

# Vulnerability of migrants, asylum seekers and refugees: Council of Europe and European Union standards



Thematic paper

Council of Europe Division  
on Migration and Refugees

COUNCIL OF EUROPE



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# **Vulnerability of migrants, asylum seekers and refugees: Council of Europe and European Union standards**

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## Introductory note

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**T**he present thematic paper ties in with the Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025).<sup>1</sup> The action plan proposes a targeted assistance package for Council of Europe member states, enhancing their capacity to identify and address vulnerabilities throughout asylum and migration procedures through its four main pillars. In the context of the action plan, “vulnerable persons in the context of migration and asylum” are persons who have been found to have special needs following individual evaluation of their situation and who are entitled to call on states’ obligation to provide special protection and assistance. This is with the understanding that it is for the national authorities, based on national legislation and international obligations, to effectively identify on a case-by-case basis the vulnerabilities of those arrivals and provide where necessary the required referral, assistance, information and protection throughout asylum and migration procedures.

The aim of the present thematic paper is to provide a concise mapping of the major Council of Europe and European Union (EU) instruments and the case law of the two European courts concerning vulnerability in the context of migration and asylum, in order to further assist Council of Europe member states in their efforts to enhance their law and practice in this domain in compliance with existing and developing European standards.

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1. Available at <https://rm.coe.int/action-plan-on-protecting-vulnerable-persons-in-the-context-of-migrati/1680a409fc>, accessed 30 September 2025.



# I – Vulnerability as a legal concept

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## 1. Definition and scope of the thematic paper

A vulnerable person can commonly be understood as someone who is “able to be easily physically or mentally hurt, influenced, or attacked”.<sup>2</sup> In a broad sense, vulnerability is inherent to the human condition,<sup>3</sup> as we are all subjected to risks, whether situational, accidental or intentional. Beyond this general understanding, however, there is increasing recognition in international, regional and national legal systems that certain groups face additional barriers to exercising their rights due to sex, gender, “race”, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity and expression, sex characteristics, age and development, state of health, disability, marital status, migrant or refugee status, or other status. Thus, various legal systems have addressed this need for protection.<sup>4</sup>

Vulnerability is particularly relevant in human rights law, as human rights focus on interests that are threatened in such a way that specific legal protection becomes necessary.<sup>5</sup> This is especially the case in European human rights law: lawmakers and courts emphasise the need to take into account and address the (actual or potential) weakness of each individual.<sup>6</sup> Therefore, the concept of vulnerability has practical implications<sup>7</sup> for how law is designed and applied. The European Court of Human Rights (the Court) began using the concept of vulnerability in the early 1980s in

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2. See <https://dictionary.cambridge.org/dictionary/english/vulnerable>.

3. Fineman M. A. (2008), “The vulnerable subject: anchoring equality in the human condition”, *Yale Journal of Law and Feminism* Vol. 20(1), p. 8.

4. Burgorgue-Larsen L. (ed.) (2014), “La vulnérabilité saisie par les juges en Europe”, Collection Cahiers européens, N°7, Pedone.

5. Besson S. (2014), “La vulnérabilité et la structure des droits de l’homme. L’exemple de la jurisprudence de la Cour européenne des droits de l’homme”, in Burgorgue-Larsen L. (ed.), *La vulnérabilité saisie par les juges en Europe*, p. 59. See also Carlier J.-Y. (2017), “Des droits de l’homme vulnérable à la vulnérabilité des droits de l’homme, la fragilité des équilibres”, *Revue interdisciplinaire d’études juridiques*, Vol. 79, pp. 175-204, p. 180.

6. Fineman (2008) posits vulnerability as “universal and constant, inherent in the human condition”.

7. Carlier (2017) uses the term “functional utility”.



criminal law cases, and later applied it across various areas of its case law.<sup>8</sup> Since then, both Council of Europe and EU standards for protecting vulnerable persons have been developed and refined significantly, particularly in the fields of migration and asylum.

This thematic paper provides an overview of Council of Europe and EU standards for protecting vulnerable individuals who are not nationals of the state under whose jurisdiction they find themselves. It includes migrants, asylum seekers, refugees, stateless persons and trafficked persons with a migration background.<sup>9</sup> Following this introductory section, the thematic paper proceeds as follows. It first focuses on Council of Europe standards and case law addressing migrant vulnerability (section II). It then explores EU law standards related to vulnerability, both in the EU's asylum *acquis* and its broader migration *acquis* (section III). Finally, it highlights examples of good practices (section IV) and formulates a number of recommendations for Council of Europe member states in this area (section V).

## 2. Vulnerability in the law and practice of migration and asylum

Migration and asylum regulation confronts different layers of vulnerability. First, large parts of migration governance can be understood as broadly underpinned by the concept of vulnerability, which gives rise either to the need for surrogate protection (that is, protection to substitute for the inability or unwillingness of a country of origin or prior habitual residence to protect) or to the need for accommodations to effectively exercise rights. For example, the 1951 United Nations Convention Relating to the Status of Refugees (the Refugee Convention) seeks to ensure surrogate protection for refugees, including a number of socio-economic entitlements to be provided by the state of asylum for those who can substantiate a well-founded fear of persecution in their countries of origin or prior habitual residence.<sup>10</sup> The 1954 Convention relating to the Status of Stateless Persons<sup>11</sup> also seeks to provide surrogate protection, including socio-economic entitlements, to individuals who do not hold a nationality and therefore face specific practical

8. Court, *Dudgeon v. the United Kingdom*, Application No. 7525/76, judgment of 22 October 1981, paragraph 49, acknowledged that the protection of vulnerable individuals can justify the regulation of sexual conduct by means of criminal law. See also the Court, *Tomasi v. France*, Application No. 12850/87, judgment of 27 August 1992, paragraph 113, concerning the vulnerability of a suspected criminal during police custody. On the “vulnerabilisation” of the European Convention on Human Rights law, see Ippolito F. and Iglesias Sánchez S. (2015), “Introduction”, in Ippolito F. and Iglesias Sánchez (eds), *Protecting vulnerable groups: the European Human Rights Framework*, Hart Publishing.
9. Following the approach of the Court, *Guide on the case-law of the European Convention on Human Rights – Immigration*, updated on 28 February 2025, available at [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_immigration\\_eng](https://ks.echr.coe.int/documents/d/echr-ks/guide_immigration_eng), accessed 2 June 2025, p. 8.
10. Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951, Articles 1 A and 2. See also United Nations General Assembly, 1967 Protocol Relating to the Status of Refugees, 606 United Nations Treaty Series 267, adopted on 31 January 1967.
11. Convention relating to the Status of Stateless Persons, signed in New York on 28 September 1954. See also United Nations, 1961 Convention on the Reduction of Statelessness, 989 United Nations Treaty Series 175, adopted on 30 August 1961.

problems and multiple infringements of their human rights.<sup>12</sup> Beyond regimes that ensure surrogate protection, the international community (e.g. through the United Nations (UN) or the International Labour Organization) has developed legal norms and principles to ensure that (labour) migrants can effectively exercise their rights. For example, at the UN level, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families addresses this need.<sup>13</sup> There can, however, be intersecting layers of vulnerability. This is the case, for example, of an unaccompanied minor refugee: they have a need for surrogate protection, and they also have additional specific entitlements, such as access to education or specialised care, due to their minority.

These developments are also echoed in Council of Europe and European Union standards. The legal systems of the Council of Europe and the European Union have, over several decades, developed instruments on the rights of migrants, refugees and asylum seekers, with specific attention to intersecting layers of vulnerability. The increasing focus on the notion of vulnerability is a common feature to both systems, and was arguably amplified by the interactions between Council of Europe and EU legal frameworks. For example, the EU incorporated the Refugee Convention's definition of a refugee into its own asylum system, the Common European Asylum System (CEAS), developed since the early 2000s. In addition, in successive "Qualification" Directives<sup>14</sup> and in the new Qualification Regulation,<sup>15</sup> the EU legislator provides for another form of surrogate protection – subsidiary protection – to be granted to people who do not meet the criteria of the Refugee Convention but are nevertheless at real risk of suffering "serious harm"<sup>16</sup> in their country of origin. Moreover, the CEAS recognises that some individuals in need of surrogate protection face additional forms of vulnerability that call for special treatment, so that they can meaningfully pursue their claims or enjoy surrogate protection. For example, the EU's asylum instruments explicitly engage with the vulnerability of specific asylum seekers and

12. "Stateless people are amongst the most vulnerable in the world, often denied enjoyment of rights such as equality before the law, the right to work, education or healthcare", Türk V. (2014), Foreword to the UNHCR's *Handbook on protection of stateless persons*, available at [www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=59a66b944](http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=59a66b944), accessed 2 June 2025.

13. United Nations Treaty Series, Vol. 2220, Doc. A/RES/45/158.

14. Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Official Journal of the European Union, L 304/12 of 30 September 2004 (first Qualification Directive); and Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), Official Journal of the European Union, L 337/9 of 20 December 2011 (second Qualification Directive).

15. Qualification Regulation (EU) 2024/1347.

16. Article 3(6) of the Qualification Regulation remains very close to the definition set out in Article 2(f) of the second Qualification Directive: a "person eligible for subsidiary protection" means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that that person, if returned to his or her country of origin or, in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15 (...), and is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country".

recognised beneficiaries of international protection, such as pregnant women or minors, as a subset of the broader cohort.

The Court's case law also reflects engagement with intersecting layers of vulnerability. In 2011, in its *M.S.S.* ruling, the Court condemned Greece and Belgium for violating Article 3 of the European Convention on Human Rights (the Convention): Greece for having left an asylum seeker in a state of extreme destitution for months, and Belgium for returning him to Greece under the EU's responsibility allocation system, the so-called Dublin Regulation, thereby contributing to his inhuman and degrading treatment. On this occasion, the Court explicitly stated that it attached "considerable importance" to the applicant's status, noting that, as an asylum seeker, he was part of "a particularly underprivileged and vulnerable population group in need of special protection".<sup>17</sup> The Court observed that this need was the subject "of a broad consensus at the international and European level", as evidenced not only by the Refugee Convention but also by the EU's Reception Conditions Directive.<sup>18</sup>

*M.S.S.* is a landmark case in two seminal ways.<sup>19</sup> First, the Court reaffirmed that regional co-operation, even within a highly integrated regulatory environment such as the EU, cannot entail "blind" mutual trust arrangements among states that fail to take into account the actual situation on the ground in relation to human rights. Next, it was the first case in which the Court held that extreme socio-economic deprivation could amount to a violation of the prohibition of torture, inhuman or degrading treatment or punishment.

A few years later, the Court confirmed and clarified its position in the *Tarakhel* ruling: asylum seekers do indeed belong to a "particularly underprivileged and vulnerable" category of the population, as established in the *M.S.S.* case. The *Tarakhel* judgment also distinguished between different degrees of vulnerability within this group, acknowledging the particular needs of child asylum seekers.<sup>20</sup> Therefore, the fact that there can be multiple layers or intersections of vulnerability – some more easily detectable than others – results in various legal and operational consequences.

That being said, vulnerability is not a concept that should be engaged with uncritically, as scholarship has elaborated. Peroni and Timmer have recognised that vulnerability, when adjudicated, can negatively impact certain groups by essentialising, stigmatising, victimising and paternalising them.<sup>21</sup> In addition, in the Court's case law, the element of exclusive control by the state over the individual – whether due to deprivation of liberty, other forms of institutionalisation or migration status – appears to be emerging as a key prerequisite to a finding of a violation of the prohibition of

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17. Court, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, judgment of 21 January 2011, paragraph 251.

18. *Ibid.*

19. Tsourdi E. L. and McDonough P. N. (forthcoming), "M.S.S. v. Belgium and Greece: the interplay between non-refoulement and refugee protection", in Singer S. and McConachie K., *Landmark cases in international refugee law*, Hart Publishing.

20. Court, *Tarakhel v. Switzerland*, Application No. 29217/12, judgment of 4 November 2014, paragraphs 118-119.

21. Peroni L. and Timmer A. (2013), "Vulnerable groups: the promise of an emerging concept in European Human Rights Convention Law", *International Journal of Constitutional Law*, Vol. 11(4), pp. 1056-1085.

torture, inhuman or degrading treatment or punishment resulting from a person's severe socio-economic deprivation and destitution.<sup>22</sup> Thus, several authors such as Morris,<sup>23</sup> Heri<sup>24</sup> and Kagiros<sup>25</sup> have argued that the Court's approach leads to an incomplete view of vulnerability, which permits unequal treatment of applicants facing the same level of deprivation. In the migration field, this has resulted in the Court engaging with an applicant's formal migration status, leading to more limited protection for irregular migrants.<sup>26</sup>

There are further pitfalls stemming from an overreliance on the concept of vulnerability. Tsourdi and Costello have argued that the Court's insistence in its post-*M.S.S.* case law on assessment based on individual vulnerability, even where there is clear evidence of generalised deficiencies or systemic flaws in (aspects of) national asylum systems, places too heavy a burden on applicants while at the same time rendering the concept of systemic breach meaningless.<sup>27</sup> In EU asylum law, recourse to vulnerability frames has been found to create binaries between the stereotypes of the "abusive" asylum seeker and the "particularly vulnerable" asylum seeker (i.e. an asylum seeker who faces intersecting layers of vulnerability).<sup>28</sup> Such binaries create complexity and crowd out the core understanding of refugee status determination as a process for recognising refugees in need of surrogate protection.<sup>29</sup>

It is against this background that the following sections unpack the use and impact of vulnerability, by highlighting the main instruments, case law and examples of good practice.

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22. For a panorama of the Court's case law on vulnerability in relation to ill-treatment, see Heri C. (2021), *Responsive human rights: vulnerability, ill treatment and the ECtHR*, Hart Publishing, pp. 31-120.

23. Morris K. (2023), "Vulnerability, care ethics and the protection of socioeconomic rights via Article 3 ECHR", *Human Rights Law Review*, Vol. 23(4), pp. 1-18.

24. Heri (2021), p. 88.

25. Kagiros D. (2019), "Vulnerability as a path to a 'social minimum'? An analysis of ECtHR jurisprudence", in Kotkas T., Leijten I. and Pennings F. (eds), *Specifying and securing a social minimum in the battle against poverty*, Hart Publishing, pp. 245-260.

26. See, e.g., *Gadaa Ibrahim Hunde v. the Netherlands*, Application No. 17931/16, decision of 5 July 2016, paragraph 56.

27. Tsourdi E. L. and Costello C. (2023), "Systemic violations in EU asylum law: cover or catalyst?", *German Law Journal*, Vol. 24(6), pp. 982-994, and references to the Court's case law therein.

28. Costello C. and Hancox E. (2016), "The Recast Asylum Procedures Directive 2013/32/EU: caught between the stereotypes of the abusive asylum-seeker and the vulnerable refugee", in Chetail V., De Bruycker P. and Maiani F. (eds), *Reforming the common European asylum system: the new European refugee law*, Brill Nijhoff, pp. 375-445.

29. Ibid.



## II – Council of Europe standards for addressing vulnerability in migration and asylum

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**T**he Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025), adopted by the Committee of Ministers on 5 May 2021, defines vulnerable persons in the context of migration and asylum as: “persons found to have special needs after individual evaluation of their situation and [who] are entitled to call on States’ obligation to provide special protection and assistance”.<sup>30</sup> These special needs for protection and assistance are addressed in a broad range of Council of Europe legal instruments.

### 1. Overview of instruments addressing migrant vulnerability in Council of Europe law

Human rights law inherently addresses various forms of vulnerability and needs for protection: as the Council of Europe is Europe’s oldest intergovernmental organisation promoting human rights, it is not surprising that multiple Council of Europe conventions are relevant for addressing the specific vulnerabilities of migrants.<sup>31</sup>

Some of these instruments have a general approach that can of course apply in situations of migration. Such is the case of the Convention and its additional protocols.<sup>32</sup> The European Social Charter<sup>33</sup> guarantees social rights to the populations of the member states of the Council of Europe and expressly includes “migrant workers and their families” within its scope.<sup>34</sup>

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30. Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025), available at <https://edoc.coe.int/en/refugees/10241-council-of-europe-action-plan-on-protecting-vulnerable-persons-in-the-context-of-migration-and-asylum-in-europe-2021-2025.html>, accessed 2 June 2025, p. 7. This action plan (p. 7, footnote 4) also specifies that Roma and Travellers are not included in this group of people, since another Council of Europe action plan is dedicated to them: the Council of Europe Strategic Action Plan for Roma and Traveller Inclusion (2020-2025).

31. A detailed list is available at [www.coe.int/en/web/migration-and-refugees/council-of-europe-reference-documents-and-resources1](http://www.coe.int/en/web/migration-and-refugees/council-of-europe-reference-documents-and-resources1), accessed 2 June 2025.

32. Of particular relevance for migrants, see especially Protocol No. 4. (Article 4 of which prohibits the collective expulsion of aliens), Protocols No. 6 and No. 13 (abolition of the death penalty), and Protocol No. 7 (Article 1 of which foresees procedural safeguards in cases of expulsion of aliens).

33. European Social Charter (Revised) (1996), ETS No. 163.

34. See Part I, Recital 19, and Part II, Article 19.

Other Council of Europe instruments address migration-related issues from a specific angle, such as:

- ▶ treaties on statelessness (the Convention on the Avoidance of Statelessness in relation to State Succession,<sup>35</sup> the European Convention on Nationality),<sup>36</sup>
- ▶ treaties on integration, such as the Convention on the Participation of Foreigners in Public Life at Local Level,<sup>37</sup> for “foreigners” facing specific obstacles (i.e. being particularly vulnerable) in this context;
- ▶ treaties on extradition (European Convention on Extradition),<sup>38</sup>
- ▶ treaties on migrant workers (European Convention on the Legal Status of Migrant Workers,<sup>39</sup> European Convention on the Academic Recognition of University Qualifications).<sup>40</sup>

In addition, many Council of Europe instruments address human rights issues that are of particular relevance in migration contexts (children’s rights, *inter alia* the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse – the Lanzarote Convention).<sup>41</sup> Some of these instruments dedicate certain of their provisions to the protection of migrants, who are recognised as particularly vulnerable to practices such as trafficking in human beings (Convention on Action against Trafficking in Human Beings)<sup>42</sup> or gender-based violence (Convention on Preventing and Combating Violence against Women and Domestic Violence – the Istanbul Convention).<sup>43</sup>

These conventions are complemented by recommendations of the Committee of Ministers,<sup>44</sup> aiming to prevent various human rights violations in the context of migration and to foster integration.<sup>45</sup>

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35. Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, CETS No. 200.
  36. Council of Europe, European Convention on Nationality, ETS No. 166.
  37. Council of Europe, Convention on the Participation of Foreigners in Public Life at Local Level, ETS No. 144.
  38. Council of Europe, European Convention on Extradition, ETS No. 24.
  39. Council of Europe, European Convention on the Legal Status of Migrant Workers, ETS No. 93.
  40. Council of Europe, European Convention on the Academic Recognition of University Qualifications, ETS No. 32.
  41. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, CETS No. 201.
  42. Council of Europe Convention on Action against Trafficking in Human Beings, CETS No. 197.
  43. Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, No. CETS 210.
  44. Article 15.b of the Statute of the Council of Europe (ETS No. 1) provides for the Committee of Ministers to make recommendations to member states on matters for which the Committee has agreed “a common policy”. Recommendations are not binding on member States. However, Article 15.b of the Statute permits the Committee of Ministers to ask member governments “to inform it of the action taken by them” in regard to recommendations.
  45. A detailed list is available at [www.coe.int/en/web/migration-and-refugees/council-of-europe-reference-documents-and-resources1](http://www.coe.int/en/web/migration-and-refugees/council-of-europe-reference-documents-and-resources1), accessed 1 October 2025; and see “Non-binding instruments of the Council of Europe in the field of migration and asylum: a reference document”, available at <https://rm.coe.int/dmr-non-binding-coe-instruments-on-migration-and-refugees-reference-do/4880284ed5>, accessed 1 October 2025.

The norms and principles found in the above-mentioned instruments are also fleshed out in the case law of the Court, in the works of expert groups monitoring the application of specific Council of Europe conventions and in the Council of Europe's actions in relation to human rights, democracy and the rule of law as well as the support it provides for co-operation between member states. All of these documents and initiatives are relevant for the interpretation and effective application of Council of Europe instruments applicable to vulnerable migrants.

## **2. Protecting vulnerable migrants, asylum seekers and refugees in Council of Europe legal instruments**

Vulnerability in Council of Europe legal instruments is increasingly understood as requiring a case-by-case analysis, as it is situational as well as individual<sup>46</sup> – that is, it depends both on a situation or set of circumstances and on characteristics inherent to an individual human being. For this reason, it is not possible to provide an exhaustive list of vulnerable profiles or an exhaustive list of factors of vulnerability. Nevertheless, Council of Europe instruments allow for the identification of many such profiles and factors. In particular, it is clear from these instruments that a migratory background is a factor of vulnerability, which is often compounded by other factors, creating specific needs that must be addressed.

### **2.1. Convention standards: norms, case law and good practices**

#### **2.1.1. Convention norms related to migration and asylum**

The Court generally acknowledges that a migration background can be a factor of vulnerability. However, the case law of the Court contains many nuances, and it would be too simplistic to conclude that all migrants or even all asylum seekers are necessarily vulnerable in the same way or in all circumstances.<sup>47</sup>

It must also be noted that there is no right to asylum as such in the Convention or any of its additional protocols. This has not prevented the Court from hearing asylum-related cases and becoming a major actor in European asylum law. Those cases are addressed by the Court not directly from the “asylum” perspective but rather from certain angles corresponding to protected rights under the Convention.

The Court's case law on immigration thus covers all Convention provisions that may apply to cases concerning migrants, asylum seekers, refugees and stateless persons – that is, “individuals who are not nationals of the respondent State”.<sup>48</sup> The Court's own reference document on this case law includes several categories of cases, including access to the territory and procedures (e.g. visa applications,

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46. Baumgärtel M. (2020), “Facing the challenge of migratory vulnerability in the European Court of Human Rights”, *Netherlands Quarterly of Human Rights*, 38(1), pp. 12-29, available at <https://doi.org/10.1177/0924051919898127>, accessed 1 October 2025.

47. See Pétin J. (2017), “La vulnérabilité en droit européen de l’asile”, as summarised in *Revue des droits et libertés fondamentaux*, available at <https://revuedlf.com/theses/la-vulnerabilite-en-droit-europeen-de-lasile/>, (in French), accessed 8 September 2025.

48. Court, *Guide on the case-law of the European Convention on Human Rights – Immigration*, p. 6.



including for family reunification), entry into the territory of the respondent state (e.g. collective expulsions including “push-backs”; confinement in transit zones or detention), cases of expulsion, extradition or removal, and other scenarios such as trafficking in human beings.

The Convention provisions relevant in these cases include, notably: Article 1 (obligation to respect human rights), Article 2 (right to life), Article 3 (prohibition of torture), Article 4 (prohibition of slavery and forced labour), Article 5 (right to liberty and security), Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 12 (right to marry), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination).

Several provisions from the protocols are also frequently cited in the case law, such as Article 2 of Protocol No. 4 (freedom of movement), Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) and Article 1 of Protocol No. 6 (abolition of the death penalty).

In its case law applying these provisions, the Court has often stated that states are entitled, “as a matter of well-established international law and subject to their treaty obligations, to control the entry and residence of aliens”.<sup>49</sup> Indeed, the “Convention does not guarantee the right of an alien to enter or to reside in a particular country”.<sup>50</sup> Nevertheless, the Court assesses whether states, in exercising their powers to regulate immigration or expel aliens, comply with the Convention’s provisions. This includes respect for absolute rights, such as the prohibition of *refoulement*, and for relevant principles – for example, the principle of proportionality – in assessing rights that are not absolute, such as the right to respect for private and family life. The concept of vulnerability often plays a role in the Court’s review.

### 2.1.2. Vulnerability factors in the Court’s case law related to migration and asylum

The following vulnerability factors are recurrent in the case law of the Court.

#### Vulnerability in the country of origin

While the Convention does not guarantee a right to asylum as such, the Court examines expulsion and removal cases where there are substantial grounds to believe that the individual, if deported, would face a real risk of being subjected to treatment contrary to Articles 2 or 3 of the Convention in the destination country.<sup>51</sup>

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49. See e.g. Court, *Boujlifa v. France*, Application No. 122/1996/741/940, judgment of 21 October 1997, paragraph 42.

50. Court, *Case of De Souza Ribeiro v. France*, GC, Application No. 22689/07, judgment of 13 December 2012, paragraph 77.

51. For instance, in *B. and C. v. Switzerland*, Application Nos. 889/19 and 43987/16, judgment of 17 November 2020, the Court checked whether the applicant “would face a real risk of being subjected to ill-treatment contrary to Article 3 of the Convention upon his return to the Gambia” (paragraph 55) in connection to his homosexuality and found that there was indeed such a real risk (paragraphs 57-63).

## Vulnerability in the context of removal to a third country

The Court's case law also covers situations in which applicants have attempted to lodge an asylum application or have expressed fear for their safety, yet were removed to a third country without any prior assessment of their claims.

In such cases, the Court examines potential violations, *inter alia* of Article 3. In *Ilias and Ahmed v. Hungary*, the Court observed that when a contracting state seeks to remove an asylum seeker to a third country without examining the asylum request on its merits, the state's duty not to expose the individual to a real risk of treatment contrary to Article 3 is discharged differently than in cases of return to the country of origin.<sup>52</sup> The main issue is indeed "whether or not the individual will have access to an adequate asylum procedure in the receiving third country. (...) In addition to this main question, where the alleged risk of being subjected to treatment contrary to Article 3 concerns, for example, conditions of detention or living conditions for asylum seekers in a receiving third country, that risk is also to be assessed by the expelling State".<sup>53</sup>

The Court also addresses removals to third countries in the specific context of the EU's responsibility allocation system – the so-called Dublin Regulation – emphasising the vulnerability of asylum seekers. The landmark judgment in this context was *M.S.S. v. Belgium and Greece*.<sup>54</sup> It was followed by *Tarakhel v. Switzerland*, in which the Court stated that, "as a 'particularly underprivileged and vulnerable' population group, asylum seekers require 'special protection'" under Article 3.<sup>55</sup> The Court stressed that this "requirement of 'special protection' of asylum seekers is particularly important when the persons concerned are children, in view of their specific needs and their extreme vulnerability".<sup>56</sup> In such cases, the authorities must obtain "individual guarantees (...) that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together".<sup>57</sup>

## Refugees as vulnerable persons in the context of family reunification procedures

In its recent case law, the Court has reiterated that recognised refugees are to be considered particularly vulnerable, and that states must take this vulnerability into account in family reunification procedures.<sup>58</sup>

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52. Court, *Ilias and Ahmed v. Hungary*, Application No. 47287/15, judgment of 21 November 2019, paragraph 130.

53. *Ibid.*, paragraph 131.

54. Court, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, judgment of 21 January 2011, paragraph 251.

55. The Court, *Tarakhel v. Switzerland*, Application No. 29217/12, judgment of 4 November 2014, paragraph 118.

56. *Ibid.*, paragraph 119.

57. *Ibid.*, paragraph 122.

58. Court, *B.F. and Others v. Switzerland*, Application No. 13258/18, judgment of 4 July 2023, paragraphs 105 and 122; see also Court, *S.F. v. Finland*, Application No. 35276/20, judgment of 8 October 2024, paragraph 47.

## Children

The Court consistently recognises children as belonging to a category of vulnerable people,<sup>59</sup> particularly in a migratory context.<sup>60</sup> This applies even more strongly to unaccompanied or separated children,<sup>61</sup> especially when they face detention or risks of violence and abuse.<sup>62</sup> In particular, with regard to immigration detention, the Court has repeatedly emphasised that the detention of migrant children must be an exceptional measure. It should be avoided, and placing children in detention facilities must be a measure of last resort, implemented by state authorities only after establishing that no alternative involving a lesser restriction of their freedom is available.<sup>63</sup>

## Adults with specific vulnerabilities

In migration contexts, the Court has recognised that adults “with specific vulnerabilities” may require particular protection or special material conditions under the Convention. These include, for example, victims of sexual abuse in need of psychological support,<sup>64</sup> heavily pregnant women,<sup>65</sup> adults with serious physical<sup>66</sup> or mental<sup>67</sup> illness.

## Trafficked persons: migration background as an indicator of vulnerability

The Court has emphasised the particular vulnerability of trafficked persons, especially those with a migratory background, and the heightened obligations of national authorities to identify and protect them. It has also stressed the need for authorities to take care to avoid re-traumatisation and criminalisation.<sup>68</sup>

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59. Court, *A. v. the United Kingdom*, Application No. 100/1997/884/1096, judgment of 23 September 1998, paragraph 22: “Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity”.
  60. Court, *A.C. and M.C. v. France*, Application No. 4289/21, judgment of 4 May 2023, paragraph 38: “Il convient de garder à l’esprit que la situation de particulière vulnérabilité de l’enfant mineur est déterminante et prévaut sur la qualité d’étranger en séjour irrégulier de son parent”.
  61. Court, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, Application No. 13178/03, judgment of 12 October 2006, paragraph 55.
  62. Court, *Rahimi v. Greece*, Application No. 8687/08, judgment of 5 April 2011, paragraph 62; see also the Court, *M.H. and S.B. v. Hungary*, Application Nos. 10940/17 and 15977/17, judgment of 22 February 2024, paragraph 72.
  63. Court, *Popov v. France*, Application Nos. 39472/07 and 39474/07, judgment of 19 January 2012, paragraph 119; Court, *A.B. and Others v. France*, Application No. 11593/12, judgment of 12 July 2016, paragraphs 110 and 123; Court, *M.H. and Others v. Croatia*, Application Nos. 15670/18 and 43115/18, judgment of 18 November 2021, paragraphs 184, 186 and 237; Court, *Nikoghosyan and Others v. Poland*, Application No. 14743/17, judgment of 3 March 2022, paragraph 86.
  64. Court, *Darboe and Camara v. Italy*, Application No. 5797/17, judgment of 21 July 2022, paragraph 123.
  65. With particular regard to the conditions of immigration detention for pregnant women, see, for example, Court, *Mahmundi and others v. Greece*, Application No. 14902/10, judgment of 31 July 2012, paragraph 70.
  66. Court, *Paposhvili v. Belgium*, Application No. 41738/10, judgment of 13 December 2016, paragraphs 175 and 206.
  67. Court, *Aswat v. the United Kingdom*, Application No. 17299/12, judgment of 16 April 2013 (concerning the extradition of a mentally ill individual), paragraph 50.
  68. Court, *V.C.L. and A.N. v. the United Kingdom*, Application Nos. 77587/12 and 74603/12, judgment of 16 February 2021 (concerning Vietnamese minors who were victims of trafficking in human beings), paragraphs 117, 159 and 161.

## Other factors of vulnerability in migration

Other factors of vulnerability may arise in migration situations, even if they have not yet been directly addressed by the Court in this specific setting.

For example, the Court's expanding case law on elderly persons<sup>69</sup> may be relevant to ensuring adequate protection for older migrants.

Gender is also a major factor of vulnerability in migration. The Court has assessed various forms and scenarios of gender-related persecution, such as widespread sexual violence,<sup>70</sup> the absence of a male support network,<sup>71</sup> ill-treatment of a separated woman,<sup>72</sup> honour killings and forced marriage,<sup>73</sup> and female genital mutilation.<sup>74</sup> It has also addressed alleged violations of Article 4 in relation to forced prostitution or return to a human trafficking network.<sup>75</sup>

In recent years, the Court's case law has also highlighted the need for vigilance in cases involving particularly vulnerable migrants in detention.<sup>76</sup> For instance, it has found violations of Article 3 in respect of an accompanying parent (the mother), particularly in view of that parent's specific vulnerability.<sup>77</sup>

## 2.2. Council of Europe treaties related to migration

### Stateless persons

In international law, the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are the key reference instruments for the protection of individuals who do not have a nationality. At present, 38 Council of Europe member states have acceded to the 1954 Convention and 34 to the 1961 Convention.

Two Council of Europe conventions specifically address statelessness. The European Convention on Nationality sets out clear rules on the acquisition and loss of nationality,

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69. Court (2023), "Factsheet – Older people and the European Convention on Human Rights", available at [www.echr.coe.int/documents/d/echr/fs\\_elderly\\_eng](https://www.echr.coe.int/documents/d/echr/fs_elderly_eng), accessed 2 June 2025.

70. Court, *M.M.R. v. the Netherlands*, Application No. 64047/10, judgment of 24 May 2016, paragraphs 26-34.

71. Court, *R.H. v. Sweden*, Application No. 4601/14, judgment of 10 September 2015, paragraphs 62-74.

72. Court, *N. v. Sweden*, Application No. 23505/09, judgment of 20 July 2010, paragraphs 51-62.

73. Court, *A.A. and Others v. Sweden*, Application No. 14499/09, judgment of 28 June 2012, paragraphs 86-96.

74. Court, *Sow v. Belgium*, Application No. 27081/13, judgment of 19 January 2016, paragraph 68.

75. Court, *L.O. v. France*, Application No. 4455/14, judgment of 26 May 2015, paragraphs 25-37; the Court, *V.F. v. France*, Application No. 7196/10, judgment of 29 November 2011, regarding alleged violations of Article 4.

76. Court, *R.R. and Others v. Hungary*, Application No. 36037/17, judgment of 2 March 2021, paragraphs 49 and 58, concerning the confinement of a family with several children and a pregnant woman. See also, regarding the detention of children, *Rahimi v. Greece* and *M.H. and S.B. v. Hungary* (see footnote 62).

77. Court, *M.D. and A.D. v. France*, Application No. 57035/18, judgment of 22 July 2021, paragraph 71 (concerning the vulnerability of a breastfeeding mother); *R.R. and Others v. Hungary* (see footnote 76), paragraphs 62-63 and 65 (pregnant woman who had a health condition); Court, *H.M. and Others v. Hungary*, Application No. 38967/17, judgment of 2 June 2022, paragraph 18 (woman at advanced stage of high-risk pregnancy).

with particular emphasis on reducing cases of statelessness, including rules on related procedures. To date, 21 Council of Europe states have ratified it. The Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession provides more detailed rules aimed at preventing statelessness in the context of state succession. Only seven Council of Europe member states have acceded to it so far. The Council of Europe has committed to encouraging its member states that have not yet done so to accede to the relevant UN and Council of Europe instruments,<sup>78</sup> in line with the recommendations of its expert bodies.<sup>79</sup> Experts also recognise the heightened vulnerability of certain stateless persons and recommend adapting judicial and administrative procedures accordingly, particularly for “women, unaccompanied children, and victims of trafficking”.<sup>80</sup>

## Migrant workers and integration of migrants

Migrant workers are specifically protected under the European Convention on the Legal Status of Migrant Workers,<sup>81</sup> which seeks to eliminate discrimination in national law and practice and to ensure that migrant workers and their family members are treated no less favourably than nationals of the receiving state. The Convention addresses the main aspects of the legal status of migrant workers, particularly in areas such as recruitment, medical examinations and occupational tests, travel, residence and work permits, family reunification, conditions of work and transfer of savings. It also covers matters relating to social security, medical and social assistance, termination of work contracts, licensing, re-employment and the right to appeal to the judicial or administrative authorities of the receiving state. However, it has been ratified by only 11 Council of Europe member states and signed (without ratification) by four others.<sup>82</sup>

In contrast, the European Convention on the Academic Recognition of University Qualifications<sup>83</sup> has been ratified by more than 50 states.<sup>84</sup> It promotes the fair recognition of academic qualifications. The Lisbon Recognition Convention Committee, which oversees its implementation, has adopted a recommendation focusing on the recognition of qualifications held by refugees, displaced persons and individuals in refugee-like situations.<sup>85</sup>

78. Council of Europe pledge GRF-00133, submitted on 28 February 2020 in the framework of the implementation of the Global Compact on Refugees: “Encourage member states to accede to the relevant European and international statelessness conventions and withdraw reservations”, available at: <https://globalcompactrefugees.org/pledges-contributions>, accessed 1 October 2025.

79. Council of Europe (2022), “Statelessness and the right to a nationality in Europe: progress, challenges and opportunities”, available at: <https://rm.coe.int/cdcj-2022-12-statelessness-report-of-the-international-conference-and-/1680a74cfa>, accessed 12 June 2025.

80. Ibid., p. 27.

81. Council of Europe, European Convention on the Legal Status of Migrant Workers, ETS 93.

82. Council of Europe, Chart of signatures and ratifications of Treaty 093, available at [www.coe.int/en/web/Conventions/full-list?module=signatures-by-treaty&treatynum=093](http://www.coe.int/en/web/Conventions/full-list?module=signatures-by-treaty&treatynum=093), accessed 12 June 2025.

83. Council of Europe, European Convention on the Academic Recognition of University Qualifications, ETS No. 32.

84. Council of Europe, “Lisbon Recognition Convention”, available at [www.coe.int/en/web/higher-ed-education-and-research/lisbon-recognition-convention](http://www.coe.int/en/web/higher-ed-education-and-research/lisbon-recognition-convention), accessed 12 June 2022.

85. Council of Europe (2017), “The Committee of the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, Recommendation on the Recognition of Refugees’ Qualifications under the Lisbon Recognition Convention and Explanatory Memorandum”, available at <https://rm.coe.int/recommendation-on-recognition-of-qualifications-held-by-refugees-displ/16807688a8>, accessed 1 October 2025.

## Detention of migrants monitored by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Monitoring immigration detention conditions forms part of the mandate of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.<sup>86</sup> In addition to its reports following country visits, which include specific recommendations, the CPT has published a factsheet outlining its standards on immigration detention.<sup>87</sup> These cover: the principle that detention should be used only as a last resort; the safeguards that must apply during detention; the requirement for states to use suitable facilities (not prisons) and to provide adequate material conditions for stays exceeding 24 hours; the application of an open regime (that is, that freedom of movement within a detention facility should be restricted as little as possible); staff qualifications; the use of disciplinary measures, segregation and means of restraint; the availability of monitoring and complaints mechanisms; access to appropriate healthcare; and, crucially, the care of vulnerable persons. Vulnerable groups identified by the CPT include victims of torture, victims of trafficking, pregnant women and nursing mothers, children, families with young children, elderly persons and persons with disabilities. The CPT places particular emphasis on the protection of children and has stated that “every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a child”.<sup>88</sup>

## Extradition

The European Convention on Extradition, supplemented by four additional protocols and several resolutions and recommendations of the Committee of Ministers,<sup>89</sup> does not specifically address vulnerability. However, the case law of the Court, as well as other relevant Council of Europe human rights instruments, may apply in its implementation. Provisions relating to extradition in other Council of Europe treaties<sup>90</sup> may also be relevant.

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86. Council of Europe, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ETS No. 126. Article 2 of this Convention provides that “Each Party shall permit visits, in accordance with this Convention, to any place within its jurisdiction where persons are deprived of their liberty by a public authority”.

87. CPT (2017), “Factsheet immigration detention, CPT/Inf(2017)3”, available at <https://rm.coe.int/16806bf12>, accessed 9 September 2025.

88. *Ibid.*, p. 8.

89. Full list available at [www.coe.int/en/web/transnational-criminal-justice-pcoc/extradition-council-of-europe-standards](http://www.coe.int/en/web/transnational-criminal-justice-pcoc/extradition-council-of-europe-standards), accessed 1 October 2025.

90. Council of Europe, European Committee on Crime Problems, Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (2015), “Extradition in the treaties of the Council of Europe. Note for practitioners”, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048d4b9>, accessed 12 June 2025.

## 2.3. Other Council of Europe treaties relevant for migration

### The European Social Charter

The European Social Charter (the Charter) was adopted in 1961, with the revised version adopted in 1996.<sup>91</sup> It guarantees the enjoyment, without discrimination, of fundamental social and economic rights defined within the framework of a social policy that states parties undertake to pursue by all appropriate means. The Charter guarantees, among other rights: the right to work, the right to organise, the right to bargain collectively, the right to social security, the right to social and medical assistance, the right of the family to social, legal and economic protection, and the right of migrant workers and their families to protection and assistance. The 1996 revised Charter also includes the right to protection against poverty and social exclusion, the right to housing, the right to protection in cases of termination of employment, the right to protection against sexual harassment in the workplace and other forms of harassment, the right of workers with family responsibilities to equal opportunities and equal treatment, and the right of workers' representatives to protection in the undertaking. The revised Charter strengthened the principle of non-discrimination, gender equality in the fields covered by the Charter, the protection of maternity for employed women, the social, legal and economic protection of children and young persons, and the protection of persons with disabilities. States parties to the Charter have an obligation to mitigate socio-economic vulnerabilities.<sup>92</sup>

Three categories of non-nationals are expressly mentioned in the European Social Charter: migrant workers, refugees and stateless persons. In relation to refugees, the Committee has stressed that individuals must be treated as refugees as long as their situation meets the criteria of the 1951 Refugee Convention, regardless of whether asylum has been formally granted.<sup>93</sup> According to the case law of the European Committee of Social Rights (ECSR) – the monitoring body of the European Social Charter<sup>94</sup> – “irregular” migrants have the right to emergency social and medical assistance (including accommodation, food, emergency care and clothing) to cope with urgent and serious situations of need.<sup>95</sup>

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91. ETS No. 35 and ETS No. 163.

92. Dunaj K. and Ryszka J. (2022), “The protection of vulnerable people in the Charter system”, in Angeleri S. and Nivard C. (eds), *The European Social Charter: a commentary*, Vol. 1, Brill, pp. 319-348.

93. *Observation interprétative sur Les droits des réfugiés au regard de la Charte sociale européenne* (2015), available at [http://hudoc.esc.coe.int/fre/?i=2015\\_163\\_10/FR](http://hudoc.esc.coe.int/fre/?i=2015_163_10/FR), accessed 1 October 2025.

94. See Council of Europe, “European Committee of Social Rights”, available at [www.coe.int/en/web/european-social-charter/european-committee-of-social-rights](http://www.coe.int/en/web/european-social-charter/european-committee-of-social-rights), accessed 12 June 2025.

95. ECSR, No. 69/2011, *Defence for Children International (DCI) v. Belgium* (case file available at [www.coe.int/en/web/european-social-charter/processed-complaints/-/asset\\_publisher/5GEFkJmH2bYG/content/no-69-2011-defence-for-children-international-dci-v-belgium](http://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-69-2011-defence-for-children-international-dci-v-belgium), accessed 1 October 2025) and ECSR, No. 173/2018 *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece* (case file available at [www.coe.int/en/web/european-social-charter/pending-complaints/-/asset\\_publisher/lf8ufoBY2Thr/content/complaint-no-173-2018-international-commission-of-jurists-icj-and-european-council-for-refugees-and-exiles-ecre-v-greece](http://www.coe.int/en/web/european-social-charter/pending-complaints/-/asset_publisher/lf8ufoBY2Thr/content/complaint-no-173-2018-international-commission-of-jurists-icj-and-european-council-for-refugees-and-exiles-ecre-v-greece), accessed 1 October 2025). See Valette M.-F. (2016), “Protection and promotion of migrants’ social rights by the European Committee of Social Rights”, *Revue européenne des migrations internationales*, Vol. 32 (3-4), available at <https://journals.openedition.org/remi/10420>, accessed 1 October 2025. See also “The fundamental social rights of irregular migrants under the European Social



## Children's rights

Children's rights, including the rights of migrant children, are protected by the United Nations Convention on the Rights of the Child,<sup>96</sup> by general Council of Europe treaties such as the Convention and the European Social Charter, as well as by specific Council of Europe instruments such as the Lanzarote Convention and the Istanbul Convention.<sup>97</sup> In addition, the Council of Europe has developed a Strategy for the Rights of the Child,<sup>98</sup> which emphasises the protection needs of certain groups of children in vulnerable situations. These include, *inter alia* Roma and Traveller children, children with a migration background, children deprived of liberty (including those in administrative or immigration detention), and children affected by migration and forced displacement.<sup>99</sup> The strategy repeatedly highlights the concept of "children on the move", a term considered less stigmatising and more inclusive. It encompasses all categories of children in migratory contexts – migrant, refugee and asylum-seeking children – and also draws attention to the impact of labour migration across Europe, which can be described as "devastating" for children left behind.<sup>100</sup>

## Council of Europe Anti-Trafficking Convention

The main Council of Europe instrument addressing trafficking in human beings is the 2005 Council of Europe Convention on Action against Trafficking in Human Beings

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Charter: central or marginal to their access to services in Europe?", available at <https://podcasts.ox.ac.uk/index.php/fundamental-social-rights-irregular-migrants-under-european-social-charter-central-or-marginal>, accessed 1 October 2025; O'Cinnéide C. (2014), "Migrant rights under the European Social Charter", in Costello C. and Freedland M. (eds), *Migrants at work: immigration and vulnerability in labour law*, Oxford Academic, pp. 282-302, available at <https://doi.org/10.1093/acprof:oso/9780198714101.003.0015>, accessed 12 May 202

96. United Nations Convention on the Rights of the Child (1989).

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

98. Council of Europe Strategy for the Rights of the Child (2022-2027), available at <https://rm.coe.int/council-of-europe-strategy-for-the-rights-of-the-child-2022-2027-child/1680a5ef27>, accessed 12 June 2025.

99. *Ibid.*, p. 17.

100. *Ibid.*, p. 21. Moreover, the Council of Europe's Committee of Ministers has issued recommendations relevant to the protection of children in migration, including on age assessment and the appointment or designation of guardians for unaccompanied and separated children: Council of Europe, Recommendation CM/Rec(2022)22 of the Committee of Ministers to member States on human rights principles and guidelines on age assessment in the context of migration, available at <https://search.coe.int/cm?i=0900001680a96350>, accessed 12 June 2025. See also Recommendation CM/Rec(2019)11 of the Committee of Ministers to member States on effective guardianship for unaccompanied and separated children in the context of migration, available at <https://rm.coe.int/0900001680993db7>, accessed 8 September 2025; Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors, available at [www.coe.int/t/dg3/migration/archives/Source/Recommendations/Recommendation%20CM%20Rec\\_2007\\_9\\_en.pdf](http://www.coe.int/t/dg3/migration/archives/Source/Recommendations/Recommendation%20CM%20Rec_2007_9_en.pdf), accessed 8 September 2025; and Recommendation CM/Rec(2019)4 of the Committee of Ministers to member States on supporting young refugees in transition to adulthood, available at <https://rm.coe.int/recommendation-cm-2019-4-supporting-young-refugees-transition-adulthoo/168098e814>, accessed 8 September 2025. Also relevant for protecting children in migration is the *Handbook on European law relating to the rights of the child* (2022), European Union Agency for Fundamental Rights and Council of Europe, available at <https://fra.europa.eu/en/publication/2022/handbook-european-law-child-rights>, accessed 12 June 2025, with section 9 focusing on migration and asylum.



(the Anti-Trafficking Convention).<sup>101</sup> A number of the Anti-Trafficking Convention's substantive and procedural provisions are relevant to the issue of vulnerability. The concept of "vulnerability" is an integral part of the definition of trafficking in human beings (Article 4). According to paragraph 83 of the Explanatory Report, "by abuse of a position of vulnerability is meant abuse of any situation in which the person involved has no real and acceptable alternative to submitting to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim's administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce". Other provisions of the Anti-Trafficking Convention also refer to vulnerability, including Article 5 (prevention of trafficking in human beings) and Article 12 (assistance to victims).

The implementation of the Anti-Trafficking Convention is monitored by the Group of Experts on Action against Trafficking in Human Beings (GRETA) through a system of evaluation rounds.<sup>102</sup> In the ongoing fourth evaluation round, GRETA focuses specifically on vulnerability to human trafficking and on the measures taken by states parties to prevent such situations, identify and support vulnerable victims, and prosecute offenders. GRETA's country evaluation reports therefore examine the actions taken to prevent and combat trafficking affecting vulnerable groups, including asylum seekers, refugees, irregular migrants, unaccompanied children, migrant workers and persons with disabilities. Based on GRETA's reports, the Committee of the Parties to the Anti-Trafficking Convention issues recommendations to states parties. In addition to its country evaluations, GRETA undertakes thematic work and issues guidance notes.<sup>103</sup> For example, it has published guidance on addressing the risks of trafficking in human beings arising from the war in Ukraine.<sup>104</sup>

The Council of Europe's Committee of Ministers also issues recommendations to member states in relation to combating trafficking in human beings.<sup>105</sup>

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101. Council of Europe Convention on Action against Trafficking in Human Beings, CETS No. 197.

102. Council of Europe GRETA page, available at [www.coe.int/en/web/anti-human-trafficking/greta](http://www.coe.int/en/web/anti-human-trafficking/greta), accessed 12 June 2025.

103. Council of Europe (2020), "GRETA Guidance Note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection", available at <https://rm.coe.int/guidance-note-on-the-entitlement-of-victims-of-trafficking-and-persons/16809ebf44>, accessed 18 August 2025; Council of Europe (2020), "GRETA Guidance Note on preventing and combatting trafficking in human beings for the purpose of labour exploitation", available at <https://rm.coe.int/guidance-note-on-preventing-and-combating-trafficking-in-human-beings-/1680a1060c>, accessed 18 August 2025.

104. Council of Europe (2022), "GRETA Guidance Note on addressing the risks of trafficking in human beings related to the war in Ukraine and the ensuing humanitarian crisis", available at <https://rm.coe.int/guidance-note-on-addressing-the-risks-of-trafficking-in-human-beings-r/1680a663e2>, accessed 12 June 2025.

105. E.g. Recommendation CM/Rec(2022)21 of the Committee of Ministers to member States on preventing and combating trafficking in human beings for the purpose of labour exploitation, 27 September 2022, available at <https://search.coe.int/cm?i=0900001680a83df4>, accessed 12 June 2025.

## The Istanbul Convention and migrant women

The Istanbul Convention states that violence inflicted on a woman because she is a woman, or that disproportionately affects women, constitutes an extreme form of discrimination against women, and it reaffirms the principle of non-discrimination.<sup>106</sup> The Istanbul Convention recognises and seeks to address “the structural nature of violence against women as gender-based violence”.<sup>107</sup> A dedicated chapter (Chapter VII) focuses on the protection of women in the context of migration and asylum who are victims of violence.<sup>108</sup> The Council of Europe recognises that migrant and asylum-seeking women are particularly vulnerable to gender-based violence.<sup>109</sup>

The Council of Europe Committee of Ministers has also acknowledged that migrant, refugee and asylum-seeking women and girls are particularly vulnerable and require specific attention from member states.<sup>110</sup>

### 2.4. Resolutions of the Council of Europe Parliamentary Assembly on migration and asylum

The Parliamentary Assembly of the Council of Europe has adopted a number of resolutions addressing migration and asylum from a variety of perspectives.<sup>111</sup> These include, most recently, Resolution 2612 “Saving the lives of migrants at sea and protecting their human rights”,<sup>112</sup> and Resolution 2613 “The challenges and needs of public and private actors involved in migration management”.<sup>113</sup>

### 2.5. Council of Europe Committee of Ministers recommendations on inclusion and combating discrimination

The Council of Europe’s work on inclusion, integration and combating discrimination is also relevant to the protection and support of vulnerable people with a migration

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106. CETS No. 210.

107. Preamble of the Istanbul Convention.

108. Chapter VII of the Istanbul Convention, entitled “Migration and asylum”, requires states to recognise gender-based violence as a form of persecution within the meaning of the 1951 Geneva Convention relating to the Status of Refugees (Article 60(1)), to apply a gender-sensitive interpretation of the grounds of persecution (Article 60(2)) and to ensure a gender-sensitive asylum procedure (Article 60(3)).

109. Council of Europe (2019), “Protecting migrant women, refugee women and women asylum seekers from gender-based violence (Istanbul Convention)”, available at <https://edoc.coe.int/fr/violence-l-gard-des-femmes/7862-protecting-migrant-women-refugee-women-and-women-asylum-seekers-from-gender-based-violence-istanbul-convention.html>, accessed 12 June 2025.

110. Council of Europe 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, available at <https://search.coe.int/cm/?i=0900001680a69407>, accessed 12 June 2025.

111. A list of these resolutions is available at [www.coe.int/en/web/migration-and-refugees/pace-resolutions](http://www.coe.int/en/web/migration-and-refugees/pace-resolutions), accessed 8 September 2025.

112. Resolution 2612 of 26 June 2025, “Saving the lives of migrants at sea and protecting their human rights”, available at <https://pace.coe.int/en/files/34504>, accessed 8 September 2025.

113. Resolution 2613 of 26 June 2025, “The challenges and needs of public and private actors involved in migration management” available at <https://pace.coe.int/en/files/34506>, accessed 8 September 2025.

background. The Committee of Ministers has, for example, addressed hate speech<sup>114</sup> and hate crime<sup>115</sup> in its recommendations to member states.<sup>116</sup>

## 2.6. The Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe

The Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025) proposes targeted measures and activities to strengthen the capacity of member states to identify and respond to vulnerability throughout asylum and migration procedures. It is firmly grounded in human rights.<sup>117</sup>

The first pillar of the action plan focuses on ensuring protection and promoting safeguards by identifying and responding to vulnerability. This is to be achieved in particular through effective screening and safeguards, enhancing specialised assistance, protection and support services, and improving access to healthcare and involvement in risk reduction.

The second pillar aims to ensure access to law and justice, notably by strengthening procedures, improving decision making and empowering vulnerable groups to access their rights.

The third pillar is dedicated to fostering democratic participation and enhancing inclusion. It emphasises the promotion of non-discrimination and diversity, as well as democratic participation and social inclusion.

The fourth pillar seeks to strengthen co-operation between migration and asylum authorities in Council of Europe member states, in particular through the development and exchange of good practices.

Reports on the implementation of the action plan are published on a regular basis.<sup>118</sup>

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114. Council of Europe Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech, available at <https://search.coe.int/cm?i=0900001680a67955>, accessed 12 June 2025.

115. Council of Europe Recommendation CM/Rec(2024)4 of the Committee of Ministers to member States on combating hate crime, available at <https://search.coe.int/cm?i=0900001680af9736>, accessed 1 October 2025.

116. See also Council of Europe Recommendation CM/Rec(2022)10 of the Committee of Ministers to member States on multilevel policies and governance for intercultural integration, available at <https://search.coe.int/cm?i=0900001680a6170e>, accessed 12 June 2025.

117. Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025), available at <https://rm.coe.int/action-plan-on-protecting-vulnerable-persons-in-the-context-of-migrati/1680a409fc>, accessed 12 June 2025. The first three pillars of the four pillars of the Action Plan focus explicitly on human rights (see p. 9).

118. The second interim report on the implementation of the action plan (available at <https://rm.coe.int/second-interim-report-on-the-implementation-of-the-action-plan/1680b06afe>, accessed 1 October 2025) was published on 19 June 2024 (see p. 4 for the most recently developed guidance documents and tools). The first interim report on the implementation of the action plan (available at <https://rm.coe.int/first-interim-report-on-the-implementation-of-the-action-plan/1680aa29bb>, accessed 1 October 2025) was published on 10 February 2023.

# III – EU law standards for addressing vulnerability in migration and asylum

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## A. Protecting vulnerable asylum seekers and refugees in EU law: norms and case law

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As outlined above, the need for international protection, which serves as a surrogate form of state protection, can itself be understood as a source of vulnerability. Additionally, the CEAS recognises that some individuals requiring international protection face further forms of vulnerability that warrant special treatment. Accordingly, the EU's asylum instruments explicitly address the vulnerability of specific asylum seekers and recognised beneficiaries of international protection as a subset of the wider group. Key among the CEAS instruments that do so are the Asylum Reception Conditions Directive of 2013, which is currently in force,<sup>119</sup> the Reception Conditions Directive of 2024, which is currently being transposed (subsection 1),<sup>120</sup> the Asylum Procedures Directive of 2013, which is in force,<sup>121</sup> and the Asylum Procedures Regulation of 2024, which will apply from July 2026<sup>122</sup> (subsection 2). Other instruments of the asylum *acquis* also address vulnerability, for example in the context of intra-EU transfers of asylum seekers or within the new EU framework of crisis prevention and management (subsection 3). The case law of the Court of Justice of the European Union (CJEU) has provided further insight into the impact of vulnerability in the field of asylum (subsection 4).

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119. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Official Journal of the European Union, L 180/96 of 29 June 2013 (RCD (2013)).

120. Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection, Official Journal of the European Union, L 2024/1346 of 22 May 2024 (RCD (2024)).

121. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), Official Journal of the European Union, L 180/60 of 29 June 2013 (APD (2013)).

122. Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, Official Journal of the European Union, 2024/1348 of 22 May 2024 (APR).

## 1. Vulnerability and reception conditions in EU law

The 2013 Reception Conditions Directive sets out a fundamental rule: member states are obliged to take into account the situation of vulnerable persons with special needs.<sup>123</sup> The directive does not define the concept of vulnerable persons. Nevertheless, it lists individuals who are *de jure* regarded as vulnerable, referring to categories or groups such as unaccompanied minors or pregnant women.<sup>124</sup> This list is not exhaustive, allowing for the inclusion of additional categories. Moreover, any personal vulnerability established *in concreto* can qualify. Thus, there is both an open list of *de jure* vulnerable persons and the possibility for any individual to be regarded as vulnerable, whether or not they fall within a listed category. This enables a flexible and inclusive approach. However, it also creates legal uncertainty as to how to determine whether an asylum seeker qualifies as a vulnerable person.

A person identified as vulnerable under the directive is not necessarily, or automatically, entitled to specific measures. They will only be entitled to such measures if they have special reception needs. The directive therefore imposes an obligation on states to carry out an individual assessment of whether an applicant has such needs, as well as their specific nature.<sup>125</sup> In other words, a vulnerable person may or may not have special reception needs. If such needs are identified *in concreto* during the assessment, member states are obliged to address them. This framework was likely adopted to avoid a formal determination of vulnerability through an administrative process that could affect the outcome of the protection claim – either positively, by supporting recognition of international protection, or negatively, by prompting rejection due to previously undisclosed vulnerability factors. Hence, the directive emphasises that the assessment of special reception needs “shall be without prejudice to the assessment of international protection needs”.<sup>126</sup>

The directive does not define the term “special reception needs”, nor does it provide a list. Such needs are to be assessed *in concreto* and addressed through a tailor-made approach. For example, a person with a physical disability who relies exclusively on a wheelchair should be provided with accessible accommodation – either on the ground floor or with a lift available. A pregnant woman facing specific health concerns should receive appropriate healthcare, such as close monitoring or regular medical examinations. The directive provides specific protective measures for only three categories of vulnerable asylum seekers: minors, unaccompanied minors and victims of torture or violence.<sup>127</sup>

The directive also addresses the situation of vulnerable asylum seekers in detention. According to its text, vulnerability and special reception needs do not, in themselves, render deprivation of liberty arbitrary. Instead, the instrument states that “[t]he health, including mental health, of applicants in detention who are vulnerable persons shall be of primary concern to national authorities”.<sup>128</sup> It further establishes obligations

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123. RCD (2013), Article 21.

124. *Ibid.*

125. *Ibid.*, Article 22(1).

126. RCD (2013), Article 22(4).

127. *Ibid.*, Articles 23-25.

128. *Ibid.*, Article 11(1).

for regular monitoring and adequate support, taking into account the applicant's particular situation, including health needs.<sup>129</sup> It then sets standards for specific categories of detained asylum seekers, such as minors and women. In practice, it is extremely difficult to provide necessary care and support in detention settings, and deprivation of liberty may aggravate vulnerability and the nature or extent of special reception needs. Given the necessity and proportionality requirements embedded in the legal framework on deprivation of liberty under EU asylum law,<sup>130</sup> exceptionally weighty considerations must justify detaining a vulnerable asylum seeker. Where their needs are not met, detention should be discontinued.

The 2024 Reception Conditions Directive (under transposition at the time of writing) states in Recital 47 that national authorities should have “due regard to the inherent vulnerabilities of the person as applicant for international protection”, echoing the Court’s judgment in *M.S.S. v. Belgium and Greece*. However, the binding provisions of the directive make no reference to the term “vulnerability”, focusing instead on the notion of special reception needs. It continues to employ an open-ended list of persons “more likely to have special reception needs”,<sup>131</sup> and requires prompt assessment of such needs.<sup>132</sup> The directive maintains specific protective provisions for the same three categories – minors, unaccompanied minors and victims of torture or violence – but sets out related guarantees for these groups in greater detail.<sup>133</sup> The emphasis on special reception needs appears intended to reinforce the distinction between such needs and the substantive merits of the international protection claim.

## 2. Vulnerability and asylum procedures in EU law

In the same vein, the 2013 Asylum Procedures Directive introduces the concept of special procedural needs<sup>134</sup> and requires a concrete assessment of such needs. Where special procedural needs are identified, member states must ensure that asylum seekers “are provided with adequate support in order to allow them to benefit from the rights and comply with the obligations” set out in the directive.<sup>135</sup> The directive does not define the term “special procedural needs” or, for the most part, specify how these needs are to be accommodated. Once again, member states are required to adopt a tailor-made approach. Specific provisions are made for unaccompanied minors.<sup>136</sup> Furthermore, the directive provides that asylum seekers with special procedural needs – particularly survivors of torture, rape or other serious forms of psychological, physical or sexual violence – may be exempted from exceptional procedures, such as border or accelerated procedures, if their needs cannot be met

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129. Ibid.

130. Ibid., Articles 8-9. See analysis in Tsourdi E. L. (2016), “Asylum detention in EU law: falling between two stools?”, *Refugee Survey Quarterly*, Vol. 35(1), pp. 7-28.

131. RCD (2024), Article 24.

132. Ibid., Article 25.

133. Ibid., Articles 26-28.

134. APD (2013), Article 24(1).

135. Ibid., Article 24(3).

136. Ibid., Article 25.

in that context.<sup>137</sup> While this guarantee is a step forward in protecting the rights of vulnerable applicants, it remains limited. Vulnerable asylum seekers with special procedural needs face a specific evidentiary burden: they must demonstrate that their needs cannot be adequately addressed within these procedures. Even where this burden is shared, it is often difficult in practice for applicants to satisfy it. A more principled approach would have been to grant an automatic exemption for applicants with special procedural needs from procedures in which procedural safeguards are curtailed.

The 2024 Asylum Procedures Regulation follows a similar approach. It provides further detail on the promptness and content of the assessment process,<sup>138</sup> and establishes an obligation for member states to provide the necessary support to applicants with special procedural needs.<sup>139</sup> It also clarifies that states may need to exempt such applicants from accelerated or border procedures.<sup>140</sup> Again, however, exemption is not guaranteed: applicants must still meet a certain evidentiary threshold, which may be difficult in practice.<sup>141</sup> In addition to unaccompanied minors, the Regulation introduces specific, detailed protective provisions for minors in general.<sup>142</sup> For all other cases, member states are expected to determine, through a tailored approach, how to accommodate the special procedural needs of individual applicants. The Regulation places strong emphasis on the qualifications and responsibilities of the staff working with applicants: staff must be trained to identify signs of vulnerability in those requiring special procedural safeguards, and must take into account both the personal circumstances and the broader context, including vulnerability and special procedural needs.<sup>143</sup>

### 3. Vulnerability in further EU asylum instruments

Under the Dublin Regulation currently in force, vulnerability in itself, including an individual's health situation, does not constitute an absolute bar to transfer. Nor does the Regulation impose an obligation to carry out a structured medical or psychological evaluation to determine whether a person is fit to travel. Instead, it provides for the exchange of "relevant information" regarding "immediate special needs"<sup>144</sup> and health data "for the sole purpose of the provision of medical care or treatment".<sup>145</sup> Upon transfer, the responsible member state must ensure that such special needs are adequately addressed, including any essential medical care that may be required. Nevertheless, as the next section discusses, case law from the CJEU has refined the circumstances under which vulnerability may constitute an obstacle

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137. Ibid., Article 24(3).

138. APR (2024), Article 21(1).

139. Ibid., Article 21(2).

140. Ibid.

141. See analysis in Tsourdi E. L. (2024), "The new screening and border procedures: towards a seamless migration process?", Policy Study, Foundation for European Progressive Studies, Friedrich-Ebert-Stiftung and European Policy Centre, Brussels.

142. APR (2024), Articles 22-23.

143. Ibid., Recital 18 and Article 13(7).

144. Dublin Regulation (2013), Article 31(2)

145. Ibid., Article 32.

to intra-EU transfer. The Dublin Regulation does provide enhanced protections for unaccompanied minors, allowing them to be reunited with a broader range of relatives than the nuclear family.<sup>146</sup> It also states that member states “shall normally” keep dependent persons together, beyond the nuclear family – a moderated obligation.<sup>147</sup> In addition, the Regulation grants discretion to member states to examine any application, even where they are not responsible under the criteria, including on humanitarian grounds.<sup>148</sup>

The 2024 Asylum and Migration Management Regulation, which will replace the Dublin Regulation, maintains a similar approach. It provides that “unaccompanied minors and vulnerable applicants” should receive “specific information”, and “where necessary for applicants with specific reception or procedural needs”.<sup>149</sup> In the assessment of the best interests of unaccompanied minors, “situations of additional vulnerabilities”, must be given “due account”, with consideration of “the need for stability and continuity in the social and educational care”.<sup>150</sup> This aligns with the Court’s case law on the right of children to undiscriminated access to education, regardless of migration status.<sup>151</sup> Article 50 of the Regulation provides for the exchange of health data prior to transfer between member states “for the sole purpose of the provision of medical care or treatment, in particular concerning vulnerable persons”, and requires the transferring member state to “transmit to the Member State responsible information on any special needs of the person”.<sup>152</sup> The final sentence of Article 50(1) obliges the responsible member state to “ensure” that such needs, as identified by the transferring state, are “adequately addressed”.

Vulnerability is also addressed in the new Screening Regulation,<sup>153</sup> which constitutes the first step in the envisaged seamless migration process. Screening includes preliminary health and vulnerability checks, identity verification, biometric registration and a security check.<sup>154</sup> It also involves completing a screening form and referring individuals to the appropriate procedures – namely asylum, relocation or return.<sup>155</sup> Screening does not result in a definitive determination of legal status.

The Regulation requires that the initial vulnerability check be carried out with a view to identifying individuals who may be vulnerable, victims of torture or other

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146. Ibid., Article 8.

147. Ibid., Article 16.

148. Ibid., Article 17.

149. Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013, Official Journal of the European Union 2024/1351 of 22 May 2024 (Regulation on Asylum and Migration Management), Article 20.

150. Regulation on Asylum and Migration Management, Article 23(4)(b).

151. Court, *Timishev v. Russia*, Application Nos. 55762/00 and 55974/00, judgment of 13 December 2005.

152. Regulation on Asylum and Migration Management, Article 50(1).

153. Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, Official Journal of the European Union 2024/1356 of 22 May 2024 (Screening Regulation).

154. Screening Regulation, Article 8(5), and references to other articles in the Regulation included therein.

155. Ibid., Articles 8(5) and 18.



inhuman or degrading treatment, stateless persons, or those who may have special reception or procedural needs as defined in the Reception Conditions Directive or the Asylum Procedures Regulation.<sup>156</sup> Specialised personnel must carry out this check. The Regulation explicitly refers to the involvement, where appropriate, of national child protection authorities and agencies responsible for identifying victims of trafficking in human beings or equivalent mechanisms.<sup>157</sup> Qualified medical personnel and non-governmental organisations may also assist in this process. Where vulnerabilities are identified, migrants must be provided with timely and adequate support in suitable facilities, taking into account both physical and mental health needs.<sup>158</sup> In the case of minors, support must be child-friendly, age-appropriate and delivered by trained personnel in co-operation with child protection authorities.<sup>159</sup> These guarantees are welcome. However, current practice at border identification centres raises concerns about the availability of specialised services and trained personnel, particularly in remote locations.

Vulnerability is also a factor in the assessment of asylum claims. The 2011 Qualification Directive provides that acts of persecution may include “acts of physical or mental violence, including acts of sexual violence”, as well as “acts of a gender-specific or child-specific nature”.<sup>160</sup> It further clarifies that the notion of a “particular social group” may include “a group based on a common characteristic of sexual orientation”, and that “[g]ender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group”.<sup>161</sup>

The 2024 Qualification Regulation, which will replace the Qualification Directive, introduces a common definition of the persecution ground “membership of a particular social group”.<sup>162</sup> It further elaborates that, for the purposes of defining such a group, issues related to an applicant’s sexual orientation or gender, including gender identity and gender expression, must be given due consideration where relevant to the applicant’s well-founded fear of persecution. The Qualification Regulation also recognises that applicants with diverse sexual orientations, gender identities, gender expressions and sex characteristics may have special needs. Notably, the Regulation includes an innovative reference to “gender expression”.<sup>163</sup> Importantly, asylum seekers must not be expected to conceal their identity in order to avoid persecution.<sup>164</sup> This is consistent with the CJEU’s judgment in *X, Y and Z*<sup>165</sup> as well as other relevant case law from the Court.<sup>166</sup> The existence and application of criminal laws specifically targeting lesbian, gay, bisexual, transgender and intersex persons may mean

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156. *Ibid.*, Recommendation 37, Article 12.

157. *Ibid.*, Article 8(9).

158. *Ibid.*, Article 12(3).

159. *Ibid.*, Article 12(4).

160. Qualification Directive (2011), Article 9(1).

161. *Ibid.*, Article 10(1).

162. *Ibid.*, Recital 40.

163. *Ibid.*, Article 10.

164. *Ibid.*, Article 10(3).

165. Joined Cases C-199/12 to C-201/12, *X, Y and Z*, ECLI:EU:C:2013:720, paragraph 70.

166. *Idem*.

that such individuals constitute a particular social group.<sup>167</sup> As discussed further below, CJEU case law has also recognised, for example, that women in Afghanistan constitute a particular social group. The Qualification Regulation, which will apply from July 2026, maintains this approach.

#### 4. Overview of the CJEU case law on vulnerability in asylum

Although the CJEU does not always use the language of vulnerability explicitly, its case law has progressively advanced the rights of vulnerable asylum seekers and beneficiaries of international protection. Without attempting to be exhaustive, this thematic paper outlines key judgments related to reception conditions, intra-EU transfers of asylum seekers and qualification for international protection.

In *C.K. and Others v. Republika Slovenija*, the CJEU ruled that systemic deficiencies in reception conditions or asylum procedures cannot be the sole basis for establishing a real risk of inhuman or degrading treatment under the Dublin Regulation.<sup>168</sup> However, the CJEU held that a transfer itself may amount to inhuman or degrading treatment if the person concerned suffers from a particularly serious state of health, regardless of the quality of care or reception in the receiving member state.<sup>169</sup> Referring to the absolute nature of the prohibition of torture, inhuman or degrading treatment or punishment, the CJEU clarified that the introduction of a “systemic deficiencies” clause in the Dublin Regulation does not preclude halting transfers on other exceptional grounds.<sup>170</sup> In the *Jawo* and *Ibrahim* cases,<sup>171</sup> the CJEU further affirmed that the absolute nature of the principle of *non-refoulement* makes it irrelevant whether the risk arises during the transfer, the asylum procedure or after the recognition of refugee status. Consequently, no distinction may be drawn based on the procedural stage. In the *Jawo* case, the CJEU also held that deficiencies “may be systematic or generalised, or [...] may affect certain groups of people”,<sup>172</sup> thereby effectively “individualising” the systemic deficiencies criterion.

The CJEU has also held that the complete withdrawal of reception conditions, rendering an asylum seeker destitute, and thus situationally vulnerable, would violate the principle of human dignity and the prohibition of inhuman or degrading treatment.<sup>173</sup> Some member states have contemplated such withdrawal, amounting to “planned destitution” or constructed vulnerability, for example as a sanction for

167. Qualification Regulation, Recital 41.

168. Case C-578/16PPU, *C. K. and Others v. Republika Slovenija*, ECLI:EU:C:2017:127.

169. *Ibid.*, paragraph 73.

170. *Ibid.*, paragraphs 91-94.

171. Case C-163/17, *Jawo v. Bundesrepublik Deutschland*, ECLI:EU:C:2019:218; Case C-318/17, *Ibrahim and Others v. Bundesrepublik Deutschland and Bundesrepublik Deutschland v. Magamadov*, ECLI:EU:C:2019:219; see also Heijer M. (den) (2020), “Transferring a refugee to homelessness in another Member State: *Jawo* and *Ibrahim*”, *Common Market Law Review*, Vol. 57(2), pp. 539-556.

172. Case C-163/17, *Jawo v. Bundesrepublik Deutschland*, ECLI:EU:C:2019:218, paragraph 90.

173. Case C-79/13, *Saciri and Others*, EU:C:2014:103, paragraph 48; Case C-163/17, *Jawo v. Bundesrepublik Deutschland*, EU:C:2019:218, paragraph 92; C-233/18, *Haqbin*, ECLI:EU:C:2019:956, paragraph 47. See also Peek M. and Tsourdi E. L. (2021), “Asylum Reception Conditions Directive 2013/33/EU”, in Thym D. and Hailbronner K. (eds.), *EU immigration and asylum law: article-by-article commentary*, third edition, Beck/Hart Publishing.

violent behaviour in reception centres or for resisting an intra-EU transfer. The CJEU has clarified that only limitations, not total withdrawal, of reception conditions are permissible, and that the applicant's basic needs (such as housing and subsistence) must be met. This reasoning aligns with pronouncements of international treaty bodies and regional committees on economic, social and cultural rights.<sup>174</sup>

Recent CJEU case law also reflects a growing consensus within the EU on the need to protect individuals from gender-based violence and to ensure that such claims are addressed within the asylum framework. In the *WS* case, the applicant, a Turkish woman, had been a victim of domestic violence in the context of a forced marriage and was at risk of an "honour" killing by her father and former husband.<sup>175</sup> The CJEU held that women may be regarded as belonging to a "particular social group" under Article 10(1)(d) of the Qualification Directive where, in their country of origin, they are exposed to physical or mental violence, including sexual and domestic violence, on account of their gender.<sup>176</sup>

In a significant 2024 judgment, *K and L*, the CJEU ruled that women who share the genuine belief in the fundamental value of equality between women and men may, depending on the context in their country of origin, constitute a "particular social group", constituting a "reason for persecution" within the refugee definition.<sup>177</sup> Most recently, in its judgment of 4 October 2024 in joined cases *AH and FN*, involving Afghan women seeking asylum, the CJEU examined the cumulative discriminatory measures imposed by the Taliban regime since 2021. It concluded that the situation in Afghanistan was so severe that it warranted a presumption that women in Afghanistan form a "particular social group" subject to persecution. Consequently, member states may grant international protection without conducting individual assessments beyond nationality and gender.<sup>178</sup>

Based on the CJEU's case law on vulnerability and recent legislative developments, this thematic paper argues that, under EU law, assessing the need for protection requires consideration of a specific individual characteristic in conjunction with the cultural, social, political or other context in which that characteristic becomes a source of vulnerability.

## B. Beyond asylum: protecting vulnerable migrants in EU law: norms and CJEU case law

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Although not always explicitly employing the language of vulnerability, a number of instruments within the EU's broader migration *acquis* provide protection based on factors linked to vulnerability. A comprehensive examination of all relevant provisions

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174. See Wessels J. (2023), "Planned destitution as a policy tool to control migration in the EU: socio-economic deprivation and international human rights law", *EU Immigration and Asylum Law and Policy*, available at <https://eumigrationlawblog.eu/planned-destitution-as-a-policy-tool-to-control-migration-in-the-eu-socio-economic-deprivation-and-international-human-rights-law/>, accessed 2 October 2025.

175. Case C-621/21, *WS*, ECLI:EU:C:2024:47.

176. *Ibid.*, paragraph 57.

177. Case C-646/21, *K and L*, ECLI:EU:C:2024:487.

178. Joined Cases C-608/22 and C-609/22, *AH and FN*, ECLI:EU:C:2023:856, paragraph 51.

lies beyond the scope of this thematic paper. Instead, several key areas have been selected for analysis: the EU's return policy (subsection 1), along with family reunification, anti-trafficking measures and selected provisions from the labour migration *acquis* (subsection 2). The analysis is further complemented by key developments in the CJEU case law (subsection 3).

## 1. Vulnerability in the framework of the EU's return policy

Through litigation and interpretation at both national and EU levels, the 2008 Return Directive has contributed to what has been described as the “incremental constitutionalisation of irregular migration in Europe”.<sup>179</sup> Indeed, the instrument has consolidated certain rights for irregular migrants, while acknowledging aspects of their vulnerability. The directive first requires that, in implementing return procedures, member states must take into account the best interests of the child, family life and the state of health of the individual.<sup>180</sup> This obligation is horizontal in nature, applying across the return framework. It further provides discretion for member states to issue an autonomous residence permit on “compassionate, humanitarian or other reasons”,<sup>181</sup> a provision which can operate to the benefit of vulnerable migrants. Voluntary return is prioritised. The directive allows for the extension of the period for voluntary departure, “taking into account the specific circumstances of the individual case, such as the length of stay, the existence of children attending school and the existence of other family and social links”.<sup>182</sup> More significantly, the directive foresees the postponement of removal. Beyond the absolute prohibition of *refoulement* and technical obstacles, postponement may be based on “the third-country national's physical state or mental capacity”.<sup>183</sup> The directive also includes express safeguards for the return of unaccompanied minors.<sup>184</sup>

Regarding deprivation of liberty, the directive provides that pre-removal detention must be both necessary and proportionate.<sup>185</sup> It establishes a series of procedural guarantees for detained individuals, covering both the initial detention decision and the right to judicial review.<sup>186</sup> Additional provisions set out minimum standards on detention conditions,<sup>187</sup> including limited but explicit safeguards for vulnerable detainees. In particular, the directive requires that “particular attention shall be paid to the situation of vulnerable persons. Emergency health care and essential

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179. Cornelisse G. and Moraru M. (2022), “Judicial interactions on the European Return Directive: shifting borders and the constitutionalisation of irregular migration governance”, *European Papers*, Vol. 7(1), pp. 127-149.

180. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Official Journal of the European Union, L 348/98 of 24 December 2008 (Return Directive), Article 5.

181. Return Directive, Article 6(4).

182. *Ibid.*, Article 7(2).

183. *Ibid.*, Article 9(2)(a).

184. *Ibid.*, Article 10.

185. *Ibid.*, Article 15(1).

186. *Ibid.*, Article 15, paragraphs 2 and 3.

187. *Ibid.*, Article 16.

treatment of illness shall be provided”.<sup>188</sup> Vulnerability, however, does not in itself exempt individuals from deprivation of liberty. Nevertheless, the embedded requirement to assess the necessity and proportionality of detention should lead to limited recourse to detention in the case of vulnerable migrants. Where their specific needs are not met, detention should be discontinued. The directive also includes more robust guarantees concerning the deprivation of liberty of minors and families.<sup>189</sup>

## 2. Vulnerability in further EU migration-related instruments

The EU’s Family Reunification Directive establishes a subjective right to family reunification, grounded in the understanding that this promotes the integration of third-country nationals and their family members.<sup>190</sup> The scope of this right is broader than that under international or regional (Council of Europe) law.<sup>191</sup> Although the directive does not explicitly refer to vulnerability, it nonetheless incorporates relevant considerations in several aspects. Firstly, it permits member states to allow family reunification with first-degree relatives beyond the strict legal definition of family members “where they are dependent on them and do not enjoy proper family support in the country of origin”.<sup>192</sup> Secondly, it provides more favourable rules for the family reunification of recognised refugees, acknowledging that such individuals may face significant difficulties in meeting financial and documentary requirements “on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there”.<sup>193</sup> The directive also gradually grants family members an autonomous residence right, to be acquired after five years of residence.<sup>194</sup> This right may be granted earlier in certain cases, including “in the event of particularly difficult circumstances”,<sup>195</sup> which can serve to protect vulnerable individuals, such as victims of domestic abuse. As examined in the following subsection, CJEU case law has further reinforced the directive’s protective potential, including with reference to vulnerability factors.

Beyond family reunification, other instruments within the EU’s legal migration *acquis* also reflect concern for vulnerability, although not systematically or explicitly. Rather than attempting an exhaustive overview, this section offers selected examples. The Seasonal Workers Directive enables migrant workers to change employers while retaining legal residence and access to the national labour market.<sup>196</sup> This flexibility

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188. *Ibid.*, Article 16 (3).

189. *Ibid.*, Article 17.

190. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Official Journal of the European Union, L 251 of 3 October 2003 (Family Reunification Directive), Recommendation 4.

191. Groenendijk K. and Strik T. (2022), “Directive 2003/86 on the right to family reunification: a surprising anchor in a sensitive field”, in Tsourdi E. L. and De Bruycker P. (edss), *Research handbook on EU migration and asylum law*, Edward Elgar, pp. 306-326.

192. Family Reunification Directive, Article 4(2)(a).

193. *Ibid.*, Recommendation 8 and Chapter V.

194. *Ibid.*, Article 15(1).

195. *Ibid.*, Article 15(3).

196. Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (Seasonal Workers Directive), Article 15(4).

can help prevent exploitation. Similarly, the recast Single Permit Directive, recently adopted, strengthens rights to avoid unfair competition between national and migrant workers that could arise from the exploitation of the latter.<sup>197</sup> It also allows permit holders to change employers during the permit's validity, as a means to prevent exploitation.<sup>198</sup> The Victims Rights Directive requires EU member states to ensure that appropriate and sufficiently specialised support services are available to all victims of crime, including those subjected to severe labour exploitation.<sup>199</sup>

Stronger protection is provided under the 2011 Anti-Trafficking Directive, which aims to prevent and combat trafficking in human beings and protect its victims.<sup>200</sup> Amended in 2024,<sup>201</sup> the directive must be transposed by member states by July 2026. Unlike many other instruments, it explicitly adopts the concept of vulnerability, identifying the reduction of victims' vulnerability as one of its core objectives.<sup>202</sup> The directive integrates this notion throughout. Firstly, vulnerability is recognised as an element in the commission of the crime itself: one of the means of perpetration is the abuse "of a position of vulnerability",<sup>203</sup> defined as "a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved".<sup>204</sup>

Secondly, the directive recognises that all victims of trafficking are vulnerable and sets out corresponding rights, including the right not to be prosecuted – a provision strengthened under the 2024 amendments.<sup>205</sup> It also provides for assistance and support tailored to victims' specific needs, including in cases involving pregnancy, health issues, disability, or serious psychological, physical or sexual violence.<sup>206</sup> Furthermore, the directive acknowledges that some groups of victims may face heightened vulnerability. It provides for increased penalties where the offence is committed against a "particularly vulnerable victim".<sup>207</sup> It clarifies which groups could be considered particularly vulnerable, extending this to at least all children and providing other indicative examples such as gender, pregnancy, state of health and disability.<sup>208</sup> In this vein, it also reinforces certain standards relating to minor victims, such as access

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197. Directive 2024/1233 of the European Parliament and of the Council of 24 April 2024 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (recast).

198. Single Permit Directive, Recommendation 44 and Article 11(2)-(3).

199. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, Official Journal of the European Union L 315 of 14 November 2012 (Victims Rights Directive), Article 8.

200. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Official Journal of the European Union L 101/1 of 15 April 2011 (Trafficking Directive).

201. Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, Official Journal of the European Union, L 2024/1712 of 24 June 2024.

202. Trafficking Directive, Recommendation 2.

203. *Ibid.*, Article 2(1).

204. *Ibid.*, Article 2(2).

205. *Ibid.*, Article 8.

206. *Ibid.*, Article 11, and especially 11(7).

207. *Ibid.*, Recommendation 12 and Article 4(2)(a).

208. *Ibid.*, Recommendation 12.

to education and dedicated psycho-social support.<sup>209</sup> The new instrument further develops these standards, for example by specifying conditions around shelters and safe accommodation and highlighting disability as a vulnerability factor that increases the risk of trafficking.<sup>210</sup>

Beyond this instrument, the EU has adopted a directive related to residence rights for trafficking victims.<sup>211</sup> In addition, it has established the function of an Anti-Trafficking Co-ordinator to act as a contact point and provide coherence among the actions of member states, EU institutions and agencies. The EU is increasingly seeking to strengthen implementation, including through monitoring and support actions, as reflected in the latest Strategy on Combatting Trafficking in Human Beings.<sup>212</sup>

The new directive on combating violence against women and domestic violence<sup>213</sup> should also contribute to enhancing the protection of vulnerable migrants, as it recognises that “victims experiencing intersectional discrimination are at a heightened risk of violence” and lists among them women with dependent residence status or a dependant residence permit, undocumented migrant women, women applicants for international protection and women fleeing armed conflict. This recital concludes that “victims experiencing intersectional discrimination should consequently receive specific protection and support”.

### 3. Overview of the CJEU case law on migrant vulnerability

The CJEU, in dialogue with national courts through the reference for a preliminary ruling procedure, has contributed to the development of a corpus of rights for migrants that take into account their vulnerability. The area of return offers significant illustrations.<sup>214</sup> One such case is *Abdida*, which concerned a rejected asylum seeker who had applied in Belgium for regularisation on medical grounds, a national non-harmonised humanitarian status.<sup>215</sup> The applicant had appealed against the return decision, arguing that its enforcement might expose him to a serious risk of grave and irreversible deterioration in his state of health.<sup>216</sup> The CJEU proceeded to a teleological interpretation of the Return Directive and ruled that for this particular category of irregularly staying migrants, member states must suspend the transfer and consequently make available the guarantees pending return that are foreseen in the Return Directive in case of postponement.<sup>217</sup>

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209. *Ibid.*, Recommendations 8, 22 and 23.

210. *Ibid.*, Recommendations 16 and 17.

211. Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, Official Journal of the European Union, L 261/19 of 6 August 2004.

212. European Commission, EU Strategy on Combatting Trafficking in Human Beings 2021-2025, COM(2021) 171.

213. Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, Official Journal of the European Union, 2024/1385 of 24 May 2024.

214. For an in-depth analysis see Moraru M. B., Cornelisse G. and De Bruycker P. (2020), *Law and judicial dialogue on the return of irregular migrants from the European Union*, Oxford: Hart Publishing.

215. Case C-562/13, *Centre public d'action sociale d'Ottignies-Louvain-la-Neuve v. Moussa Abdida*, EU:C:2014:2453.

216. *Ibid.*, paragraph 58.

217. *Ibid.* and Return Directive, Articles 9(1)(b) and 14.

Regarding the obligation to provide “emergency health care and essential treatment of illness”, the CJEU clarified that it would be “rendered meaningless if there were not also a concomitant requirement to make provision for the basic needs of the third country national concerned”.<sup>218</sup> It stressed, however, that “it is for the Member States to determine the form in which such provision for the basic needs of the third country national concerned is to be made”.<sup>219</sup> The CJEU therefore adopted an extensive interpretation of the requirement to provide emergency healthcare and essential treatment of illness, reading into it an obligation to provide a minimum level of subsistence. Nevertheless, given the particulars of this case, it limited its findings to this specific group of irregular migrants – those who contest their transfer on the basis of medical grounds. More broadly, in the more recent *Changu* judgment, the CJEU stated that as long as the addressee of a return decision has not been removed, that person may rely on the rights guaranteed to him or her by both the EU Charter of Fundamental Rights and the directive, emphasising that member states must ensure that “as far as possible, as long as the removal of the third-country national concerned is postponed, emergency health care and essential treatment of illness are provided and the special needs of vulnerable persons are taken into account”.<sup>220</sup>

Another area where the CJEU has fleshed out protective standards in the context of returns is deprivation of liberty. For example, the Return Directive stipulates that detention should as a rule take place in specialised detention facilities. However, it recognises that member states might have to resort to the use of prison facilities.<sup>221</sup> The CJEU found that recourse to prison accommodation must be truly exceptional. The fact that in Germany some federal states (*Länder*) did not have specialised detention facilities was not found to constitute sufficient reason for using prison accommodation.<sup>222</sup> In the *El Dridi* case, the CJEU highlighted the obligation for member states to consider alternatives to immigration detention by noting that they “must carry out the removal using the least coercive measures possible”.<sup>223</sup> In the *Arslan*<sup>224</sup> and *Mahdi* cases,<sup>225</sup> the CJEU further developed standards requiring detention to be imposed only when necessary, and when less coercive measures would not suffice. In the *Mahdi* case, the CJEU also confirmed that reviewing courts have the competence to assess all relevant elements of the lawfulness of detention under the directive. Finally, in *FMS and Others*, it recalled that “the national court must be able to substitute its own decision for that of the administrative authority that ordered the detention and to order either an alternative measure to detention or the release of the person concerned”.<sup>226</sup>

In addition, the CJEU’s interpretative guidance has solidified and deepened the right to family reunification. First, it has firmly established family reunification as a

218. Case C-562/13, *Centre public d’action sociale d’Ottignies-Louvain-la-Neuve v. Moussa Abdida*, EU:C:2014:2453, paragraph 60.

219. *Ibid.*, paragraph 61.

220. Case C-352/23 *Changu*, ECLI:EU:C:2024:748, paragraph 73.

221. Return Directive, Article 16 (1).

222. Joined Cases C-473/13 and C-514/13, *Bero and Bouzalmate*, ECLI:EU:C:2014:2095.

223. Case C-61/11 PPU, *El Dridi*, ECLI:EU:C:2011:268, paragraph 39.

224. Case C-534/11, *Arslan*, ECLI:EU:C:2013:343.

225. Case C-146/14, *Mahdi*, ECLI:EU:C:2014:1320.

226. Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and Others*, ECLI:EU:C:2020:367, paragraph 293.



subjective right. Member states are left a certain margin of appreciation to verify whether the directive's requirements are met. However, as the CJEU has stressed, the exercise of this discretion should not undermine the objective of the directive, which is to promote family reunification.<sup>227</sup> This also means that the directive's optional clauses, that allow member states to impose certain requirements, should be interpreted strictly and in line with the principle of proportionality.

The *Chakroun* case<sup>228</sup> concerned a Moroccan national who, after legally residing in the Netherlands for 25 years, submitted an application for family reunification with his wife. The couple had been married for over 20 years. At the time of the application, Mr Chakroun had regular and stable resources. However, these were slightly below the applicable monthly income threshold set for family formation. Referring to the Family Reunification Directive's objective and its effectiveness, the CJEU held that the applicant could not be deprived of the right to family reunification simply because his income was marginally below the minimum. Such a threshold can only serve as a reference, not an absolute barrier. Finally, the fact that he could potentially claim special assistance to meet exceptional, individually determined living costs did not mean he was dependent on "social assistance".

Further, in its case law on the concept of dependency, the CJEU ruled that member states should consider a variety of factors – such as legal, financial, emotional or material support provided by the sponsor and/or their spouse/partner – and adopt an individualised approach to assess whether a situation of dependency exists.<sup>229</sup> This allows for the requisite flexibility to take into account the vulnerability of family members. Finally, in the *K and A* case,<sup>230</sup> the CJEU assessed the controversial practice of pre-arrival integration conditions, such as civil and language knowledge tests, as a prerequisite to family reunification. While not holding the practice per se incompatible with the directive, the CJEU ruled that such tests should not undermine the directive's objective. They should be proportionate, for example, in terms of fees and levels of difficulty, and include hardship clauses. This means recognising that some applicants should be exempted from these tests altogether, including on the basis of individual vulnerability. Despite these safeguards, research has shown that such tests disproportionately impact certain applicants due to individual characteristics such as gender, educational background and economic situation.<sup>231</sup>

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227. Case C-578/08, *Chakroun*, ECLI:EU:C:2010:117, paragraph 43; Joined Cases C-356/11 and C-357/11, *O. and S.*, ECLI:EU:C:2012:776, paragraph 69; and Case C-550/16, *A. and S.*, ECLI:EU:C:2018:248, paragraph 55.

228. Case C-578/08, *Chakroun*, ECLI:EU:C:2010:117.

229. For example, Case C-316/85, *Lebon*, ECLI:EU:C:1987:302, paragraphs 21-22; Case C-200/02, *Zhu and Chen*, ECLI:EU:2004:639, paragraph 43; Case C-1/05, *Jia*, ECLI:EU:2007:1, paragraphs 36-37; Case C-83/11, *Rahman and Others*, ECLI:EU:C:2012:519, paragraphs 18-45.

230. Case C-153/14, *K and A*, ECLI:EU:C:2015:453.

231. See analysis and further references in Groenendijk K. and Strik T. (2022), "Directive 2003/86 on the right to family reunification: a surprising anchor in a sensitive field", in Tsourdi E. L. and De Bruycker P. (eds), *Research handbook on EU migration and asylum law*, Edward Elgar, pp. 306-326.

## IV – Examples of good practices in European states

Some examples of good practices in European states for addressing the needs of vulnerable migrants, asylum seekers and refugees are outlined below.

### 1. Overarching approaches to vulnerability in migration contexts

The Italian Ministry of the Interior surveyed practices for detecting and addressing vulnerabilities at various local levels and processed the results to standardise those practices at national level. This resulted in a detailed and practical handbook for the identification of persons with vulnerabilities who enter Italy and go through the protection and/or reception systems.<sup>232</sup>

### 2. Identification and registration of unaccompanied migrant children

In Poland, to enhance follow-up actions, the retention period for unaccompanied minors' records in national data systems was extended from 12 to 36 months, enabling better assessment of their eligibility to receive education benefits upon reaching majority. Belgium implemented a "fast-lane" system to expedite the process for international protection applicants when there are manifest doubts regarding their claimed status as minors. To better identify juvenile offenders and improve the tracing of minors who have committed multiple offences, France adopted a repository of unaccompanied minors suspected of having committed a criminal offence, making it possible to collect identity data and fingerprints without the minor's consent.<sup>233</sup>

In order to act in the best interests of the child, Bulgaria, Cyprus and Sweden reported updates to guidance or procedures related to age assessment. Guidance issued by the Bulgarian State Agency for Refugees aimed to avoid unnecessary medical examinations when determining an unaccompanied minor's age. Cyprus drafted standard operating procedures (with the support of the EU Agency for Asylum), and Sweden updated standardised processes to ensure accuracy and consistency in line with identified best practices.<sup>234</sup>

232. Italian Ministry of the Interior (2023), "Handbook for the identification, referral and care of persons living with vulnerabilities entering Italy and within the protection and reception system", available at [www.interno.gov.it/sites/default/files/2023-11/vademecum\\_vulnerabilities\\_31-web-eng.pdf](http://www.interno.gov.it/sites/default/files/2023-11/vademecum_vulnerabilities_31-web-eng.pdf), accessed 19 June 2025.

233. European Migration Network (2025), "Asylum and migration overview 2024", p.58, available at [https://home-affairs.ec.europa.eu/networks/european-migration-network-emn\\_en](https://home-affairs.ec.europa.eu/networks/european-migration-network-emn_en), accessed 3 November 2025.

234. Ibid.

Furthermore, Belgium and Greece introduced simplified procedures for unaccompanied minors to renew their international protection applicant card and register for health insurance, respectively. Both measures aimed to reduce the administrative burden. In Belgium, this was achieved by allowing minors to register for health insurance while waiting to be appointed a guardian, due to the long waiting times involved.<sup>235</sup>

### **3. Procedures and reception conditions for victims of torture/traumatised asylum seekers**

A study conducted in eight EU member states identified major gaps and shortcomings, but also highlighted a few good practices in two of the surveyed states: Poland and Slovenia.<sup>236</sup>

In Poland, early identification is considered a contractual obligation of the private medical facility responsible for co-ordinating medical care for all asylum seekers. In Slovenia, beyond early identification during the first medical check, standard operating procedures for victims of gender-based violence have been adopted and are also applied to any other vulnerable persons. In both countries, medical and psychological care, including interpretation services, is available in all reception centres.

In Poland, training is provided upon the recruitment of asylum officers, meaning that all officials are trained on how to work with vulnerable groups. In Slovenia, social workers receive training on a monthly basis. In both countries, cases involving vulnerable asylum seekers are prioritised.

Poland has also established special teams for the prevention of violence in reception centres, alongside detailed safeguards in national legislation concerning the asylum interview process for vulnerable applicants.

Finally, in Slovenia, financial support is available for private accommodation where housing in reception or alternative centres is deemed unsuitable for a particular individual.<sup>237</sup>

### **4. Detention and alternatives to detention**

A pilot project on case management-based alternatives to detention in seven European countries was conducted by the European Alternatives to Detention Network. Each of the pilot projects (in Belgium, Bulgaria, Cyprus, Greece, Italy, Poland and the United Kingdom) developed a screening and assessment process to examine personal data, immigration history, vulnerabilities and community ties. The information obtained through this screening and assessment process informs how case management is delivered to individuals, taking into account their personal circumstances, needs and strengths. In Bulgaria, Cyprus and Poland, 82% of the individuals who participated in

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<sup>235</sup>. Ibid., p. 59.

<sup>236</sup>. Matevžič G. (2017), "Unidentified and unattended. The response of Eastern EU member states to the special needs of torture survivor and traumatised asylum seekers", available at <https://www.refworld.org/reference/countryrep/hhc/2017/en/118238>, accessed 3 November 2025.

<sup>237</sup>. Ibid, p. 5.

the programme were in situations of vulnerability. After two years, 99% of participants from competent authorities reported that the case management programme had a positive impact on individuals' ability to participate in informed decision making, while 96% reported a positive impact on their ability to engage with immigration procedures over time.<sup>238</sup>

## 5. Protection of migrants and refugees subject to sexual violence

The Austrian Integration Department dedicated funds to combating sexual violence such as forced marriage, abduction and female genital mutilation. This included funding for a co-ordination office providing advice and support on issues related to female genital mutilation, as well as for the National Competence Centre for the Prevention of Abduction and Family Violence. The country also ran multilingual information campaigns for victims of violence, recognising that women and girls in migration were generally less aware of the services available.<sup>239</sup>

## 6. Integration of migrants and access to rights and services

The United Nations Network on Migration identified promising practices in the provision of essential services to migrants,<sup>240</sup> with some examples emphasising support to vulnerable migrants.

For instance, Portuguese authorities have identified “stigma and discrimination” towards certain categories of migrants “in law, practice, and attitude of service providers”. This leads to increased “vulnerability” for these groups and to “inequalities and inequities in accessing health services”. Authorities developed a targeted response to address the issue in the form of a “one-stop centre” for integration services in Portugal. This “one-stop centre” is co-ordinated by the High Commission for Migration, which operates a network of national institutions across the country tasked with helping migrants overcome access barriers to various services (health, education, social security, employment and others). The High Commission for Migration also collaborates with the Bureau of Support to Victims to address cases of domestic violence, gender-based violence, forced child marriage, etc. This service benefits from the insights of cultural mediators with a migration background. As concluded: “a network allowing integrated and coordinated national and local multi-disciplinary action and strong liaison with local realities through a single entry point has proved to be an effective practice in migrant services delivery”.<sup>241</sup>

238. Reported in PICUM (2021), “Preventing and addressing vulnerabilities in immigration enforcement policies”, available at [https://picum.org/our-publications/?\\_languages=english&\\_paged=10](https://picum.org/our-publications/?_languages=english&_paged=10), accessed 3 November 2025.

239. European Migration Network (2024), “Asylum and migration overview 2024”, p. 60, available at: [https://home-affairs.ec.europa.eu/networks/european-migration-network-emn\\_en](https://home-affairs.ec.europa.eu/networks/european-migration-network-emn_en), accessed 3 November 2025.

240. United Nations Network on Migration (2022), “Promising practices in the provision of essential services to migrants”, available at <https://migrationnetwork.un.org/resources/promising-practices-provision-essential-services-migrants>, accessed 3 November 2025.

241. Ibid, p. 13-14.

In addition, the United Nations Network on Migration also highlighted a special programme for the regularisation of vulnerable migrant groups in Portugal. This is the “SEF em Movimento” programme, designed to support “vulnerable migrant groups, such as neglected minors, elders, pregnant women, patients needing bed-rest or hospitalized, people with mental, sensory and motor deficits, detainees, and socially disadvantaged groups”. Support was practically delivered through formal and informal partnerships with various organisations, leading to the issuance of residence permits and facilitating integration and access to education and other services, including family reunification and access to citizenship.<sup>242</sup>

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242. Ibid, 41-42.

## V – Conclusions and recommendations

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The instruments and case law analysed in this thematic paper point to an expanding body of increasingly detailed norms, with several instruments often needing to be applied in combination. This encourages an intersectional approach to vulnerability in migration. In addition, the paper has illustrated that vulnerability cannot be understood without its relational dimension: the vulnerability of an individual varies according to their environment and the context in which they find themselves.<sup>243</sup> That is why experts have argued that we should “give more and better value to contexts of vulnerability, rather than to vulnerable people and/or groups”.<sup>244</sup> The intensifying focus on vulnerability in the context of migration and asylum thus presents a demanding challenge for Council of Europe member states: to take into account, in an individualised and contextualised manner, both the fragility inherent in the human condition and that arising from characteristics pertaining to specific groups. Against this background, a number of practical recommendations could assist Council of Europe member states in realising their obligations under Council of Europe (and EU) law.

### Attention to ongoing legal developments and to interactions between legal systems and sources

As Council of Europe and EU law on the vulnerability of migrants and refugees continues to evolve, it is recommended to regularly monitor developments in the case law of the Court and to consult the most up-to-date versions of relevant case law guides. In addition to the Court’s guide on immigration case law, guides on transversal themes (e.g. children’s rights) and on individual articles of the Convention are also regularly updated.<sup>245</sup> Similarly, all of the Council of Europe bodies mentioned above (e.g. CPT, ECSR and GRETA) regularly produce reports and documentation that further clarify and inform the applicable standards.

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243. Soulet M.-H. (2014), “La vulnérabilité, une ressource à manier avec prudence”, in Burgorgue-Larsen L. (ed.) (2014), *“La vulnérabilité saisie par les juges en Europe”*, Collection Cahiers européens, N°7, Pedone, pp. 7-30. See also Nedelsky J. (2012), *Law’s relations: a relational theory of self, autonomy, and law*, Oxford University Press.

244. Burgorgue-Larsen (2014), “La vulnérabilité saisie par la philosophie, la sociologie et le droit. De la nécessité d’un dialogue inter-disciplinaire”, in Burgorgue-Larsen L. (ed.), *“La vulnérabilité saisie par les juges en Europe”*, Collection Cahiers européens, N°7, Pedone, p. 242.

245. Court, “All Case-Law Guides”, available at <https://ks.echr.coe.int/web/echr-ks/all-case-law-guides>, accessed 3 June 2025.

The Council of Europe has pledged to encourage its member states to accede to the relevant UN and Council of Europe instruments – <sup>246</sup> – in line with expert recommendations.<sup>247</sup> Experts have also acknowledged the heightened vulnerability of certain stateless persons and have recommend adapting judicial and administrative procedures accordingly, especially for “women, unaccompanied children, and victims of trafficking”.<sup>248</sup>

Given the uneven ratification rate of certain Council of Europe treaties referenced in this thematic paper, it is advisable to verify whether and where these instruments apply when addressing cases involving migrant vulnerability. It is also important to take into account Council of Europe instruments that, while not migration-specific, apply transversally and may offer additional tools for the protection of vulnerable migrants.

Finally, it is recommended to remain mindful of the interplay between distinct but interconnected legal systems and sources. For example, in the context of gender-related vulnerabilities, the Convention, the Istanbul Convention and relevant EU law may all be applicable in combination).

## **A co-operative and evolutive approach to vulnerability**

Identifying and addressing vulnerability requires attention to both individual and contextual/environmental factors, including a person's migration background.

It is also important to acknowledge that vulnerability may arise or evolve over time. Procedures and actors must therefore be equipped to detect and respond to such changes as they occur.

For this reason, co-operative work between authorities should be encouraged – operating in networks rather than in silos – since vulnerability is multifactorial, and addressing it requires a multidisciplinary and multilevel governance approach. Such co-operation entails, *inter alia*:

- ▶ the development of interstate co-operation and the exchange of good practices through official networks such as the Council of Europe Network of Focal Points on Migration;
- ▶ close collaboration with National Human Rights Institutions, Ombudspersons and specialised civil society organisations at all stages of policy development and implementation;
- ▶ supporting and empowering local government bodies and communities to respond effectively to the needs of vulnerable migrants and refugees, and to foster their socio-political inclusion and integration.

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246. Council of Europe pledge GRF-00133, submitted on 28 February 2020 in the framework of the implementation of the Global Compact on Refugees: “Encourage member states to accede to the relevant European and international statelessness conventions and withdraw reservations”, available at: <https://globalcompactrefugees.org/pledges-contributions>, accessed 1 October 2025.

247. CDCJ (2022), “Statelessness and the right to a nationality in Europe: progress, challenges and opportunities”, available at: <https://rm.coe.int/cdcj-2022-12-statelessness-report-of-the-international-conference-and-/1680a74cfa>, accessed 12 June 2025, p. 22.

248. *Ibid.*, p. 27.

## Addressing migrant vulnerabilities throughout administrative processes

Vulnerabilities must be addressed at all stages and in all environments where migrants may find themselves during various administrative procedures. This requires authorities to adopt practices that take into account vulnerability in (at least) the following situations and contexts.

- ▶ **Border operations:** authorities should effectively plan for the provision of specialised services in border processing facilities to meet the specific procedural guarantees and reception needs of vulnerable applicants. These services include, among others, medical and psychological assistance.
- ▶ **Reception facilities:** monitoring at Council of Europe, EU and national levels should ensure the systematic implementation of vulnerability assessments and verify that special (reception) needs are met, including access to healthcare.
- ▶ **Asylum procedures:** procedures must allow for the thorough identification and assessment of vulnerability factors in light of current legal frameworks and case law (e.g. relating to gender), which may justify the need for international protection.
- ▶ **Other immigration procedures:** for example, family reunification procedures require the assessment of dependency between family members and consideration of the best interests of the child.
- ▶ **Combating trafficking in human beings:** vulnerabilities (including those related to migratory backgrounds) must be identified and addressed at all stages: before, during and after proceedings involving victims.
- ▶ **Detention:** vulnerability must be assessed before making a (last-resort) decision to detain, and any special needs must be addressed throughout the entire period of detention.
- ▶ **Return operations:** authorities should remain alert to the possible evolution of a migrant's vulnerability while return decisions are pending and during the implementation of return operations.

## Monitoring mechanisms and remedies

Information gathered from a variety of sources – including National Human Rights Institutions, Ombudspersons and civil society organisations – should inform both the content and outcomes of monitoring activities at state and local levels.

Concrete mechanisms must be established, at both state and local levels, to enable vulnerable individuals to lodge complaints when their procedural or reception needs are not adequately met. Clear procedures should be in place to ensure timely follow-up, appropriate responses and access to redress where necessary.



This thematic paper is published by the Council of Europe Division on Migration and Refugees. It provides a concise overview of the main Council of Europe and European Union instruments, as well as the case law of the two European courts, relating to vulnerability in the context of migration and asylum. The aim is to further support Council of Europe member states in strengthening their laws and practices in this area, in line with existing and evolving European standards.

It aligns with the Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025). The action plan proposes a targeted assistance package for member states, enhancing their capacity to identify and address vulnerabilities throughout asylum and migration procedures, based on its four main pillars.

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