. v Poland (ECtHR)*

Families sought to seek protection on Belarus-Polish border.

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

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

More recently, albeit pushback to Ukraine (pre-war in 2017) see: *Sherov v Poland* (April 2024).

See further:

M.D v Hungary (ECtHR, 19 Sept 2024) and case-law cited therein- Removal of migrant families, including children to external side of Hungarian border fence with Serbia.

No individual consideration of potential Convention rights breaches if returned to Serbia (or chain refoulement).

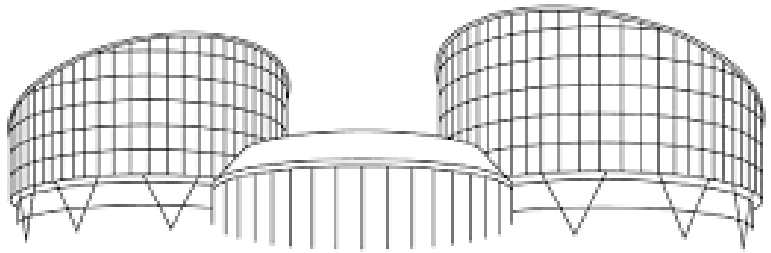
Rule 39(1) of the Rules of ECtHR

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

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

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

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



EUROPEAN COURT OF HUMAN RIGHTS

COUR EUROPÉENNE DES DROITS DE L'HOMME

States' refusing to comply with ECtHR Interim Measures

See e.g. *O.M. and D.S. v Ukraine* (2022):

No justification or acceptable explanation was given for the authorities' failure to comply with the Court's decision.

Border guards were aware of her wish to claim asylum in Ukraine and no justification for Ukraine failing to comply with Rule 39 measure.

Collective Expulsion of Aliens

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

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

Čonka v Belgium ECtHR, 2002.

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

(1) Did the applicants have access to legal pathways to enter a State to claim protection?

(2) Did the applicants have 'cogent reasons' for entering the State irregularly?

(3) Was there any *ordre public*/public safety issues with the applicants' entry?

(4) If applicants did not have legal pathways to entry, and since they had 'cogent reasons' for entering a State in an irregular manner, then for State to show they did not collectively expel applicants.

Application of these tests in *M.H.*

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

(a) the extensive reporting by civil society on the conduct of Croatian authorities concerning pushbacks at the Croatian-Serbian border;

(b) Complete absence of evidence by Croatia refuting the applicants' claims, despite where applicants entered being covered in CCTV cameras, most which also had sound);

(c) No issues akin to N.D. and N.T arose (public order/safety)

(d) No effective and genuine access to legal pathways were available to the applicants.

(e) Violation of Art. 2 (due to death of child), Art. 3 and Article 4 Protocol 4 ECHR had occurred.

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

#TRALIM3

C. Reception

Migrant Children and Migrant Families

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Non-Discrimination in the Enjoyment of Rights?

Non-discrimination and equality are "…**fundamental components of international human rights law**…"

HOWEVER

Differences of treatment in the enjoyment of socio-economic rights may be justified where these are ***lawful, objective* and *proportionate***.

General Comment No. 20, ICESCR, *Non-Discrimination in Economic, Social and Cultural Rights* (Art. 2(2))

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

BUT….??????????????

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

Source: ICESCR Committee 2017

European Union Law: Recast Reception Directive (2013)

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

Highly circumscribed freedom of movement rights (Article 7 RRD)

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

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

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

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

A limited right to work (Art. 15 RRD)

Restrictions on detention (Arts. 8-11).

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

i. **Neither the ECHR nor the EUCFR** provides that every person in a State must be provided with a home or a **certain standard of living**

ii. By their status as 'asylum seekers', such persons are **inherently vulnerable**, however special recognition of vulnerability of children and families

iii. European Union law provides under the **Reception Conditions Directive and its Recast Directive**, that as asylum seekers, there are **certain minimum rights** that must be provided: these include, a right to basic shelter, a right to food; a right to an adequate standard of living, although not necessarily a standard of living enjoyed by citizens or other lawful residents; and a right of children to access education. The EU has decided to provide this 'high level' of socio-economic rights protection

iv. European Union law provides under its Procedures Directive (and its Recast) that those seeking protection must have their **claims for protection determined fairly**

v. A State **not complying** with the Reception Conditions Directive (or its Recast) or the Procedures Directive (or its Recast) does **not automatically mean that an asylum seeker is being or will be subject to inhuman and degrading treatment** if returned to the first EU country of entry

Synthesis of Key Legal Principles II

vii. That ‘real risk’ may emerge from **systemic deficiencies** in reception systems in States and/or a real risk of an Art 3 ECHR/Article 4 EUCFR breach if returned under Dublin

viii. What is needed to prevent removal, is for an asylum seeker to show that she **faces a real risk of individual harm to their human rights under the Charter and/or ECHR**

ix. There may be **heightened vulnerability of a particular asylum seeker**, including children and families, over and above the vulnerability of being an asylum seeker per se

x. In a Dublin transfer situation, a State **may have to gain guarantees** on reception conditions, prior to the transfer being effected.

M.T. v The Netherlands (2021)

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

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

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

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

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

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

Using vulnerability of children/families to justify breach of reception conditions under European Union/ECHR law for others e.g.

N.H. v France (ECtHR, 2020)

Belgium (ECtHR, Interim Measure 2022)

Ireland: male IPAs.

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

José María Pey González

Migrant women and LGBTI+ persons

TRALVU Dublin, 26 September 2024

Co-funded the European Union

Vulnerable Groups of Migrants: Women & LGBTI+ persons

- **LEGISLATIVE INSTRUMENTS**
  - **COUNCIL OF EUROPE**
  - **EUROPEAN UNION**
- **JURISPRUDENCE**
  - **EUROPEAN COURT OF HUMAN RIGHTS**
  - **COURT OF JUSTICE OF THE EUROPEAN UNION**

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LEGISLATIVE INSTRUMENTS

COUNCIL OF EUROPE

* WARSAW CONVENTION, 16/05/2005: TRAFFICKING IN HUMAN BEINGS

* ISTANBUL CONVENTION, 11/05/2011: VIOLENCE AGAINST WOMEN

EUROPEAN UNION

- DIRECTIVE 2024/1712, 13 JUNE, AMENDING DIRECTIVE 2011/36: TRAFFICKING IN HUMAN BEINGS
- DIRECTIVE 2024/1385, 14 MAY: VIOLENCE AGAINST WOMEN

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* WARSAW CONVENTION

- THE MAIN ADDED VALUE OF THE CONVENTION IS ITS FOCUS ON HUMAN RIGHTS & THE ***PROTECTION OF VICTIMS.***
- THE CONVENTION ***DEFINES*** TRAFFICKING AS A VIOLATION OF HUMAN RIGHTS & AN OFFENCE TO THE DIGNITY AND INTEGRITY OF THE HUMAN BEING. THIS MEANS THAT THE NATIONAL AUTHORITIES ARE HELD RESPONSIBLE IF THEY DON´T TAKE ACTION TO PREVENT IT, PROTECT VICTIMS & EFFECTIVELY INVESTIGATE TRAFFICKING CASES

* WARSAW CONVENTION

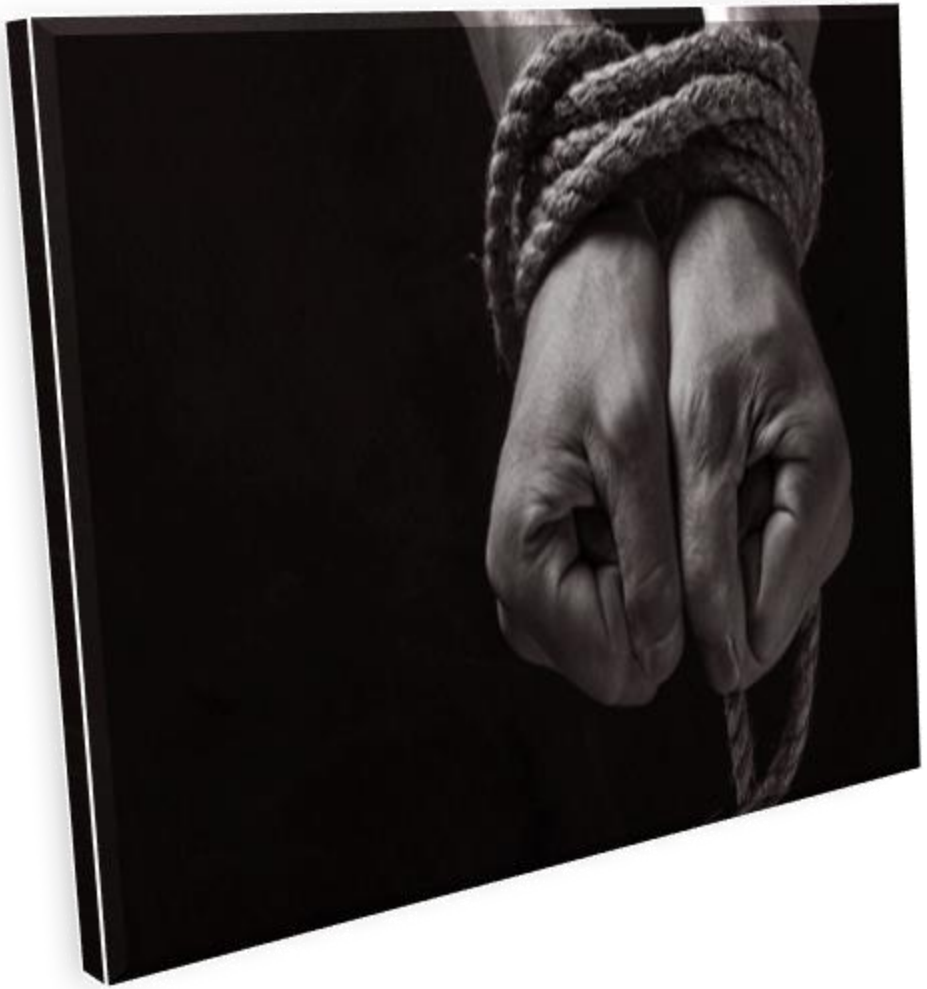
- **AIMS TO**
  - PREVENT TRAFFICKING IN HUMAN BEINGS
  - PROTECT VICTIMS OF TRAFFICKING
  - PROSECUTE TRAFFICKERS
  - PROMOTE COORDINATION OF NATIONAL ACTIONS AND INTERNATIONAL COOPERATION

- **APPLIES TO**
  - ALL **FORMS OF TRAFFICKING**: NATIONAL OR TRANSNATIONAL, LINKED TO ORGANISED CRIME OR NOT
  - **ALL VICTIMS**: WOMEN, MEN & CHILDREN
  - ALL **FORMS OF EXPLOITATION**: SEXUAL*, FORCED LABOUR OR SERVICES, SLAVERY, SERVITUDE, REMOVAL OF ORGANS, ETC

* WARSAW CONVENTION

- OF PARTICULAR NOTE IS **CHAPTER 3,** RELATING TO MEASURES TO PROTECT & PROMOTE THE **RIGHTS OF VICTIMS**, GUARANTEEING GENDER EQUALITY INSOFAR AS IT ENSHRINES THE RIGHT TO **LEGAL ASSISTANCE**, THE RIGHT TO THEIR **DOCUMENTATION** INDEPENDENTLY OF THE RIGHT TO **REQUEST AND ENJOY ASYLUM** & RESPECT FOR THEIR RIGHTS, SAFETY & DIGNITY IN THE EVENT OF **REPATRIATION & RETURN**.

* DIRECTIVE 2024/1712⇔2011/36



- MAIN LEGAL INSTRUMENT OF THE UE 4 PREVENTING & COMBATING TRAFFICKING IN HUMAN BEINGS & 4 PROTECTING VICTIMS OF THIS CRIME.
- THIS DIRECTIVE LAYS DOWN SPECIFIC PROTECTION MEASURES FOR VICTIMS OF TRAFFICKING IN HUMAN BEINGS, THEREFORE DOESN´T ADRESS THE CONDITIONS OF RESIDENCE.
- *MODIFIES 17 (25) & INTRODUCES 5 MORE PROVISIONS.*

* DIRECTIVE 2024/1712⇔2011/36

- **OBJETIVES**
  - PREVENT & COMBAT TRAFFICKING IN HUMAN BEINGS ⇔ VIOLATIONS RELATED TO HUMAN TRAFFICKING
  - PROTECT VICTIMS OF TRAFFICKING

- **ADDRESSES CHANGING TRENDS IN THIS FIELD**: OFFENCES COMMITTED BY LEGAL PERSONS & THE USE OF NEW TECHNOLOGIES.
- **EXPANDS FORMS OF EXPLOITATION**: BEGGING, CRIMINAL PURPOSES, SURROGACY, FORCED MARRIAGES OR ILLEGAL ADOPTION.

* DIRECTIVE 2024/1712⇔2011/36

- ARTS. 11 & 11 BIS: ASSISTANCE & SUPPORT + INTERNATIONAL PROTECTION.
- DIRECTIVE 2004/81, 29 APRIL: RESIDENCE PERMIT FOR VICTIMS.
- DIRECTIVE 2009/52, 18 JUNE: SANTIONS TO EMPLOYERS OF IRREGULAR IMMIGRANTS.
- DIRECTIVE 2012/29, 25 OCTOBER: RIGHTS, SUPPORT & PROTECTION OF VICTIMS OF CRIME.

* ISTANBUL CONVENTION

- ***WOMEN & GIRLS ARE OFTEN EXPOSED TO SEVERE FORMS OF VIOLENCE SUCH AS DOMESTIC VIOLENCE, SEXUAL HARASSMENT, RAPE, FORCED MARRIED, CRIMES COMMITTED IN THE NAME OF HONOUR & GENITAL MUTILATION.***
- THE CONVENTION ***DEFINES*** VIOLENCE AGAINST WOMEN, DOMESTIC VIOLENCE & GENDER-BASED VIOLENCE AGAINST WOMEN.

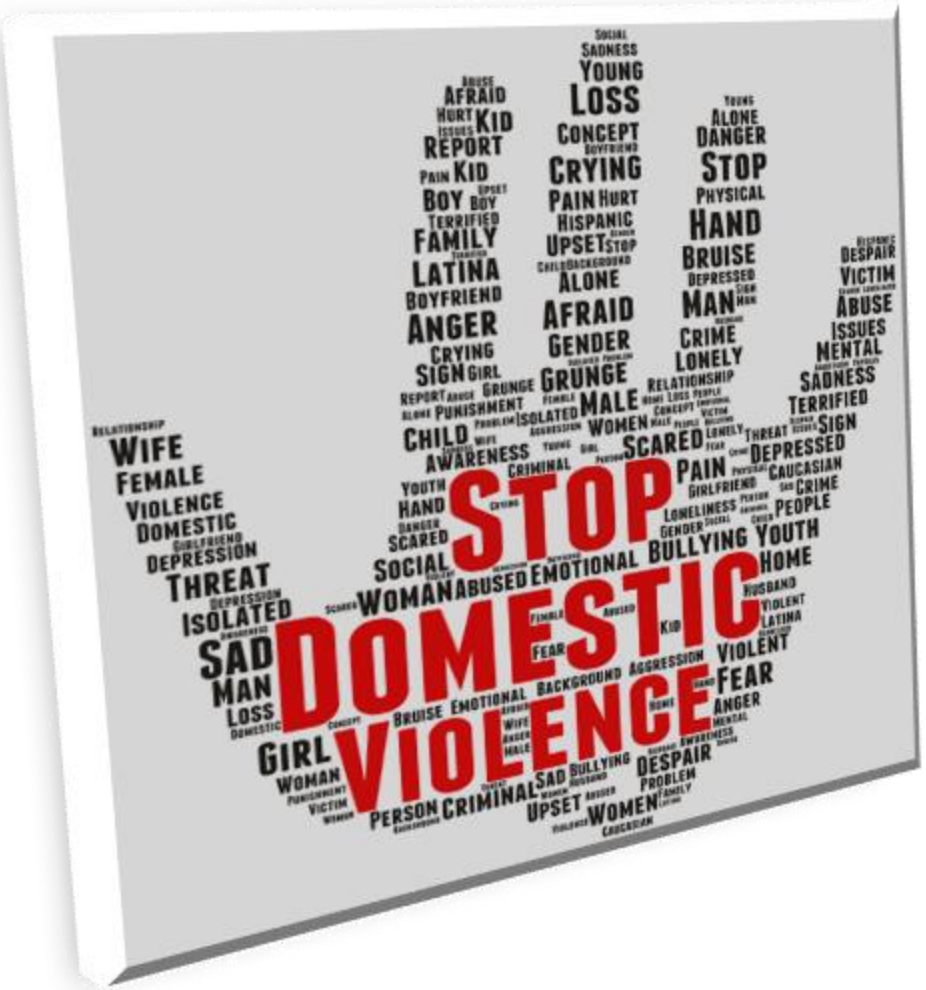
* ISTANBUL CONVENTION

- **OBJETIVES**
  - PROTECT WOMEN FROM ALL FORMS OF VIOLENCE.
  - PREVENT, PROSECUTE & ELIMINATE VIOLENCE AGAINST WOMEN.
  - CONTRIBUTE TO THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN & TO PROMOTE REAL EQUALITY BETWEEN WOMEN & MEN.
  - DESIGN A COMPREHENSIVE FRAMEWORK, POLICIES & MEASURES 4 THE PROTECTION & ASSISTANCE OF ALL VICTIMS OF VIOLENCE.
  - PROMOTE INTERNATIONAL COOPERATION

- **FORMS OF VIOLENCE**:
  - FORCED MARRIAGES,
  - PHYCHOLOGICAL, PHYSICAL & SEXUAL VIOLENCE,
  - HARASSMENT,
  - FEMALE GENITAL MUTILATION,
  - FORCED ABORTION & STERILIZATION.

* ISTANBUL CONVENTION

- CHAPTER VII (arts. 59 to 61) SPECIFIC PROVISIONS IN RELATION TO IMMIGRATION & INTERNATIONAL PROTECTION:
  - *INDEPENDENT RESIDENCE PERMIT TO VICTIMS**
  - *SUSPENSION OF EXPULSION PROCEEDINGS*
  - *VICTIMS OF FORCED MARRIAGES: RECOVER THE RESIDENCE STATUS*
  - *APPLICATIONS FOR INTERNATIONAL PROTECTION*
  - *RESPECT THE PRINCIPLE OF NON-REFOULEMENT.*



* DIRECTIVE 2024/1385

- EU APPROVES FIRST DIRECTIVE TO COMBAT VIOLENCE AGAINST WOMEN.
- ***THE DIRECTIVE AIMS TO ENSURE THAT ALL EU COUNTRIES CRIMINALISE FEMALE GENITAL MUTILATION, FORCED MARRIAGE, NON-CONSENSUAL DISSEMINATION OF INTIMATE IMAGES, CYBERSTALKING AND CYBER HARASSMENT.***
- THE DIRECTIVE ***DEFINES*** VIOLENCE AGAINST WOMEN & DOMESTIC VIOLENCE.

* DIRECTIVE 2024/1385

- **LAYS DOWN RULES TO PREVENT & COMBAT VIOLENCE AGAINST WOMEN**
- **SETS OUT MINIMUM STANDARS CONCERNING:**
  - THE DEFINITION OF OFFENCES & PENALTIES IN THE AREAS OF SEXUAL EXPLOITATION OF WOMEN & CHILDREN & CYBERCRIME
  - THE RIGHTS OF VICTIMS OF ALL FORMS OF VIOLENCE AGAINST WOMEN BEFORE, DURING & 4 AN APPROPIATE PERIOD OF TIME AFTER CRIMINAL PROCEEDINGS
  - THE PROTECTION & SUPPORT OF VICTIMS, PREVENTION & EARLY INTERVENTION.

- **OFFENCES DEFINED IN THE DIRECTIVE**:
  - FEMALE GENITAL MUTILATION,
  - FORCED MARRIAGE,
  - NON-CONSENSUAL DISSEMINATION OF INTIMATE OR MANIPULATED MATERIAL,
  - CYBER-STALKING,
  - CYBER-HARASSMENT,
  - CYBER-BULLYING,
  - CYBER-FLASHING.

* DIRECTIVE 2024/1385

- VICTIMS EXPERIENCING *INTERSECTIONAL DISCRIMINATION* SHOULD THEREFORE BE PROVIDED WITH SPECIAL PROTECTION & SUPPORT.
- DIRECTIVE 2012/29, 25 OCTOBER: RIGHTS, SUPPORT & PROTECTION OF VICTIMS OF CRIME.
- IN ORDER TO PROTECT ALL VICTIMS OF VIOLENCE IT´S IMPORTANT TO APPLY A VICTIM-CENTRED APPROACH => DIRECTIVE 2008/115

LEGISLATIVE INSTRUMENTS

COUNCIL OF EUROPE

- LGBTI+ RIGHTS
  - NON-DISCRIMINATION (art. 14 ECHR + Protocol 12)
- REFUGEE RIGHTS.

EUROPEAN UNION

- Charter of Fundamental Rights
- EU Treaty & Treaty on the functioning of EU
- Equality Directives 2000/78; 2000/43; 2006/54
- *Free Movement Directive 2004/38*
- Asylum procedures & Reception Conditions Directives ⇔ Regulations

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LGBTI Asylum Seekers

- LGBTI PERSONS CAN FACE DISCRIMINATION, PERSECUTION & VIOLENCE IN THEIR COUNTRY OF ORIGIN AS MANY COUNTRIES STILL CRIMINALIZE CERTAIN SEXUAL EXPRESSIONS ⇔ **COUNTRY OF ORIGIN INFORMATION** PLAYS AN IMPORTANT ROLE IN THE ASSESSMENT OF LGBTI ASYLUM APPLICATIONS
- IN THE EU ASYLUM CONTEXT, LGBTI PERSONS **AREN´T CONSIDERED A SEPARATE LEGAL GROUP**. THEY MAY QUALIFY AS VULNERABLE PERSONS WITH SPECIFIC PROTECTION NEEDS. TO ENSURE THAT THEY CAN ENJOY HUMAN RIGHTS EFFECTIVELY IT´S ESSENTIAL TO APPLY A HOLISTIC APPROACH THAT CONSIDERS & INTEGRATES THEIR PARTICULAR NEEDS & VULNERABILITIES.

RECENT COURT RULINGS

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

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CJEU - ECtHR

- 16/01/24 C-621/21
- 11/06/24 C-646/21

- 04/04/2023 A.D. v GREECE (n. 55363/19)
- 04/05/2023 A.C & MC v FRANCE (n. 4289/21)
- 31/08/2023 M.A. v ITALY (n. 70583/17)
- 23/11/2023 M.B. v GREECE (n. 8389/20)
- 05/10/23 P.S and A.M v HUNGARY (n. 53272/17)

CJEU LGBTI

- ASYLUM – INTERNATIONAL PROTECTION
  - 07/11/2013 C-199-201/2012
  - 02/12/2014 C-148-150/2013
  - 25/01/2018 C-473/2016
  - 09/09/2021 C-18/2020
- EU CITIZENSHIP
  - 14/12/2021 C-490/2020
- RESIDENCE
  - 05/06/2018 C-673/2016

ECtHR LGBTI

- RISK ON RETURN
  - 17/11/20 B. & C. v SWIZERLAND (n. 889/19 & 43987/16)
- GENDER IDENTITY
  - 19/1/21 X & Y v ROMANIA (n. 2145 & 20607/16)
  - 1/12/22 A.D. & others v GEORGIA (n. 57864/17)
- RIGHT TO LIBERTY (detention after requesting asylum)
  - 5/7/16 OM v HUNGARY (n. 9912/15)

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

Piotr Turowicz

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

TRALVU Dublin, 26 September 2024

Co-funded the European Union

Introduction

- 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 mirgation

- majority of migrants have been traumatized and forced to leave their homeland

  - they saw war, ethnical crimes, experienced homelessness

Implications in general

- culture shock of migrants

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

Migrants with trauma

- trauma for displaced persons
  - they are characterised by high levels of guilt, shame and fear, which can have negative consequences in the future, as this emotional state can develop into a „refugee syndrome”
  - the „refugee syndrome” is understood as a set of negative emotional reactions, such as sadness, depression, irritability, disorientation due to leaving the family and the homeland
  - lose the ability to critically and rationally assess the situation

- symptoms of the mental health disorders
  - such as somatisation, decreased activity levels, feelings of helplessness, conflict, appearance of unusual emotional reactions and destruction of close emotional relationships
  - in case of wartime migration, all of the above features combine with the need to continue the usual rhythm of life, learning the foreign language and the culture of another country

- during a traumatic event
  - there is no time to distinghuish thoughts from feelings and put everything in order’ in the head
  - everyone is overwhelmed, because simply such events are beyond our ability to process information

Implications

- violation of intra-family and partnership relations
- disturbances in adaptation and integration into the new cultural environment
- experiencing panic, increased anxiety, fears
- decrease in self-esteem and violation of self-image, own identity
- states of exhaustion, apathy and helplessness
- difficulties in parenting, changes in children's behaviour
- age-related crises, need for support at the stage of accepting changes associated with growing up
- crisis of meaning, states of breakdown of the relevant values and views on life, states of moral confusion
- experiencing the consequences of violence: bullying, moral, physical and sexual violence
- eating disorders
- manifestations of self-harm

Migrants with disabilities and elderly migrants

- migrants with disabilities are among the most vulnerable and disproportionately affected groups

  - approx. 15 – 20% of migrants are those disabled persons

- elderly immigrants have limited access to benefits and services

  - older migrants are particularly vulnerable as the national care systems do not take them into account

  - older immigrants are a very heterogeneous category in terms of religion, country of origin, education, language skills and socio-economic status

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
  - longevity of procedures

Practice and procedures

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

  - in case of visible disability

- push back practice
- against international and domestic and law

  - no possibility to ascertain current legal/health situation of migrants

- condemned by NGOs but nothing has been changed since

Okręgowa
Izba
Radców
Prawnych
w Warszawie

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 help due to
  - lack of documentation
  - lack of qualified translators
  - longevity of correspondence circulation

- low degree of attention from mainstream institutions to elderly/traumatised or migrants with diseases immigrants

Indentify needs

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

  - translators/activists

- organisation of time

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

Next step - rules of care

- 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”

Rules of care

- 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

- noticing culture difference is a must
- if ignored – may lead to unethical practice and discrimination

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 humans

- 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

- role of regional/local authorities

Okręgowa Izba Radców Prawnych w Warszawie

Further steps (continued)

- introduce activity and integration programmes/policies for the elderly/traumatized/with diseases
- involve young people and others in voluntary work
- help organise self-help groups or informal carers and support lonely people (e.g. when they are ill) in their day-to-day problems
- run rehabilitation equipment rental shops which can be made available to people after an injury or trauma, and ensure that every senior citizen has a ‘life envelope’ which contains all the necessary information on health and treatment
- make it easier for pensioners to re-enter the labour market, e.g. through discounts or subsidies for companies employing them
- facilitate reentry into the labour market for pensioners, e.g. through discounts or subsidies for companies employing them
- contribute to the special meals programme by providing meals to people who cannot prepare them themselves, promote places such as shops, cafés and other public places suitable for migrants with trauma etc.

Pact on immigration and asylum

- aims to facilitate and organise legal migration, combat irregular migration and protect refugees, and may include a number of different provisions, such as: common standards for the reception and integration of refugees and migrants, strengthening cooperation to combat irregular migration, increasing development assistance to countries of origin and transit of migrants, and ‘solidarity’, i.e. supporting the relocation of refugees from countries that are particularly burdened
- the joint implementation plan aims to structure the gradual adaptation of Europe's asylum systems to the requirements under the Migration Pact. The plan should include specific objectives and actions, as well as a timetable for their implementation. The joint implementation plan should be developed by all parties to the Migration Pact and approved by the relevant authorities
- the National Implementation Plans are documents that define how the Migration Pact will be implemented in each country. National plans should be in line with the Joint Implementation Plan and take into account country specificities. National Implementation Plans should be developed by Member State governments and approved by the relevant national authorities.
- milestones are specific targets to be achieved within a certain timeframe in the implementation of the Migration Pact and should be realistic and measurable.

New provisions of law on the way

- Asylum Directive No 2024/1346 of 14 May 2024 in force since 12 June 2024
  - recital 2 of the Asylum Directive indicates that the EU's common asylum policy is based on the full application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967 (the Geneva Convention)
  - includes the principle of non-refoulement contained in that Convention
  - according to the principle of non-refoulement, a migrant who has been refused refugee status must not be deported to a country where he or she would be in danger of persecution. In such a case, the state should surround such a person with a form of protection other (than refugee status) - e.g. in the regulations of many countries, including Polish law, there is the institution of tolerated stay

- since 1 July 2024 in case of migrants from Ukraine (Act of 12 March 2022 on assistance to citizens of Ukraine in connection with the armed conflict on the territory of that country)

- cooperation with local authorities
  - each governor will be able to sign an additional agreement with public benefit organization, which will guarantee accommodation for people with disabilities, their carers and the elderly under special conditions
  - at least 10 persons will have to be accommodated in a particular collective accommodation facility, but a non-profit organisation must have been in existence for a minimum of 24 months to sign such an agreement with the governor.

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

Katie Mannion

Migrants with individual types of vulnerability

TRALVU Dublin, 26 September 2024

Co-funded the European Union

Irish Refugee Council

Vulnerability and international protection applicants and refugees

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

#TRALIM3

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

Irish Refugee Council

People in vulnerable circumstances

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

Irish Refugee Council

Procedures and vulnerability

- Asylum Procedures Directive 2005

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

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

Irish Refugee Council

Age-disputed minors

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

#TRALIM3

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

In the 15 months to April 2024, 607 unaccompanied boys and girls were referred to Tusla, Of those, 243 minors arrived in the first three months of 2024.

Section 13 International Protection Act

Initial interview

Section 14 of the International Protection Act 2015:

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

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

Irish Refugee Council

Age-disputed minors

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

#TRALIM3

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

Examination to determine age of unaccompanied person

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

Irish Refugee Council

Age-Disputed Minors

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

#TRALIM3

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

Irish Refugee Council

Age-disputed minors

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

#TRALIM3

Diakite v Italy No. 44646/17 – 14 September 2023

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

Irish Refugee Council

Age-disputed minors

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

#TRALIM3

T.K. and others v. Greece (case nº 16112/20) , 18th January 2024

Minor Sierra Leonean applicant for international protection

Was unable to produce documents stating his age and was therefore registered as an adult by Greek authorities.

⇒*No guardian appointed, not transferred to suitable accommodation for unaccompanied minors. Subsequently submitted original birth cert.*

⇒*Took one year for age re-assessment.*

⇒ECtHR: Greece violated Articles 8 (private life), 3 (deplorable reception conditions in Samos camp, which amounted to inhuman and degrading treatment) and 13 combined with Articles 3 and 8 of the Convention due to lack of an effective remedy in relation to age assessment procedure, failure to appoint legal guardian and the living conditions in Samos.

Irish Refugee Council

Procedures and vulnerability

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

#TRALIM3

- Recast Asylum Procedures Directive 2013 (Ireland did not opt into Recast)
- Considers that some asylum-seekers need extra support in the asylum process, and some forms of procedures are not suitable for people with vulnerabilities.
- 'Applicant in need of special procedural guarantees': 'an applicant whose ability to benefit from the rights and comply with the obligations provided for in this Directive is limited due to individual circumstances'.
- Recital 29: Factors to be taken into account include age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence.
- Member States are required to assess vulnerability within a reasonable time following an application for international protection.

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

Irish Refugee Council

Procedural Safeguards

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

#TRALIM3

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

Irish Refugee Council

Procedural Safeguards

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

#TRALIM3

For Written Answer on : 28/03/2023
Question Number(s): 601 Question Reference(s): 15419/23
Department: Justice
Asked by: Catherine Connolly T.D.

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

Irish Refugee Council

Reception Conditions Directive 2013

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#TRALIM3

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

Irish Refugee Council

Reception Conditions Regulations: Vulnerable persons

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

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

(i) whether a recipient is a recipient with special reception needs,

(ii) and (ii) if so, the nature of his or her special reception needs.

Vulnerable person includes a reference to a person who is

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

Irish Refugee Council

Recipient with special reception needs

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

#TRALIM3

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

- Designation of accommodation centre

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

  - (a) the need to lodge a minor with his or her parents, unmarried minor siblings or an adult responsible for him or her, provided it is in the best interests of the minor concerned;

  - (b) the need for the accommodation centre to be suitable to meet all of the minor's needs and to allow the minor to avail of the benefits to which he or she is entitled under these Regulations.

- (4) Where the recipient concerned is a vulnerable recipient, the Minister, in designating an accommodation centre under paragraph (1), shall, in addition to the matters specified in paragraph (2) [family unity, gender and age-specific concerns], take account of any special reception needs of the recipient, assessed in accordance with Regulation 8.

Irish Refugee Council

Provision of material reception conditions to recipients

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

#TRALIM3

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

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

Irish Refugee Council

Vulnerability Assessment

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

- September 2022: IPAS Vulnerability Assessment Pilot Progamme Policy
- **Suspended since March 2024**

- "The ongoing demands on the service due to the significantly increased numbers of arrivals has resulted in extreme pressure on the vulnerability assessment programme, including constraints on available accommodation across the IPAS portfolio, longer waiting times for assessments and lack of resources.
- Additionally, the ongoing emergency situation with respect to accommodation availability for single male applicants has placed further pressure on IPAS resources, including our capacity to conduct vulnerability assessments.
- As a result, the vulnerability assessment pilot programme is being suspended until further notice, as resources are redirected to support operations across the Resident Welfare Team and IPAS overall."
  - https://www.gov.ie/en/publication/58397-resident-welfare/

Irish Refugee Council

Vulnerability Triage

Vulnerability assessment must be completed within 30 days of application for international protection.

Not intended as gatekeeper to accommodation

Vulnerability assessment intended to identify those people with "special reception needs" "in need of special guarantees in order to benefit from his or her entitlements".

- a person with a disability,
- a victim of human trafficking,
- a person with a serious illness,
- a person with a mental disorder,
- and a person who has been subjected to torture, rape or other form of serious psychological, physical or sexual violence.

- No privacy for vulnerability triage at IPO.
- 2 social workers on Mondays. 1 social worker on other days – meeting 30 people per day.

Irish Refugee Council

Vulnerability Assessment

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

#TRALIM3

- For Written Answer on : 09/09/2024
- Question Number(s): 1455 Question Reference(s): 34964/24
- Department: Children, Equality, Disability, Integration and Youth

Asked by: Catherine Connolly T.D.

- QUESTION
- To ask the Minister for Children; Equality; Disability; Integration and Youth if an organisation has been tendered to provide a vulnerability assessment to international protection applicants, in line with the State's obligations under the Reception Conditions Regulations; when the assessments will resume; and if he will make a statement on the matter.

- The significant increase in numbers of arrivals and constraints on available accommodation across the International Protection Accommodation Service (IPAS) portfolio has placed extreme pressure on IPAS resources, including the Vulnerability Assessment Programme. As a result, a decision was made to suspend the programme and to seek to procure an external contractor to manage it.
- Following the suspension, resources were redirected to support operations across the Resident Welfare Team and IPAS overall, including to conduct triage of newly arrived single male applicants and identify those with very high needs requiring priority for accommodation when available.
- A successful tender process for the provision of this service has now concluded, contracts are currently being signed with the provider and it is expected that the new Vulnerability Assessment Programme will recommence in early course. Support remains available for International Protection (IP) applicants in IPAS accommodation centres through a number of channels, including the IPAS website at Suspension of VA Programme.

Irish Refugee Council

Vulnerability Assessment

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

#TRALIM3

- https://www.gov.ie/en/publication/58397-resident-welfare/
- Cases relating to accommodation Centre: Centre Manager
  - To escalate: ipasinbox@equality.gov.ie
  - Transfer Requests: IPAS can only consider transfer requests for Medical Priority "that involve a medical priority, or otherwise exceptional cases at this time"
  - IPAS Protocol for Medical Priority
  - IPAS Family Reunification Requests: **Both parties** seeking family re-unification must contact ipasinbox@equality.gov.ie **separately in writing** , requesting family reunification.
  - Eligible: Husband, wife, or partner; Minor children with parents or guardians; Adults with dependent minor siblings, Dependent family members
  - **Please note that there is currently an extended waiting period for approved transfers due to limited capacity within IPAS accommodation.**
  - Re-accommodation Requests: ipasinbox@equality.gov.ie

Vulnerability Assessment

- Pregnancy: If a transfer is required in order to access specific maternity services or care due to medical complications in pregnancy, the applicant or a person acting on behalf of the applicant (healthcare professional, medical social worker etc.) must submit a IPAS Protocol for Medical Priority transfer form to ipasinbox@equality.gov.ie
- Age-disputed minors:

- In all cases, IPAS are instructed by the decision issued by the IPO and/or Tusla. Persons deemed ineligible for services under the Child Care Act must be accommodated by IPAS on this basis.
- Applicants are entitled to appeal their decision with Tusla, and can do so by contacting scsipreview@tusla.ie
- Until such a time as a new decision is issued, persons deemed ineligible for services must continue to be accommodated by IPAS on this basis.
  - Support Services Information Booklet for International Protection Applicants, February 2024

Irish Refugee Council

LGBT +

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

#TRALIM3

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

LGBTQI+ Community

- **Additional vulnerabilities in homelessness:** May not be able to avail of any supports from their country-of-origin community e.g. sleeping on floor of Mosque / church / restaurant
- Less likely to gather with other homeless international protection applicants in tents, which are prioritised for accommodation
- **Increased risk of attack, due to homophobia / transphobia**
- High risk of **exploitative accommodation situations** / unequal relationships

- Impacts sense of security in Ireland, **ability to engage with international protection process** – concentrate, formulate thoughts, remember timelines, build relationships / participate in supportive groups which are considered proof of sexual orientation.
- Men now attending substantive interview, having slept on street.
- Issues with TRC, IPF1 and other important documents being lost/damaged/stolen

Irish Refugee Council

Young refugees transitioning to adulthood

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

#TRALIM3

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

Irish Refugee Council

Vulnerability Assessment

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

Irish Refugee Council

Meeting Special Reception Needs

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

#TRALIM3

- PQ, 26 September 2023
- ….

- In cases where significant vulnerabilities or complex needs have been identified, the RWT may refer a person to the Intake and Reception and Resident Mobility Teams in IPAS to address specific accommodation recommendations or requirements. These teams will then **identify the most suitable accommodation** for the applicant. This is done **within the overall constraints of the accommodation available, which means that it is not always possible for IPAS to address all identified vulnerabilities optimally when allocating accommodation.** Where possible, IPAS will improve the alignment between accommodation and vulnerabilities where accommodation that is more appropriate becomes available.

- Ongoing demands on the service due to the significantly increased numbers of arrivals has resulted in wait times for assessments being affected. However the programme remains available to all IPs who wish to access it, and every effort is made to prioritise cases where a vulnerability has been identified.

Irish Refugee Council

Experiences of people contacting our Information and Advocacy Service

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

Irish Refugee Council

Vulnerability Assessment

- Letter confirming that client is “deemed to be a recipient with special reception needs as defined in Regulation 8”, and category under which they meet the criteria – e.g. has been subjected to torture, rape or other forms of serious psychological, physical or sexual violence.
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  - Single room
  - Reception needs that can be addressed within the currently available national resources.

Irish Refugee Council

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

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

#TRALIM3

Judgment of Justice Max Barrett, 5th March 2019

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

Awarded Frankovich Damages for breach of EU law.

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

Irish Refugee Council

Consideration of Limits of Concepts of Vulnerability

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

#TRALIM3

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

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

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

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

Recipient with special reception needs

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

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

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

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

Irish Refugee Council

Situation of Homeless International Protection Applicants

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

Irish Refugee Council

S.Y. (A minor suing by his next friend Aoife Dare) -v- The Minister for Children & Ors [2023] IEHC 187

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

Irish Refugee Council

S.Y. (A minor suing by his next friend Aoife Dare) -v- The Minister for Children & Ors [2023] IEHC 187

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

#TRALIM3

Findings of Mr Justice Meenan:

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

Irish Refugee Council

S.Y. (A minor suing by his next friend Aoife Dare) -v- The Minister for Children & Ors [2023] IEHC 187

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

Irish Refugee Council

S.Y. (A minor suing by his next friend Aoife Dare) -v- The Minister for Children & Ors [2023] IEHC 187

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

#TRALIM3

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

Granted:

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

Irish Refugee Council

Experience of Homelessness

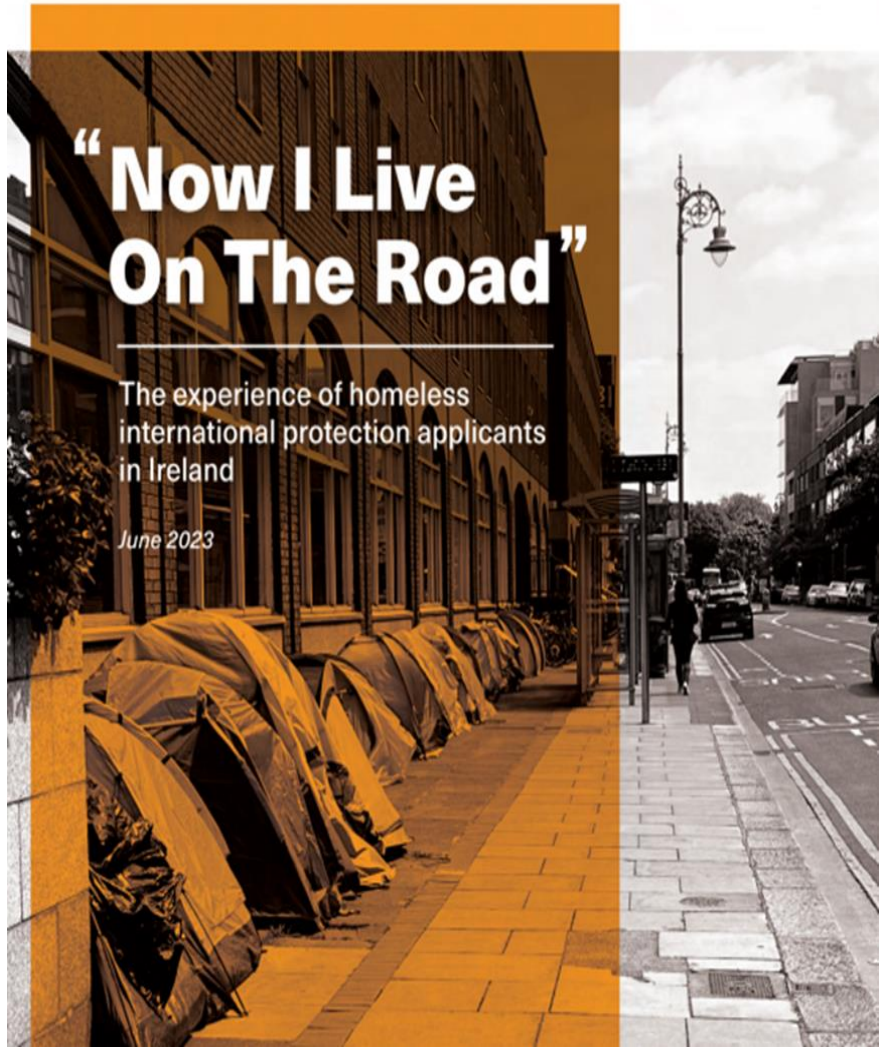
Irish Refugee Council 30 years

- Mr Justice Meenan: SY and MCEDIY- **By reason of the failure of the Minister the applicant has been forced to live and sleep rough**, beg for food and **has been deprived of basic hygiene conditions**. In addition, **the applicant has been exposed to personal attack and danger** and also subjected to humiliation, April 2023

- S.A. and Minister for Children 2023/209 JR and RJ

S.A.: Experiencing pain due to a hip injury, headaches and suicidal thoughts. Cold weather was aggravating his condition. Fearful of attack.

"I was hungry, tired, cold, filthy and scared almost all of the time. I found the whole experience humiliating", December 2023



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S.A. and Minister for Children 2023/209 JR
R.J. and Minister for Children 2023/541 JR

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#TRALIM3

Judgment of Mr. Justice Ferriter, 14th December 2023, Issue of Damages

A: 71 days street homeless J: 63 days street homeless

The respondents accept that the applicants were denied their entitlements to accommodation under the relevant legislation and consents to declarations of breach of the applicants' rights.

The applicants also claim damages arising from the failure of the State to provide for their basic needs. The State opposes the claims for damages on the basis that the failure to provide the applicants with accommodation, in particular, arose from the force majeure circumstances of saturation of available international protection accommodation capacity stemming from the huge influx of Ukrainian refugees arising from the war in Ukraine and an unexpectedly large increase in the numbers of other international protection applicants arriving in Ireland in the same period.

2 cases represent test cases from a pool of 51: all single male adult international protection applicants being left street homeless for periods following their arrival in Ireland to claim protection from 24 January 2023 until 9 June 2023.

Irish Refugee Council

S.A. and Minister for Children 2023/209 JR and R.J. and Minister for Children 2023/541 JR.

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

#TRALIM3

Reference made on 6th February

The cases raise potentially significant questions of EU law as to the availability and scope of a force majeure defence to claims for damages for breach of State liability for inviolable fundamental rights under the Charter of Fundamental Rights

Referring Questions:

i) Where "force majeure" is not found as a defence in a Directive or implementing Regulations in issue, is such a defence nonetheless available as a defence to a Francovich damages claim for a breach of an EU law obligation that confers rights on individuals which derive from the fundamental right to human dignity contained in Article 1 of the Charter (whether as a defence within the second limb of the Brasserie du Pêcheur/Factortame test or otherwise)?

ii) If the answer to question (1) is "yes", what are the parameters and proper scope of that force majeure defence?

Irish Refugee Council

S.A. and Minister for Children 2023/209 JR and R.J. and Minister for Children 2023/541 JR.

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As the review of the relevant law contained in this judgment makes clear, as a matter of EU law (as transposed into Irish law) the State remains under a continuing, mandatory obligation to provide international protection applicants with basic needs including accommodation on an uninterrupted basis from the point at which qualifying persons apply for international protection.

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2024: Homelessness Situation

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- Since 5th December 2023, new male IP applicants are not being accommodated by IPAS
- Exception: Over 55, vulnerability triage, part of a family
- Provided with initial €100 Dunnes Stores voucher
- Increased Daily Expense Allowance from €38.80 to €113.80
- Possibility of Additional Needs Payment to partially cover cost of hostel, bills, transport, food. (although information is not shared about this). Maximum per week: €120.
- No progress made on re-accommodation based on date of arrival. Confusion among applicants around allocation.
- Inadequate supports for people who are rough sleeping.

NO PARKING

Irish Refugee Council

Impact of failure to provide accommodation

- Increased Daily Expense Allowance payment for unaccommodated persons to €113.80/ week + 1 off €100 shopping voucher

Challenges for applicants:

- Payments insufficient to access accommodation
- Applicants cannot access basic hostel accommodation due to requirements of national Photo ID and credit card
- Competing for hostel availability with tourists.
- Currently awaiting accommodation: 2,703 international protection applicants.

Experience of Homelessness

- IHREC and MCEDIY, Ire and AG 2023 1496 JR
- IHREC: Own-name proceedings for first time.
- Mr. Justice O'Donnell: The court is satisfied that the Commission has proved that the current range of services made available for this class of unaccommodated IP applicants is not adequate to provide properly for their basic needs of housing, food, clothing and hygiene.

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LGBTQI+ Community

- **Additional vulnerabilities in homelessness:** May not be able to avail of any supports from their country-of-origin community e.g. sleeping on floor of Mosque / church / restaurant
- Less likely to gather with other homeless international protection applicants in tents, which are prioritised for accommodation
- **Increased risk of attack, due to homophobia / transphobia**
- High risk of **exploitative accommodation situations** / unequal relationships

- Impacts sense of security in Ireland, **ability to engage with international protection process** – concentrate, formulate thoughts, remember timelines, build relationships / participate in supportive groups which are considered proof of sexual orientation.
- Men now attending substantive interview, having slept on street.
- Issues with TRC, IPF1 and other important documents being lost/damaged/stolen

Sources of vulnerability

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

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Letter from Council of Europe's Commissioner of Human Rights

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- "the exposure of often traumatised and vulnerable individuals to cold, rain, hunger, and distress has serious consequences for their human rights, notably the right to health. It may very well also fall short of the minimum standards under Article 3 of the European Convention on Human Rights.

- In my view, the scale and complexity of the prevailing reception and accommodation crisis in Ireland therefore calls for a determined, whole-of-government approach, as the responsible Department for Children, Equality, Disability, Integration and Youth, owing to its limited capacities along with a broad range of functions, is not in the position to address all the issues that appear relevant to secure a holistic response alone. I therefore encourage you to continue working towards a more sustainable system of reception that firmly places the accommodation of refugees and asylum seekers within the context of the broader housing policy development and implementation.

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Ireland

'We sleep with our eyes open': Homeless asylum seekers in Dublin fear attack and the encroaching cold

These asylum seekers, who cannot access homelessness hostels, are 'particularly vulnerable' as the seasons change

Kitty Holland, Irish Times,
Sat Sept 14 2024