



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

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**The European framework (EU, CoE) for vulnerable
migrants**

TRALVU Nicosia, 5 June 2024



Co-funded the European Union

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



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



OFFICE OF THE LAW COMMISSIONER
REPUBLIC OF CYPRUS

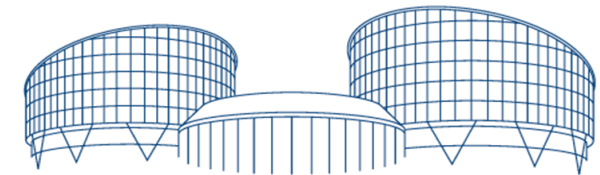
1. EU Directives
2. CoE conventions
3. ECtHR judgements



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE



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

Part I. Deconstructing the Question

Definitions

The Notion of Vulnerability



- **Vulnerable people** are defined as **those who**, due to reasons of age, gender, physical or mental state, or due to social, economic, ethnic and/or cultural circumstances, **find it especially difficult to fully exercise their rights before the justice system as recognised to them by law**. The following may constitute causes of vulnerability: age, disability, belonging to indigenous communities or minorities, victimisation, migration and internal displacement, poverty, gender and deprivation of liberty.

Brasilia Regulations Regarding Access to Justice for Vulnerable People approved by the Plenary Assembly of the Ibero-American Judicial Summit in March 2008



Definition of *“Migrant”*

Applicants and Beneficiaries
of International Protection
under the 1951 Refugee
Convention

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

- (1) the person’s legal status;
- (2) whether the movement is voluntary or involuntary;
- (3) what the causes for the movement are;

or (4) what the length of the stay is (temporarily or permanently).”

**Part II: Inherent
vulnerability of asylum
seekers within the
judgments of the ECtHR**

Inherent
vulnerability of
asylum
seekers:
ECtHR
judgments

***CASE OF M.S.S. v. BELGIUM AND GREECE
(Application no. 30696/09), January 2011***

[232] “it must take into account that the applicant, being an asylum-seeker, **was particularly vulnerable because of everything he had been through during his migration and the traumatic experiences he was likely to have endured previously.**” “In addition, the applicant’s distress was accentuated by the **vulnerability inherent in his situation as an asylum-seeker.**” [233]. Further the Court considered that the Greek authorities have not had due regard to the applicant’s vulnerability as an asylum-seeker and must be held responsible” [263].

Inherent
vulnerability
of asylum
seekers:
ECtHR
judgments

- ***CASE OF M.S.S. v. BELGIUM AND GREECE (Application no. 30696/09), 21 January 2011***
- [251] 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**. It notes the existence of 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”.

Inherent
vulnerability
of asylum
seekers:
ECtHR
judgments

***CASE OF N.H. AND OTHERS v. FRANCE
(Applications 28820/13, 75547/13 &
13114/15), 2 July 2020***

[162] “In addition, the Court would point out **that asylum-seekers may be regarded as vulnerable** on account of everything they have been through during their migration and the traumatic experiences they may have endured previously...It notes the existence of a broad international and European consensus as to the need to protect asylum-seekers, as evidenced by the Geneva Convention, the remit and the activities of the UNHCR and the standards set out in the EU Reception Directive.”

Part III. Common European Asylum System

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

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



Medical Approach

versus

**Social and Human-
Rights based
approach**

- **Overarching Question**: whether the CEAS views Vulnerable Migrants as subjects and right-holders (thus autonomous persons who participate actively in society on an equal basis with others) (***Social and Human-Rights based approach***) or if they are viewed as patients, passive welfare receivers (***Medical Approach***).
- **Reception Conditions Directive (2013/33/EU)**: We shall analyse which of both approaches has been applied by the legislator when drafting the Reception Conditions Directive in regards to **Vulnerable Migrants**.

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

- **Reception Conditions Directive (2013/33/EU)** which ensures that there are humane material reception conditions for asylum seekers across the EU and that the fundamental rights of the concerned persons are fully respected, seems to treat vulnerable migrants as autonomous persons who participate actively in society on an equal basis with others, adopting thus the social and human-rights based approach.
- This is relied on the analysis of the following provisions of the Reception Conditions Directive:
 - **Article 21** Reception Conditions Directive (2013/33/EU) (General principle).
 - **Article 22** Reception Conditions Directive (2013/33/EU) (Assessment of the special reception needs of vulnerable persons).
 - **Article 19** Reception Conditions Directive (2013/33/EU) (Health care).

Vulnerable Persons



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

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

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

(General principle)

**(Social and Human-
Rights Approach)**

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

- 1.** A **non-exhaustive minimum list** of persons which in any case have to be considered vulnerable.
- 2.** Member States shall take into account the specific situation of vulnerable persons **“in the national law”**: Expressly refers to national law not national authorities **therefore this calls for binding law.** Proactive approach towards the inclusion and legal protection of vulnerable persons, recognising them as autonomous rights holders.
- 3.** Member States shall take into account the specific situation of vulnerable persons **“implementing this Directive”** Thus, all the rights found in the Receptions Conditions Directive are intended to be adapted on vulnerable migrants treating them on an equal basis with the other right holders within the Directive, indicating towards the social and human-rights based approach.

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

(Assessment of the
special reception needs
of vulnerable persons)

(Social and Human-
Rights Approach)

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

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

(Social and Human-Rights
Approach)

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

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

- **The Reception Conditions Directive (2013/33/EU) adopts a social and human-rights based approach** given it treats vulnerable migrants on an equal basis with all other right holders within the said Directive. This is premised on the textual interpretation of article 19, 21 and 22 of the Reception Conditions Directive.
- The overarching intention of the Reception Conditions Directive (2013/33/EU) namely, the provision of reception conditions (healthcare, shelter, education etc.) for asylum seekers across the EU is in itself more towards the medical approach given it deals with the provision of welfare to vulnerable persons.

Part IV: EU Pact on Migration and Asylum

EU Pact on Migration and Asylum 10 Legislative Texts

1. Regulation on Asylum and Migration Management
2. Regulation on addressing situations of crisis and force majeure
3. Regulation on introducing the screening of third-country nationals at the external borders
4. Regulation on a European Criminal Records Information System – Third Country Nationals
5. Regulation establishing a common procedure for international protection in the Union
6. Regulation establishing a return border procedure
7. Regulation on the establishment of ‘Eurodac’
8. Regulation on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection
9. Directive on laying down standards for the reception of applicants for international protection
10. Regulation establishing a Union Resettlement and Humanitarian Admission Framework

EU Pact on Migration and Asylum

Regulation establishing a common procedure for international protection in the Union

Regulation establishing a common procedure for international protection in the Union (repealing Directive 2013/32/EU)

Special Guarantees regarding minors, including unaccompanied minors:

- Temporary representative to help with the registration, lodging, fingerprinting and all the necessary procedural steps [Article 23 paragraph (2) subparagraph (a)]
- The representative of an unaccompanied minor is to be appointed as soon as possible and no later than 15 working days from the date on which the application is made (Article 23 paragraph (2) subparagraph (b)).
- Maximum number of unaccompanied minors to be assigned to a representative (under normal circumstances (30), in exceptional situations may be increased up to a maximum of 50 unaccompanied minors).

EU Pact on Migration and Asylum

Regulation establishing a common procedure for international protection in the Union

Regulation establishing a common procedure for international protection in the Union (repealing Directive 2013/32/EU)

Article 21 paragraph (2) of the Asylums Procedure Regulation: Adopted a similar approach with article 24 paragraph (3) of the Asylums procedure Directive in regards to applicants in need of special procedural guarantees within accelerated or border procedures.

EU Pact on Migration and Asylum

Regulation on addressing situations of crisis and force majeure

Regulation on addressing situations of crisis and force majeure

Article 11 (Measures applicable to the asylum border procedure in a situation of crisis or force majeure)

Paragraph 6: In a situation of crisis as referred to in Article 1(4), point (b), by way of derogation from Article 44(1), point (b), and Article 53(2), point (a), of Regulation (EU) 2024/...++ , Member States may, in a border procedure, take decisions on the merits of all applications that are made by any third-country national or stateless person who is subject to instrumentalisation and that are registered within the period during which this paragraph is applied.

Paragraph 7: When applying paragraph 6, Member States shall: (a) exclude from the border procedure minors under the age of 12 and their family members, and persons with special procedural or special reception needs as defined in Directive (EU) 2024/...+and in Regulation (EU) 2024/...++; or

(b) cease to apply the border procedure in respect of the following categories of applicants where it is determined, on the basis of an individual assessment, that their applications are likely to be well-founded: (i) minors under the age of 12 and their family members; and (ii) vulnerable persons with special procedural or special reception needs as defined in Directive (EU) 2024/...□ and in Regulation (EU) 2024/...□□ . This paragraph shall be without prejudice to the mandatory nature of the border procedure as referred to in Article 46 of Regulation (EU) 2024/...++ .

**Part V: Istanbul Convention
(Council of Europe Convention on
preventing and combating
violence against
women and domestic violence)**



ISTANBUL CONVENTION

Istanbul Convention

Article 60: Gender-based asylum claims

- **Article 60 – Gender-based asylum claims**
- 1. Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.
- 2. Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.
- 3. Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.

Istanbul Convention

Gender-based violence against women

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

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

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



Istanbul Convention

Article 37: Forced marriage

Article 37: Forced marriage

- 1. Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised.
- 2. Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage is criminalised.
- **Case Study (Denmark):** Forced marriage was seen as a form of persecution under the 1951 Refugee Convention, granting international protection to the victim.

**Istanbul
Convention:
Article 39:
Forced
abortion and
forced
sterilisation**

Article 39 – Forced abortion and forced sterilisation

- Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:
 - (a) performing an abortion on a woman without her prior and informed consent;
 - (b) performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure.
- **Case study (Germany)**

Interrelatedness between Istanbul Convention and EU Law

- **ECJ Case-621/21 “Women who are victims of Domestic Violence”**
- Article 78(1) TFEU stipulates that EU refugee law must also be applied ‘in accordance with (...) other relevant treaties’. Hence, the ECJ was asked to determine whether the Istanbul Convention would qualify as ‘other relevant treaties’ within the meaning of Art. 78(1) TFEU.
- ‘in so far as it relates to asylum and non-refoulement, is also one of the relevant treaties referred to in Article 78(1) TFEU’

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

ECtHR Jurisprudence:

“Aliens” within the ECHR

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

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

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

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

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

ECtHR: Very exceptional circumstances test

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

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

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

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

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

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

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

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

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

ECtHR: Real risk test

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

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

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

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

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

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

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

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



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

Piotr Turowicz

Migrant workers: trafficking and labour exploitation

TRALVU Nicosia, 5 June 2024



Co-funded the European Union

Ways of recruitment

- information obtained from the other people, friends etc.
- job agencies/specialised „job agents”
 - offer complexevity of services
 - Provide transportation to the workplase, collect money, arrange visas if neccesary
 - very attractive and „profiled” vacancies
 - know what are the expectations and needs of the given market
 - it seems that there is no clue that they are connected with the international trafficking

(let's not use words as „employment contract”, „employer” and „employee” – there is almost nothing common between forced labour and normal work/employment)

Definitions

- Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime, adopted by the United Nations General Assembly, adopted on 15 November 2000 („Palermo Protocol”),
- Council of Europe Convention on Action against Trafficking in Human Beings, drawn up in Warsaw on 16 May 2005 („Warsaw Convention”). Article 4 contains a definition which coincides with that of the Palermo Protocol, highlighting its growing importance

Article 3 of the Palermo Protocol:

*(a) „trafficking in human beings” means the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or by any other form of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, 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 includes, at a minimum, the use of the prostitution of others or other forms of sexual exploitation, **forced labour** or services, slavery or practices similar to slavery, enslavement or removal of organs.*



Definitions

(b) the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.

➤ „labour”:

- can be understood as an activity consisting of repetitive actions performed in time and space, (e.g. operating machines, driving vehicles, performing office duties, etc.) and performed for the purpose of obtaining an economic result and under conditions of subordination. No need for a recognised occupation
- begging can be considered to be a particular variant of such „work”
- „forced delinquency” - forcing to commit a crime or offence from which the organiser of the crime or offence can gain profit.



Definitions – EU regulations

- In accordance with Council Framework Decision (EC) 2002/629/JHA of 19 July 2002 on combating trafficking in human beings (article 1), each Member State shall take the necessary measures to ensure that the following acts are punishable:
 - the recruitment, transportation, transfer, harbouring, onward reception of a person, including exchange or transfer of control over that person, where: (a) it is done by means of coercion, force or intimidation, including abduction; or (b) it is done by means of fraud or abuse; or (c) there is an abuse of power or a situation of vulnerability which results in the person not having, in reality, a genuine and acceptable choice other than to submit to exploitation; or (d) payments or benefits are offered or accepted for the consent of a person having control over another person for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery and servitude, or for the purpose of exploitation of the prostitution of others or other forms of sexual exploitation, including pornography
 - again, no matter if consent of a victim was given
- ***forced labour is a form of human trafficking***



Definitions – EU regulations

- judgment of the European Court of Human Rights in *case Siliadin v France (77316/01, 26 July 2007)*. Siliadin, a minor Togolese national (15 years old) came to France legally, together with Ms D. According to the arrangements made, she was to work at her home until Ms D. was reimbursed for the cost of her plane ticket. Ms D. was to help with immigration matters and find Siliadin a school. In reality, she became an unpaid working maid. She was then „loaned” to Mr and Mrs B. Mr B. also promised to help her deal with immigration matters. Despite the passage of time, the situation did not change - the minor stayed in France illegally and did not go to school. During the criminal proceedings against Mr. and Mrs. B., it was established that the minor had limited freedom of movement (she could go out to a phone box, attend mass). She had been provided with some minimum subsistence (clothes) and the possibility of contact with her family. On this basis, the French court considered that this was not a crime under French law. ECtHR considered that, given the maintained state of complete dependence of the minor on family of B. (she was afraid of the police, subject to empty promises to legalise their stay) was a case of forced labour and as well as serfdom.
- another case (C.N. i V. against France No. 67724/09) concerned allegations of servitude or forced or compulsory labour (unpaid domestic duties in the home of the applicants' aunt and uncle) The Court held that there had been a violation of Article 4 (prohibition of slavery and forced labour) of the Convention in respect of the applicant because the State had failed to establish a legislative and administrative framework to effectively combat servitude and forced labour.



Definitions – EU regulations

- judgment of the European Court of Human Rights in
- This case concerned allegations of servitude or forced or compulsory labour (unpaid domestic duties in the home of the applicants' aunt and uncle) The Court held that there had been a violation of Article 4 (prohibition of slavery and forced labour) of the Convention in respect of the applicant because the State had failed to establish a legislative and administrative framework to effectively combat servitude and forced labour. The Court found that France had failed to comply with its obligations under Article 4 of the Convention with regard to combating forced labour. Translated with DeepL.com (free version). Translated with DeepL.com (free version)



Questions – how to discover trafficking?

- physical and/or psychological violence used against the migrant
- migrant's ability to move restricted
- migrant's documents confiscated
- was there provision of work for alleged debts?
- did the migrant receive remuneration at all, in total?
- working and accommodation conditions
- signing the labour contract
- performing work voluntarily,
- possibility to stop the work, change/leave the workplace

Practice

- labour exploitation or „just” a breach of the employment law?
- role of lawyers
 - to be responsive, react quickly, in proper order, to notify the authorities
- main problems of exploitation in case of migrants:
 - non-payment of wages and overtime work
 - almost all complaints concerned non-payment of wages or payment of only part of the wages due
 - failure of „employers” to respect working time
- pressure on migrants and taking advantage of the ignorance of labour laws
- psychological violence against migrant workers
- various forms of threats (blackmailing), e.g. employers threaten foreign workers that if they do not work, the employers will inform the law enforcement authorities of their illegal work and they will be expelled

Profile of a victim of forced labour

- migrants between the ages of 20-50, i.e. those most active in the labour market
- mostly men, while women very often forced to provide sexual services
 - service sector with no data, but vulnerable to exploitation (including sexual harassment), is so-called domestic help
- education
- smuggled migrants in general have a vocational or secondary education, some with university education
 - it changes in case of war
 - education is not relevant here, but the fact that all migrants are unemployed and rather socially helpless

Methods of taking control over migrants by the criminals

- accomodation
 - in premises belonging to the „employers”
 - places close to the workplace, in temporary sheds, agricultural buildings
 - exemption: migrants forced to beg are placed in motels or workers' hotels, due to the specific nature of the „work”
- documents: general rule is confiscation
 - lack of confiscation of documents is due to the type of work the migrants are doing
 - migrants are provided with false documents – in case they are exposed to scrutiny by law enforcement authorities
- **important!**
 - legality of stay of migrants does not at all determine that we are not dealing with victims of forced labour

Consequences

- culture shock of migrants
 - physical
 - climate
 - micro-organisms, food
 - rhythm of life
 - psychological
 - increase in stress
 - new negative emotions/inadequacy of previous defence mechanisms
 - social
 - change of role and social status (to a lower one)
 - no family/social life at all

Problems to be solved in future

- increase of role of NGOs and their cooperation with the state/local authorities
 - activists are closer, are perceived as more trustworthy
 - natural barrier of fear of expulsion between the illegally staying person and the law enforcement services, often reinforced by negative experiences from the migrants/ home country
 - additionally, there is uncertainty of the consequences of asking for help
- alienation, lack of support from family, friends, often having to take illegal jobs, poor knowledge of one's rights and avoidance of contact with the authorities
- migrants tend rather to forget that seek justice
- poor identification of victims who are expelled from the country
 - in fact, we may never know about exploitation and other migrants may suffer in the future

Problems to be solved in future

- preventive measures
 - information campaigns for migrants who are planning to arrive to the given country
- support and protection for victim
 - social and professional integration
 - protection against the risk of becoming a victim of human trafficking again in the future
- training activities
 - specialised trainings for, inter alia, social welfare workers, staff dealing with the legalisation of residence or emergency number operators, guardians of unaccompanied foreign children who apply for international protection.
 - training also for the Police, Border Guard, as well as judges or prosecutors
- research on trafficking in human beings
 - monitoring effectiveness in providing basic assistance to migrants
 - researching the situation of persons after they stop receiving this support
 - monitoring their return to society and the labour market - only in this way it will be possible to assess the effectiveness of state assistance



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

Olga Komiti

Migrant children and migrant families

TRALVU Nicosia, 5 June 2024



Co-funded the European Union

Migrant families and migrant children

Terms & Definitions

Migrants, asylum-seekers or refugees?

- All are third country nationals
- Migrants are persons who move for better living conditions
- Asylum-seekers are fleeing persecution and need international protection
- Refugees and subsidiary protection beneficiaries are persons who have been granted international protection

Terms & Definitions

Irregular migrants?

- Movements of people from one country to another may include some persons who are in need of international protection and others who are not. This is likely to be the case when, as often happens, a country of origin is simultaneously affected by human rights violations, conflict, economic decline and an absence of livelihood opportunities.
- Most asylum-seekers or refugees do not have the privilege of securing travel documents or visas and often see themselves forced to resort to smuggling or trafficking networks in a desperate attempt to reach international protection. They have important legal entitlements under international law, even where they may not fulfil national legislative provisions on entry and stay.

Applicability of human rights law

- Most human rights are guaranteed irrespective of an individual's immigration status: they are a function of a person's status as a human being, not as a citizen of a particular state.
- In other words, a person's status as an 'alien' or non-national does not exclude him or her from the protection of human rights law.

International legal framework

Universal Declaration of Human Rights, Article 16:

1. Men and women of **full age**, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the **free and full consent** of the intending spouses.
3. The family is the natural and fundamental group unit of society and is **entitled to protection** by society and the State.

International legal framework

International Covenant on Civil and Political Rights:

- Article 23: The family is the natural and fundamental group unit of society and is **entitled to protection** by society and the State.
- Protection of the family and its members is also guaranteed, directly or indirectly, by Article 17, which establishes a **prohibition on arbitrary or unlawful interference** with the family.
- Article 24 specifically addresses the **protection of the rights of the child**, as such or as a member of a family.

International legal framework

Convention on the Rights of the Child:

- Children (below 18 years old) and families with children are also protected under the UN Convention on the Rights of the Child
- Article 9: States should take all appropriate measures to ensure that a child **shall not be separated from his or her parents** against his or her will, and that applications by a child or his or her parents to enter or leave a state party for the purpose of **family reunification** shall be dealt with in a **positive, humane and expeditious** manner.

International legal framework

1951 Geneva Convention Relating to the Status of Refugees:

- The 1951 Geneva Convention does not refer to the issue of family reunification.
- However, the Final Act of the UN Conference of Plenipotentiaries states that '**the unity of the family ... is an essential right of the refugee**'.

European framework - CoE

European Convention on Human Rights, Article 8:

“1. Everyone has the **right to respect** for his private and family life, his home and his correspondence.

2. There shall be **no interference** by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

European framework - CoE

European Convention on Human Rights, Article 8:

- According to the case law of the European Court of Human Rights (ECtHR), the right to family life is **not automatic**.
- Migrants must demonstrate that family life cannot be enjoyed 'elsewhere', before it is concluded that refusal to grant them family reunification is in violation of Article 8

European framework - EU

Treaty on the functioning of the European Union:

The Treaty on the Functioning of the European Union (TFEU) states in Article 79(2) that the European Parliament and the Council shall adopt:

- Necessary measures in the areas of 'the conditions of entry and residence
- Standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification'.

European framework - EU

EU Charter of Fundamental Rights:

- The EU Charter of Fundamental Rights is applicable to EU institutions and to Member States when they are implementing EU law
- It refers in Article 7 to the right to respect for private and family life (along the same lines as Article 8 of the ECHR)

European framework - EU

EU recast Qualification Directive 2011/95/EU :

- Not applicable to migrants
- Refugees' and 'persons eligible for subsidiary protection' are defined
- 'family members' — extended to the father, mother or other adult responsible for the beneficiary of international protection if the person is under 18 (a minor) and unmarried.

European framework - EU

EU recast Qualification Directive 2011/95/EU :

- The Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union.
- The Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of the Charter, including Article 7.

European framework - EU

EU recast Qualification Directive 2011/95/EU :

- The '**best interests of the child**' should be a primary consideration of Member States when implementing this Directive, in line with the 1989 United Nations Convention on the Rights of the Child.
- In assessing the best interests of the child, Member States should in particular **take due account of the principle of family unity**, the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity.

European framework - EU

EU recast Qualification Directive 2011/95/EU :

- Recital 19: It is necessary to **broaden the notion** of family members, taking into account the different **particular circumstances of dependency** and the special attention to be paid to the **best interests of the child**.
- Recital 36: Family members, **merely due to their relation** to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the **basis for refugee status**.

European framework - EU

EU recast Qualification Directive 2011/95/EU :

- Family members' means, **in so far as the family already existed in the country of origin**, the following members of the family who are present in the same Member State :
 - — the spouse or his or her unmarried partner in a stable relationship where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,
 - — the minor children, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,
 - — the father, mother or another adult responsible for the beneficiary of international protection whether by law or by the practice of the Member State concerned, when that beneficiary is a minor and unmarried;

European framework - EU

EU recast Qualification Directive 2011/95/EU, Article 23:

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

European framework - EU

EU Family Reunification Directive 2003/86/EC

- Applies in 25 of 27 EU Member States (excluding Denmark and Ireland).
- Applies to both migrants and international protection beneficiaries
- It mainly concerns reunion of spouses and minor children with a non-EU sponsor

European framework - EU

EU Family Reunification Directive 2003/86/EC

Definition

- "family reunification" means the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, **whether the family relationship arose before or after the resident's entry;**

European framework - EU

EU Family Reunification Directive 2003/86/EC

- The sponsor (the person who has been granted the right to reside legally in the country) must have a **residence permit valid for at least one year** and have reasonable prospects of obtaining the right of permanent residence;
- the **family** members must reside **outside** the territory when the application is made;
- public policy, public security or public health are **grounds for rejection**;
- conditions relating to **accommodation, sickness insurance and stable and regular resources** may be imposed;
- Member States may require **integration** measures;

European framework - EU

EU Family Reunification Directive 2003/86/EC

Special provisions for refugees

- may **limit** the special rules to family relationships that **predate** entry to the Member State;
- may authorize family reunification of **other family members** not referred to in Article 4, if they are dependent on the refugee;
- shall authorize the entry and residence of an **unaccompanied minor's first-degree relatives**; his or her legal guardian; or any other family member where there are no relatives or such relatives cannot be traced;
- shall take into account **other evidence**, where a refugee cannot provide official documentary evidence of the family relationship;
- shall **not require the refugee to have resided** in their territory for a certain period of time before having his or her family members join him or her.

European framework - EU

EU Family Reunification Directive 2003/86/EC

Special provisions for refugees

- Third-country nationals are required to provide evidence that they have accommodation, health insurance and resources (material conditions) that can support newly arrived family members.
- This requirement is not set out for refugees
- Member States may request this evidence if the application for family reunification is made after three months of recognition of the refugee status.

European framework - EU

EU Family Reunification Directive 2003/86/EC

Scope:

The Directive does not apply to:

- asylum-seekers;
- applicants for or beneficiaries of temporary protection;
- applicants for or beneficiaries of 'a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States'.

European framework - EU

EU Family Reunification Directive 2003/86/EC

Scope: why are SPBs excluded?

- The FRD was adopted in 2003, prior to the adoption of the Qualification Directive in 2004, when the status of “international protection”, encompassing both refugee status and subsidiary protection status, was established;
- Although when the Qualification Directive was transposed into national law by 2005 EUMS extended FRD to SPB, later on Cyprus deprived SPB from FR rights due to economic considerations (2013).

Greece, Cyprus and Malta fully exclude beneficiaries of subsidiary protection from family reunification, while others, such as Austria, Germany, Sweden and Hungary impose restrictive conditions in this regard due to the 2015 influx.

National Implementation

- Family unity is not ensured for families formed post recognition: children are now granted derivative status but spouses not (short term humanitarian permit, exceptional right to work without other rights).
- Families residing for more than a decade also retroactively affected.
- Family reunification for refugees: long delays, DNA tests required that refugees cannot afford, approvals by the CRMD become obsolete due to Embassies / Consulates requesting further documents.

Children: Definitions

- “Unaccompanied children” are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.
- “Separated children” are children separated from both their parents or from their previous legal or customary primary caregivers but not necessarily from other relatives.

Children: gender-related persecution

- Domestic violence
- Early and forced marriage
- Female genital mutilation
- Physical assault
- Rape
- Sexual harassment
- Trafficking
- Transgression of social mores

Children: persecution

- Orphans/ street children/ lack of adult care;
- physical and mental violence, abuse, neglect, and exploitation;
- No access to education, health, child development;
- Under-age / forced military recruitment;
- Commonly 'sent away' by elders;

The refugee definition

- A refugee is a person who:

*“...owing to a well founded fear of being **persecuted** for reasons of race, religion, nationality, **membership of a particular social group** or political opinion, is outside the country of his nationality and is unable or, owing to such fear is unwilling to avail himself to the protection of that country...”*

UNHCR Guidelines

- UNHCR Guidelines on International Protection: Gender-related persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (2002)
- UNHCR Guidelines on International Protection: : “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (2002)
- UNHCR Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked (2006)
- Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 December 2009
- UNHCR guidance note on refugee claims relating to female genital mutilation (2009)

UNHCR Guidelines on child asylum claims (para 13)

- Application of the 1951 Refugee Convention criteria in children's claims requires particular awareness of children's rights and child-specific forms of persecution.
- Children are entitled to a range of **child-specific rights** set forth in the Convention on the Rights of the Child which recognize their young age and dependency and are fundamental to their protection, development and survival.

UNHCR Guidelines on child asylum claims (para 13)

- The right not to be separated from parents (CRC, Article 9);
- Protection from all forms of physical and mental violence, abuse, neglect, and exploitation (CRC, Article 19);
- Protection from traditional practices prejudicial to the health of children (Article 24);

UNHCR Guidelines on child asylum claims (para 13)

- A standard of living adequate for the child's development (Article 27);
- The right not to be detained or imprisoned unless as a measure of last resort (Article 37);
- Protection from under-age recruitment (Article 38).

UNHCR Guidelines on child asylum claims (para 48 - 50)

- Many children's claims to refugee status could be analysed in the context of the Convention ground of "membership of a particular social group". Being a child is in effect an *immutable characteristic* at any given point in time. Age and other characteristics may give rise to narrower social groups such as 'orphans', 'homeless children' or 'illegitimate children'.

Imputed political opinion

- the views or opinions of adults, such as the parents, may be imputed to their children by the authorities or by non-State actors. This may be the case even if a child is unable to articulate the political views or activities of the parent, including where the parent deliberately withholds such information from the child to protect him/her. In such circumstances, these cases should be analysed not only according to the political opinion ground but also in terms of the ground pertaining to membership of a particular social group (in this case, the “family”). (UNHCR Child Guidelines, 46)

Common European Asylum System

- Reception Conditions Directive – sets out standards for the well-being of families and children
- Asylum Procedures Directive – procedural guidelines specifically for children
- Qualification Directive – recognises child-specific harm

Cyprus: Guardianship and the care of children

- The Director of Social Welfare Services is responsible to act as a guardian for unaccompanied asylum-seeking children by virtue of the Refugee Law and must take all measures necessary under the given law on the child's behalf and in his or her best interests (Refugee Law, s.10)

Cyprus: Age assessment

- While a procedure was put in place following the intervention of the Child Commissioner, routine referrals to the age assessment process were noted.
- The assessment is not multidisciplinary and is limited to medical assessments with a considerable margin of error.
- The decision cannot be independently challenged, but only if and when the asylum claim is rejected. This deprives children from their reception and procedural rights throughout the refugee status determination process.
- Recent amendments to the Refugee Law introduced a presumption of adulthood in case a child does not consent to the medical test.

Legal representation: administrative stage

The Asylum Procedures Directive (2013) Article 25(1):

- obliges states to as soon as possible take measures to ensure that a representative represents and/or assists an unaccompanied child with respect to the examination of the asylum application
- Member States shall ensure that a representative and/or a legal adviser or other counsellor admitted or permitted as such under national law are present at that interview and have an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview
- **Article 19(1):** Member States shall ensure that, on request, applicants are provided with legal and procedural information free of charge, including, at least, information on the procedure in the light of the applicant's particular circumstances.
- **Article 20:** Free legal assistance and representation in appeals procedures

Cyprus: Legal Representation

- Administrative stages – guardian acts as representative
- International Protection Administrative Court (Child Commissioner – private lawyers)

Education of unaccompanied children

Reception Condition Directive (2013), Article 14 – *mainstream*:

- Special programmes for UASC
- Some children not enrolled in school are attending afternoon state institute classes (τα Κρατικά Ινστιτούτα Επιμόρφωσης)
- Most children not enrolled in school, KIE or other

Jurisprudence

- Standing jurisprudence of the European Court of Human Rights requires states to give effect to the right to family life and family unity through flexible, prompt and effective access to family reunification.
- *Mugenzi v. France*, 10 July 2014, Appl. No. 52701/09, para. 52
- *Tanda-Muzinga v. France*, 10 July 2014, Appl. No. 2260/10, para. 73.

Jurisprudence

- A State's entitlement to control the entry of aliens into its territory and their residence there applies regardless of whether an alien entered the host country as an adult or at a very young age, or was perhaps even born there (**Üner v. the Netherlands [GC], §§ 54-60**).
- While a number of Contracting States have enacted legislation or adopted policy rules to the effect that long-term immigrants who were born in those States or who arrived there during early childhood cannot be expelled on the basis of their criminal record, such an absolute right not to be expelled cannot be derived from Article 8 (*ibid.*, § 55).

Jurisprudence

- However, very serious reasons are required to justify expulsion of a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in a host country (Maslov v. Austria [GC], § 75).
- Taking into account the applicant's family life and the fact that he only committed one serious crime in 1999, the Court stated that the expulsion of the applicant to Albania and a lifetime ban on returning to Greece violated Article 8 (Kolonja v. Greece, §§ 57-58).
- By contrast, in Levakovic v. Denmark, §§ 42-45, the Court did not find a violation of the "private life" of an adult migrant convicted, after entering adulthood, of serious offences, who had no children, no elements of dependence with his parents or siblings, and had consistently demonstrated a lack of will to comply with the law.

Jurisprudence

The Court also examines the best interests and wellbeing of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and the solidity of social, cultural and family ties with the host country and with the country of destination (*Üner v. the Netherlands* [GC], § 58; *Udeh v. Switzerland*, § 52).

The Court has affirmed that the best interests of minor children should be taken into account in the balancing exercise with regard to expulsion of a parent, including the hardship of returning to the country of origin of the parent (*Jeunesse v. the Netherlands* [GC], §§ 117-118).

Jurisprudence

In *M.A. v. Denmark* [GC], the Grand Chamber considered the Article 8 compatibility of a three-year waiting period for applying for family reunion.

It accepted that States had a wide margin of appreciation in this area. In particular, it acknowledged that resource constraints caused by an influx of asylum seekers might justify the prioritisation of Article 3 protection over and above the interests of refugees and persons in receipt of subsidiary protection to family reunification.

It did not, therefore, consider that a waiting period per se offended against Article 8 (see §§ 145-146).

Jurisprudence

However, the discretion enjoyed by States in this area was not unlimited and on the facts of the case before it considered that a waiting period of three years was by any standard a long time to be separated from one's family, when (as in the applicant's case) the family member left behind remained in a country characterised by arbitrary violent attacks and ill-treatment of civilians and when insurmountable obstacles to reunification there had been recognised. This was especially so given that the actual separation period would inevitably be even longer than the waiting period.

Furthermore, beyond very limited exceptions the impugned legislation had not allowed for an individualised assessment of the interest of family unity in the light of the concrete situation of the persons concerned. Nor had it provided for a review of the situation in the country of origin with a view to determining the actual prospect of return. Thus, the Court found that in the applicant's case a fair balance had not been struck between the relevant interests at stake.



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

Andriana Kossyva

Migrant women and migrant LGBTI+

TRALVU Nicosia, 5 June 2024



Co-funded the European Union

Migrant/ refugee/ asylum-seeking women and LGBTIQ+ persons

2024

Who are migrant/ refugee/ asylum-seeking women and LGBTIQ+ persons?

- **Migrant:** a person who **moves** from one country to another
- **Refugee:** A person forced to **flee** their country of origin/ habitual residence due to **persecution** on the basis of **race/ religion/ nationality/ political opinion/ membership in a particular social group**, or due to **war or violence**
- **Asylum seeker:** A person whose application for international protection has not yet been examined
- **Woman:** Any person identifying as a woman
- **LGBTIQ+:** Lesbian, Gay, Bisexual, Trans, Intersex, Queer and Questioning persons

Why focus on migrant/ refugee/ asylum-seeking women and LGBTIQ+ ?

- The **migration/ asylum experience** is **diverse**. Women and LGBTIQ+ persons experience them in a different way than cis/ heterosexual men
- Current international **human rights standards apply to everybody** and further efforts are needed to assess the **prevention and protection gaps** as regards migrant/ refugee/ asylum-seeking women and LGBTIQ+ persons

- Women and LGBTIQ+ persons are **vulnerable to violence/discrimination that is specific to them** as women/LGBTIQ+, or that **impacts them disproportionately** (in their countries of origin, during their journey, in transit, in the destination country)
- Women and LGBTIQ+ persons face **specific difficulties** and **structural barriers** in overcoming such violence/discrimination and in accessing their rights
- **Intersecting** barriers, discrimination, violence need an **intersectional** approach

EU legal framework

Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, “Istanbul Convention”, 2011)

Article 3 – Definitions

- **Violence against women** is a human rights violation and a form of discrimination (**physical, sexual, psychological** or **economic** harm or suffering to women - threats, coercion, deprivation of liberty, in public or private spaces)
- **Domestic violence** can be **physical, sexual, psychological** or **economic**
- **Gender** as the **socially constructed** roles
- **Gender-based violence**: violence on the basis of gender or that affects women disproportionately
- **Victim**: violence against women or domestic violence
- **Girls** included

- **Article 5 - State obligations and due diligence**

States and their authorities, officials, agents and other actors must **refrain from engaging** in gender-based violence and must **take measures** necessary to **prevent, investigate, punish** and provide **reparation** for acts of violence perpetrated by non-state actors.

Chapter III – Prevention

• Article 12 - General obligations

States should:

- aim to **eradicate prejudice, customs, traditions and practices** which are based on stereotypical roles for men and women;
- **implement** the necessary **legislative measures** to prevent violence against women, taking into account the **specific needs** of persons made vulnerable by certain circumstances;
- **engage men and boys** in prevention work
- adopt a **human rights and victim centred approach**.

Chapter IV – Protection and support

- **Article 18 - General obligations for protection and support Measures:**

- **gendered understanding** of violence
- **human rights and victim-centred approach**
- **integrated approach** that takes into account the relationship between victims, perpetrators, children and their environment
- **avoids secondary victimization**
- aims at **empowerment** and the **economic independence** of women
- allows for a range of **support services** on the same premises
- **addresses the needs of vulnerable persons**, including child victims
- **Support services shall not be dependent on pressing charges or testifying against a perpetrator.**

Chapter V – Substantive law

- Article 29 - Civil lawsuits and remedies
- Article 30 – Compensation (both the perpetrator and the State)
- **Article 31 - Custody, visitation rights and safety**
Incidents of violence should be taken into account in the determination of **custody and visitation rights of children** not to endanger the victim or the children.
- **Article 32 - Civil consequences of forced marriages**
Forced marriages should be voided, annulled or dissolved without financial or administrative burden.

- **Articles 33 – 40 Criminalisation of gender-based violence**

Types of violence to be criminalised:

- psychological violence
- stalking
- physical violence
- sexual violence, including rape
- forced marriage, including luring an adult or child to enter the territory of another state with the aim of forcing them into marriage
- female genital mutilation (FGM)
- forced abortion and forced sterilization
- sexual harassment (verbal, nonverbal, or physical).

- Article 38.a **FGM** as a form of violence against women
- Definition: “excising, infibulating or performing any other mutilation on the whole or any part of a woman’s labia majora, labia minora or clitoris”
- Measures against it
- A **criminal offence** (doctors or anybody)
 - Pressure or coercion to do it “voluntarily”

- Article 41 - Aiding or abetting and attempt
- Article 42 - Unacceptable justifications for crimes, including crimes committed in the name of so-called “honour”
- Article 43 - Application of criminal offences (irrespective of the relationship between victim and perpetrator)
- Article 46 - Aggravating circumstances
 - offence against current or former spouse or partner
 - repetition
 - in the presence of a child
 - extreme violence
 - severe physical or psychological harm
- Article 48 - Prohibition of mandatory alternative dispute resolution processes

Chapter VI – Investigation, prosecution, procedural law and protective measures

- **No delay**; take into account the rights of the victim (art. 49)
- States can **continue investigating and prosecuting** a crime under the Convention, even if the victim withdraws their statement/complaint. (art. 55)
- Victims have the right to **free legal aid**. (art.57)

Chapter VII – Migration and asylum

- **Article 59 – Residence status**

Victims can be granted an **autonomous residence permit**, irrespective of the duration of the marriage or partnership.

- **Article 60 - Gender-based asylum claims**

GBV should be recognised as a **form of persecution** and ground for granting asylum.

- **Article 61 - Non-refoulment**

Victims of gender-based violence shall not be returned to any country where their life might be at risk or where they may be subjected to torture or inhuman or degrading treatment.

Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime

Minimum standards on the **rights of victims of crime**, independently of residence status, gender, sexual orientation:

- **identification** (“regardless of whether an offender is identified, apprehended, prosecuted or convicted”)
- access to **information**
- (specialist) **support**, including “providing shelter and safe accommodation, immediate medical support, referral to medical and forensic examination for evidence in cases of rape or sexual assault, short and long-term psychological counselling, trauma care, legal advice, advocacy and specific services for children as direct or indirect victims”
- (legal) **protection**, including from retaliation & re-victimisation
- access to **justice** (the right to be heard, legal aid)
- **compensation**

Recommendation CM/Rec(2022)17 of the Committee of Ministers to member States on protecting the rights of migrant, refugee and asylum-seeking women and girls

- Migrant, refugee and asylum-seeking women and girls as a **diverse** group.
- They constitute **more than half of the migrant population** in Europe.
- Persisting **gender inequalities** in both countries of origin and destination affect their migration/ asylum experience.
- Migration, asylum and integration policies should be **gender sensitive**, including specific protection and support mechanisms.
- The recommendation **brings together** the provisions of existing Council of Europe and international standards and the policies that can best ensure the empowerment and protection of the rights of migrant, refugee and asylum-seeking women and girls.

Recommendation Rec(2002)5 on the protection of women against violence

- Recommends that member states take **measures** (legislation, policies) **to protect victims and to prevent GBV**
- It gives member states a **list** of measures they can take to protect victims' interests in practice, safeguard their rights and prevent GBV.

Recommendation CM/Rec(2010)10 on the role of women and men in conflict prevention and resolution and in peace building;

- It gives member states a **list of measures** they can take: gender equality, gender mainstreaming, education, civil society, media, conflict prevention, conflict resolution, security, peace building, empowerment
- It recommends that member states **adopt and implement** such measures

Recommendation CM/Rec(2019)1 on preventing and combating sexism

- Member states to implement **legislative measures**, applicable to all media, which define and **criminalise incidents of sexist hate speech**, and include reporting procedures and appropriate sanctions.
- It comprises a comprehensive **list of measures** both to prevent and to condemn sexism, and it calls for specific action in areas such as: language and communication; internet and social media; media, advertising and other communication methods; workplace; public sector; justice sector; education institutions; culture and sport and the private sphere. Countries are **encouraged to pass legislation** that condemns sexism and criminalises sexist hate speech. It also requires that countries **monitor the implementation** of anti-sexist policies at national level and report back periodically to the Council of Europe.

Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law

Criminalisation of hate speech

- “publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin”

The International Labour Organization Domestic Workers Convention No. 189 (2011)

- It affirms the **fundamental rights of domestic workers**, establishing **minimum labour standards** for them, including decent living conditions and effective **protection** against all forms of abuse, harassment and violence.
- It requires states to take a series of **measures** to guarantee decent work for domestic workers.

The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”, 1979) and its Optional Protocol (1999), as well as relevant CEDAW General Recommendations specifically related to this recommendation

- To **eradicate discrimination against women** in all fields (individual, institutional, systemic), both in the public and private sphere (employment, health, education, political rights, reproductive rights)
- It recognises both **state** and **non-state actors** when violation of rights occurs
- State obligation for **respect, protection, promotion, and fulfillment of human rights**
- States to ensure the **prevention, investigation, and sanctioning** of private acts of discrimination.
- Corrective and positive **measures**; enabling conditions and affirmative actions
- **Eliminating stereotyped** roles on the basis of gender
- Safeguarding **equality** before the law

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

- “**Gender-related persecution**”: interpretation of the refugee definition from a gender perspective
- “**gender**” and “**sex**”
- Gender may influence, or dictate, the **type** of persecution or harm suffered and the **reasons** for this treatment.

- **Transgression of social or religious** norms may be analysed in terms of religion, political opinion or membership of a particular social group
- Women as members of a particular social group (past vs now)
- Non-state agents of persecution (past vs now)
- Discriminatory laws (e.g. adultery in Iran)

- GBV claims generally include, but are not limited to:
 - Acts of sexual violence
 - Family/ domestic violence
 - Coerced family planning
 - Female genital mutilation
 - Punishment for transgression of social norms
 - Discrimination on the basis of sexual orientation/ gender identity
 - Trafficking
 - Honour crimes
 - Discrimination amounting to persecution
- It sets **measures** to be taken during **RSD**

GUIDELINES ON INTERNATIONAL PROTECTION NO. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees

- Human rights abuses and other forms of persecution due to their actual or perceived sexual orientation and/or gender identity.
- Criminalisation of sexual orientation
- No state protection
- Non-state agents
- Transgression of social or religious norms may be analysed in terms of religion, political opinion or membership of a particular social group

- LGBTI individuals may be targeted for:
 - killings
 - sexual violence
 - honour crimes
 - GBV violence
 - physical attacks
 - torture
 - arbitrary detention
 - societal disapproval (accusations of immoral or deviant behaviour, isolation)
 - denial of the rights to assembly, expression and information
 - discrimination (in employment, health, education) amounting to persecution
 - criminalisation

- **Intersecting** factors: sex, age, nationality, ethnicity/ race, social or economic status and HIV status
- It sets **measures** to be taken during **RSD**
- **Self-identification** as an indication
- The applicant's **testimony** is the most important element (no medical test)

The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity

- **Sexual orientation:** “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate relations with, individuals of a different gender or the same gender or more than one gender”
- **Gender identity:** “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body and other expressions of gender, including dress, speech and mannerisms”
- It sets **measures** for the protection of LGBTIQ+ persons

- Principle 23:
 - “Everyone has **the right to seek and enjoy in other countries asylum from persecution**, including persecution related to sexual orientation or gender identity. A State may not remove, expel or extradite a person to any State where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment, on the basis of sexual orientation or gender identity.”
 - It sets **measures** for the protection of LGBTIQ+ persons in the asylum procedure

Legal basis for the protection of LGBTIQ+ persons (EU)

- Article 21 of the **EU Charter of Fundamental Rights** clearly **forbids discrimination** based on sexual orientation
- Article 19 of the **Treaty on the Functioning of the European Union** allows action to **combat discrimination** against LGBTIQ+ persons
- The **Amsterdam Treaty** (1997) expanded the **grounds** protected against discrimination in EU law, including sexual orientation. It also includes sex, race, ethnic origin, religion, belief, disability, and age.

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

- A general framework to guarantee **equal treatment at the workplace** irrespective of religion/ belief, disability, age or sexual orientation
- It covers both **direct** (differential treatment based on a specific characteristic) and **indirect discrimination** (any provision, criterion or practice which is apparently neutral but puts the people in the above categories at a disadvantage compared to others)
- It applies both to the **public** and the **private** sector
- Protection from unfair treatment when **applying** for a job
- Protection from **harassment**(name-calling, jokes) at the **workplace**
- Protection from refusal of promotion/ training & from **dismissal**

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

- It obliges member states to adopt relevant anti-discrimination **legislation** in the areas of:
 - social protection (including social security and healthcare)
 - education
 - access to and supply of goods and services available to the public (including housing)

The Free Movement Directive (Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States)

- Under the definition of '**spouse**' and '**members of the family**' recognises same-sex marriages/ partnership agreements

The Family Reunification Directive (Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification)

- In connection with the **entry and residence rights** of LGBTIQ+ third-country nationals

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

- Granting **international protection** on the basis of belonging to a *specific social group*, including explicit references to sexual orientation and gender identity.

Case Law

- **UK - Supreme Court, 7 July 2010, HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31**
 - Homosexuals as members of a particular social group
 - Concealment of sexuality → denial of identity as a fundamental right
 - No condition to take steps to avoid persecution

- **United States Immigration Court, Baltimore, Maryland – Matter of A-T- (Mali)**
 - past FGM as a basis for refugee protection
 - ongoing medical, psychological, and sexual problems
 - fear for forced marriage
 - FGM as an act of the past, once vs ongoing process
 - women’s rights to bodily integrity and autonomy = human rights
 - cooperation of experts, concerned citizens, civil society

IPAC decision, Judge Katsarides, 13/10/2023

- judicial recourse of a woman from **Somalia** who was granted **SP** by the AS
- accepts that given the harm experienced and likely to be experienced, which includes FGM, she should have been recognized as a refugee on the basis that this harm is experienced as she is a **MPSG**
- IFA not relevant nor reasonable – issues of survival; FGM is countrywide

Challenges & recommendations

- EU law to **extend protection for LGBTIQ+ beyond the employment** area, to cover fields such as health, education, housing, and fully recognise same-sex marriages/ partnerships
- Migrant and refugee women and LGBTIQ+ come from **different** cultural, ethnic, language and religious **backgrounds** → **communication**
- **Specialised services**, tailored to their needs
 - Effective representation
- **Training** of legal experts (lawyers, judges) and other professionals
- Taboos, trauma, stigma, concern for others → **concealment** of identity
- **Trauma** → communication → referral

- Terminology, **inclusive language**
- In risk of **re-victimization**, (trafficking, exploitation, violence), re-trauma:
 - Prevention
 - New grounds for protection/ resident permit
 - New legal proceedings
- Burden of proof
- Confusion about legal proceedings → clarity
- Personal perceptions (past experiences, corruption in countries of origin, pessimism)

- Financial barriers:
 - legal aid availability
 - social benefits/ services, etc.
- Intersections of vulnerabilities
- Trust

Challenges in Cyprus

- Women as members of a particular social group
- Credibility in LGBTIQ+ claims
- FGM
 - future risk (burden of proof)
 - indication of gender oppression



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

Stephie Karagiorge

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

TRALVU Nicosia, 5 June 2024



Co-funded the European Union

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

DEFINITIONS

Vulnerable Persons

The Reception Conditions Directive (2013/33/EU) obliges EU Member States to take into account the specific situation of vulnerable persons.

“[M]inors, 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” (Article 21)

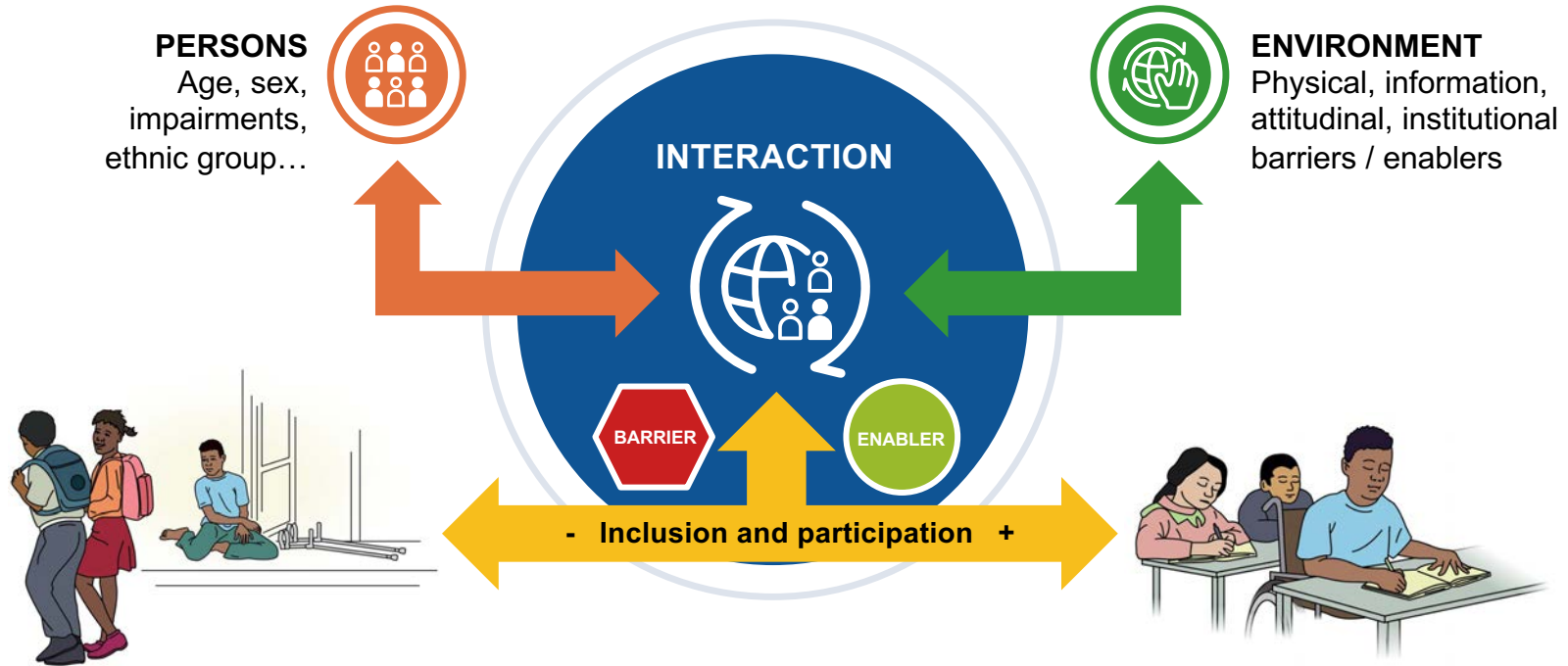
Persons with Disability

Convention on the Rights of Persons with Disability

Article 1: Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

“... disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”

What is disability?



**Persons
with
disability
are not a
homogenous
group**





Elderly Persons

An older person is defined by the United Nations and the World Health Organization as a person who is over **60** years of age.



Trauma – Long Term Impacts

“Trauma” is what happens when an individual is exposed to actual or threatened death, serious injury, or sexual violence and as a result, experiences overwhelming stress (fear, hopelessness, helplessness).

<p>It can impair memory:</p> <ul style="list-style-type: none">• General memory loss• Dissociation of specific traumatic memories into incoherent parts <p style="text-align: center;"></p> <p>This can affect credibility assessment</p>	<p>Victims may experience intrusive flashbacks but have difficulty articulating what they are feeling</p> <p style="text-align: center;"></p> <p>This can affect a victim’s ability to provide useful information</p>	<p>A victim can be retraumatized by processes that inquire about past traumatic events, like the RSD process</p>
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“Traumatic events” experienced by persons on the move

- Forced displacement from home;
- Sexual and gender-based violence;
- Trafficking and severe exploitation, abuse;
- Witnesses violence or death involving others, including loved ones;
- Child abuse (including psychological);
- Emergency situations like armed conflict or shipwreck.



A. LEGAL INSTRUMENTS

❖ Convention on the Rights of Persons with Disabilities

Purpose = to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.



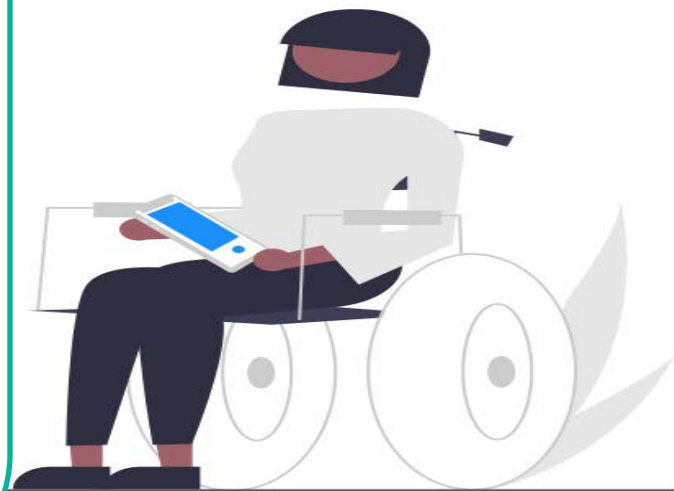
Commissioned by ARCH Disability Law Centre 2018

Article 11 - States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of **persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.**

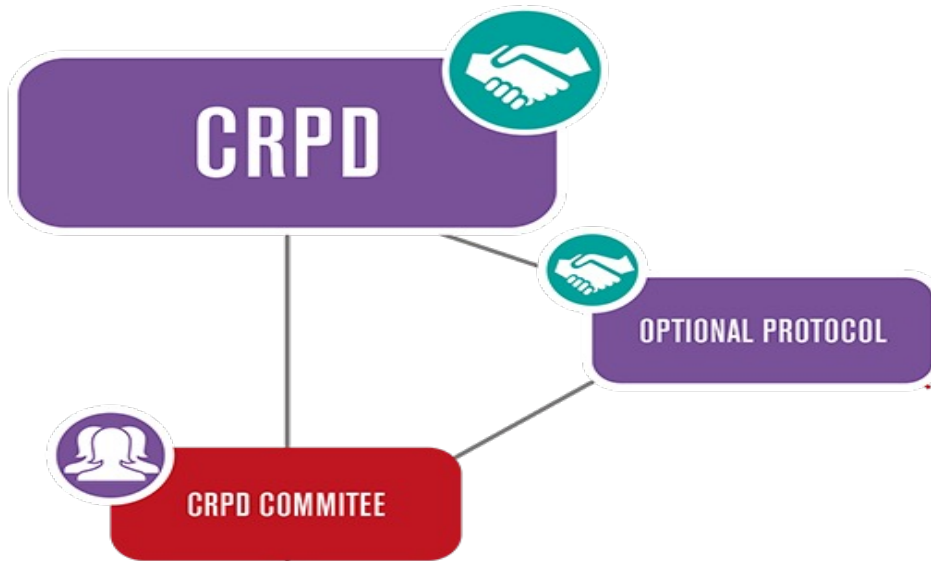
Article 1 - Persons with disabilities are entitled to a "full and equal enjoyment of human rights", which includes the right to access and participation in all proceedings, including the asylum or RSD process and by providing reasonable accommodations (Article 2).

Obligations for States under A.11

- Ensuring **equal access to asylum** by acknowledging disability-specific forms of persecution in national asylum laws and procedures.
- Providing additional **procedural safeguards** in asylum procedures.
- Providing **reasonable accommodation** for asylum-seekers beyond procedural requirements.
- **Granting access to rights and national systems** for refugees with disabilities.
- Granting **protection** under national legislation **against discrimination** on the basis of disability.



CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)



CRPD COMMITTEE

OPTIONAL PROTOCOL

STATES REPORTS

GENERAL COMMENTS

EARLY-WARNING MEASURES

URGENT PROCEDURES

INDIVIDUAL COMPLAINTS

INQUIRIES

PARALLEL REPORTS

Cyprus and the CRPD

- Cyprus signed the Convention in 2007 and ratified it in 2011. In March 2017, the Council of Ministers extended disability schemes **only** to refugees with disabilities (following intervention)
- Asylum-seekers are **not** entitled **to** a series of **social benefits** granted to nationals such as:

Child benefit; student grants, given to nationals who secure a position in university; and the single parent benefit.

Benefits and services aimed to help disabled persons: special allowance for blind people; mobility allowance; financial assistance schemes for the provision of technical means; aids; care allowance schemes for paraplegic persons

No special needs benefits are afforded to vulnerable asylum-seekers, including asylum-seekers with disabilities.

Concluding Observations to Cyprus 2017

“The Committee is deeply concerned about the precarious situation of refugees and asylum-seekers with disabilities in the State party and also notes with concern that the RSD procedures are not accessible.

*While noting the indication of the State party delegation that refugees with disabilities are entitled to the same disability support schemes and benefits — including wheelchairs, care and information — as Cypriot citizens with disabilities, the Committee notes with concern that equal access to these support schemes and benefits is **not available** for asylum seekers.”*

B. Common European Asylum System

EU recast Reception Conditions Directive 2013/33/EU

Article 22: Assessment if 'applicant with special reception needs'

Article 19: Provide healthcare, including emergency care and essential treatment of illnesses and serious mental issues, including mental health care

Article 17: Grant the right to material reception conditions guaranteeing subsistence and protecting physical and mental health

Article 25(1): Persons subjected to torture, rape or serious acts of violence must receive including medical and psychological care.

Identification of vulnerable applicants in Cyprus

The Cyprus Refugee Law (9KΔ) provides for an identification mechanism in line with the APD & RCD:

- Individual assessment
- Notification to the Asylum Service
- Medical report

SOME DISABILITIES LOOK LIKE THIS



SOME LOOK LIKE THIS



Identification & referral in Cyprus

Increase in staff



Lack of expertise and training

Vulnerability Assessments



New Vulnerability Form - restrictive

Findings of Vulnerability
Assessments



Primary focus on special reception
needs

Social Welfare Service



Confined role

Referral Pathways



Lack of mechanism to address
identified needs

Access to mental health services



Insufficient capacity of State services

EU recast Asylum Procedures Directive 2013/32/EU (Para 29)

- Certain applicants may be in need of special procedural guarantees due, inter alia, to their age....disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence.
- Member States should endeavour to identify applicants in need of special procedural guarantees before a first instance decision is taken. Those applicants should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection.

Procedural barriers in accessing RSD

Applicants with disabilities may have **difficulty to recall and recount** what happened to them or what they fear in their country of origin =

a finding of **lack of credibility**



Procedural Standards

for Refugee Status Determination
under UNHCR's Mandate

- lack of understanding of the RSD process and ensuing obligations
 - fear or distrust of authorities
 - impaired memory
- traumatic nature of the events underlying his/her claim,
 - reduced attention and concentration
 - mood disturbances
 - diminished cognitive functions
- lack of accommodations to address these challenges

Implementation of special procedural guarantees in Cyprus [Article 10A]

- Cases allocated to an examiner trained to deal with vulnerable cases - five specialized case officers.
- If requested, usually in writing, a social advisor or psychologist can escort a vulnerable person to the interview (but limited capacity)

- Level and type of support not specified in law
- No set procedure / guidance for examiner to request support for applicant (medical or psychological)
- Cases not identified as vulnerable and examined by caseworkers without necessary training
- Specific interview techniques not systematically used.
- Lack of quality control – different outcomes.

C. International Protection

Persecution and ill-health

- ❖ Persons with disabilities and other health considerations may be granted international protection on the ground of persecution under the 1951 Refugee Convention.
 - ❖ Although disability is **not** one of the Convention grounds.

Country Z not allowing access to health care to persons living with HIV Aids

The failure of State W to implement the CRPD requirements to make accommodations for persons with disabilities

The individual assessment of whether applicants of this profile face a reasonable degree of likelihood of persecution is to be conducted while taking into account **risk-impacting circumstances**, including:

- Nature and visibility of the mental or physical disability
- Perception by the family and by the surrounding society



Persecution as cumulative acts of discrimination

Systematic denial of socio-economic rights (e.g. health/education) & applicant's personal circumstances → persecution on cumulative grounds.



Severity and/or repetitiveness of the acts or accumulation of various measures:

- Cumulative or additive discrimination - two or more forms of discrimination happen at the same time but are not related to each other.
- Intersectional discrimination - where two or more forms of discrimination interact in such a way that they are inseparable.

Discrimination on the basis of disability



- **Adverse distinction:** differentiation or labelling resulting in inequality
- **Exclusion:** not accessing a space, service or activity due to barriers
- **Restriction:** limitation to rights

Refugee Convention Grounds

Both personal and environmental factors should be considered when assessing the vulnerability of an individual in the context of a claim for international protection:

- Age and related life cycle stage
- Ethnicity
- Religion
- Geographic and temporal location
- Political opinion

Persecution could be for reasons of **membership of a particular social group**, defined by an innate characteristic and distinct identity linked to their stigmatisation by the surrounding society.

Case Study - Religion

If country's way of life is dominated by religion, culture might be promoting the belief that disability is a sign of black magic, creating a hostile environment, as seen in Ghana, Nigeria, and Pakistan.

Autistic boy from Pakistan had obsessive-compulsive disorder. Cited fear of persecution due to psychosocial disability. In Pakistan, was forced to undergo various **degrading mystical treatments** consistent with the 'curse of Allah' which is how the Islamic majority in Pakistan viewed his condition. This treatment stemmed from the **shared cultural and religious beliefs** surrounding those with a disability in Pakistan.

Article 3 ECHR

Prohibition of torture, or degrading treatment, or punishment

ECtHR has repeatedly stressed that not all serious or life-threatening illnesses of applicants would meet the real risk criterion of Article 3 ECHR but that the application of Article 3 for medical cases requires a **very high threshold** = meaning exceptional medical circumstances.



Paposhvili v Belgium [41738/10]–

1. ‘Severity Threshold’

“....situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she, although **not at imminent risk of dying**, would face a **real risk**, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a **serious, rapid and irreversible decline** in his or her state of health resulting in **intense suffering** or to a **significant reduction in life expectancy**.”

2. Availability of health-care

If severity threshold met



Assess if illnesses can be treated and if medication is available in country of origin



If required treatment and/or medication are not available in the country of origin, a return to the said country would violate Article 3 ECHR.



3. Accessibility of health-care

Geographic

Economic

Political

- **Proximity** of medical facilities and pharmacies to the individual's place of residence;
- Physical **ability** of applicant to reach facilities;
- Influence of security situation in country of origin;
- Availability of **transport**;
- Necessary frequency of travel to the medical facility;
- **Costs** of transportation;
- Other barriers to travel/move to the specific region

Country of Origin Information

- **Principles for Conducting COI research on disability**

(Asylos & ARC Foundation 2021)

- Need for better COI on persons with disability to be used in international protection procedures
- Absence of relevant COI leads to misconceptions about disability issues in the international protection legal sector
 - contributes to rejection of meritorious claims.



- **EUAA MEDCOI Database**

Legal interaction between CRPD & Refugee Convention

- Fundamental opportunity to improve the conditions of refugees with disabilities under international law.
- Could high thresholds required to obtain refugee status be mitigated by the guidelines of the CRPD? (Art. 2 – reasonable accommodation – substantive equality facilitator)



Z.H. v Sweden [CRPD]

- An Afghan national who applied for international protection in Sweden presented a medical report with diagnosis of PTSD, psychotic mental health problems and suicide risk due to death threats in Afghanistan.
- The Swedish Migration Agency rejected his request and noted that the applicant could receive psychiatric treatment and medication in Kabul.



CONVENTION
ON THE RIGHTS
OF PERSONS
WITH DISABILITIES

- Based on health care reports on Afghanistan, the CRPD held that there was a lack of resources, trained professionals and infrastructure.
 - Committee noted that Sweden should have required individual assurances as the applicant left Afghanistan at a young age and could face difficulties in accessing health care.

Committee Recommendations:

1. Review the applicant's case taking in to account its obligations
2. Publish the present views and circulate them widely in an accessible manner and to take measures to prevent similar violations in future.



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

David Querol Sanchez

Migrants with individual types of vulnerability

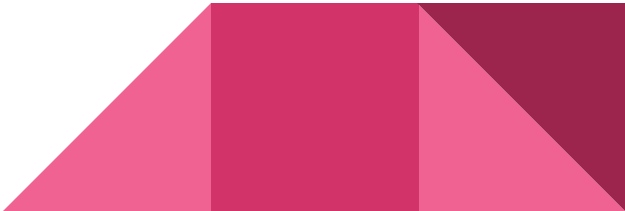
TRALVU Nicosia, 5 June 2024

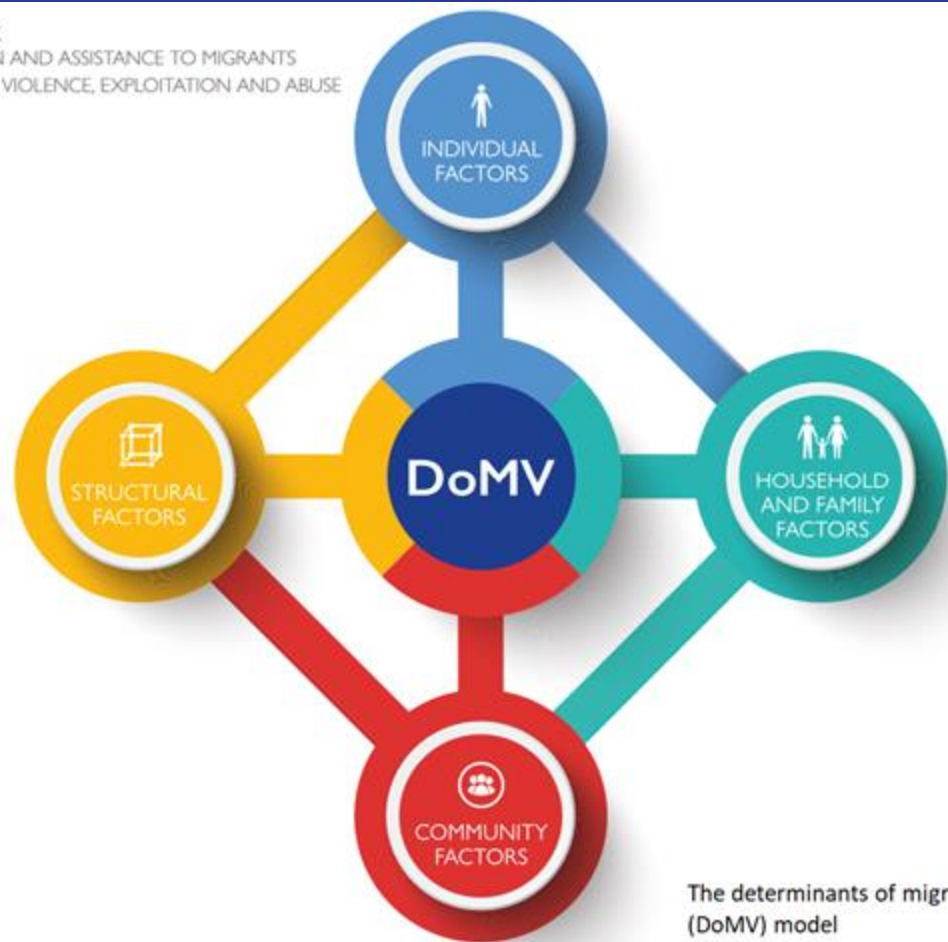


Co-funded the European Union

Definition

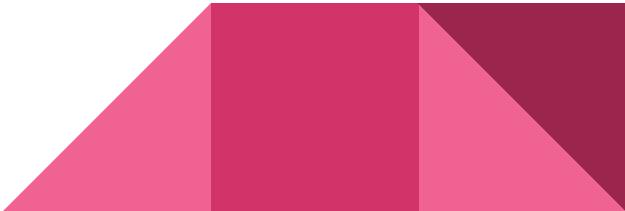
“Migrant vulnerable to violence, exploitation or abuse” means a migrant or group of migrants exposed to or with experience of violence, exploitation or abuse within a migration context and with limited capability to avoid, resist, cope or recover, as a result of the unique interaction of individual,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



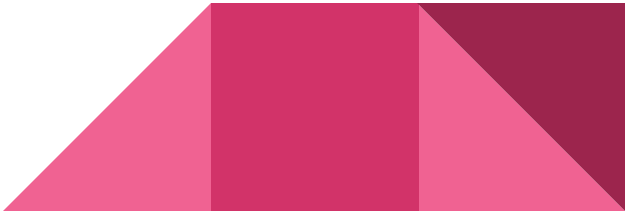


The determinants of migrant vulnerability
(DoMV) model

INDIVIDUAL FACTORS

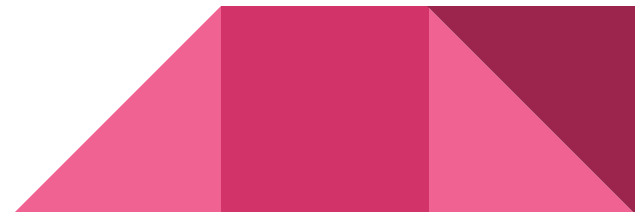
- Status in society
 - Physical and biological characteristics
 - Histories and experiences
 - Beliefs and attitudes
 - Individual emotional, psychological and Cognitive characteristics
 - Physical and mental health and well-being
- 

HOUSEHOLD & FAMILY FACTORS

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

COMMUNITY FACTORS

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



STRUCTURAL FACTORS

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



INTERACTION OF RISK & PROTECTIVE FACTORS

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

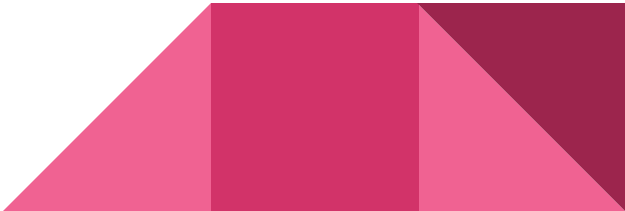
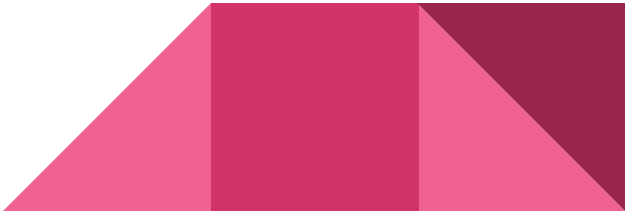




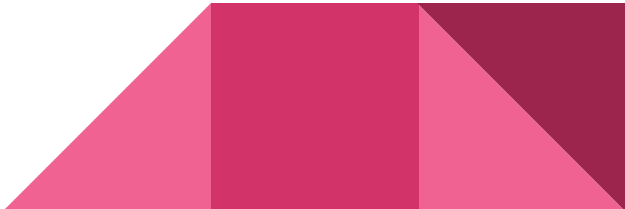
Figure 1.2

Programmatic responses and relevant players at each level

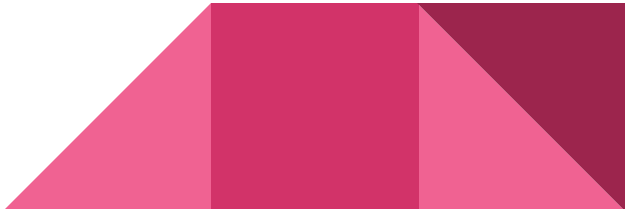
Programmatic Responses at the Individual Level

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

Programmatic Responses at the Household/Family Level

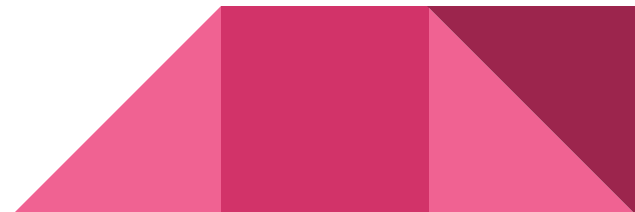
- Family tracing and assessment
 - Best interests assessments and determination for child migrants
 - Alternative care arrangements for unaccompanied child migrants
 - Responses to domestic or gender-based violence within the family
 - Family reunification services
 - Family counseling
 - Livelihood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

Programmatic Responses at the Community Level

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

Programmatic Responses at the Structural Level

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





PROPOSAL FOR MIGRANTS WITH INDIVIDUAL TYPES OF VULNERABILITY

PROPOSAL


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

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

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

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

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



PROPOSAL

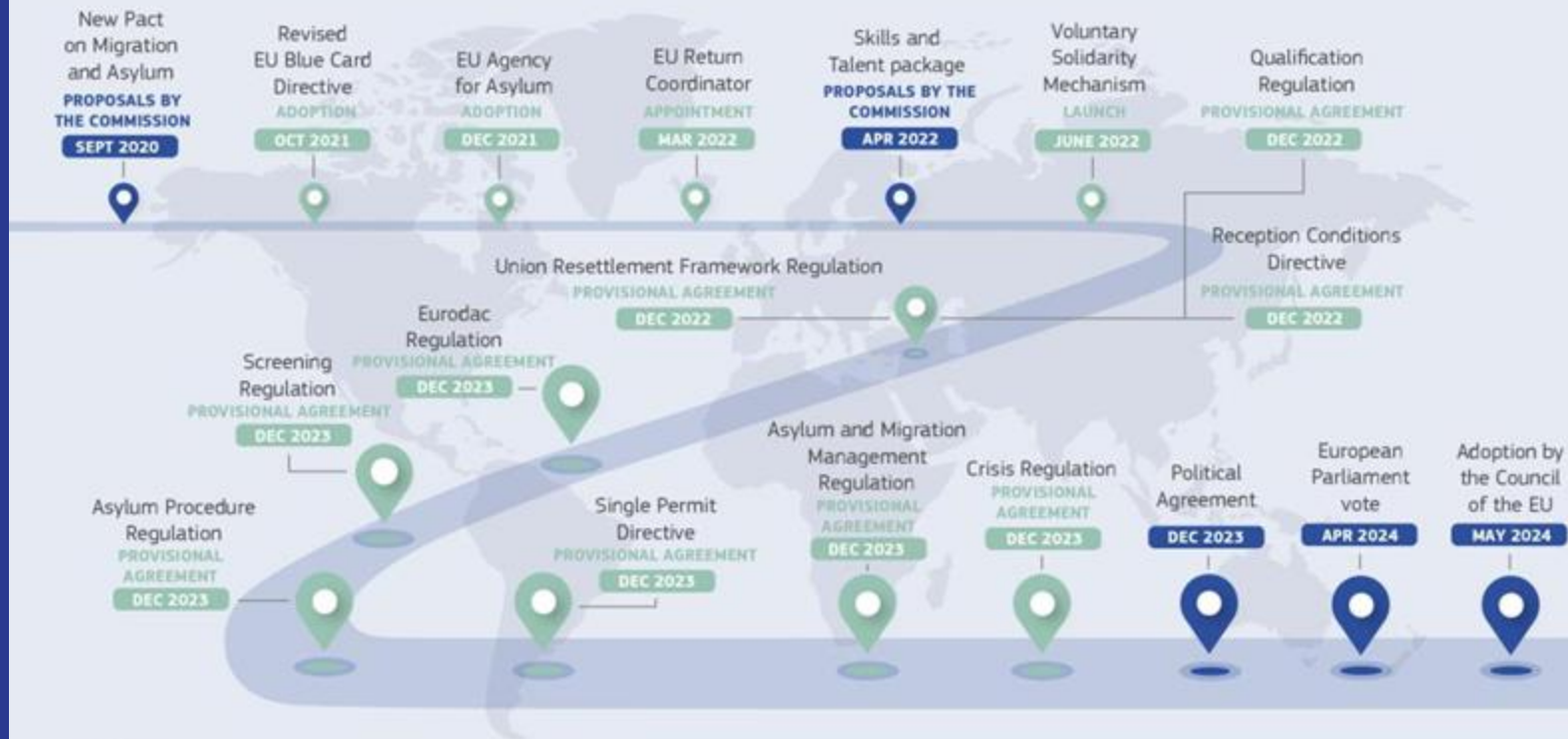
The submission of the relevant application could suspend the execution of administrative measures of temporary detention and forced return (deportation)

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

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



NEW PACT ON MIGRATION AND ASYLUM: TIMELINE AND MAIN ACHIEVEMENTS



A common EU system to manage migration



Secure external borders

Robust screening

Eurodac asylum and migration database

Border procedure and returns

Crisis protocols and action against instrumentalisation



Fast and efficient procedures

Clear asylum rules

Guaranteeing people's rights

EU standards for refugee status qualification

Preventing abuses



Effective system of solidarity and responsibility

Permanent solidarity framework

Operational and financial support

Clearer rules on responsibility for asylum applications

Preventing secondary movements



Embedding migration in international partnerships

Preventing irregular departures

Cooperation on readmission

Fighting migrant smuggling

Promoting legal pathways

SENTENCES IN CASES C-165/14 ALFREDO RENDÓN MARÍN AND C-304/2014 OF THE CJUE OF 13 SEPTEMBER 2016. RIGHT TO RESIDENCE OF THE FOREIGN PARENT OF A MINOR CHILD WHO IS AN EU CITIZEN WITH A CRIMINAL RECORD.

Sentence of the Court (Grand Chamber) of 13 September 2016.

Alfredo Rendón Marín v State Administration.

Reference for a preliminary ruling from the Tribunal Supremo (Spain).

Reference for a preliminary ruling - Citizenship of the Union - Articles 20 TFEU and 21 TFEU - Directive 2004/38/EC - Right of residence in a Member State of a third-country national who has a criminal record - Parent having sole custody of two minor children, citizens of the Union - First child having the nationality of the Member State of residence - Second child having the nationality of another Member State - National legislation precluding the grant of a residence authorisation to that parent on account of his criminal record - Refusal of residence which may entail an obligation for the minor children to leave the territory of the Union.

Case C-165/14

EU law does not allow either to automatically refuse a residence permit to a non-EU national who has sole custody of a minor EU citizen or to expel him from EU territory solely on the grounds that he has a criminal record.

(...)

By today's sentence, the Court finds, first, that EU law precludes national legislation which automatically requires the refusal of a residence authorisation or the expulsion of a national of a non-EU country having sole custody of a minor EU citizen solely on the ground that that national has a criminal record, where that refusal or that expulsion would oblige the minor to leave the territory of the Union.

LEGISLATIVE ACTS

- **Screening Regulation** will allow national authorities to refer irregular migrants and asylum applicants at an external border to the relevant procedure and will make sure that identification, security and vulnerability checks and health evaluation are carried out in a uniform way.
- **Asylum Procedure Regulation** streamlines the European asylum procedure and introduces a mandatory border procedure in well-defined cases.
- **Return Border Procedure Regulation** deals with the returns of people whose application in this border procedure is rejected
- **Asylum and Migration Management Regulation** determines which member state is responsible for the examination of applications for international protection and for the first time introduces a fair sharing of responsibility among the member states.
- **Crisis Regulation** the EU will be better equipped to deal with asylum applications in exceptional circumstances.
- **Qualification Regulation** and **Reception Conditions Directive** lay down uniform rules for the criteria for granting international protection and the standards for the reception of asylum seekers. This should also help to reduce secondary movements between member states.
- **Resettlement regulation** deals with legal and safe pathways to the EU by establishing common rules for resettlement and humanitarian admission.



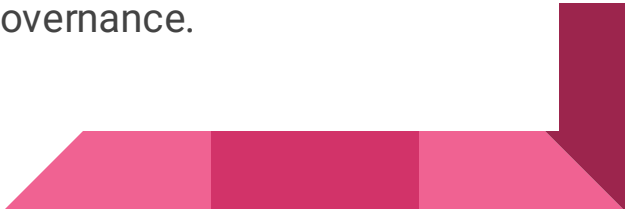
THE 20 PRINCIPLES

IOM Principles and Guidelines on the Human Rights
Protection of Vulnerable Migrants

THE 20 PRINCIPLES

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

THE 20 PRINCIPLES

11. Protect the human rights of migrant women and girls.
 12. Ensure that all migrants enjoy the highest attainable standard of physical and mental health.
 13. Safeguard the right of migrants to an adequate standard of living.
 14. Guarantee the right of migrants to work in just and favourable conditions.
 15. Protect the right of migrants to education.
 16. Uphold migrants' right to information.
 17. Ensure that all responses to migration, including large or mixed movements, are monitored and accountable.
 18. Respect and support the activities of human rights defenders who promote and protect the human rights of migrants.
 19. Improve the collection of disaggregated data on the human rights situation of migrants while protecting personal data and the right to privacy.
 20. Ensure human rights-based and gender-responsive migration governance.
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PROTOCOL OF THE BAR ASSOCIATIONS OF
CATALONIA (COL·LEGIS DE L'ADVOCACIA DE
CATALUNYA) FOR ASSISTANCE FOR VICTIMS
OF WAR CRIMES AND AGAINST HUMANITY

ELEMENTS OF THE PROTOCOL

1. Legal framework of reference. Framework of international regulations and national
2. Types and subtypes of international crimes
3. Identification and detection of victims of international crimes. Main characteristics of victims of international crimes
4. Rights of victims of international crimes before the Criminal Court International
5. Mechanisms to activate the competence of the International Criminal Court

ELEMENTS OF THE PROTOCOL

6. Assistance phases and main actions of the lawyer for the defense of the victim of international crimes
 1. Previous legal assistance and co-operation in decision-making and in the action of complaint mechanisms before the International Criminal Court (ICC)
 1. Initial phase. Interview and initial legal advice by the lawyer. Processing of the application for participation and / or repair
 2. The intervention of the lawyer in border posts or internment centers of foreigners
 3. Legal advice on the administrative situation of the victim
 2. Phase of investigation and prosecution
 1. The participation of the lawyer appointed by the International Criminal Court
 2. Processing of the application for free legal assistance before the International Criminal Court
 3. Role of the prosecutor and magistrates in the protection of the victims (68 and seq. of the statute of Rome)
 4. Right of reparation of the victim

