



FACULTY OF LAW  
Lund University

Ágnes Szalóki

Vulnerable Asylum Seekers in the Common European Asylum System. The Treatment and  
Identification of Unaccompanied Minors and Women in the Asylum Procedure

JAMM07 Master Thesis

International Human Rights Law  
30 higher education credits

Supervisor: Eleni Karageorgiou

Term: Spring 2017



## **ABBREVIATIONS**

AA - Age assessment

APD - Asylum Procedures Directive Directive

APD recast - Asylum Procedures Directive Directive recast

Art - Article

CAT - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CEAS - Common European Asylum System

CEDAW - Convention on the Elimination of All Forms of Discrimination against Women

COI - Country of origin information

CRC - Convention on the Rights of the Child

CRC - Convention on the Rights of the Child or The UN Declaration of the Rights of the Child

CRPD - Convention on the Rights of Persons with Disabilities

Commission - European Commission

Convention - United Nations 1951 Convention relating to the Status of Refugees

Council - European Council

EASO - European Asylum Support Office

ECHR - European Convention on Human Rights

ECJ - European Court of Justice

ECRE - European Council on Refugees and Exiles

ECtHR - European Court of Human Rights

EU - European Union

FGM - Female genital mutilation

FRA - Fundamental Rights Agency

ICCPR - International Covenant on Civil and Political Rights

ICERD - International Convention on the Elimination of All Forms of Racial

ICESCR - International Covenant on Economic, Social and Cultural Rights

IRB - Canadian Immigration and Refugee Board

NGO - non-governmental organisation

Protocol - 1967 Protocol Relating to the Status of Refugees

QD - Qualification Directive

QD recast - Qualification Directive recast

RC - Refugee Convention

RC - United Nations 1951 Convention relating to the Status of Refugees

RCD - Reception Conditions Directive

RCD recast - Reception Conditions Directive recast

UAM - Unaccompanied minor

UNHCR - The Office of the United Nations High Commissioner for Refugees

UNICEF - The United Nations Children's Fund

## TABLE OF CONTENTS

<b>ABBREVIATIONS</b>	<b>3</b>
<b>Chapter I</b>	<b>7</b>
<b>INTRODUCTION</b>	<b>7</b>
<b>Chapter II</b>	<b>9</b>
<b>METHODOLOGY, LIMITATIONS</b>	<b>9</b>
Methodology	9
Limitations	10
<b>Chapter III</b>	<b>11</b>
<b>THEORETICAL FRAMEWORK AND DEFINITIONS FOR VULNERABILITY.</b>	<b>11</b>
<b>INTRODUCING FEMALE AND UNACCOMPANIED MINOR ASYLUM SEEKERS</b>	<b>11</b>
1. Vulnerability in theory	11
2. Definitions	13
3. The significance of vulnerable asylum applicants	14
a) Minors	14
b) Women	16
<b>Chapter IV</b>	<b>18</b>
<b>VULNERABILITY IN INTERNATIONAL LAW</b>	<b>18</b>
1. UNHCR and asylum	18
2. Asylum and the Refugee Convention, Gender and age perspectives	21
3. Asylum in International Human Rights Law, Gender and age perspectives	23
a) Children's rights	24
b) Women's rights. Gender-related persecution of female asylum seekers	26
<b>Chapter V</b>	<b>31</b>
<b>VULNERABILITY WITHIN THE COMMON EUROPEAN ASYLUM SYSTEM</b>	<b>31</b>
1. The Common European Asylum System	31
a) Asylum Procedures Directive and its recast	34
b) Reception Conditions Directive and its recast	37
c) Qualification Directive and its recast	38
d) Future amendments and current protection in the EU	41
2. European Asylum Support Office (EASO)	43
3. Vulnerability in the CEAS	45

a) Status determination and protection of female asylum seekers	47
b) Status determination and protection of UAMs	48
<b>Chapter VI</b>	<b>52</b>
<b>MECHANISMS TO IDENTIFY AND ADDRESS VULNERABILITY: INTERVIEW DURING THE ASYLUM PROCEDURE, AGE ASSESSMENT PROCEDURE</b>	<b>52</b>
1. Interviewing vulnerable persons	53
2. Support in identifying special needs	57
3. Age as vulnerability factor in asylum law	59
a) Age assessment	60
<b>Chapter VII</b>	<b>65</b>
<b>SUMMARY</b>	<b>65</b>
<b>Chapter VIII</b>	<b>67</b>
<b>THE WAY FORWARD</b>	<b>67</b>
<b>SUGGESTIONS FOR A MORE COMPREHENSIVE APPROACH TO VULNERABILITY IN THE CEAS</b>	<b>67</b>
<b>BIBLIOGRAPHY</b>	<b>71</b>

## Chapter I

### INTRODUCTION

*'[...] the number of asylum seekers rose at a more rapid pace, with 431 thousand applications in 2013, 627 thousand in 2014 and around 1.3 million in both 2015 and 2016. As such, the number of asylum applications within the EU-28 in 2015 and 2016 was approximately double the number recorded within the EU-15 during the previous relative peak of 1992.'*<sup>1</sup> Last year, almost one-third of the total number of applicants asking for international protection in the EU for the first time, were minors, and more than half were between 18 and 43 years old.<sup>2</sup>

Among the increasing number of asylum applications lodged in the EU, and a significant proportion of children, there is likely to be a high number of vulnerable applicants, such as unaccompanied minors, elderly people, pregnant or single women, people with disabilities, who have special needs and require special attention from the authorities. One of the goals of this paper is to explain vulnerability and its factors by demonstrating two focus groups, unaccompanied minors, and women through general approaches to vulnerability and theories before arriving at explaining what asylum is, and how law interacts with vulnerability with relevant provisions in the EU.

The EU law and legal obligations do not specify elaborately how to, and to what extent identify vulnerable asylum seekers however, there are legal grounds, although some of them are rather vague. The vulnerable category itself has only been introduced a few years ago and States are clearly struggling with approaching the topic, while case law is limited. Consequently, the identification in practice is missing in many Member States, posing human rights risks for example on the rights of the child. Within the scope of the analysis carried out in the paper, the law, practice and legal complexities will be demonstrated in connection with vulnerable applicants and the identification of their special needs.

The lack of clear guidances leaves too much place for the Member States to jeopardise the human rights of certain asylum seekers, although it is not in line with the ideology of the Common European Asylum System, which is to unitedly and efficiently act in the field of asylum. The paper aims to reveal challenges and gaps in this aspect, and tries to find out whether the CEAS responds well to the needs of vulnerable applicants.

---

<sup>1</sup> Asylum statistics, Eurostat, available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics) Downloaded: 16.05.2017

<sup>2</sup> Ibid

Altogether, the research targeted to reveal problems of this category of asylum seekers: their access to the asylum procedure, the process of identifying them as vulnerable asylum seekers and thus receive protection suitable to their needs.

What factors are needed to be taken into account by the competent authorities in the identification process, given the legal background within the CEAS applicable to vulnerable asylum seekers?

How are these groups treated and what can be done to effectively identify their special needs?

By showing the complexity of vulnerability in asylum, some legal or systematic gaps will be exposed, with suggestions of scholarly approach or competent and respected organisations' recommendations. By the end of this paper, it will be clear why vulnerable asylum seekers have to be taken into consideration and in what way, by what means it can be reached.



## **Chapter II**

### **METHODOLOGY, LIMITATIONS**

#### Methodology

The paper's main goal is to demonstrate vulnerability in asylum from a legal perspective, and for that reason, it collects relevant provisions of the European Union *acquis* and available information on the topic for analysis.

For the support of the central argument, a legal, qualitative analysis is carried out in the traditional way<sup>3</sup>: stating that there are vulnerable applicants in the asylum context, describing the law applicable to them, applying it in certain situations (examples), discussing the nature of the law and find out if it conflicts with practice through an assessment of the gained information. If it does, solutions will be proposed from a wide-angle approach.

The qualitative analysis rests on theoretical frameworks, mainly scholarly literature and laws as primary sources. Laws concern some international treaties and conventions, but mainly limited to European Union *acquis* and case law, nevertheless it is not exhaustive.

The methodology consists of a literature study, including a study of legislations, international conventions, and relevant research.

The traditional analysis is reflected in the structure of the paper as well: Chapter III describes the theoretical framework and definitions for vulnerability and vulnerability in asylum law, moreover it sheds light on the significance of vulnerable applicants. Chapter IV explains asylum in the context of International Law, the relevance of UNHCR in depth, followed by demonstrating the relation between the Refugee Convention and vulnerable applicants, highlighting children's and women's rights. Chapter V provides the details of legal instruments in the CEAS with a focus on provisions concerning vulnerable persons. Chapter VI deals with the identification through the interview in asylum procedures, emphasising practicalities in connection with UAMs and female applicants, and on how the interview in the status determination procedure can help identifying special needs. Age assessment is also discussed as part of the identification process.

Key definitions are provided under each chapter.

---

<sup>3</sup> As in Laura P. Graham, *Why-Rac? Revisiting the Traditional Paradigm for Writing About Legal Analysis*, *Kansas Law Review*; 2015, Vol. 63, p681-715, 35p and Mary S. Lawrence, *The Legal Writing Institute the Beginning: Extraordinary Vision, Extraordinary Accomplishment*, 11 *LEGAL WRITING* 213, 227 (2005)

The paper for the above-described purposes was conducted through the use of the following research tools: legal instruments, reports, recommendations, guidelines, articles, books, studies, fact sheets, handbooks, press releases, judicial cases.

As for the choices of sources, UNHCR as a supervisory body for the Refugee Convention, and EASO as the EU agency for asylum are frequently referred to throughout the analysis, because they both are specialised on asylum globally and extensively. The Fundamental Rights Agency's reports are also relied on since they carry out many field works and researches in the area of asylum. The European Commission being the executive body of the EU is often cited, especially for its reporting function and because it envisages important new amendments.

## Limitations

The paper emphasises vulnerable persons within the European Union, based on the EU law through some examples, but not limited to any Member States.

In order to illustrate vulnerable applicants, two categories will be highlighted: women and unaccompanied minors, although there are more groups of applicants with special needs. Still, these are the two most common groups of asylum seekers with special procedural and reception needs, that is why they were chosen for the purpose of the analysis. When exposing the problems within the two categories, the approach was limited to examine the access to protection and the protection grounds, therefore that phase is examined when applying for asylum and being in the asylum procedure, although many other aspects could have been reviewed, such as certain rights (for example access to health care or education), reception needs after gaining protection, etcetera.

The paper furthermore discusses the identification of these groups through EU law, recommendations, guidelines and policy papers.

In the analysis, certain actors or organisations are mentioned more than others, which does not mean those are the only active participants in the field. The reasons for prioritising are indicated in the respective chapters.

The structure of analysing the two category examples are not identical since there are different factors influencing their vulnerabilities and different needs and grounds for their protection.<sup>4</sup>

---

<sup>4</sup> For example within chapter VI, age assessment is briefly demonstrated, as in many cases the age of the minor applicants is unknown or questioned and it needs to be determined what rules apply, but those are irrelevant in women's cases. Gender-related persecution is mentioned within the group of female asylum seekers, because analysis provides a better insight under that category than under UAMs, even though girls can experience such a form of persecution as well.

## Chapter III

### THEORETICAL FRAMEWORK AND DEFINITIONS FOR VULNERABILITY. INTRODUCING FEMALE AND UNACCOMPANIED MINOR ASYLUM SEEKERS

Vulnerability is frequently associated with weakness, dependency, deprivation, handicap or an absence of capacity. Provided the context, it refers to qualities of people, who due to their personal situations are depending on others, like children or elderly. Mostly, external factors, different than those one has control over make people vulnerable and as a result, they have special needs. Vulnerable persons are also often referred to as people with special needs.

As in the Cambridge dictionary vulnerable means: able to be easily physically, emotionally, or mentally hurt, influenced or attacked.<sup>5</sup> Other meanings reveal: exposed to the possibility of being attacked or harmed, either physically or emotionally.<sup>6</sup> The word comes from late Latin *vulnerabilis*, from Latin *vulnerare*: ‘to wound’, from *vulnus*: ‘wound’.

But what is its relevance in law?

#### 1. Vulnerability in theory

Martha Albertson Fineman argued in her article that *‘vulnerability is - and should be understood to be - universal and constant, inherent in the human condition.’*<sup>7</sup> Her approach has created a new concept of the vulnerable subject and it ‘ [...] *has the potential to move us beyond the stifling confines of current discrimination-based models toward a more substantive vision of equality.*’<sup>8</sup>

Fineman claims that people as individuals differ on many levels, due to economic and institutional relationships, since for instance society can lessen or compensate vulnerabilities through programs, thus when carrying out a vulnerability analysis it must have both an individual and an institutional component.<sup>9</sup> She adds, that the vulnerability subject makes not only theorists drawing attention to bodily needs and dependency, but States being responsive to and responsible for vulnerability.<sup>10</sup> *‘We*

---

<sup>5</sup> Cambridge Dictionary online version, searching world vulnerable as adjective, available at: <http://dictionary.cambridge.org/dictionary/english/vulnerable> Downloaded: 04.04.2017

<sup>6</sup> Oxford Dictionary online version, searching world vulnerable as adjective available at: <https://en.oxforddictionaries.com/definition/vulnerable> Downloaded: 04.04.2017

<sup>7</sup> p1 in Fineman, Martha Albertson (2008) "The Vulnerable Subject: Anchoring Equality in the Human Condition," *Yale Journal of Law & Feminism*: Vol. 20: Iss. 1, Article 2. Available at: <http://digitalcommons.law.yale.edu/yjlf/vol20/iss1/2> Downloaded: 04.04.2017

<sup>8</sup> Ibid

<sup>9</sup> p10, Ibid

<sup>10</sup> p12-13, Ibid

*must begin to think of the state's commitment to equality as one rooted in an understanding of vulnerability and dependency, recognising that autonomy is not a naturally occurring characteristic of the human condition, but a product of social policy.*'<sup>11</sup>

Vulnerability in law cannot and should not be ignored, as it has implications on the individual's rights and obligations. For example in criminal law, special rules apply for minors, but being a minor is only one factor among many influencing factors. In the field of asylum, the personal circumstances of the applicant are especially important, since the status determination procedure assesses the claim of the asylum seeker in light of these. It also determines how the applicant will be treated through the procedure, namely whether he or she has some special procedural needs, which require extra safeguards and attention from the authorities.

In a study commissioned by one of the European Parliament's Committees<sup>12</sup>, an example illustrates vulnerability of asylum-seekers: *'a female migrant or asylum seeker who is pregnant has clearly identifiable special needs. If these needs are taken into consideration, this person's vulnerability can be reduced. On the other hand, an isolated woman's special needs do not make it possible to identify her as vulnerable but the conditions of her arrival and detention may place her in a situation of vulnerability.'*<sup>13</sup> Hence, the study collected factors influencing cases of asylum applicants: risk factors, personal factors, and environmental factors.

The risk factors are events experienced by the people prior to their arrival to the EU, such as living conditions (war, economic disasters etc.), and conditions experienced during migration, often very trying (sea or desert crossings, exploitation by traffickers etc.).

The personal factors *'concern people's special and specific condition: gender, age, physical conditions, existence of an impairment which limits their aptitudes, but also the existence of special needs as regards the treatment of this impairment. The identification of these personal factors is one way to respond to people's special needs in order to reduce their vulnerability.'*<sup>14</sup>

The environmental factors mean the experience of asylum seekers after arriving at the Member State (reception conditions, medical, legal and social needs etc.).

These factors are to be considered in every application, as they influence the applicant's vulnerability and can be best evaluated after the personal interview in the procedure. Interviewing asylum seekers is challenging and requires particular skills. Vulnerable persons may need more

---

<sup>11</sup> p23, Ibid

<sup>12</sup> European Parliament, The conditions in centres for third country national (detention camps, open centres as well as transit centres and transit zones) with a particular focus on provisions and facilities for persons with special needs in the 25 EU member states, December 2007, available at: <http://www.statewatch.org/news/2007/dec/eu-ep-detention-centres-report.pdf>, Downloaded: 19.03.2017

<sup>13</sup> p30, Ibid

<sup>14</sup> Ibid

attention than others. That is why the role of the interview will be demonstrated in the paper, when it has already been established why vulnerabilities are important, and what they mean.

## 2. Definitions

Practice has shown that vulnerabilities have to be defined and related claims to be separated from other applications. The Canadian Immigration and Refugee Board (IRB) implemented the following definition to vulnerability:

*'[...] vulnerable persons are individuals whose ability to present their cases before the IRB is severely impaired. Such persons may include, but would not be limited to, the mentally ill, minors, the elderly, victims of torture, survivors of genocide and crimes against humanity, women who have suffered gender-related persecution, and individuals who have been victims of persecution based on sexual orientation and gender identity.'*<sup>15</sup> The Canadian approach is sensitive to address special needs on a case-by-case basis, not limiting vulnerabilities to certain categories of people and emphasising an early identification of special needs.

For the purpose of this paper, a vulnerable applicant is an applicant in need of special procedural or reception guarantees, emphasising the special needs of the individual in the broadest way possible, as enshrined in the EU law and the respective directives<sup>16</sup>, which will be detailed in Chapter V. Thus, applicants with special needs are vulnerable, covering the following categories of applicants: minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, however the list is non-exhaustive.

Migrants are exposed to vulnerability, but it does not mean that every applicant has special needs. The identification, for example through an interview plays an important role in filtering the types of applicant profiles. It is both for the sake of the authority to have an insight of the applicant's claim, and separate non-credible applicants claiming to be vulnerable to receive higher protection or better reception conditions from those, who are in need of special safeguards due to their weaknesses. In

---

<sup>15</sup> Canadian Immigration and Refugee Board, Chairperson Guideline 8: Procedures With Respect to Vulnerable Persons Appearing Before the IRB, Guideline on Vulnerable Persons, available at: <http://www.irb-cisr.gc.ca/Eng/BoaCom/references/pol/GuiDir/Pages/GuideDir08.aspx#a2> Downloaded: 01.05.2017

<sup>16</sup> As in Art 21 of 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, and Article 22 of 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)

other words, as much as the identification itself helps to address special needs and to provide an adequate protection, it may select malicious behaviours and find abuses of the asylum system.

### 3. The significance of vulnerable asylum applicants

#### a) Minors

Among asylum seekers, many have special needs due to their special circumstances, although this is not reflected in the decisive instrument in refugee protection, the Refugee Convention (RC).

Violence, conflicts, poverty, natural disasters, desire for a safe or better life are just a few of many factors making millions of people leave their countries. UNICEF reported: *‘Sixty-five million children around the world are on the move – running from conflict, poverty and extreme weather, looking for a better life and a place to call home. They are among the most vulnerable people on earth – children on the edge. Their numbers are not likely to fall. It’s one of the greatest challenges of our age.’*<sup>17</sup>

Lots of children, accompanied or unaccompanied arrive in Europe on the sea, through dangerous journeys, where many lose their families and others pay with their lives.<sup>18</sup> In the Eastern-Mediterranean in 2015, 25% of all deaths of illegal migrants were children’s.<sup>19</sup> Numbers are striking, asylum systems of hosting countries are failing to deal with the protection of minors, while children are exposed to trafficking, abuse, and exploitation. *‘Apart from addressing the factors that are forcing children to travel alone from their homes, a comprehensive protection, monitoring system needs to be developed to protect them.’*<sup>20</sup>

Minors have a limited capacity due to their age and maturity, their protection is especially important. That is why many international and national organisations such as UNICEF, Terre des Hommes, Save the Children, just to name a few, and children’s ombudsmen, children’s rights movements, advocacy groups, lawyers are dedicated to their assistance.

Arriving in a country and seeking asylum as a child comes with various risk factors: detention, age determination, inadequate reception conditions and health service, long waiting time for the status determination procedure and for the final decision, lengthy attempts to family reunification etc.

---

<sup>17</sup> Article on the webpage of UNICEF, Migrant and refugee children are often children in danger, available at: <https://www.unicef.org/emergencies/childrenonthemove/> Downloaded: 01.05.2017

<sup>18</sup> Article on the webpage of UNICEF, Number of unaccompanied or separated children arriving by sea to Italy doubles in 2016, available at: [https://www.unicef.org/media/media\\_94399.html](https://www.unicef.org/media/media_94399.html) Downloaded: 01.05.2017

<sup>19</sup> IOM and UNICEF Data Brief: Migration of Children to Europe, 30 November 2015, [http://www.iom.int/sites/default/files/press\\_release/file/IOM-UNICEF-Data-Brief-Refugee-and-Migrant-Crisis-in-Europe-30.11.15.pdf](http://www.iom.int/sites/default/files/press_release/file/IOM-UNICEF-Data-Brief-Refugee-and-Migrant-Crisis-in-Europe-30.11.15.pdf) , Downloaded: 01.05.2017

<sup>20</sup> Supra note 18, Ibid

Lives of children depend on adults, and not only on the policy makers. Everyone shares common responsibility, thus their protection should be of primary consideration regardless of legal status, country of origin, or social background. Protection and promotion of the rights of the child are also one of the objectives of the European Union.<sup>21</sup>

In the recognition of children's needs the Convention on the Rights of the Child (CRC) is fundamental in defining every human being under 18 years old as child<sup>22</sup>, expressing the importance of the best interest of the child as a primary consideration in all circumstances<sup>23</sup>, that children should not be separated from their families, and refugee children should be assisted in tracing their family members<sup>24</sup>, moreover that *'States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.'*<sup>25</sup>

As affirmed by the Fundamental Rights Agency (FRA), the number of unaccompanied minors in the EU is striking. *'Their identification and registration bring additional challenges, and their protection needs are often neglected. On arrival, these children are often 'accompanied', but the accompanying adult(s) may not necessarily be able, or suitable, to assume responsibility for their care. These children are also at risk of exploitation and abuse, or may already be victims. Their realities and special needs require additional attention. The lack of data and guidance on separated children poses a serious challenge.'*<sup>26</sup>

Facing many dangers, UAMs are entitled to protection under the CRC, complemented with the CRC Committee's General Comments 6 and 14<sup>27</sup>, the Hague Convention for the Protection of Children<sup>28</sup>, the Charter of Fundamental Rights of the European Union and all EU directives mentioned in the following chapters.

---

<sup>21</sup> Webpage of European Commission, Rights of the Child, available at: [http://ec.europa.eu/justice/fundamental-rights/rights-child/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/rights-child/index_en.htm) Downloaded: 09.05.2017

<sup>22</sup> Art 1, 1989 Convention on the Rights of the Child

<sup>23</sup> Art 3.1, Ibid

<sup>24</sup> Art 9, 22.2 Ibid

<sup>25</sup> Art 22.1 Ibid

<sup>26</sup> Fundamental Rights Agency, Current migration situation in the EU: separated children, 2016 available at: <http://fra.europa.eu/en/publication/2016/december-monthly-migration-focus-separated-children> Downloaded:05.05.2017

<sup>27</sup> Committee on the Rights of the Child General Comment No. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 2013

<sup>28</sup> Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993

How UAMs and children are special in the light of international protection will be analysed together with its challenges, and legal, practical possibilities later.

## b) Women

Protection and safety are crucial for women when applying for asylum due to being traumatised by the journey itself, or by the persecution, or situation at the country of origin, not to mention other circumstances, like single motherhood, pregnancy or illness. Many become widows as a result of war or armed conflict, victimised by boarder guards or other migrants<sup>29</sup>. There might be poor conditions, overcrowded conditions in refugee camps on the way to Europe, no separation of men and women, where the latter are exposed to exploitation, sometimes even prostitution.

The Executive Committee of the High Commissioner's Programme pointed out that refugee women and girls '*are exposed to special problems in the international protection field*'<sup>30</sup> and that '*these problems result from their vulnerable situation which frequently exposes them to physical violence, sexual abuse, and discrimination*'.<sup>31</sup> Moreover, the Committee implied that States may consider the interpretation '*that women asylum-seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a "particular social group" within the meaning of Article 1 A(2) of the 1951 United Nations Refugee Convention*'.<sup>32</sup>

Gender development studies were emerging in the '80s, in the lead with Women In Forced Migration and the Gender And Forced Migration paradigms, from among the former became respected, which reflected in '*becoming a fully legitimate, institutionalised element of forced migration discourse*'.<sup>33</sup>

After all, the relation between illegal migration and women (gender) issues arrived at the realisation, but the reasoning why it should be considered in asylum was not yet sufficient. '*[...] forced migration academics and practitioners largely identified, depicted, and responded to 'refugee women' as apolitical and non-agentic victims, either as madonnalike figures (Malkki 1992: 33, 1996: 389), or as weakened, dependent, and vulnerable 'womenandchildren' (Enloe 1991).*

---

<sup>29</sup> Reuters: Female asylum seekers in Greece face sexual harassment, assault, available at <http://uk.reuters.com/article/uk-greece-refugees-women-idUKKCN10G0CV> Downloaded at 28.04.2017

<sup>30</sup> Para c, Executive Committee, Conclusion No. 39 (XXXVI) 1985, Refugee Women and International Protection, 1985, available: <http://www.unhcr.org/excom/exconc/3ae68c43a8/refugee-women-international-protection.html>

<sup>31</sup> Para d, Ibid

<sup>32</sup> Para k, Ibid

<sup>33</sup> Page 4 of 18 in Fiddian-Quasmiyeh, Gender and Forced Migration, The Oxford Handbook of Refugee and Forced Migration Studies, Edited by E. Fiddian-Quasmiyeh, G. Loescher, K. Long, N Sigona, 2014, Oxford University Press



*While increasingly recognizing that women's experiences of displacement differed from men's, these accounts often reduced such experiences to women's vulnerability to sexual violence, rather than exploring how and why women were victimized and persecuted, or recognizing that displaced women could simultaneously be victimized and yet remain active agents deserving of respect, and not simply pity (Hajdukowski-Ahmed, Khanlou, and Moussa 2008: 6).'<sup>34</sup>*

Realising the increased possibility of vulnerability for women is just a part of providing them access to protection, the protection itself greatly depends on the type of persecution they may have experienced. Therefore, there are two factors to consider in gender-related asylum cases: one is the increased risk of vulnerability, the other is the gender-based persecution, but they both originate in gender. *'Gender refers to the relationship between women and men based on socially defined roles that are assigned to one sex or another, while sex is a biological category. The distinction is an important one for refugee protection because not every aspect of the differences between women and men is related to their biology.'*<sup>35</sup>

A key issue is the identification of vulnerability, or special needs of the applicants, to provide adequate procedural safeguards, international protection, and reception circumstances. It is beyond doubt that this approach requires special attention, a well-prepared system, and trained staff of the host country.

Considering gender as a possible ground for vulnerability in the cases of female asylum seekers will be considered as a part of the paper, together with its relation to refugee status determination and whether gender-sensitive interpretations are available.

---

<sup>34</sup> P4-5 Ibid

<sup>35</sup> P1 in UN High Commissioner for Refugees (UNHCR), UNHCR Position Paper on Gender-Related Persecution, 1 January 2000

## Chapter IV

### VULNERABILITY IN INTERNATIONAL LAW

In order to get closer to the vulnerable topic, and its examples, it is inevitable to shed light on fundamental asylum law terms, and legal questions first. Understanding refugee, the levels of protection, and the global approach to asylum law will help guide through vulnerable asylum seeker's needs and rights afterward.

Explaining the Refugee Convention and refugee protection will play a role in the further chapters, where the European Union's asylum system is demonstrated, just like how international human rights law connects to vulnerable asylum seekers, in order to understand what is beyond the Refugee Convention, and prepare the reader for the EU law analysis.

The position of UNHCR as a supervisory body and its role in asylum is going to be explained, and its instruments (guidelines, position papers etc) will be frequently invoked, since *'the High Commissioner's supervisory role in relation to states' compliance with their international obligations towards refugees and asylum-seekers is an integral part of his core mandate and directly linked to ensuring a principled application of the international protection regime'*.<sup>36</sup>

#### 1. UNHCR and asylum

As already established, due to many reasons, such as armed conflicts, political violence, persecution, millions of people have had to flee from their country of origin throughout the years.

Most of the religions have always recognised and practiced refuge, or some sort of protection for those who are in need of it, although there hadn't been any internationally organised form of refuge until the 20th century and the first World War<sup>37</sup>. The League of Nations had a few attempts to nominate commissioners or ambassadors in charge for ethnic minorities e.g. for Germans or Russians, and also many organisations assisted European, Korean or Palestinian refugees after the second World War. Yet, no real system for international assistance was available until the formation of The office of the United Nations High Commissioner for Refugees (UNHCR) in 1950-1951.

---

<sup>36</sup> P6 in United Nations High Commissioner for Refugees, NOTE ON THE MANDATE OF THE HIGH COMMISSIONER FOR REFUGEES AND HIS OFFICE, October 2013

<sup>37</sup> P1, Ibid

UNHCR is governed by the UN General Assembly and the Economic and Social Council and its mandate is set in the 1950 UNHCR Statute<sup>38</sup>. The The General Assembly extended the organisation's mandate in 2003 *'until the refugee problem is solved.'*<sup>39</sup>

*'The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.'*<sup>40</sup>

The nature of UNHCR's position is non-political, humanitarian and social in character, as stated in paragraph 2 of the Statute. The organisation is a multilateral, intergovernmental institution and its mandate is laid down in international treaty law.<sup>41</sup> States are obliged to cooperate with the High Commissioner, for the protection of refugees being its core mandate globally, while other *'functions and responsibilities are also embedded in international law concepts more broadly, such as the surrogate function of diplomatic and consular protection for refugees and stateless persons or international human rights protection concepts.'*<sup>42</sup> UNHCR also intercedes on behalf of refugees, and stateless persons, providing them legal representation, when not being represented on the international level.<sup>43</sup>

*'The heart of refugee protection - asylum and non-refoulement - stem from the basic right of all individuals to seek and enjoy asylum from persecution, as clearly embodied in the 1948 Universal Declaration of Human Rights. [...] A more effective international human rights machinery is essential to strengthen early warning, monitoring, and investigation, and to seek redress within the context of post-conflict rehabilitation.'*<sup>44</sup>

The High Commissioner's words could not be more actual than today, 20 years later, when numerous conflicts are causing human rights violations, triggering migration of millions, with the Syrian civil war standing in the first place. On the other hand, it shows how long it takes for

---

<sup>38</sup> Statute of the Office of the United Nations High Commissioner for Refugees, General Assembly Resolution 428 (V) of 14 December 1950

<sup>39</sup> UNHCR's homepage on Governance, available at: <http://www.unhcr.org/governance.html> Downloaded: 10.05.2017

<sup>40</sup> Introductory note by the Office of the United Nations High Commissioner for Refugees (UNHCR) to the Convention and Protocol Relating to the Status of Refugees, available at: <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf> Downloaded: 10.05.2017

<sup>41</sup> P2 in United Nations High Commissioner for Refugees, NOTE ON THE MANDATE OF THE HIGH COMMISSIONER FOR REFUGEES AND HIS OFFICE, October 2013

<sup>42</sup> Ibid

<sup>43</sup> Ibid

<sup>44</sup> Statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees, to the 51st Session of the United Nations Commission on Human Rights available at: <http://www.refworld.org/docid/4a54bc140.html> Downloaded: 22.05.2017

countries and organisations to get to providing efficient protection to those who are entitled to them by law. The magnitude of the refugee crisis started in 2015 when more than a million asylum seekers entered the EU, from which almost 30% were Syrian citizens, showed that coping strategies are not effective or well constructed.<sup>45</sup> This is straightforwardly deduced from the number of pending applications (almost a million) by the end of 2015, indicating the massive workload of authorities in the EU.<sup>46</sup>

The protection, and care of refugees are the duty of the States, while UNHCR plays an important role in guarding the compliance of the RC, and assisting States in their refugee affairs.

UNHCR is the biggest organisation dealing with the challenges of migration, helping asylum-seekers, protected persons, stateless persons etc, by projects, fieldwork, legal assistance, monitoring, peace-keeping, among many others. It also has the responsibility to supervise the implementation of the RC by States Parties, who are required to cooperate with UNHCR, and provide relevant information, statistical data, and contribute to the protection of refugees by promoting accession to, and implementation of, refugee conventions and laws; ensuring that refugees are treated in accordance with internationally recognised legal standards, that refugees are granted asylum and non-refoulement is respected; promoting appropriate procedures to determine refugee status; and looking for durable solutions for refugees.<sup>47</sup>

The organisation's work had previously been considered more asylum-oriented, reactive and refugee-specific<sup>48</sup>, for dealing mostly with refugees and asylum, and providing assistance mainly in the host countries, having the idea that asylum issues are to be solved in the receiving countries. On the contrary, later on, UNHCR became more pro-active, country of origin-oriented and holistic, by trying to prevent human rights abuses and forced migration, emphasising the duties and obligations of the countries of origin and trying to enable a comprehensive approach to illegal migration, finding long lasting solutions, while keeping in mind the needs of stateless persons, internal migrants, asylum-seekers and returnees, in addition to refugees.<sup>49</sup>

Rights and obligations laid down in the RC mean and reflect the work UNHCR is dedicated to carry out.

---

<sup>45</sup> Eurostat, Asylum quarterly report 15.03.2017, available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_quarterly\\_report](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_quarterly_report) Downloaded: 17.05.2017

<sup>46</sup> Eurostat publication 44/2016 - 4 March 2016, Record number of over 1.2 million first time asylum seekers registered in 2015 available at: <http://ec.europa.eu/eurostat/web/products-press-releases/-/3-04032016-AP> Downloaded: 16.05.2017

<sup>47</sup> P6 in UNHCR, THE 1951 CONVENTION relating to the Status of Refugees and its 1967 PROTOCOL, 2011, available at: <http://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html> Downloaded: 01.05.2017

<sup>48</sup> P30-55 in UNHCR, The State the World's Refugees: In Search of Solutions, Oxford University Press, Oxford, 1995

<sup>49</sup> Ibid

## 2. Asylum and the Refugee Convention, Gender and age perspectives

The Universal Declaration of Human Rights (UDHR) in 1948 mentioned the right to asylum as an individual right: *‘Everyone has the right to seek and to enjoy in other countries asylum from persecution’*.<sup>50</sup>

Later, in 1951 the United Nations Convention relating to the Status of Refugees (RC) was adopted, which - perhaps due to the drafters political reasons - lacks to mention the right to asylum the way expressed in the UDHR, yet it is *‘[...] the centrepiece of international refugee protection today. The Convention entered into force on 22 April 1954, and it has been subject to only one amendment in the form of a 1967 Protocol, which removed the geographic and temporal limits of the 1951 Convention. The 1951 Convention, as a post-Second World War instrument, was originally limited in scope to persons fleeing events occurring before 1 January 1951 and within Europe. The 1967 Protocol removed these limitations and thus gave the Convention universal coverage. It has since been supplemented by refugee and subsidiary protection regimes in several regions, as well as via the progressive development of international human rights law.’*<sup>51</sup>

The RC is an important global, legal instrument dealing with the right and status of refugees for many reasons. Although it does not only provide a common ground and rights of refugee status at an international level, but also imposes duties on States, from which the principle of *non-refoulement* is the most fundamental, no reservation or derogation is allowed from this safeguard. It provides, that no one shall expel or return (“*refouler*”) a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom.<sup>52</sup>

*Non-refoulement* apart from being a rule of customary international law, originates in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>53</sup>, which applies to asylum-seekers and their removals from the host country, in order to avoid torture in any country, not just the country of origin. The principle is so fundamental that it is applicable regardless of the status given to an asylum-seeker.<sup>54</sup>

Non-penalisation and the unity of the family are also highlighted in the instrument<sup>55</sup>.

The refugee definition enshrined in the Convention is a result of a long negotiation process of countries in order to find a terminology suitable for all to create international legal responsibility.

---

<sup>50</sup> UDHR, Article 14 (1)

<sup>51</sup> Supra note 40

<sup>52</sup> Article 33 of the RC

<sup>53</sup> Art 3.1 of the CAT

<sup>54</sup> Para 15, Note on Non-Refoulement (Submitted by the High Commissioner) EC/SCP/2, 1977

<sup>55</sup> Articles 3, 33 and Recommendations B in the RC

With regards to the core of refugee status, Article 1 of the RC defines the following: *‘The term “refugee” shall apply to any person who [...] As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.’*<sup>56</sup>

Persecution is not defined by the RC, it means a kind of harassment of a targeted person or group and can be carried out by authorities or by private parties, if authorities are unable or unwilling to provide effective protection. The threat to life or freedom, and other serious violations of human rights constitute persecution.<sup>57</sup>

Providing refugee is always attached to persecution. The term and, as the RC requires that it is linked to any of the five grounds, have been explained carefully in many sources<sup>58</sup>.

The refugee definition of the Convention shows an individual approach to asylum claims, making States assess the personal background of asylum-seekers, which was a new approach compared to the period before the RC, when whole groups of people received asylum, as indicated earlier.

Although the RC is used for determining the status of vulnerable applicants too, the general rules apply, since some clarification is missing, as gender and age factors are not included in the Convention. This calls for a broader interpretation of the law.

The Convention lays down the principle of non-discrimination<sup>59</sup>, which is an adequate starting point in considering age and gender issues. Without considering age in refugee law, the application of the RC would become discriminatory. Age is not a circumstance, it means an additional factor in asylum, that requires a careful consideration of circumstances within the application, entitling the asylum seeker child to extra safeguards.

Many have criticised the Convention for being male oriented and gender neutral: *‘ [...] historically, the refugee definition has been interpreted through a framework of male experiences, which has meant that many claims of women and of homosexuals have gone unrecognised’*. *‘ [...] the so-called ‘gender neutral’ Convention was developed with adult male, heterosexual asylum applicants in mind, raising questions as to whether ‘adding and stirring’ women, children, and LBGTI applicants*

---

<sup>56</sup> RC Chapter I, Article 1, A (2)

<sup>57</sup> P51 in UNHCR HANDBOOK AND GUIDELINES ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, 2011

<sup>58</sup> UNHCR’s handbook and guidelines in particular

<sup>59</sup> Art 3, RC

*via 'exceptional' guidelines adequately addresses the conceptual biases and protection gaps emerging when assessing the causes of forced migration.* <sup>60</sup>

Apart from age, gender perspectives have to be part of international refugee law too, starting from the identification processes, including age-assessment, to refugee status determination from an age-sensitive approach. Just as Alice Edwards has stressed out in her article, claiming that the evolution of the understanding of the refugee definition calls for including child-specific forms of persecution, persecution by non-State agents, and claims based on sexual orientation or as a result of being trafficked.<sup>61</sup> She points out the need for differentiating between sex and gender and the real challenge in her opinion to status determination is *'to give true effect to the individualized nature of the inquiry, characterized not only by age and sex, but also by cultural, religious, political, physical, mental, and other factors. [...] The assortment of asylum claims of women in particular rests in gender stereotypes of accepted and 'believed' roles. It is these stereotypes which need to be deconstructed, rather than there being a need to recreate international norms.*<sup>62</sup>

Consequently, the root of the problem - according to Edwards - is not the gender-neutral language of the law, therefore when the realisation has come, that women may face different persecution than men, gender claims started to be recognised, adding a gender-inclusive, holistic approach to refugee law.<sup>63</sup> With other words, not only a gender-sensitive understanding and approach to asylum procedures is desirable, but also a gender-sensitive interpretation of the refugee definition.

### 3. Asylum in International Human Rights Law, Gender and age perspectives

Altogether, by 1967, when the Protocol was adopted, all geographic and temporal limits of the GC ended and the two instruments since then are central for refugee status determination especially in the EU.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Rights of the Child (CRC),

---

<sup>60</sup> Supra note 33, P 5-6

<sup>61</sup> P47 in Alice Edwards. "Age and Gender Dimensions in International Refugee Law" Refugee Protection in International Law: UNHCR's Global Consultations on International Protection (2003), Available at: [http://works.bepress.com/alice\\_edwards/29/](http://works.bepress.com/alice_edwards/29/) Downloaded: 04.02.107

<sup>62</sup> p48-49 Ibid

<sup>63</sup> Ibid

Convention on the Rights of Persons with Disabilities (CRPD), European Convention on Human Rights (ECHR) are all decisive instruments in asylum in the EU.

There is a strong causal link between human rights and the protection of refugees, originating in these vital human rights instruments since they lay down the most essential human rights standards. On the whole, it is not only the RC, but international human rights law securing additional guarantees, which is increasingly important in certain situations, for example, asylum detention and the right to be free from torture or inhumane, degrading treatment or punishment.

Although it is very interesting how asylum developed in different parts of the world and how international treaties and case-law included asylum as a basic human right together with non-refoulement, it is beyond the scope and limits of this paper to go any further.

#### a) Children's rights

Rights of the child are human rights: universal, indivisible, and inalienable.

The Geneva Declaration of the Rights of the Child<sup>64</sup>, The UN Declaration of the Rights of the Child (CRC)<sup>65</sup>, UDHR, ICCPR, ICESCR are the most relevant and decisive international legal instruments putting children's rights in focus, and empowering children by creating obligations for States to take actions in establishing adequate jurisprudence, legislation, and safeguards, in order to ensure their protection on multiple levels. Children are entitled to special care and assistance.

The rights provided by these instruments are secured and reflected on in the EU acquis and policies. The Commission is strongly guided by the principles set out in the CRC, enshrined in the Treaty of Lisbon, introducing an objective for the EU to promote the protection of children's rights, just like The Charter of Fundamental Rights of the EU, which applies to all children within the Union.<sup>66</sup>

Within the context of refugee law and asylum, the same rules apply: children's rights are secured with all the safeguards laid down in the aforementioned laws; children are active holders of those rights. However, asylum seeking children are in a vulnerable position<sup>67</sup>, they are lacking documents, they do not speak the host country's language, but foremost, they are not aware of their rights and obligations. As stipulated in General Comments no. 19 to the CRC: “*children in vulnerable*

---

<sup>64</sup> Geneva Declaration of the Rights of the Child, Adopted 26 September, 1924, League of Nations

<sup>65</sup> Article 22, The United Nations Convention on the Rights of the Child, Adopted by General Assembly resolution 44/25 of 20 November 1989

<sup>66</sup> Ibid

<sup>67</sup> ‘*Children in vulnerable situations [...] migrant and refugee children, (around the world, nearly 50 million children have migrated across borders or been forcibly displaced; and children now comprise half of all refugees) unaccompanied children and those without family, face particular risks and are exposed to discrimination, marginalization, institutionalisation and exclusion.*’ - p4 in EU European External Action Service, Guidelines for the Promotion and Protection of the Rights of the Child (2017) Leave no child behind, available at: [https://eeas.europa.eu/sites/eeas/files/eu\\_guidelines\\_rights\\_of\\_child.pdf](https://eeas.europa.eu/sites/eeas/files/eu_guidelines_rights_of_child.pdf) Downloaded: 09.05.2017



*situations” are those who are particularly susceptible to violations of their rights, such as, but not limited to, children with disabilities, children in refugee situations, children from minority groups, children living in poverty, children in alternative care and children in conflict with the law.’<sup>68</sup>*

States have to make steps to work out common and national strategies to protect children. In the last two years, 30% of all asylum applicants in the EU were children<sup>69</sup>, whose special needs require special attention, calling for a complex and effective system with cooperation among the Member States.

The CRC provides *’State Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.’<sup>70</sup>* In fact, considering appropriate protection types may be challenging, as they can differ from State practice to State practice, given their wide legislative discretion under the EU acquis, but that does not change that children *per se* are under a broad protection in international law. How human rights standards are implemented in the EU law will further elaborate children’s rights in asylum in Chapter V, to answer what is provided by law that reflects their special situation.

Case law is limited on UAMs’ protection. In a decision from Slovenia<sup>71</sup>, an UAM was found to belong to a particular social group merely by being a child in Afghanistan, although the decision was later overturned by the national court, requesting the authority for a new procedure, in which the minor got subsidiary protection. It is though unknown, what made the authority disregard the belonging to a particular social group established by the court. This illustrates, how differently a case can be interpreted by resulting sometimes a lower level of protection, questioning what ‘appropriate’ protection means and how it is assessed.

---

<sup>68</sup> Para 3, Committee on the Rights of the Child General comment No. 19 (2016) on public budgeting for the realization of children’s rights

<sup>69</sup> European Commission, Protecting all children in migration: Commission outlines priority actions, Brussels, 12 April 2017, available at: [http://europa.eu/rapid/press-release\\_IP-17-906\\_en.htm](http://europa.eu/rapid/press-release_IP-17-906_en.htm) Downloaded: 01.05.2017

<sup>70</sup> Art 22 CRC

<sup>71</sup> Slovenia - Administrative Court of the Republic of Slovenia, 14 February 2012, I U 42/2012

## b) Women's rights. Gender-related persecution of female asylum seekers

As for the treatment of women, CEDAW<sup>72</sup> is a linchpin and hallmark in defining discrimination and promoting equality between women and men, although equality sometimes lies in the recognition of different treatment for certain groups of people.

Why Edwards is advocating for a gender-sensitive interpretation is for the same reason UNHCR calls States to encourage the adoption of guidelines on women asylum-seekers<sup>73</sup>, in recognition of the fact that women refugees often experience persecution differently than refugee men<sup>74</sup>, due to their gender. UNHCR desires to adjust the refugee definition to women's special claims, so that authorities know what look for, and how to properly interpret the RC in those cases, by stressing out that country of origin information (COI) is decisive.<sup>75</sup>

Some aspects of asylum procedures could benefit from this approach in the identification of specific protection issues, problems and risks refugee women may experience<sup>76</sup>, by setting out *'[...] the evolution of the understanding of the refugee definition to include child-specific forms of persecution, persecution by non-State agents, and claims based on sexual orientation or as a result of being trafficked. In doing so, they cover traditional protection concerns such as the determination of refugee status and the provision of physical security. They outline various measures that can be taken to improve the protection of refugee women.'*<sup>77</sup>

The cited tool of UNHCR collects guidelines for assessing the protection situation of refugee women, protection needs based on physical security problems and legal protection problems faced by refugee women, and also suggests improvements for prevention of abuses and specifies actions.

Sexual violence women may experience is a form of persecution, and a serious form of violation of human rights under international standards<sup>78</sup>, which should be assessed in the light of possible protection the authorities of the country of origin may be able to, and or willing to provide.<sup>79</sup>

---

<sup>72</sup> The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly

<sup>73</sup> Annex 4 - UNHCR Executive Committee Conclusion No. 73 (XLIV) (1993) on Refugee Protection and Sexual Violence, available at: <https://goo.gl/nBzp3a> Downloaded: 11.04.2017

<sup>74</sup> Point (e), Ibid

<sup>75</sup> Supra note 35, P1

<sup>76</sup> Para 16 in Guidelines on the Protection of Refugee Women prepared by the Office of the United Nations High Commissioner for Refugees Geneva July 1991

<sup>77</sup> Ibid

<sup>78</sup> Para. 28 in 1993 Vienna Declaration and Programme of Action, UN doc. A/CONF.157/23, and Paras. 29-30 in 1995 Beijing Declaration

<sup>79</sup> Supra note 76, Para 71

However, grounds for refugee protection are rather numerous, UNHCR has worked out some guidelines and legal reasoning for asylum case-officers to follow in the cases of female applicants:

*‘Case-law has recognized a wide range of valid claims, including sexual violence, domestic violence, punishment and discrimination for transgression of social mores, sexual orientation, female genital mutilation, and trafficking [...]’<sup>80</sup> ‘Victims of domestic violence where the State is unable or unwilling to intervene to provide protection have in recent years increasingly also been recognized as refugees, not least as a result of evolving jurisprudence on ‘membership of a particular social group’. The position adopted by the Executive Committee that ‘women asylum-seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a “particular social group”’<sup>35</sup> has been accepted in numerous jurisdictions.’<sup>81</sup>*

According to UNHCR, punishment for transgression of a law or policy; a law, policy or practice (like FGM), method of implementation of a legitimate law (forced abortion and sterilisation); some forms of discrimination or denial of justice (some sort of domestic violence cases), can also be considered as persecution.<sup>82</sup>

As among all the categories of asylum-seekers, not all women are vulnerable, just as not all asylum applications lodged by women have a gender-related, possible persecution factor. Besides, all the factors within the refugee definition must be fulfilled - well-founded fear from persecution in connection with at least one out of the five conventional grounds - in order to be recognised as a refugee. Nevertheless being a woman carries a higher risk to be subjected to violence, discrimination or persecution, which gives the complexity of women’s claims.

Gender is a relevant component when determining someone’s asylum status. *‘[...] persecution is not necessarily or only caused by the victim’s sex as the ultimate factor; but by the perpetrator’s ideology, dictating that people deviating from their attributed gender role shall be persecuted. For example, women who fear persecution because they transgress social mores in general are not persecuted because they are women; they are persecuted because they refuse to be “proper” women.’<sup>83</sup>*

---

<sup>80</sup> P52 in REFUGEE PROTECTION IN INTERNATIONAL LAW: UNHCR'S GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION, E. Feller, V. Türk, and F. Nicholson, eds., pp. 46-80, Cambridge University Press, 2003.

<sup>81</sup> P53, Ibid

<sup>82</sup> P3-5, UN High Commissioner for Refugees (UNHCR), UNHCR Position Paper on Gender-Related Persecution, 1 January 2000

<sup>83</sup> Ibid, p1

When arriving at the examination of the claim, among the refugee grounds for female asylum seekers, race and nationality are more obvious than religion, political opinion and being part of a social group, in addition, they overlap at times.

*'In certain societies, the role ascribed to women may be attributable to the requirements of the State or official religion. The authorities or other agents of persecution may perceive the failure of women to conform to this role as the failure to practice or to hold certain religious beliefs. At the same time, the failure to conform could also be interpreted by the persecutor as evidence of an unacceptable political opinion that threatens the basic structure from which certain political power flows. [...] For example, ignoring the family planning policies of a certain State could be interpreted by the persecuting agent as a different political opinion. A different political opinion could thus be imputed on the person concerned.'*<sup>84</sup>

Regarding particular social group, the assessment is more complex, yet probably it is the most common ground for protection in gender-related claims. The concept applies to social groups existing irrespectively to the putative fear.<sup>85</sup> COI is influential to get an insight of the country's policies, legislation, factual circumstances and how similarly situated people are treated by law and by society.<sup>86</sup> Furthermore, members of the group have to hold associative qualities that go to the members' identity, as belonging to the group is a factual circumstance, not a legal one.<sup>87</sup>

As an example, marked with the characteristic of being a married woman might form a social group and, if it meets a human rights violation, such as penalty of stoning for not wearing a headscarf in public as prescribed by the customs of the country, the applicant should be treated as a member of the married women's social group. The group is a social group, that exists with or without persecution (not all the members of the group are persecuted just because being married), society sees it as a special group and COI verifies that law provides special rules for such persons, therefore it fits in the theory. Stoning is a disproportional punishment, can be seen as torture, and is a severe physical violation. The given circumstances and information make the applicant eligible for refugee status.

Looking into case-law, only a little information can be found on such claims. In a rather old, but landmark case from the UK, the House of Lords was interpreting the belonging to a particular membership of a social group in Pakistani women's cases.<sup>88</sup> The applicants expressed their fears of

---

<sup>84</sup> P7, Ibid

<sup>85</sup> Ibid

<sup>86</sup> Ibid

<sup>87</sup> P8, Ibid

<sup>88</sup> House of Lords, Judgments - Islam (A.P.) v. Secretary of State for the Home Department, Regina v. Immigration Appeal Tribunal and Another Ex Parte Shah (A.P.) (Conjoined Appeals), 1999

being subjected to a risk of criminal proceedings for sexual immorality, claiming that if found guilty, the punishment may be flogging or stoning to death under Sharia law. The House broke precedent by interpreting the RC in favour for the applicants, saying that ‘women from Pakistan’ form a social group, and it entitles them to protection based on gender-based persecution. It was found that the category of a ‘particular social group’ could not be confined to those categories that the drafters had had in mind, but instead had to be interpreted in light of the anti-discriminatory purposes of the Convention.<sup>89</sup>

Realising how many factors need to be taken into account, it is understandable why Edwards requires a complete gender analysis in the cases of female applicants.<sup>90</sup> She goes even further, by saying that sex is an immutable characteristic, therefore it is within the ambit of social group category.<sup>91</sup> Also, she emphasises that internal flight alternatives should be considered for unaccompanied and single women in exceptional cases only, since for unmarried women, living alone might be impossible in the country of origin.<sup>92</sup> Speaking of returning, other factors should be considered too, such as psychological effects of rape, and sexual violence, in which as a consequence, women may be victimised, or ostracised by society or by their own families.<sup>93</sup>

Edwards explains that the omission of mentioning sex in the RC implies, that it had not been understood by anyone at the time of drafting the law, that individuals may ‘[...] *suffer different forms of persecution, for different reasons, including age- and gender-related ones.*’<sup>94</sup> This opinion was reflected in the British case mentioned above, proving that law has to be applied flexible, adjusted to current situations, otherwise it can be discriminatory and in violation of human rights:

*‘Although international law is intended to govern relations between States, human rights law (and refugee law) have at their centre the rights of individuals. Thus, the failure of a State to fulfil its obligations can result in a breach of an individual’s rights, as well as a breach of human rights (and refugee) law. A State’s failure in this regard includes unwillingness or inability to protect. Thus a State not only has an obligation under international human rights (and refugee) law to refrain from directly breaching its provisions, it must equally take measures to protect individuals from breaches*

---

<sup>89</sup> Lord Steyn’s reasoning, Ibid

<sup>90</sup> P63, Edwards, Alice, Age and Gender Dimensions in International Refugee Law (January 12, 2010). REFUGEE PROTECTION IN INTERNATIONAL LAW: UNHCR’S GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION, E. Feller, V. Türk, and F. Nicholson, eds., pp. 46-80, Cambridge University Press, 2003.

<sup>91</sup> Ibid p70

[More about social group interpretation and characteristics in UNHCR Guidelines on Membership of a Particular Social Group, 2002 available at: <http://www.unhcr.org/publications/legal/3d58de2da/guidelines-international-protection-2-membership-particular-social-group.html> Downloaded: 11.04.2017]

<sup>92</sup> P71-72, Ibid

<sup>93</sup> P76, Ibid

<sup>94</sup> P80, Ibid

*by other individuals. Forms of persecution perpetrated by State and non-State actors are, therefore, valid.*<sup>95</sup>

One of the problems Edwards is bringing up, is that many female asylum seekers with special protectional or procedural needs disappear from the scope of the authorities, which is validated by the fact, that jurisprudence on such cases in front of ECtHR is almost non-existing. This could be due to not subjecting their decisions to judicial review, or feeling ashamed for what they have gone through, especially in sexual abuse cases.

On the whole, female applicants require a different approach and expertise from the authorities assessing their claims. Does the EU provide any special treatment for them?

---

<sup>95</sup> P79, Ibid

## Chapter V

### VULNERABILITY WITHIN THE COMMON EUROPEAN ASYLUM SYSTEM

The CEAS was born as a result of the need for uniformity in regulating asylum in the EU. Through a chronological presentation of the relevant EU laws, it will be possible to see how the approach towards vulnerable asylum seekers evolved, and provisions developed. Then, the main actors carrying out significant work for and in the CEAS will be presented, together with an analysis on vulnerable applicants.

Questions are about to answer, such as: Whether there is any identification mechanism in the EU or any clear-cut regulations on how to carry out the identification. How is the targeted group handled within the EU countries during the status determination procedure? Are their specific needs addressed efficiently by the given procedural guarantees?

#### 1. The Common European Asylum System

The CEAS rests on treaty law, European Council programs and legal instruments.

The Treaty of Amsterdam<sup>96</sup> (entered into force on 1st May 1997) made asylum become a union law, instead of an intergovernmental cooperation between the Member States within justice and home affairs. This meant the creation of common provisions on asylum, and a judicial control of the Court of Justice of the European Union, showing a true willingness of regulating asylum unitedly.

The idea was planted to create a common asylum system already in the Tampere EU Conclusions<sup>97</sup>: *'[...] common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection.'*<sup>98</sup>

Parallel to the treaty-law evolution, the Council Resolution of 20 June 1995 on minimum guarantees for asylum procedures<sup>99</sup> was born as the first document on asylum at EU level, tackling common guarantees in compliance with the principles of the RC and the Protocol. The Resolution

---

<sup>96</sup> Treaty of Amsterdam, available at: [https://europa.eu/european-union/sites/europaen/files/docs/body/treaty\\_of\\_amsterdam\\_en.pdf](https://europa.eu/european-union/sites/europaen/files/docs/body/treaty_of_amsterdam_en.pdf), Downloaded: 01.04.2017

<sup>97</sup> Tampere European Council 15 and 16 October 1999, Presidency Conclusions A Common EU Asylum and Migration Policy

<sup>98</sup> Para 14, Ibid

<sup>99</sup> The Resolution is available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31996Y0919\(05\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31996Y0919(05)&from=EN), Downloaded: 01.04.2017

was an early, practical resource on the common asylum policy, including guarantees on the examination of asylum applications, and rights of asylum seekers. As additional safeguards, there are provisions on UAMs and women<sup>100</sup>, indicating that they might have special needs compared to ‘regular’ asylum-seekers. Representation of UAMs and desired involvement of female employees, or interpreters were among the few extra safeguards being introduced in the instrument, leaving much space for later progress.

This Resolution has changed a lot since its adoption before the millennium, thankfully to its benefit, bringing Member States closer to the harmonisation of their asylum procedures.

As a follow-up work of the Commission for protected persons, a new document was issued a few years later, in 2000, tackling a common asylum procedure.<sup>101</sup> It can mostly be seen as results of getting closer to a common asylum policy, little had been added in favour of persons with special needs, although the instrument mentions vulnerability as something that has to be addressed by States properly.<sup>102</sup>

Consequently, vulnerability became an issue, as there had already been an aim to include it in asylum procedures, but definitions or examples and guidelines were completely missing at that time.

Then the Hague Programme<sup>103</sup> - one of the series of programmes adopted by the Council, ensuring implementation of European asylum policy - targeted to focus on common minimum standards for the qualification of asylum seekers, the reception of asylum seekers, and the procedures for determining refugee status. This is reflected in the directives adopted by the Council: in the Asylum Procedures Directive, the Reception Conditions Directive, and the Qualification Directive<sup>104</sup>. These packages of instruments bear great relevance in the analysis of this paper.

Later on, with the Lisbon Treaty<sup>105</sup>, entering into force on 1st December 2009, not only new asylum-related provisions were introduced, but also the EU Charter of Fundamental Rights<sup>106</sup> became legally binding. *‘The Charter strengthens the protection of fundamental rights by making*

---

<sup>100</sup> Paras 26-28, Ibid

<sup>101</sup> Communication from the Commission to the Council and the European Parliament Towards a Common Asylum Procedure and a Uniform Status, Valid throughout the Union, for persons Granted Asylum see text: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:52000DC0755> , Downloaded: 01.04.2017

<sup>102</sup> Part I 1.2, Ibid

<sup>103</sup> THE HAGUE PROGRAMME: STRENGTHENING FREEDOM, SECURITY AND JUSTICE IN THE EUROPEAN UNION (2005/C 53/01)

<sup>104</sup> and the Dublin and Eurodac Regulations, but they do not form a part of this paper

<sup>105</sup> Treaty of Lisbon, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12007L/TXT&from=EN> , Downloaded: 01.04.2017

<sup>106</sup> EU Charter of Fundamental Rights, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT&from=EN> , Downloaded: 01.04.2017



*those rights more visible and more explicit for citizens.*<sup>107</sup> Article 18 of the Charter and article 63 of the Lisbon Treaty grant the right to asylum, expressing that ‘*The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement.*’<sup>108</sup> Furthermore, the legislators aimed to express among others, that asylum status shall be the same in every Member State, so as the subsidiary protection, the procedures for granting protection and the standards for reception conditions.<sup>109</sup> Apart from the UDHR’s provision on the right to asylum, all the human rights treaties had an influence on how asylum rules were shaped within the EU. The Treaty on the Functioning of the European Union explicitly refers to them when establishing grounds for the CEAS, stating that the RC and the Protocol are the underlying instruments, ‘*and other relevant treaties*’.<sup>110</sup>

*‘Following the completion of the first stage of CEAS in 2005, which was based on minimum standards between Member States, in 2013 new rules have been agreed upon (CEAS II). The aim was to ensure that all applicants for international protection are treated equally in a fair system, wherever they apply. The legal framework of the CEAS II is composed of two Regulations and five Directives while two EU Agencies are of particular relevance for the implementation of the CEAS: the European Asylum Support Office (EASO) and the Border Agency Frontex.’*<sup>111</sup>

Although the road to make CEAS work was rather long, especially in working out prompt legal bases and making national-level implementations fast and effective, as Member State responses were not always the same speed and the political will was rather diverse.<sup>112</sup> The CEAS is a living concept, so there are constant developments, which means packages of legislative proposals from the European Commission for future achievements.

As a next step, the law is being presented, concentrating on vulnerability within the CEAS, and then, among important actors, EASO’s mandate, work, and importance will be introduced. EASO is one of the main actors in the CEAS, although not the only one, assisting technical and operational

---

<sup>107</sup> European Commission on the EU Charter of Fundamental Rights, [http://ec.europa.eu/justice/fundamental-rights/charter/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm), Downloaded: 01.04.2017

<sup>108</sup> Lisbon Treaty, Art63 §1

<sup>109</sup> Lisbon Treaty, Art63 §2

<sup>110</sup> Art 67 (2) and 78 (1) on developing a common policy on asylum, subsidiary protection and temporary protection to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement, Ibid

<sup>111</sup> P18 in European Parliament’s Policy Department for Citizen’s Rights and Constitutional Affairs publication on The Implementation of the Common European Asylum System, available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556953/IPOL\\_STU\(2016\)556953\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556953/IPOL_STU(2016)556953_EN.pdf) Downloaded: 10.04.2017

<sup>112</sup> Ibid

cooperation between States, yet for the purpose of this paper its work bears great importance, especially on vulnerable applicants.

#### a) Asylum Procedures Directive and its recast

Applying the mentioned Council Resolution of 20 June 1995 for asylum procedures for many years, the Council proposed a directive on minimum standards on procedures in the Member States for granting and withdrawing refugee status<sup>113</sup>, as a means to establish a fair and efficient asylum procedure. As the document's name implies, it only proposed minimum standards on refugee status and not on any other protection forms, and allowed wide derogation for States, which only made it weaker. Although, vulnerability was dealt with, as indicating within Art 14 of the directive, that vulnerable applicants have special needs and thus interviewers have to have a basic training on the issue<sup>114</sup>, nothing else was explicitly mentioned. This provision was supplemented to some extent in the amended proposal, by establishing the need for specific procedural guarantees for persons with special needs, such as unaccompanied minors.<sup>115</sup>

The **Asylum Procedures Directive (APD)**<sup>116</sup> was adopted in 2005. According to the legislators, the directive lays down minimum standards for the refugee status procedures, aiming to reduce disparities between Member States' procedures, and safeguards the quality of decision-making.<sup>117</sup> The protection provided by a state, greatly depends on the procedure in which it is assessed, thus the APD, and later its recast lay down legal basis on how to carry out those assessments, and what elements to consider. It sets limits to certain procedural features, such as the length of the procedure, or the qualification of decision-makers.

The APD highlighted the special needs of UAM asylum-seekers, pointing out in general provisions 14 that they are in a vulnerable position, adding that the best interests of the child should be a primary consideration. Furthermore, definitions for UAM<sup>118</sup>, and representative<sup>119</sup> had been added,

---

<sup>113</sup> European Council, Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, 2000, COM/2000/0578 final - CNS 2000/0238

<sup>114</sup> Art 14, Ibid

<sup>115</sup> Annex II, 17 of Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status 2002, COM/2002/0326 final - CNS 2000/023

<sup>116</sup> Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32005L0085&qid=1491298201454> Downloaded: 01.04.2017

<sup>117</sup> Summary of legislation, Ibid

<sup>118</sup> Chapter 1, Article 2. h) Ibid, provides: 'unaccompanied minor' means a person below the age of 18 who arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or by custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States

<sup>119</sup> Chapter 1, Article 2. i) Ibid provides: 'representative' means a person acting on behalf of an organisation representing an unaccompanied minor as legal guardian, a person acting on behalf of a national organisation which is responsible for the care and well-being of minors, or any other appropriate representation appointed to ensure his/her best interests

unlike in the 1995 resolution. The instrument introduces some new guarantees too: *‘the representative shall have an opportunity to explain the purpose of the interview to the minor’* and that *‘a person with knowledge of the special needs of minors shall prepare the decision of the determining authority and, if applicable, conduct the personal interview’*. A medical examination is also mentioned as a legit source of age-determination with some procedural guarantees, like the need of providing information and getting the consent of the asylum-seeker<sup>120</sup>.

Among the weaknesses, there is neither indicators or clarification of vulnerability, nor examples of persons with special needs, except UAMs. The Commission itself admitted that *‘The rules were often too vague and derogations allowed Member States to keep their own rules, even if these went below basic agreed standards.’*<sup>121</sup>

The **APD recast directive**<sup>122</sup> was adopted in 2013, after having recognised that *‘[...] the proliferation of disparate procedural arrangements at national level and deficiencies regarding the level of procedural guarantees for asylum applicants which mainly result from the fact that the Directive [the APD] currently allows Member States a wide margin of discretion.’*<sup>123</sup> Consequently, the recast seemed necessary for ensuring a higher standard of harmonisation in the EU. Also, later an amended proposal was made<sup>124</sup> for more efficiency and better protection, in order to help to tackle potential abusive claims, and guarantee that applications will be treated similarly in all States.: *‘It fully respects fundamental rights and the related developing case-law, thus also helping ensure it can withstand challenge before the courts. At the same time, it is flexible enough to accommodate the particularities of national legal systems.’*<sup>125</sup>

The recast is decisive with regards to vulnerable applicants, since it includes specific guarantees for their protection. In line with the directive, asylum-seekers with specific procedural needs, due to for example their age, disability, illness or sexual orientation, trauma, must be given support in the

---

<sup>120</sup> Art 17 (5)

<sup>121</sup> P4 in European Commission, Home Affairs, A Common European Asylum System, Luxembourg: Publications Office of the European Union, 2014, available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/ceas-fact-sheets/ceas\\_factsheet\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/ceas-fact-sheets/ceas_factsheet_en.pdf)

<sup>122</sup> Directive 2013/32/EU common procedures for granting and withdrawing international protection

<sup>123</sup> Para 1.1 in Commission of the European Communities, Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on minimum standards on procedures in Member States for granting and withdrawing international protection (Recast), October 2009

<sup>124</sup> Amended proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common procedures for granting and withdrawing international protection status (Recast) Amended proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common procedures for granting and withdrawing international protection status (Recast), 2011

<sup>125</sup> Para 1.1 Ibid

assistance of their applications<sup>126</sup>. Moreover, specific requirements exist for UAMs<sup>127</sup>, including the obligation to appoint a qualified representative, and a best interests assessment in general.

This time a long, detailed section lists the guarantees for UAMs, in the most extensive manner in their history so far. Art 25 (3) mentions that both the decision and the interview should be conducted by a person in the hold of necessary knowledge of UAMs.

According to Art 31 (7) b): *Member States may prioritise an examination of an application in particular where the applicant is vulnerable, within the meaning of Article 22 of Directive 2013/33/EU [Reception Condition Directive recast], or is in need of special procedural guarantees, in particular unaccompanied minors.* This provision also harmonises the APD recast's and the Reception Condition Directive recast's vulnerable definition, as demonstrated below.

The mentioned provisions are in line with the Commission's European Agenda issued in 2015, where expressed that [*i*]n addition, working with the Member States and European Asylum Support Office (EASO), the Commission will give further guidance to improve standards on reception conditions and asylum procedures to provide Member States with well-defined and simple quality indicators, and reinforcing protection of the fundamental rights of asylum-seekers, paying particular attention to the needs of vulnerable groups, such as children.<sup>128</sup>

The APD recast has been applied since July 2015 and is still in force. One of the key achievements is effectiveness through clearer rules, and rules on appeals so as not to overload the ECtHR. Although it draws more attention to vulnerable persons in the procedure, there is still place for improvement on how to guarantee the safeguards listed in the instrument.

The Commission is currently planning to establish an EU common list of safe countries of origin for the purposes of the recast, for being able to respond crisis situations like the one in 2015 quicker, and to manage migration better.<sup>129</sup> Moreover, the Commission tackles the harmonisation of all directives in asylum for a fair and effective common procedure in the EU, by making procedures shorter, clearer and more simple, and strengthening procedural guarantees: *'Reinforced safeguards are foreseen for applicants with special procedural needs and unaccompanied minors, such as more*

---

<sup>126</sup> Art 21, Ibid

<sup>127</sup> Art 24, Ibid

<sup>128</sup> P12 COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, Brussels, 05.13.2015, COM(2015) 240 final, available at: [goo.gl/C19o65](http://goo.gl/C19o65) Downloaded: 30.04.2017

<sup>129</sup> European Commission, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU, 2015

*detailed rules on assessing, documenting and addressing the applicant's special procedural needs.*<sup>130</sup>

## b) Reception Conditions Directive and its recast

**Council Directive 2003/9/EC of 27 January 2003<sup>131</sup> (RCD)** was among the early instruments collecting, and laying down minimum standards for the reception of asylum seekers, for as long as they wait for their asylum decisions.

Concisely, the directive did consider certain groups of people having special needs, by defining people with special needs in the same way as the qualification directive does, discussed below. Also, chapter IV specifies minors, UAMs, and victims of torture and violence, but the provisions are rather vague. For instance, Art 20 sets rules for States to ensure that victims of torture, rape or other serious violent acts are receiving treatments, but without clarifying, what necessary treatment is<sup>132</sup>.

As a next step, the directive was replaced with a more suitable instrument, in the sense of addressing the needs of vulnerable asylum applicants, with **Directive 2013/33/EU<sup>133</sup> (RCD recast)**, repealing the former with effect from 21 July 2015, and still being in force. It is detectable in the recast's proposal that the aim was to guarantee a dignified standard of living to applicants and protected persons, and to harmonise reception conditions to stop secondary movements<sup>134</sup>. With regards to persons with special needs, the proposal mentions the matter as a weak part, aiming to incorporate safeguards and recognising that *'Identifying special needs not only has a bearing on access to appropriate treatment, but could also affect the quality of the decision-making process in relation to the asylum application, especially with regard to traumatised persons. In this respect the proposal ensures that national measures are put in place in order to immediately identify such needs'*.<sup>135</sup> Thus, the significance of identification of special needs finally came into focus *expressis verbis*.

---

<sup>130</sup> European Commission, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 2016 July

<sup>131</sup> see text: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:En:PDF> , Downloaded: 01.04.2017

<sup>132</sup> of Council Directive 2003/9/EC of 27 January 2003

<sup>133</sup> 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, available at: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013L0033> Downloaded: 01.04.2017

<sup>134</sup> Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (Recast), 2008

<sup>135</sup> Para 5, Legal Elements of the Proposal, Summary of the proposed action, Ibid

The recast introduced an obligation for an individual assessment to identify the needs of vulnerable people (children, disabled people or victims of abuse), specific rules applying to children, unaccompanied children and victims of torture and violence were crucial new parts of the legislation, followed by a criteria that vulnerable asylum seekers must have access to psychological care<sup>136</sup>. In addition, it introduced the obligation of a qualified representative for UAMs to help them. Respecting and protecting the rights of minors are reflected in the instruments by taking into account their best interests. Considering family unity also came up as a requirement, and certain provisions finally restricted the detention of vulnerable people, and prohibited it in the cases of children.<sup>137</sup>

Lately, the Commission has raised concern in a press release about common reinforced guarantees missing, therefore the directive needs to be reformed soon<sup>138</sup>.

### c) Qualification Directive and its recast

**Council Directive 2004/83/EC of 29 April 2004<sup>139</sup> (QD)** was another part of legal instruments required by the Amsterdam treaty for the creation of CEAS, and the harmonisation of national asylum laws, to provide a high level of international protection.

By introducing specific rules concerning refugee and subsidiary protection statuses, and provisions on vulnerable persons, this instrument was a milestone. Giving a non-exhaustive list of vulnerable persons (as used in the RCD as well), such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence<sup>140</sup> was a step forward, especially by making an individual evaluation obligatory<sup>141</sup> in spite of the fact that not all Member States implemented provisions concerning this category of asylum-seekers.

After having it transposed to national level, and several years after its adoption, the Commission issued a report<sup>142</sup> to the European Parliament and the Council, presenting the

---

<sup>136</sup> Art 21-25

<sup>137</sup> Art 11 in the RCD recast

<sup>138</sup> European Commission Press release, Completing the reform of the Common European Asylum System: towards an efficient, fair and humane asylum policy, Brussels, 13.07.2016 available at: [http://europa.eu/rapid/press-release\\_IP-16-2433\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2433_en.htm) Downloaded: 09.05.2017

<sup>139</sup> 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

<sup>140</sup> Art 20 para 3, Ibid

<sup>141</sup> Art 20 para 4, Ibid

<sup>142</sup> Report from the Commission to the European Parliament and the Council on the Application of 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, European Commission, Brussels, 16.6.2010, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52010DC0314>, Downloaded: 01.04.2017

transposition and implementation of the directive by EU countries, pointing out problematic issues identified. As concluded in the report *'the aim of harmonising the qualification and status of beneficiaries of international protection and the content of that protection has not yet been fully achieved'*<sup>143</sup>. Also *'some EU countries failed to transpose the provisions concerning vulnerable persons and minors and access to information, healthcare and integration facilities'*<sup>144</sup>.

The Commission repeated that *'Article 20 (4) imposes an obligation for Member States to recognise the special needs of vulnerable persons for the purposes of applying paragraph 3 only after an individual evaluation of their situation. This provision has not been transposed in 12 Member States.'*<sup>145</sup>

In other words, the non-action, or not sufficient responses of Member States towards vulnerable asylum-seekers after 6 years of the adoption of the first qualification directive were indicating that the EU-level legislation is weak, and is calling for urgent changes.

UNHCR also carried out an investigation, as a part of a research project on the aftermath of the qualification directive, resulting in a detailed report with important findings and recommendations in 2010<sup>146</sup>. It found that further legislation was needed due to serious gaps and deficiencies had been identified, not to mention the divergence of national approaches to the implementation of the directive, which were also found to be worrisome. In UNHCR's professional opinion, interviewers have to receive a specific training for being fit to identify people with special needs, and a different one for carrying out the interview of children. *'Member States should ensure that they have mechanisms to identify and assist, at the earliest possible stage of the asylum procedure, applicants who are vulnerable or have special needs.'*<sup>147</sup> Knowledge of countries of origin and cultural factors, competence, qualifications and training of interpreters, gender sensitive approach, and specific measures to address special needs were highlighted as well. While examining the latter throughout surveys, UNHCR realised that no guidelines were in use in any of the Member States, and only a few procedures had a sensitivity approach taken place. It concluded

---

<sup>143</sup> Summary of legislation of Council Directive 2004/83/EC of 29 April 2004, under 'Related Acts' available at <http://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32004L0083> , Downloaded: 01.04.2017

<sup>144</sup> Ibid

<sup>145</sup> Specific provisions, Vulnerable persons and minors in Directive 2013/32/EU common procedures for granting and withdrawing international protection and Directive 2005/85/EC on minimum standards on procedures for granting and withdrawing refugee status in the European Union

<sup>146</sup> IMPROVING ASYLUM PROCEDURES: COMPARATIVE ANALYSIS AND RECOMMENDATIONS FOR LAW AND PRACTICE, A UNHCR research project on the application of key provisions of the Asylum Procedures Directive in selected Member States, March 2010, available at: <http://www.refworld.org/docid/4bab55752.html> , Downloaded: 01.04.2017

<sup>147</sup> P31 Ibid

that it would be advised if *'EU-wide guidelines on the personal interview of persons with special needs are adopted and implemented in all Member States'*.<sup>148</sup>

On the whole, the directive did not ensure the desired protection or safeguards, thus creating gaps, which put international law and European law at risk. *'There are many areas in which individual's rights are not respected, not only because of non-observance of the APD, but also in the context of the application of its provisions, in line with the low minimum standards it sets.'*<sup>149</sup>

As a potential improvement, UNHCR mentioned the strengthening of the legal framework for asylum procedures. *'Courts can assist in this area by interpreting and providing guidance to Member States on the correct application of the APD and related instruments. Beyond interpretation, however, further legislative reform will be needed, both at national and EU level, to ensure that the necessary safeguards are in place.'*<sup>150</sup>

Receiving so many critiques as time passed by, the *acquis* had to develop, and it did bring some positive changes in the field of asylum and vulnerable persons.

In 2009, the Commission issued a proposal to recast the directive<sup>151</sup> addressing the need of amendments for the purpose of simplifying decision-making procedures, improving the efficiency of the asylum process, and ensure coherence with the jurisprudences of the ECJ and the ECtHR.

The reason for the need the new law was partly the vagueness and ambiguity of the QD, how it resulted in uncertainty and administrative errors, and the process losing its credibility.<sup>152</sup> The *'[...]/ proposal seeks to ensure the full compatibility of the standards of the EU *acquis* with the standards developed since the adoption of the Directive by the case law of the ECJ and the ECtHR'* and *'to ensure that the burden will be shared more fairly between all Member States.'*<sup>153</sup>

In 2011, the European Union adopted the **recast Qualification Directive 2011/95/EU**<sup>154</sup>, setting out rules governing minimum standards on conditions under which international protection is granted as part of the CEAS. New elements included the widening of family definition and most importantly, for the sake of the paper, better standards for vulnerable persons with special needs,

---

<sup>148</sup> P37 Ibid

<sup>149</sup> P91 Ibid

<sup>150</sup> P91 Ibid

<sup>151</sup> Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted, 2009

<sup>152</sup> Grounds for and objectives of the proposal, Ibid

<sup>153</sup> Ibid

<sup>154</sup> 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) see text: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>, Downloaded: 02.04.2017



UAMs in particular. This is reflected in the proposal for the instrument too, where the Council required that States shall take into account the specific situation of vulnerable persons.<sup>155</sup>

While the provision with regards to the identification of vulnerabilities stayed the same, NGO activism, UNHCR recommendations and case-law showed that States must take into consideration the special needs of certain groups of asylum-seekers: *'The requirement to undertake an individual evaluation of the specific needs of beneficiaries also reflects the requirement to assess specific needs in other aspects of the EU asylum acquis for example under the provisions of the recast Reception Conditions Directive.'*<sup>156</sup>

With regards to UAMs, family tracing was discussed as obligations of State parties at the earliest time possible, whilst respecting the best interest of the child. Moreover, those working with unaccompanied minors shall have and continue receiving appropriate trainings concerning their needs under Article 31 of the directive.<sup>157</sup>

*'ECRE also welcomes the fact that when the applicant is an unaccompanied child, Recital 27 provides that the availability of appropriate care and custodial arrangements, which are in the best interests of the minor, shall form part of the assessment as to whether protection is available.'*<sup>158</sup>

#### d) Future amendments and current protection in the EU

The Commission is proposing to replace the APD with a Regulation *'establishing a fully harmonised common EU procedure for international protection to reduce differences in recognition rates from one Member State to the next, discourage secondary movements and ensure common effective procedural guarantees for asylum seekers'*, and reinforce safeguards for persons with special needs.<sup>159</sup> The same is the plan for the QD, among others to *'harmonise protection standards in the EU and put an end to secondary movements and asylum shopping'*.<sup>160</sup> The Commission is also going to reform the RCD to increase the level of harmonisation of reception conditions.<sup>161</sup>

---

<sup>155</sup> Art 94 Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted, 2009

<sup>156</sup> European Council on Refugees and Exiles, Information Note on the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011, October 2013, p12, available at: [http://www.ecre.org/wp-content/uploads/2016/07/ECRE-Information-Note-on-the-Qualification-Directive-recast\\_October-2013.pdf](http://www.ecre.org/wp-content/uploads/2016/07/ECRE-Information-Note-on-the-Qualification-Directive-recast_October-2013.pdf) , Downloaded: 03.04.2017

<sup>157</sup> Ibid

<sup>158</sup> P8, Ibid

<sup>159</sup> Supra note 138

<sup>160</sup> Ibid

<sup>161</sup> European Commission: Reception Conditions: reforming the Common European Asylum System 13 July 2016, available at: [goo.gl/X4NPjt](http://goo.gl/X4NPjt) Downloaded: 09.05.2017

The Commission's European Agenda on Migration from 2015 envisaged further accomplishments with pending proposals for the establishment of a resettlement framework<sup>162</sup>, a crisis relocation mechanism<sup>163</sup>, an EU common list of safe countries of origin<sup>164</sup> among many others.

Member States have a shared responsibility within the CEAS, guided by the provisions laid down by the EU for a duty to protect, although there are differences in protection forms and in the practice of Member States. From the various proposals for the directives explained in this chapter, it is apparent that harmonisation of asylum systems is very challenging for the EU, and so far, no real solutions have been found to stop asylum shopping and other abuses.

Within the scope of asylum, refugee status is the highest level of protection. Although, the RC does not cover all forms of incidents that make asylum-seekers entitled to receive adequate protection, plus with time it became obvious that other grounds are needed to be covered too in asylum law. Hence, the QD in 2004 developed the form of subsidiary protection, with the aim of harmonising asylum on EU-level, for those who do not qualify as refugees under the provisions of the GC, but would face a real risk of suffering serious harm if they returned to their countries of origin. Serious harm is defined as the risk of death penalty, or execution; or torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or serious and individual threat to a civilian's life or person by reasons of indiscriminate violence in situations of international or internal armed conflict.<sup>165</sup>

The implementation of subsidiary protection status into national legislation is still varied, after so many years. In Romania, for instance there is no actual difference between the entitlements, the rights and obligations are just the same for both refugees and the holders of subsidiary protection.<sup>166</sup> In Hungary, refugees have more rights than those who get other forms of protection, for example, family reunification is available only for refugees.<sup>167</sup> This demonstrates that the CEAS has not arrived in its final destination, the protection given in one Member State is not the same as in the other. As long as protection and inherent rights deviate within the EU States, inequality will

---

<sup>162</sup> Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council

<sup>163</sup> Proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person

<sup>164</sup> Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU

<sup>165</sup> Art 15 of the QD

<sup>166</sup> Section 2, Article 20, LAW no 122/2006 on asylum in Romania, unofficial translation available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=544f8b206>

<sup>167</sup> Para 7 (2), 10, 17, Act LXXX of 2007 on Asylum, unofficial translation available at: <http://www.refworld.org/docid/4979cc072.html>

encourage asylum-seekers to trying to find the best solution for themselves, which comes with abusing or overloading certain States' immigration systems. The idea in the EU of enjoying the same level of protection still does not exist, which undermines the EU's harmonisation goals and asylum applicants' rights.

As another illustrative example, '*a person's chances of being granted asylum still vary hugely according to the country processing the asylum claim reflecting the continued differences of Member States approaches to assessing protection needs. For instance, in 2008, virtually no Iraqis were recognised as refugees in Greece, while in Germany, 91% of Iraqi asylum-seekers were given international protection*'.<sup>168</sup>

Illegal migration and asylum, so as the Member States are facing tons of challenges which are remained unsolved despite the effort of the Council. Unfortunately, it is potential refugees, beneficiaries of subsidiary protection, or perhaps vulnerable persons, who suffer from systematic problems, legal traps or unfavourable political decisions on their situations. Identification and recognition of problems are only part of the success, just like having a proper legal framework, or maybe even judicial control over these issues. The solution might be tailored to the actual needs of the target group and the socio-economic, legal and political culture of the country, and might be dynamic, responding to changes quickly and effectively in the means of rights, obligations, and practice.

The achievements of the CEAS are not complete, further clarifications and developments are necessary for many aspects, including proper implementations, where the treatment of vulnerable persons sadly seem to remain secondary. Practical cooperation measures may be more viable than legislative interference, as the latter is more time consuming than the former. Practical measures are possible through the help of NGOs or national programmes, or with the assistance of EASO, the most expansive agency of the EU created partly for the practical cooperation on asylum.

## 2. European Asylum Support Office (EASO)

EASO, an operational agency of the EU was founded by Regulation (EU) No 439/2010<sup>32</sup> of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office. EASO is tasked with supporting the asylum authorities in EU Member States in fulfilling their protectional obligations: '*EASO provides the employees of the relevant authorities with*

---

<sup>168</sup> The Qualification Directive, Asylum in Europe, Article on [refworld.com](http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opedocpdf.pdf?reldoc=y&docid=4aa508692): <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opedocpdf.pdf?reldoc=y&docid=4aa508692> Downloaded: 25.04.2017

*training and instruction sessions with the aim to contribute to the further harmonisation of asylum processes and results of asylum decisions across EU MS.*’ Its mandate is to contribute to the implementation of the CEAS, support practical cooperation between States and support States facing challenges in asylum. EASO prepares country of origin reports, carries out training of asylum officers, arranges annual meetings on various topics, assists in relocations processes, is involved in early warning and preparedness systems for States facing high influxes of asylum seekers and does many other asylum-related tasks especially in the implementation of EU standards. According to the Council, to find a solution for the disproportionate pressures of Member States, primarily due to their geographical or demographical situations, the resources proved by the EU (for example: European Refugee Fund) were distributed to where they were needed the most, providing financial support to ease and make the burden fairer between States. Additionally, EASO provides and supports common action ‘[...] to assist Member States faced with particular pressures, and, more generally, help Member States identify the most cost-efficient ways to implement the envisaged measures through the pooling of good practice and the structured exchange of high-level expertise.’<sup>169</sup> The organisation has so far helped Bulgaria, Cyprus, Sweden, Italy, Luxembourg upon their requests and played a central role in the implementation of the EU Migration Agenda and the new hotspot approach during the refugee crisis in 2015.<sup>170</sup> Another important advancement the Office has been carrying out, is the technical and relocation support from Greece and Italy to other Member States.<sup>171</sup>

Given its progressive work, The Commission has just strengthened EASO’s role last year by recognising that: ‘It is essential to equip the Agency with the means necessary to assist Member States in crisis situations, but it is all the more necessary to build a solid legal, operational and practical framework for the Agency to be able to reinforce and complement the asylum and reception systems of Member States’.<sup>172</sup>

EASO focuses on vulnerable persons too, therefore its materials in certain topics, for instance in age assessment will be relied on, especially because the APD recast sets it out for the States to take due account of its relevant guidelines<sup>173</sup>

---

<sup>169</sup> Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (Recast), 2009

<sup>170</sup> EASO History, EASO’s webpage, available at: <https://www.easo.europa.eu/easo-history> Downloaded: 20.05.2017

<sup>171</sup> EASO Relocation, EASO’s webpage, available at: <https://www.easo.europa.eu/relocation-0> Downloaded: 20.05.2017

<sup>172</sup> P2 European Commission: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, Brussels, 4.5.2016

<sup>173</sup> APD recast recital (26), and Art 4.3 to have the knowledge to identify victims of torture

### 3. Vulnerability in the CEAS

The context and wording of legal instruments and other sources bear importance in analysing vulnerability, so as the jurisdiction of the ECtHR.

The first asylum instruments in the EU did not deem necessary declaring some applicants vulnerable, and did not recognise that they may have special needs. Later on, the recast directives took a step forward. Meanings of the expressions differ, as ‘vulnerable applicant’ and ‘applicant with special needs’/‘in need of special procedural guarantees’ have different meanings in each directive. ‘Special needs’ in the APD, and ‘need of special procedural guarantees’ in the APD recast, would primarily mean that a person needs additional procedural guarantees to be able to substantiate his or her application for international protection, while in the RCD recast ‘applicant with special reception needs’ would mean that a person is in need of additional social, material or medical assistance. Consequently, someone qualifying as a person with special needs under the APD may not have those needs under the RCD.

The law has named some categories, however, it is to note, that many sources mentioning ‘vulnerable persons’ or ‘vulnerable applicants’ within the CEAS are usually referring to the characteristics of categories which can be considered as vulnerable asylum applicants. This means that the person in question has some kind of special - for example procedural - need.

The approach of vulnerability by the jurisprudence of the ECtHR is not clear-cut either. Though it is not within the competence of the Court to examine the applications of the RC, the European Convention on Human Rights does not provide for a right to asylum. States have the right to control entries to their territories, they decide on residence issues and expulsions too. *‘But the Member States of the Council of Europe are under the obligation to secure to everyone within their jurisdiction, including migrants, the respect of the rights guaranteed by the European Convention on Human Rights. And it is to this end that the Court’s case-law imposes certain limitations on the right of States to turn someone away from their borders.’*<sup>174</sup>

Cases in front of the Court are always examined of the applicant’s individual situation, *‘but some applicants may belong to inherently vulnerable groups and the Court has recognised that, for this reason, they are in need of special protection.’*<sup>175</sup>

---

<sup>174</sup> 2/7 Court Talks, Asylum, Council of Europe/European Court of Human Rights, 2016, available at: [http://www.echr.coe.int/Documents/COURTalks\\_Asyl\\_Talk\\_ENG.PDF](http://www.echr.coe.int/Documents/COURTalks_Asyl_Talk_ENG.PDF). Downloaded: 01.05.2017

See also: Abdulaziz, Cabales and Balkandali v. the United Kingdom, 9214/80, 28 May 1985, § 67, Series A no. 94, and Saadi v. Italy [GC], 37201/06, §§ 124-125, ECHR 2008

<sup>175</sup> p4/7 Ibid

The Court adjudicated in the MSS case<sup>176</sup>, that as an asylum seeker, the applicant was in need of special protection as *a member of a particularly underprivileged and vulnerable population group*<sup>177</sup>. The Grand Chamber decision also took into account that *'the applicant, being an asylum seeker, was particularly vulnerable because of everything he had been through during his migration and the traumatic experiences he was likely to have endured previously.'*<sup>178</sup> However, in his dissenting opinion, judge Sajó noted that the Court applied a very broad interpretation of vulnerability: *'[...] although many asylum seekers are vulnerable persons, they cannot be unconditionally considered as a particularly vulnerable group [...]*<sup>179</sup> By this narrow interpretation of the law, this opinion reflects that some think, among asylum seekers, there are vulnerable and *particularly* vulnerable applicants, which seems rather sophisticated. Following this logic, it implies that there are applicants and vulnerable applicants, in which category some are even more vulnerable than others, and only the latter are entitled to some kind of different treatment.

The case was, however, a landmark case indeed, for considering the applicant's vulnerable situation for the first time, that imposes obligations on States.

The Rahimi case<sup>180</sup> concerned an UAM asylum seeker, who was held in detention in Greece, where adults were detained, and the conditions were found to result in a violation of article 3 of the ECHR. *'[...] he was unaccompanied and therefore left to fend for himself, the Applicant undoubtedly came within the category of highly vulnerable members of society, and it had been incumbent on the Greek State to protect and care for him by taking appropriate measures in the light of its positive obligations under Article 3.'*<sup>181</sup>

Later, in the case of Popov v France<sup>182</sup> the Court assessed vulnerability in the situation where a family with children were detained and found, that the conditions resulted in violation of article 3 of the ECHR. The reasoning puts emphasis on the young age of the children, who found themselves in a situation of vulnerability heightened by their detention, which was bound to cause them stress and have serious psychological repercussions. France thus needed to pay damages for not adopting to the children's extreme vulnerability in detention.

Deducting from the approach of the Court and its position taken in interpreting vulnerability, it is more the certain situations of the applicants on a case-by-case basis that is assessed in deciding

---

<sup>176</sup> M.S.S. v. Belgium and Greece [GC], 30696/09, ECHR 2011

<sup>177</sup> para 251, Ibid

<sup>178</sup> para 232, Ibid

<sup>179</sup> Part II, PARTLY CONCURRING AND PARTLY DISSENTING OPINION OF JUDGE SAJÓ, Ibid

<sup>180</sup> Rahimi v. Greece, 8687/08, 5 April 2011

<sup>181</sup> European Database of Asylum Law, ECtHR - Rahimi v. Greece, Application No. 8687/08, available at: <http://www.asylumlawdatabase.eu/en/content/ecthr-rahimi-v-greece-application-no-868708-1> Downloaded: 01.05.2017

<sup>182</sup> Application Nos. 39472/07 and 39474/07, 19 January 2012

whether it calls for special guarantees or not. Therefore it is even more challenging to find a fit-for-all-solution, making it more obvious that each and every case has to be examined individually, in order to address vulnerability if having any.

a) Status determination and protection of female asylum seekers

The UNHCR's position and some scholarly opinion on gender-related claims and persecution have already illustrated the possible special needs of female asylum seekers, concluding that preparedness and a tailored procedure to their needs for examining their claims are desired. However, the EU's legal background is rather laconic, there is no hint of gender-sensitive approaches or interpretations.

In a gender-related persecution claim in Sweden<sup>183</sup>, the applicant was granted refugee status for being threatened by the male members of the family for giving birth to an illegitimate child. Although, the protection was not given so easily, as the authority rejected the claim, so as the Migration Court. It was the Migration Court of Appeal expressing that the applicant would be vulnerable to abuse from male relatives upon her return to Somalia in collaboration with Al Shabaab, because as a woman, she had not followed the norms that prevailed.

In a report by the Committee on Women's Rights and Gender Equality<sup>184</sup> from last year, a great degree of gender inequality for female asylum applicants across the EU had been listed, together with among several other worrisome issues. Consequently, it called for the Member States *'to new, comprehensive set of EU-wide gender guidelines to be adopted as part of wider reforms to migration and asylum policy, which take full account of the social, cultural and political dimensions of persecution and include reception and integration measures.'*<sup>185</sup> Likewise, the report requested a gender-sensitive interpretation of the RC.

It is questionable though, how States are well prepared for such instances in terms of training or capacity. Creating lists in directives, indicating persons with special needs is only a stepping stone, the mention of them without substance will not entitle anyone receiving extra safeguards. Currently, the regular rules apply to female asylum seekers as to others, with the possibility of asking for a female interviewer and interpreter. Although, the mere fact of the presence of a same-sex personnel

---

<sup>183</sup> Migration Court of Appeal, 21 April 2011, UM 7851-10, available at: <http://www.asylumlawdatabase.eu/en/case-law/sweden-%E2%80%93-migration-court-appeal-21-april-2011-um-7851-10> Downloaded: 21.05.2017

<sup>184</sup> Report on the situation of women refugees and asylum seekers in the EU (2015/2325(INI)), available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2016-0024+0+DOC+XML+V0//EN> Downloaded: 04.05.2017

<sup>185</sup> Para 11, Ibid

will not bring a whole gender-sensitive approach with taking into consideration all the facts a female applicant may have. Therefore, more guidance is needed that shapes state policies and thus practices, and case law, and preferably more interpretation of the ECtHR, facilitating the interpretation of the GC and the EU law.

#### b) Status determination and protection of UAMs

Children's status determination procedures should be prioritised under the urgency principle.<sup>186</sup> By the provisions of the APD, special rules apply, starting with the appointing of a representative, who acts according to the child's best interest, informs him or her about the procedural steps, and his or her rights and obligations, and also about the relevance of the asylum procedure's interview.<sup>187</sup> They are provided with legal and procedural information free of charge.<sup>188</sup>

By the APD making it possible for States to prioritise the examination of UAMs' applications, it clearly provides special procedural guarantees.<sup>189</sup> It allows UAMs to avoid a lengthy procedure and limit their vulnerable situation to the shortest possible time. The Commission encourages the States to ensure '[...] *that individual gender- and age-sensitive vulnerability and needs assessments of children are carried out upon arrival and taken into account in all subsequent procedures.*'<sup>190</sup>

The APD includes, that best interests of the child shall be a primary consideration, which is vital for the conduct and the outcome of the status determination<sup>191</sup>. Therefore, the assessment of the best interest is not possible to grasp in one element but has to be kept throughout the whole procedure, and tailored to the circumstances and personal situation of the UAM (age, country of origin information etc.).

Additionally, the APD includes special procedural safeguards for UAMs in situations where applications are conducted faster than usual, when for instance the examination procedure is accelerated or conducted in the border zone, or when it is a border procedure.<sup>192</sup> It is perhaps to avoid any premature decision in the cases of applicants in such a vulnerable situation, which calls for an in-depth assessment.

---

<sup>186</sup> p11, European Commission, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, The protection of children in migration, Brussels, 12.4.2017

<sup>187</sup> Art 25 (1) APD

<sup>188</sup> Art 25 (4) Ibid

<sup>189</sup> Art 7 b) Ibid

<sup>190</sup> Supra note 186, P9

<sup>191</sup> Art 25 (6) APD

<sup>192</sup> Art 25 (6)



Being the whole procedure complex and requiring special attention, qualification for officers and careful considerations of all factors are desired, in order to give due protection to minors.

Although not all UAMs will be entitled to international protection, it does not mean that they are entitled to different rights and treatments in the procedure until the status determination ends.

The Committee on the Rights of the Child issued a General Comment in 2005 for the treatment of unaccompanied and separated children<sup>193</sup>, feeling the urge to fill in protection gaps and reflect on children's vulnerable situation, giving guidance on how to protect and treat them properly based on the legal framework of the CRC.<sup>194</sup> *'Unaccompanied and separated girls are at particular risk of gender based violence, including domestic violence. In some situations, such children have no access to proper and appropriate identification, registration, age assessment, documentation, family tracing, guardianship systems or legal advice. In many countries, unaccompanied and separated children are routinely denied entry to or detained by border or immigration officials, and in other cases they are admitted but are denied access to asylum procedures or their asylum claims are not handled in an age and gender sensitive manner. Some countries prohibit separated children who are recognized as refugees from applying for family reunification; others permit reunification but impose conditions so restrictive as to make it virtually impossible to achieve. Many such children are granted only temporary status which ends when they turn 18, and there are few effective return programmes.'*<sup>195</sup>

Although the aforementioned problems were identified more than 10 years ago, reports still disclose massive violations of children's rights, in which immigration detention of children seems like a recurrent phenomenon, despite the EU standpoint. The Commission's opinion is straight forward: *'Given the negative impact of detention on children, administrative detention should be used, in line with EU law, exclusively in exceptional circumstances, where strictly necessary, only as a last resort, for the shortest time possible, and never in prison accommodation.'*<sup>196</sup> The RCD recast describes the possibilities and strict limitations of detention<sup>197</sup>, yet children are kept in detention frequently in some Member States.<sup>198</sup>

---

<sup>193</sup> The Committee on the Rights of the Child, GENERAL COMMENT NO. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin, Thirty-ninth session, 17 May – 3 June 2005

<sup>194</sup> Para1-3, Ibid

<sup>195</sup> Para3, Ibid

<sup>196</sup> Supra note 60, P8-9

<sup>197</sup> Article 11 of Directive 2013/33/EU

<sup>198</sup> The Guardian: Child asylum seekers may have been illegally detained, rules court, available at: <https://www.theguardian.com/world/2017/mar/07/-hungary-to-detain-all-asylum-seekers-in-container-camps>

The Daily Mail: Asylum children held in detention centre available at: <http://www.dailymail.co.uk/news/article-132725/Asylum-children-held-detention-centre.html>

End Child Detention, Abassi's Greek detention, available at: <https://vimeo.com/46354910>

The ECtHR established many years ago, that detention of UAMs are very harmful, given they find themselves in an extremely vulnerable situation, which should be avoided. The case<sup>199</sup> concerned a girl in Belgium where at that point no framework existed for UAMs. She was deported later, which together with her detention, resulted to inhuman treatment and violation of among others articles 3 and 8 of the ECHR according to the Court.

*'Research has shown that detention is highly distressing for children and has the potential to result in poor social adjustment as well as symptoms of depression (Salem and Flakerud, 2011). Without their parents present, children have increased difficulties coping, especially psychologically. Children who have undergone extreme trauma while in detention are at a higher risk for developing posttraumatic stress disorder (PTSD). PTSD can manifest itself for years following the original trauma and hinder a child's ability to lead a normal life (Salem and Flakerud, 2011).'*<sup>200</sup>

Limiting someone's liberty is one of the most strict measures, having an impact on the detainee's psychological state, which is to be considered in the cases of vulnerable persons, as it can influence the outcome of the status determination procedure. Detention is just one of the posing dangers to UAMs, nevertheless, it is the most well-known and documented one.

On the whole, a child, and age-sensitive approach is desired to consider UAMs' vulnerabilities from the start of the procedure, in order to respect the child's best interest and provide them adequate protection. It is pessimistic to see how more and more action-plans and projects are involving UAMs' rights, targeting problems that have been called by the UN or the Commission to be solved a long time ago, yet the Member States are still struggling with them, even with the provisions of the directives tackling such weaknesses.

Breaches of human rights violations could be avoided by the proper interpretation and use of the law, the RC and the respective EU instruments. Albeit the EU legislation provides limited possibilities and leaves it to the States how to respond to such situations. Practice shows that it results in non-acting or not efficiently acting, which has further impacts: triggering the absconding of applicants in one State, ensuring secondary movements in the EU, creating overloads for other States.

The obligation for an individual assessment of special needs could be a valuable starting point, preferably at the earliest time of the asylum procedure possible. Identification determines the aftermath of how female and UAM applicants are treated, giving significance for the proper and

---

<sup>199</sup> Mubilanzila Mayeka and Kaniki Mitunga v Belgium, Application No. 13178/03, 12.10.2006

<sup>200</sup> NGO Committee on Migration, Migrant Children's Issues, available at: <https://ngo-migration.org/children-in-detention/>

professional personal interview of the applicant, helping not only the identification, but addressing special needs throughout the whole procedure, creating possibility for more complex interpretations and implementations of the law in gender-related claims by female asylum seekers and UAMs.

## Chapter VI

### MECHANISMS TO IDENTIFY AND ADDRESS VULNERABILITY: INTERVIEW DURING THE ASYLUM PROCEDURE, AGE ASSESSMENT PROCEDURE

Lodging the application for international protection, a personal interview is inevitable: *‘Before a decision is taken by the determining authority, the applicant shall be given the opportunity of a personal interview on his or her application for international protection with a person.’*<sup>201</sup> Meeting the authorities is a defining moment both for the asylum seeker and the officer.

Usually, at least one interview is conducted during the status determination procedure, since the APD recast requires one for the decision of the admissibility too<sup>202</sup>. If the case is complicated, or it is deemed necessary, the applicant may be interviewed more than once, the number is not maximised. The applicant needs to present his or her grounds for protection, and the authority has to assess the claim, explore the credibility of the applicant and make a decision. Many factors can influence the decision, just like many factors can influence the quality of the interview. Importance may lay in the details: the way the case worker asks a question or the way the information provided by the applicant is evaluated.

Personal circumstances can impair someone’s ability to present his or her case, such as vulnerabilities like being a minor, or having experienced physical or sexual violence, being trafficked etc. These factors may limit their abilities to understand the importance of the personal interview in the asylum procedure of presenting their cases, and reasons for asylum effectively.

It is the interviewer’s role to recognise these handicaps, to identify vulnerabilities and properly address them. Hence, this chapter focuses on the role of the interview in identifying special needs (especially in the cases of UAMs and women), because this might be the only chance for an applicant to call attention to his or her vulnerability.

Nevertheless, components of the interview are not detailed here, such as, how to prepare for it, what is the role of the interpreter and many more technical details, since the purpose is to illustrate how special needs can be identified during the interview.

---

<sup>201</sup> Art 14.1, 2013/32/EU (APD recast)

<sup>202</sup> Art 34.1 Ibid

As interviews may differ in the Member States, this part gives guidance developed by EASO through tools<sup>203</sup> and trainings<sup>204</sup> with a reflection on EU provisions, contributing to the implementation of the CEAS. Training established and developed by EASO are well-known and highly respected sources by the EU, aiming to strengthen authority personnel's skills in creating an appropriate examination of applications in accordance with the EU acquis.<sup>205</sup>

## 1. Interviewing vulnerable persons

The previous chapters, among others concluded, that the training of the staff of the authorities is crucial for vulnerable applicants. Some of the directives have provisions on relying on EASO's training activities<sup>206</sup>, which concern interviewing and interview techniques of children and vulnerable persons<sup>207</sup> with the aim to make officers more prepared to situations where vulnerable applicants are involved. Participants completing those trainings become national trainers and can pass on the necessary skills to their colleagues, raising the standard of asylum interviews.

One of the most important safeguards in the status determination procedure is that the interview has to be conducted by someone who has the necessary knowledge of the special needs of minors, and the same applies to the decision-maker.<sup>208</sup> A trained officer is able to unfold the applicant's true flight reason with the help of adequate questions, whereas applicants benefit by having the proper environment to tell their stories and show their personal involvements.

The interview is the time when applicants are given the chance to reveal their application reasons and to establish grounds for future protection, procedural or reception safeguards or assistance of any kind. Another purpose is also the ability to filter unfounded<sup>209</sup> claims. At least one personal interview is required by EU law: within the right to access to an effective procedure (recital 25), conducting timely interviews on the substance of an application (recital 37), and that examinations should be gender-sensitive (recital 32) including the interview too, in the APD recast.

---

<sup>203</sup> EASO, Practical Guide: Personal interview, December 2014, available at: <https://www.easo.europa.eu/sites/default/files/public/EASO-Practical-Guide-Personal-Interview-EN.pdf> Downloaded: 16.05.2017 and EASO TOOL FOR IDENTIFICATION OF PERSONS WITH SPECIAL NEEDS, available online: <https://ipsn.easo.europa.eu/easo-tool-identification-persons-special-needs>

<sup>204</sup> Interviewing Vulnerable Persons, ESO Training Curriculum

<sup>205</sup> this is also reflected in the APD recast, Art 4.3

<sup>206</sup> APD recast recital (26)

<sup>207</sup> European Asylum Support Office, EASO Training Curriculum, Luxembourg: Publications Office of the European Union, 2014, available at: <https://www.easo.europa.eu/sites/default/files/public/BZ0413152ENC.pdf>

<sup>208</sup> Art 25 (3) a -b) APD

<sup>209</sup> More on unfounded claims: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:133102&from=EN>

Special rules apply to interviews conducted only on the admissibility of the application: personnel of authorities, other than the determining authority is also authorised to conduct interviews, however *'[i]n such cases, member states shall ensure that such personnel receive in advance the necessary basic training, in particular with respect to international human rights law, the Union asylum acquis and interview techniques'*.<sup>210</sup> With this provision, the legislators' intention of securing the identification of vulnerable situations is perceptible.

The recording of the interview can also serve as further help for the officer or other caseworkers to evaluate the information obtained during the interview, or if the case gets to judicial phase, for the judge to have a better understanding of the procedure and the information provided by the applicant.

The interviewer has a responsible role in the procedure. He or she has to prepare with relevant information on the case and on the country of origin (COI), has to become familiar with the applicant with the help of the given information (provided for example by the border police or other authorities), and has to check special procedural needs. Latter can be assumed by the profile of the applicant based on age, and gender, sometimes family status. Therefore, the interviewer himself or herself makes an impact on the quality of the whole procedure, including the final decision, which is mostly based on the information acquired from the applicant through the interview, by him or her. The latest APD recast<sup>211</sup> introduced many positive requirements regarding the personal interviews, including that *'states shall ensure that the person who conducts the interview is competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability'*.<sup>212</sup> This way being trained and having experience as an interviewer became a standard, which ensures that the applicant's circumstances will be considered. Moreover, the directive is establishing a more sensitive approach towards female applicants with the possibility of selecting a female officer and interpreter throughout the interview<sup>213</sup> and that wearing uniforms are better to be avoided in such situations.<sup>214</sup> The same goes for creating a child-friendly atmosphere by securing that *'interviews with minors are conducted in a child-appropriate manner'*<sup>215</sup>.

Additionally, EASO recommends more information on what a child-friendly manner is: adjusting the language or tone of the officer to the child's age and level of understanding, giving the

---

<sup>210</sup> Art 34.2 APD recast

<sup>211</sup> 2013/32/EU (APD)

<sup>212</sup> Art 15.3 (a) Ibid

<sup>213</sup> Art 15.3 (c) Ibid

<sup>214</sup> Art 15.3 (d) Ibid

<sup>215</sup> Art 15.3 (e) Ibid

presence of the guardian.<sup>216</sup> In the case of single parents *'the case officer should ensure that arrangements are in place so that parents are not required to give an account of personal victimisation or humiliation if their children are present.'*<sup>217</sup>

Securing that the child's maturity would be taken into account is also essential. Interviews need a different structure, and require expertise different than in adult applicants' cases. Therefore, UNHCR indicates that age, health, and maturity are defining factors to the status determination, thus a necessary assessment to evaluate them has to be conducted first, foremost because children may manifest their fears in ways different from adults.<sup>218</sup> EASO also realised that *'[s]pecific skills and knowledge are required to interview children, since a child's perception of the environment, his/her memory and sense of time is considerably different from that of an adult. It is therefore crucial that case officers are fully aware of these differences when conducting a personal interview with a child.'*<sup>219</sup>

Handling cases where both women and children are involved requires special attention. In a case study on gender-related claims it was found that *'Women seeking asylum are too often confronted with legislation and policy that fail to meet acceptable standards, while even gender-sensitive policies are not implemented in practice'* illustrating it with an example, where a woman claimed that she had to tell her story with the presence of her 7-year-old, who at some point asked to leave the room, saying that it is too hard for him.<sup>220</sup>

There are recommendations collected by EASO for being considerate also about people subjected to rape, or torture, or other serious forms of violence by a more sensitive approach.<sup>221</sup>

Furthermore, EASO made recommendations for preparing for, conducting, and evaluating the interview, so that it brings the most out of the applicant in substantiating his or her claim. For example, how to build up a trusting environment, how to use body language and tone, how to provide information to the applicant, what attitude to communicate towards him or her and how to be encouraging in giving the floor to the free narrative effectively, in which usually the most information is provided by the applicant. Not only interview techniques are listed in the guide, but

---

<sup>216</sup> supra note 203, P2

<sup>217</sup> P3, Ibid

<sup>218</sup> P43, UN High Commissioner for Refugees (UNHCR), *Refugee Children: Guidelines on Protection and Care*, 1994, available at: <http://www.refworld.org/docid/3ae6b3470.html>

<sup>219</sup> P14-15 in *European Asylum Support Office, EASO Training Curriculum*, Luxembourg: Publications Office of the European Union, 2014

<sup>220</sup> Main findings, Executive Summary, *Gender-related asylum claims in Europe, Comparative analysis of law, policies and practice focusing on women in nine EU states*, May 2012

<sup>221</sup> Ibid

also tips and hints on how to assess the claim by evaluating certain information disclosed by the applicant in line with the relevant EU law.

Preparations for the interview help discovering vulnerable situations early. This can mean collecting information of the applicant and his or her situation (country of origin and personal), but also the gathering of social worker's, legal representer's or guardian's opinions or reports, and also medical records if available.

For example, if the applicant claims to be detained and there is available COI on a pattern of torturing detainees, it should be considered as a possible occurrence. In Eritrea, military service is compulsory for women, and reports address frequent sexual abuse and rape by military leaders and sometimes even women with children are spending their services.<sup>222</sup> This should be kept in mind when interviewing an Eritrean woman.

The person of the interviewer is also relevant, not only in the means of experience (especially in the cases of UAMs), but in establishing a more trustworthy atmosphere by assigning a female officer to a female applicant.

For instance, when a female asylum-seeker lodges an application together with a claimed husband, without documents proving the family link, it would be advised to carry out a separate interview with her, to verify the intention of the claim and make sure, the women is not used by the partner to receive favourable reception and a positive decision. Also, women might not be willing or used to talk freely about their private life due to traditions, cultural morale, past experiences, let alone tell them to a male interpreter or caseworker. In some cultures man and women do not interact openly and freely, therefore a male officer could hinder a female asylum seeker to tell him about her sexual violence experience. Even setting up the room for the interview may help to interview vulnerable persons (by preparing water or tissues to avoid unnecessary breaks etc).

These details are all deriving from the APD recast: *'Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner.'*<sup>223</sup> That is probably the other reason EASO is constantly working on developing tools and guidelines on such technical matters. Although, it mainly belongs to the State's policies how to carry out interviews, working out common practices is the interest of the CEAS, for which EASO is acting actively by trainings officers. The more professional and skilled the persons of the refugee authorities are, the more

---

<sup>222</sup> Immigration and Refugee Board of Canada, Eritrea: Military service, including age of recruitment, length of service, grounds for exemption, penalties for desertion from and evasion of military service, and availability of alternative service, 4 September 2012, ERI104179.E, available at: <http://www.refworld.org/docid/5084f3982.html> Downloaded: 01.05.2017

<sup>223</sup> Art 15.3 2013/32/EU (APD)



effective they can carry out the assessment of asylum seekers' claims. Thus, vulnerable situations can be handled easier and special needs can be addressed better. For this purpose, learning how to ask questions matter, indeed. And there are other tools and forms for the help of the caseworkers, like the Questionnaire and observations for early identification of asylum seekers having suffered traumatic experiences<sup>224</sup> to easily check whether the applicant may have suffered any traumas.

## 2. Support in identifying special needs

The above mentioned practical guide of EASO is to be seen in conjunction with two others, one on evidence assessment, and the other on identifying persons with special needs. Latter has been developed recently and made available on EASO's web page<sup>225</sup> earlier this year, as a practical and easy tool for case workers, dealing with potentially vulnerable persons. It is also promoted in social media by the Office, for the reason to make it available to many. So far, it seems to be the the most extensive and easiest technical help for officers in asylum procedures, as it provides practical information tailored to the case.

On the platform, there are 2 boxes with different helping guides. One is where users can select the indicators of special needs, describing: *This tool is designed to support without requiring any medical or other expert knowledge.* Here, the following indicators are listed: Age, Sex, Gender identity and sexual orientation, Family status (in relation to the asylum procedure), Physical indicators, Psychosocial indicators and Environmental indicators. All of them offer multiple choices, for example under Physical indicators there are further options: Physical appearance, Health conditions, Disabilities, Sexual and reproductive health, Pregnancy, which can further elaborated, with for instance: physical signs, injuries apparently as a result of assault or controlling measures, visible signs of illness, work-related injuries due to poor health and safety measures, tattoos or other marks indicating ownership by exploiters within the category of Physical appearance. By selecting the indicators, a tick automatically appears in the Special needs box on the right side, which can be further explored by selecting them. Multiple choices are allowed too, making the test customised.

In the third step, there are choices for selecting support, depending on how to address the special need(s) of the applicant. It indicates the stages of the process: First contact - making an application,

---

<sup>224</sup> The PROTECT-ABLE project, Questionnaire and observations for early identification of asylum seekers having suffered traumatic experiences, available at: <http://protect-able.eu/wp-content/uploads/2013/01/protect-questionnaire-english.pdf>  
Downloaded: 16.05.2017

<sup>225</sup> EASO TOOL FOR IDENTIFICATION OF PERSONS WITH SPECIAL NEEDS, available online: <https://ipsn.easo.europa.eu/easo-tool-identification-persons-special-needs>

Reception support, Lodging the application, Personal interview, or End of the first instance asylum procedure.

Finally by clicking on View Results, the program gives a very detailed guide on special needs of the applicant.

By looking at female UAMs for First contact - making an application, the program first suggests potential intersections for further consideration, like Victims of human trafficking or Persons who have been subjected to other serious forms of psychological, physical or sexual violence, which indicators can be added or disregarded when not applicable. Then, on UAMs, a whole range of information will be accessible, breaking down in general information about the category, Indicators of special needs and Potential pieces of evidence regarding special needs.

Selecting the first possibility, information on UAMs pops up with the indication of all relevant EU law and some further suggestions.

Selecting the last possibility, Potential pieces of evidence regarding special needs will provide evidence relevant for identifying an unaccompanied child: statements, documents, age-assessment etc, with some information in all evidence.

Back to the evaluation, further useful details will be visible concerning special procedural guarantees, for example: *Take the best interest of the child into consideration. The responsible officer dealing with a child should throughout the process assess the best interest of the child. In assessing the best interest of the child, due account has to be taken to certain factors such as family reunification possibilities; the child's wellbeing and social development, taking into particular consideration the child's background; safety and security considerations; and the views of the child in accordance with his/her age and maturity (Article 23(2) RCD recast, Recital 33 APD recast).*

When there is an applicant with sexual violence, the tool gives a detailed list of special indicators of persons who have been subjected to rape for instance, from health conditions to attitude, assisting in recognising signs of this form of persecution.

All the information can be saved or printed and attached to the file of the applicant for later considerations or access to other case workers. This way, the information and assessment of special needs is carried out quickly and easily.

EASO is currently working on making translations possible in all official languages of the EU to make it accessible for non-English speaker officials as well.

All in all, the tool is innovative in addressing vulnerable asylum seekers' needs in a very simple way, and officers do not have to research information they are not competent with, for example,

psychological symptoms. Furthermore, they are provided with hints for the interview, guidances for the decision making and all kinds of other practical advice.

It also comes handy when there is a high influx of applicants and limited time to gather individual information in each case, because it still gives a possibility for addressing special needs and every information is available in one place. The tool gives support in every phase of the procedure, not only for the interview, but throughout the whole status determination, and at any stage of the reception process. Officers, interviewers do not have to look up every single legislative guide or provisions, because they are indicated or referred in the evaluation.

Vulnerable factors can be identified in every phase of the procedure, but the earlier, the better in order to provide applicants with special procedural safeguards. That is why the interview is crucial, so as how it is carried out, in what environment and by whom. Training the staff of national authorities increases the possibility of early identification, and also contributes to work out stronger control mechanisms in the CEAS, to check how Member States implement certain provisions of the EU law, and to ensure identifying and protecting vulnerable applicants.

### 3. Age as vulnerability factor in asylum law

Children's rights in asylum are different from the rights of adults. The CRC ensures that asylum-seeking children have the same rights as the children holding the citizenship of the host country<sup>226</sup>, and their best interest should be considered<sup>227</sup>.

In assessing an asylum application, the child's age, health, and maturity have to be taken into consideration. Consequently, providing adequate protection of an UAM is among one of a set of requirements and it starts by taking care of the child from the minute he or she crosses the border of the host country. The child's best interest requires a complex analysis, while age is so crucial in asylum, that it has to be considered from all angles, in every phase of a procedure: in age-assessment upon arrival to the host country, throughout the status determination procedure, and within the reception conditions.

The EU does not regulate how a status determination for UAMs, or anyone else should be performed, none of the EU directives set rules for it, leaving a wide discretion to States in this aspect. The APD leaves a rather free practice to States, where it is mainly the national judicial and

---

<sup>226</sup> Art 2, CRC

<sup>227</sup> Art 3, CRC

other control systems (for example ombudsman), with authority to identify if children's rights are jeopardised or violated.

Unfortunately, in asylum law children may not be able to receive the investigation results of their cases, as they might leave the country prior to the end of any procedure, not to mention the problems of being compensated years later for something, that resulted in human rights violations, for instance being detained as a child together with adults for months long. The ECtHR does not have jurisprudence in such cases<sup>228</sup>, thus some authoritative interpretation is missing on this field. This further deepens the incoherence of asylum law between Member States, and results in asylum seekers setting goals of reaching the countries with the likely favourable decision in their cases. This is not only far from the goals of the CEAS, but leads to systematic problems to the detriment of the UAMs.

#### a) Age assessment

Identifying vulnerabilities and minor age in an early phase of the procedure is very important, possibly done through evidence provided by the asylum seeker, which is quite rare due to lack of documents. If the UAM cannot provide trustable and factual information on his or her age, an age-assessment is carried out by the police, or the refugee authority in the country applied for asylum.

Age assessment means the procedure in which someone's age (usually in an interval) is estimated, and in which it is established whether he or she has reached the legal adulthood or not. In other words within the asylum context: *'Age assessment in asylum procedures refers to the procedures through which authorities seek to establish the chronological age of a person to determine which immigration procedures and rules need to be followed.'*<sup>229</sup>

Being misidentified as an adult, when seeking international protection can have considerable implications on the level of rights and protections given by the host state. This ranges from being unable to access welfare services and support, to be detained as an adult, or not receiving legal representation during the asylum process. On the other hand, the lack of age assessment (AA) or an improper AA can result to abuse the asylum system by applicants, and adults might be treated as children, having all the extra safeguards and rights that they would normally not be entitled to.

---

<sup>228</sup> Except the detention of children (ex: Kanagaratnam v. Belgium, No. 15297/09, 2011) or family reunification cases (ex: Jeunesse v. the Netherlands [GC], No. 12738/10, 2014)

<sup>229</sup> P4 in Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, available at: <http://www.refworld.org/pdfid/4ff535f52.pdf> Downloaded: 12.05.2017

Moreover accommodating adults with children can be dangerous and not within the best interest of children.

AA is a complex field, where more science meet (medicine, psychology, anthropology etc.), yet there is no exact method to define someone's age, while many are concerned about the invasiveness or the accuracy of the methods.<sup>230</sup> The methods vary from physical appearance inspection, examination of the teeth, sexual maturity examination to X-ray methods (of the wrist, collarbone, hip or orthopantogram) and they are not going to be demonstrated now, since the purpose of this chapter is to illustrate the assessment's relevance from the perspective of protection of UAMs.

The APD authorises the Member States to use medical examinations to determine the age<sup>231</sup>, therefore it is widely used within the EU. (Although it is to notice that some scholars highly contest the use of radiological methods, a popular way of AA in Europe, saying that they are not in compliance with internal norms of the forensic science community.)<sup>232</sup>

The European Commission's Action Plan on Unaccompanied Minors (2010-2014) set a goal to issue a Best Practice Guideline<sup>233</sup>, in collaboration with scientific and legal experts and in cooperation with EASO. Latter prepared a technical document on age assessment in the end of 2013. The guide<sup>234</sup> is a practical tool, providing information and support about the methods, their advantages, and weaknesses, procedure measures, the role of actors, including checklists, recommendations and a referral to important legal instruments, which will be updated soon<sup>235</sup>.

The reason why the Commission put this topic on agenda was presumably that the previous EU regulations were not detailed enough about AA, leaving it to the Member States to decide how to establish age, but as it makes such a big difference from a legal perspective whether someone is a minor or an adult, the need to spread information and collect some best practices arose.

---

<sup>230</sup> See in:

- European Union: European Asylum Support Office (EASO), EASO Age assessment practice in Europe, December 2013, available at: <http://www.refworld.org/docid/532191894.html> Downloaded: 16.05.2017
- UNICEF, Terry Smith, Laura Brownlees, Age assessment practices: a literature review & annotated bibliography, April 2011, available at: [https://www.unicef.org/protection/Age\\_Assessment\\_Practices\\_2010.pdf](https://www.unicef.org/protection/Age_Assessment_Practices_2010.pdf) Downloaded: 16.05.2017
- p3-6, The Asylum Information Database (AIDA), Detriment of the Doubt: Age Assessment of Unaccompanied Asylum-Seeking Children, December 2015, available at: <http://www.ecre.org/wp-content/uploads/2016/07/ECRE-AIDA-Detriment-of-the-doubt-age-assesment-of-unaccompanied-asylum-seeking-children-December-2015.pdf> Downloaded: 16.05.2017

<sup>231</sup> Art 25 (5) 2013/32/EU (APD)

<sup>232</sup> for example in p1, Gregor Noll, Short Summary Report on Age Assessment, available at: <http://migrationlawnetwork.org/wp-content/uploads/2015/07/noll-short-summary.pdf> . Full article: Junk Science? Four Arguments against the Radiological Age Assessment of Unaccompanied Minors Seeking Asylum, Gregor Noll, Int J Refugee Law (2016) 28 (2): 234-250, August 2016

<sup>233</sup> Para 4.2, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, Action Plan on Unaccompanied Minors (2010 – 2014), 2010

<sup>234</sup> European Union: European Asylum Support Office (EASO), EASO Age assessment practice in Europe, December 2013

<sup>235</sup> European Commission - Press release Protecting all children in migration: Commission outlines priority actions, Brussels, 12 April 2017

With the recast directive in 2013<sup>236</sup> new guarantees for UAMs have been introduced, providing relevant procedural safeguards for them. Such guarantees are *inter alia* the followings:

- Appointing a representative as soon as possible ‘*to enable him or her to benefit from the rights and comply with the obligations provided for in the Directive*’.<sup>237</sup>
- Free legal and procedural information for UAMs and their representatives<sup>238</sup>
- ‘*Member States may use medical examinations to determine the age of unaccompanied minors [...] where, Member States have doubts concerning the applicant’s age. If, thereafter, Member States are still in doubt concerning the applicant’s age, they shall assume that the applicant is a minor. Any medical examination shall be performed with full respect for the individual’s dignity, shall be the least invasive examination and shall be carried out by qualified medical professionals allowing, to the extent possible, for a reliable result.*’<sup>239</sup> Furthermore the UAMs shall be informed in an early stage of the procedure that their age might be examined, including the method, the outcome and the consequences and their consent is necessary prior to the AA. They also have the right to refuse the examination and the authority’s decision on international protection cannot be based solely on this behaviour.<sup>240</sup>
- The best interest of the child shall be a primary consideration.<sup>241</sup>

Apparently, the law has introduced protective procedural measures, enabling a more effective age assessment procedure, but it is silent about its methods. The only restriction is to use the least invasive examination, but leaving the defining of invasive to the States.

AA is clearly a complicated procedure, requiring a multi-disciplinary approach, complex knowledge, financial resources, and expertise. All States have different approaches and policies, but as long as every State carries out AA differently, some UAMs’ cases will be favourably evaluated than others, because less strict systems will be more permissive than others. It means for example, that if someone’s age is estimated between 16-17 and 16 is taken as applicable, he will be treated differently compared to that State, where the expert opinion would only state that he is under 18. Conversely, countries who use medical methods combined with other methods will arrive at a different (maybe more accurate) finding of age in the same case, as in the country, where the age is estimated based on a single dental X-ray.

---

<sup>236</sup> 2013/32/EU

<sup>237</sup> Art 25 (1) a) Ibid

<sup>238</sup> Art 25 (4) Ibid

<sup>239</sup> Art 25 (5) Ibid

<sup>240</sup> Art 25 (5) a)-c) Ibid

<sup>241</sup> Art 25 (6) Ibid

One of the reasons why AA is such a frequently criticised and targeted topic is the aforementioned accuracy and the lack of clear recommendations. Not even EASO has recommended a particular method so far, promoting rather common procedures and approaches, and focusing on key recommendations, such as the best interest of the child as a primary consideration, carrying out age assessment only when in doubt, making the assessment from a holistic and multi-disciplinary approach, considering other evidences as prior that are within easier reach, respecting the child's dignity, choosing the least invasive method, asking for the consent of the child in advance, providing efficient information, and being able to challenge the decision.<sup>242</sup>

Every child has the right to protection and care necessary for their well-being, and their best interest should be of primary consideration whether taken by public authorities or private institutions<sup>243</sup>, as set out in the CRC. The latter also ensures that States take appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention.<sup>244</sup> AA is for the protection of children and their rights, although it is the Member States, having a common responsibility to create and maintain a comprehensive child-protection system and through that system, assess applicants' ages in a manner which is in line with international and EU law.

*'The best interests of a child in a specific situation of vulnerability will not be the same as those of all the children in the same vulnerable situation. Authorities and decision makers need to take into account the different kinds and degrees of vulnerability of each child, as each child is unique and each situation must be assessed according to the child's uniqueness.'*<sup>245</sup>

The EU legislation provides the main safeguards, but the importance may lie in the details: Member State policies, the everyday behaviour of border guards, asylum caseworkers or judges. It might be easily contested if it is fair and in harmony with the goals of the CEAS.

*'Thus the task of making a reasonably accurate assessment of age is further challenged, and evidence shows that it is extremely rare that the child's unique characteristics and needs are appropriately accommodated within the procedure. Perhaps a way forward would be to give greater weighting to the assessment of a child's maturity and their coping skills when undertaking an age assessment. This could be supported by addressing the need for more specific international*

---

<sup>242</sup> Supra note 234, P6-7

<sup>243</sup> EU Charter of Fundamental Rights, Article 24. 1-2

<sup>244</sup> CRC, Article 4

<sup>245</sup> Para 76, Committee on the Rights of the Children, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, Adopted by the Committee at its sixty-second session (14 January – 1 February 2013), available at: [http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC\\_C\\_GC\\_14\\_ENG.pdf](http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf)

*guidance on how these should be carried out, and the weighting they should be given as part of a holistic age assessment.*<sup>246</sup>

---

<sup>246</sup> p41, UNICEF, Terry Smith, Laura Brownlees, Age assessment practices: a literature review & annotated bibliography, April 2011



## **Chapter VII**

### **SUMMARY**

This conclusive chapter summarises the findings of the research, by navigating through the main ideas of the previous chapters.

As having demonstrated, vulnerability is a complex issue in asylum, not only because solid legal grounds are lacking and the interpretation is various, but case law is limited too. Given the freedom of the CEAS, Member States have a wide discretion to create their own asylum procedures, which does not help in specifying details for the help of vulnerable applicants. Having only the main lines defined puts applicants with special needs in a difficult situation in terms of identification and treatment within the asylum procedure.

In the case of UAMs, the legislation is more articulate, perhaps due to the fact that the legal category of minors has been regulated for long, in different areas of law. Therefore, they are entitled to more safeguards in response to their vulnerable positions, just like providing them a guardian, taking into account their maturity and carrying out a best interest assessment, to name the main evolvments. It does not mean though, that there is no place for improvement, detention of UAMs or the challenges of age assessment speak for themselves.

As for female applicants it is not only special needs originating in their gender that has to be considered, but also the different forms of gender-related persecution, making the problem multilevel. Existing EU law provides little about these matters, leaving gaps in the procedure and challenges for the States. Gender-sensitive approaches are not well channeled either, as having established in the analysis of the directives. Slow or weak responses coming from the EU bodies do not improve the situation, considering how long it takes from the identification of the problem to arrive at proposals and amendments of the law. This means, that even though the Commission reveals and collects legal, practical gaps and advocates for early identification of UAMs for instance, the road to make those changes happen is quite long.

The EU law in the CEAS is developing, although viewing the evolution and the current situations (crisis and high influxes of applicants, unfair distribution, policy differences in the legislation etc.) show that the EU has more focus on handling the high numbers, and harmonising reception, procedural and qualification standards, than strengthening the identification of vulnerable applicants, which is among the plans but remains secondary. Identification of special needs would not require much, only the revision of the interviews, together with the help of the available tools

presented, that are prepared for the overload of the authorities and provide much technical assistance. In sum, more emphasis put on how to conduct interviews could bring positive changes in the identification.

Despite the significant and constant changes of law in the CEAS in asylum, the responses to the problems are slow, which are reflected in the proposals for the directives. Latter also display that there are implementational obstacles too, as many of the proposals are repeating the same achievements years after each other.

The APD recast is not only difficult to implement but difficult to understand, since it tries to harmonise the procedural standards in the most flexible way to its disadvantage, because it only makes its own goal impossible: achieving a common procedure. Therefore no wonder, Member States have differences in legislation, in protection, in treatment, in conditions. These systematic differences and challenges result in secondary movements and thus, unfair share of responsibilities, which the CEAS is unable to handle. (Although with the help of EU funding EASO relocated thousands of more than 17,000 applicants from Italy and Greece last year<sup>247</sup>). All these factors are having an impact on weak mechanisms for dealing with vulnerabilities.

For many of the mentioned issues, the practical solution lies in soft law (guidances or handbooks published by organisations), which come up with comprehensive summaries and recommendations, nevertheless they bear little fruit without executive power. ECtHR could improve the situation, but case-law is very limited in connection with vulnerable applications, perhaps due to the high rates of secondary movements and absconding, the lack of legal representation and that such procedures take a lot of time.

EASO's work on applicants with special needs is essential considering the expertise work it carries out, in order to give states new perspectives, for example with the publication about age assessment, or providing training for officers in interviewing children and vulnerable applicants, or with the developing of tools. The strengthening of its role in the CEAS by the Commission is one of the most positive steps being taken at the moment.

Reforms for vulnerable applicants has started, nevertheless systematic weaknesses, obstacles accompany their implementations.

Based on the assessment, several key considerations were found.

---

<sup>247</sup> EASO Relocation, EASO's webpage, available at: <https://www.easo.europa.eu/relocation-0> Downloaded: 20.05.2017

**Chapter VIII**  
**THE WAY FORWARD**  
**SUGGESTIONS FOR A MORE COMPREHENSIVE APPROACH TO VULNERABILITY**  
**IN THE CEAS**

Concluding the analysis and having realised that the RC is not gender and age sensitive and is silent about the means to access protection, there is a clear need for a new approach of vulnerability by including addressing the needs of vulnerable applicants in the EU. *[...] the European Parliament should urge the Commission to ensure that all proposals on the reform of the Common European Asylum System are in full compliance with a full and inclusive interpretation of the 1951 Refugee Convention, the 1967 Protocol and other relevant human rights treaties, and the EU Charter of Fundamental Rights, in particular the right to asylum.*<sup>248</sup>

Clearer provisions creating obligations for States would lessen the challenges vulnerable applicants face in the asylum procedures.

As for legal changes, deriving from the analysis of the paper, the emphasis of procedural guarantees and strengthening the rights of the applicants and reinforcing safeguards are desired. This means common procedures in the States in an efficient and balanced way, and more harmonisation in the outcome of the asylum procedures, which would also put an end to asylum shopping, secondary movements and would create a more balanced distribution of applicants in the EU. The Commission's latest proposal for the new QD reflects this.<sup>249</sup>

Consistency in policies is especially important for vulnerable applicants, since the law is too broad. Policies could shape the strengthening of the rights of applicants with more emphasis put on procedural guarantees together with reinforced safeguards.

Resolving the sophisticated nature of the APD, according to the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs<sup>250</sup>: *'1) the Commission could further invest, with the support of EASO, into permanent monitoring of the implementation of the Directive, thereby lobbying for adaptations that would result in further harmonisation; 2) the Asylum*

---

<sup>248</sup> P97 in DIRECTORATE GENERAL FOR INTERNAL POLICIES, Policy Department C: CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS, CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS, The Implementation of the Common European Asylum System, STUDY, 2016 available at: [http://www.epgencms.europarl.europa.eu/cmsdata/upload/983a50a5-69d6-48b1-a0bd-2b34cced9e36/Sessions\\_1\\_and\\_2\\_-\\_Study\\_European\\_Asylum\\_System\\_and\\_Alternatives\\_to\\_Dublin.pdf](http://www.epgencms.europarl.europa.eu/cmsdata/upload/983a50a5-69d6-48b1-a0bd-2b34cced9e36/Sessions_1_and_2_-_Study_European_Asylum_System_and_Alternatives_to_Dublin.pdf) Downloaded: 23.04.2017

<sup>249</sup> p 3-5 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 2016

<sup>250</sup> Supra note 248

*Procedures Directive could be transformed into an “asylum procedures regulation” describing a single asylum procedure applicable in all EU MS; or 3) an EU Asylum agency could be given the authority to make individual decisions on asylum applications, thereby conferring responsibility for the asylum determination from the national level to an EU wide specialised agency.*<sup>251</sup>

More reporting and evaluation could bring deficiencies on the surface by monitoring the effectiveness of national systems.

In UAMs’ rights, more widely accepted guidance on the best interest assessment could probably assist caseworkers on how to address some of their needs, since the assessment is one of the most unclear areas. *‘Best interest assessments should be multidisciplinary, robust and include participatory procedures, which should be involve the views of the child and those of his or her guardian.’*<sup>252</sup> The appointing of a qualified and trained guardian at the earliest possible stage in the procedure could also ensure that the child receives all the procedural safeguards he or she is entitled to. Setting deadline for certain procedural steps in UAM cases could safeguard their rights more adequately. Also involving NGOs to assist minors or women would bring positive changes, just like accessible and free legal assistance. Making child-friendly environments available would contribute to the quality of procedures where UAMs are cared for, and their background and personal circumstances are taken into consideration.

UAMs should not be detained due to their already vulnerable situation, as detention has very harmful consequences on young people. Other identified vulnerable applicants should not be detained either, especially not as a policy to cope with the high number of applicants.

Age testing should be used from a complex approach and not limited to medical examinations.

*‘The European Parliament should promote:*

- a comprehensive approach at EU level for ensuring that the needs and rights of all migrant children are specifically identified and addressed. This should be guided by the UN Convention on the Rights of the Child, the Fundamental Rights Charter, the safeguards in EU instruments and the principles contained in the Commission Reflection Paper on integrated child protection systems*

---

<sup>251</sup> p 94 Ibid

<sup>252</sup> Missing Children Europe, Lost in Migration: working together in protecting children from disappearance, Conference conclusions, January 2017 available at: [http://lostinmigration.eu/Conclusions\\_Lost\\_in\\_Migration\\_Conference.pdf](http://lostinmigration.eu/Conclusions_Lost_in_Migration_Conference.pdf) Downloaded: 22.05.2017

- *significantly enhanced EU mechanisms for transnational cooperation between Member States, and between Member States and third countries [...] Furthermore, it is worth exploring the establishment of an EU child protection agency to deal with cross border situations*<sup>253</sup>

The CEAS and EASO have the potentiality to help function effective asylum systems, although more monitoring mechanism and faster reaction are needed. The biggest potential lies in EASO's activities: *'Identification and response to the special needs of vulnerable groups is further mainstreamed in all EASO activities, including in particular training, quality support and country of origin information. [...] it will take into account the general work on child protection and the protection of the rights of the child developed, inter alia, by the European Commission, in particular in line with the EU action plan on unaccompanied minors, FRA, UNHCR and the UN general committee on the rights of the child. [...] EASO mainstreams aspects related to children, including unaccompanied children, in all EASO activities and will support policy coherence in this field.'*<sup>254</sup>

EASO is the most relevant actor in the implementation of CEAS actively dealing with vulnerable groups. Mainstreaming gender and age in asylum by sensitivity trainings and preparedness (more staff, female staff members, child protection officers, use of the tool of EASO etc) would be one of the most important practical developments, rising the quality of the decisions as well. Latter could be reached by taking into consideration some of UNHCR's important supervisory advice, complementing the asylum procedures.

The role of EU institutions and agencies in general are very supportive by ensuring Member State cooperations, and developing standardised approaches in such areas as the best interest assessment. Although it is to be questioned whether and how Member States would comply with them, if they were given a wider, more interventionist discretion and more responsible functions.

Overall assessment of risk, personal and environmental factors in each cases is desired to address vulnerability related problems. This both goes for UAMs and women, together with a quick gender analysis for the latter. All of these can be checked easily with the use of EASO's tool on persons with special needs, which should be used by the national authorities.

---

<sup>253</sup> Supra note 248, P102

<sup>254</sup> EASO Vulnerable Groups, EASO's webpage, available at: <https://www.easo.europa.eu/training-quality/vulnerable-groups>  
Downloaded: 21.05.2017

Gender mainstreaming in asylum could meet with the effective use of the APD recast's provisions on additional safeguards<sup>255</sup> in practice. The Commission is working on amendments more favourable to women by specifically including their needs in human rights instruments<sup>256</sup>.

Reaching the goal of an extensive gender-sensitive interpretation in asylum, flexibility, capacity and an open mind is needed from States and their authorities. By establishing training programmes and implementing legal reasonings, best practices to introduce a protection-based approach to gender-related claims to officials and staff of the authorities, would bring changes. Informing the asylum-seeker or refugee society about their rights and obligations to raise awareness is also vital. EASO could *'promote the implementation of existing UNHCR guidelines and standards on gender-sensitive asylum systems and adopt EU best practice guidelines on gender-sensitive asylum systems to address any protection gaps.'*<sup>257</sup>

Certainly, States have to set policies and implement programmes for the protection of potential refugee women. Until then, the identification remains the priority, in which personal interviews within the procedure play an essential role, as already stated.

As interviews determine how the applicant's special needs are adhered to, the right to a personal interview has to be enforced and improved stronger, especially by keeping the provision of providing a competent, knowledgeable interviewer, who is considerate about the applicant's background and personal circumstance including the applicant's cultural origin, age, gender, sexual orientation, gender identity and vulnerability.<sup>258</sup>

Since finances determine priorities in asylum, more funding and operational help could contribute to reaching many goals set out in Commission proposals, as States have very diverse economic situations. Funding and consultation with the stakeholders and other participants, like civil organisations, local authorities, child care facilities etc. about their needs would be beneficial. Of course, the Commission's monitoring would help in making sure that the funds are targeted directly to vulnerable persons' assistance.

---

<sup>255</sup> for example: recital (26) ,Article 15(3) of Directive 2013/32/EU

<sup>256</sup> See The European Commission's Committee on Women's Rights and Gender Equality's Report on the situation of women refugees and asylum seekers in the EU (2015/2325(INI)), 10.02.2016 or the Committee on Civil Liberties, Justice and Home Affairs' proposal for a regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (COM(2016)0271 – C8-0174/2016 – 2016/0131(COD))

<sup>257</sup> Main recommendations in: Comisión Española de Ayuda al Refugiado (coordinator), France terre d'asile, Asylum Aid, Consiglio Italiano per i Rifugiati, Hungarian Helsinki Committee, Gender-related asylum claims in Europe, a Comparative analysis of law policies and practice focusing on women in nine EU Member States, 2012

<sup>258</sup> Art 12 (6), p 45 Ibid

## BIBLIOGRAPHY

### I. Table of authorities

#### A. Cases

National courts:

Abdulaziz, Cabales and Balkandali v. the United Kingdom, 9214/80, 28 May 1985, Series A no. 94,

House of Lords, Judgments - Islam (A.P.) v. Secretary of State for the Home Department, Regina v. Immigration Appeal Tribunal, Ex Parte Shah (A.P.) (Conjoined Appeals), 1999

Sweden, Migration Court of Appeal, 21 April 2011, UM 7851-10

I U 42/2012, Slovenia - Administrative Court of the Republic of Slovenia, 14 February 2012

ECtHR:

Mubilanzila Mayeka and Kaniki Mitunga v Belgium, Application No. 13178/03, 2006

Saadi v. Italy, Application No. 37201/06, 2008

M.S.S. v. Belgium and Greece, Application No. 30696/09, 2011

Rahimi v. Greece, 8687/08, 2011

Kanagaratnam v. Belgium, Application No. 15297/09, 2011

Popov v France Application Nos. 39472/07 and 39474/07, 2012

Jeunesse v. the Netherlands, Application No. 12738/10, 2014

#### B. Statutes and statutory instruments

The Committee on the Rights of the Child General comment No. 19 (2016) on public budgeting for the realization of children's rights

The Committee on the Rights of the Child, GENERAL COMMENT NO. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin, Thirty-ninth session, 17 May – 3 June 2005

The Committee on the Rights of the Children, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, Adopted by the Committee at its sixty-second session (14 January – 1 February 2013)

Statute of the Office of the United Nations High Commissioner for Refugees, General Assembly Resolution 428 (V) of 14 December 1950

Tampere European Council 15 and 16 October 1999, Presidency Conclusions A Common EU Asylum and Migration Policy

The Hague Programme: Strengthening Freedom, Security and Justice in the European Union (2005/C 53/01)

##### i. International and European legal instruments

The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

THE 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol

Universal Declaration of Human Rights

Geneva Declaration of the Rights of the Child

The United Nations Convention on the Rights of the Child

The Convention on the Elimination of All Forms of Discrimination against Women

Treaty of Amsterdam

Treaty of Lisbon

Treaty on the Functioning of the European Union

EU Charter of Fundamental Rights

International Convention on the Elimination of All Forms of Racial

Discrimination International Covenant on Civil and Political Rights

International Covenant on Economic, Social and Cultural Rights

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Convention on the Rights of Persons with Disabilities

1993 Vienna Declaration and Programme of Action

1995 Beijing Declaration

## ii. EU legislation

Council Resolution of 20 June 1995 on minimum guarantees for asylum procedures

Council Directive 2003/9/EC of 27 January 2003 (RCD) laying down minimum standards for the reception of asylum seekers

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

Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status in the European Union

Directive 2011/95/EU 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)

Directive 2013/32/EU common procedures for granting and withdrawing international protection

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)

Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Dublin Regulation)

Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (Eurodac Regulation)



### iii. European Commission materials

Communication from the Commission to the Council and the European Parliament Towards a Common Asylum Procedure and a Uniform Status, Valid throughout the Union, for persons Granted Asylum, 2000 COM/2000/0755 final

European Council, Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, 2000, COM/2000/0578 final - CNS 2000/0238

Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status 2002, COM/2002/0326 final - CNS 2000/023

Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (Recast), 2008, COM/2008/0815 final - COD 2008/0244

Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted, 2009, COM(2009) 551 final/2 2009/0164 (COD)

Commission of the European Communities, Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on minimum standards on procedures in Member States for granting and withdrawing international protection (Recast), October 2009, COM(2009) 554 final 2009/0165 (COD)

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, Action Plan on Unaccompanied Minors (2010 – 2014), 2010, COM (2010) 213 final

Amended proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common procedures for granting and withdrawing international protection status (Recast), 2011, COM(2011) 319 final 2009/0165 (COD)

Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions, A European Agenda on Migration, Brussels, 05.13.2015, COM(2015) 240 final

European Commission, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 2016 July, COM(2016) 467 final 2016/0224 (COD)

European Commission's Committee on Women's Rights and Gender Equality's Report on the situation of women refugees and asylum seekers in the EU (2015/2325(INI)), 10.02.2016

European Commission: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, Brussels, 4.5.2016

European Commission - Press release Protecting all children in migration: Commission outlines priority actions, Brussels, 12 April 2017

European Commission's Committee on Women's Rights and Gender Equality's Report on the situation of women refugees and asylum seekers in the EU (2015/2325(INI)), 10.02.2016

European Commission, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, The protection of children in migration, Brussels, 12.4.2017

### iv. European Parliament materials

Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014) of the European Parliament and the Council 2014

Proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, 2015

Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU, 2015

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 2016

Committee on Civil Liberties, Justice and Home Affairs proposal for a regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (COM(2016)0271 – C8-0174/2016 – 2016/0131(COD)), 2016

DIRECTORATE GENERAL FOR INTERNAL POLICIES, Policy Department C: CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS, CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS, The Implementation of the Common European Asylum System, STUDY, 2016, available at: [http://www.epgencms.europarl.europa.eu/cmsdata/upload/983a50a5-69d6-48b1-a0bd-2b34cced9e36/Sessions\\_1\\_and\\_2\\_-\\_Study\\_European\\_Asylum\\_System\\_and\\_Alternatives\\_to\\_Dublin.pdf](http://www.epgencms.europarl.europa.eu/cmsdata/upload/983a50a5-69d6-48b1-a0bd-2b34cced9e36/Sessions_1_and_2_-_Study_European_Asylum_System_and_Alternatives_to_Dublin.pdf) Downloaded: 23.04.2017

Report from the Commission to the European Parliament and the Council on the Application of 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, European Commission, Brussels, 16.6.2010, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52010DC0314>, Downloaded: 01.04.2017

European Parliament, Report on the situation of women refugees and asylum seekers in the EU (2015/2325(INI)), available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2016-0024+0+DOC+XML+V0//EN> Downloaded: 03.04.2017

## v. UNHCR materials

Note on Non-Refoulement (Submitted by the High Commissioner) EC/SCP/2, 1977

Guidelines on the Protection of Refugee Women prepared by the Office of the United Nations High Commissioner for Refugees Geneva July 1991

UN High Commissioner for Refugees (UNHCR), Refugee Children: Guidelines on Protection and Care, 1994, available at: <http://www.refworld.org/docid/3ae6b3470.html> Downloaded: 27.04.2017

UNHCR Executive Committee Conclusion No. 73 (XLIV) (1993) on Refugee Protection and Sexual Violence, available at: <https://goo.gl/nBzp3a> Downloaded: 11.04.2017

UN High Commissioner for Refugees (UNHCR), UNHCR Position Paper on Gender-Related Persecution, 1 January 2000

Introductory note by the Office of the United Nations High Commissioner for Refugees (UNHCR) to the Convention and Protocol Relating to the Status of Refugees, available at: <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf> Downloaded: 10.05.2017

IMPROVING ASYLUM PROCEDURES: COMPARATIVE ANALYSIS AND RECOMMENDATIONS FOR LAW AND PRACTICE, A UNHCR research project on the application of key provisions of the Asylum Procedures Directive in selected Member States, March 2010, available at: <http://www.refworld.org/docid/4bab55752.html> , Downloaded: 01.04.2017

UNHCR HANDBOOK AND GUIDELINES ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, 2011

United Nations High Commissioner for Refugees, NOTE ON THE MANDATE OF THE HIGH COMMISSIONER FOR REFUGEES AND HIS OFFICE, October 2013

## II. Bibliography

### A. Books

UNHCR, The State the World's Refugees: In Search of Solutions, Oxford University Press, Oxford, 1995, pp 30-55

Alice Edwards. "Age and Gender Dimensions in International Refugee Law" Refugee Protection in International Law: UNHCR's Global Consultations on International Protection (2003), Available at: [http://works.bepress.com/alice\\_edwards/29/](http://works.bepress.com/alice_edwards/29/) Downloaded: 04.02.107

REFUGEE PROTECTION IN INTERNATIONAL LAW: UNHCR'S GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION, E. Feller, V. Türk, and F. Nicholson, eds., Cambridge University Press, 2003.

Mary S. Lawrence, The Legal Writing Institute the Beginning: Extraordinary Vision, Extraordinary Accomplishment, 11 LEGAL WRITING 213, 227 (2005)

Fiddian-Quasmiyeh, Gender and Forced Migration, The Oxford Handbook of Refugee and Forced Migration Studies, Edited by E. Fiddian-Quasmiyeh, G. Loescher, K. Long, N. Sigona, 2014, Oxford University Press

## B. Journals

Laura P. Graham, Why-Rac? Revisiting the Traditional Paradigm for Writing About Legal Analysis, Kansas Law Review; 2015, Vol. 63

Fineman, Martha Albertson (2008) "The Vulnerable Subject: Anchoring Equality in the Human Condition," Yale Journal of Law & Feminism: Vol. 20: Iss. 1, Article 2. Available at: <http://digitalcommons.law.yale.edu/yjlf/vol20/iss1/2>

Junk Science? Four Arguments against the Radiological Age Assessment of Unaccompanied Minors Seeking Asylum, Gregor Noll, Int J Refugee Law (2016) 28 (2): 234-250, August 2016

## C. Official publications

IOM and UNICEF Data Brief: Migration of Children to Europe, 30 November 2015, [http://www.iom.int/sites/default/files/press\\_release/file/IOM-UNICEF-Data-Brief-Refugee-and-Migrant-Crisis-in-Europe-30.11.15.pdf](http://www.iom.int/sites/default/files/press_release/file/IOM-UNICEF-Data-Brief-Refugee-and-Migrant-Crisis-in-Europe-30.11.15.pdf) , Downloaded: 01.04.2017

Fundamental Rights Agency, Current migration situation in the EU: separated children, 2016 available at: <http://fra.europa.eu/en/publication/2016/december-monthly-migration-focus-separated-children> Downloaded: 05.05.2017

Executive Committee, Conclusion No. 39 (XXXVI) 1985, Refugee Women and International Protection, 1985, Contained in United Nations General Assembly Document No. 12A (A/40/12/Add.1).

Eurostat publication 44/2016 - 4 March 2016, Record number of over 1.2 million first time asylum seekers registered in 2015 available at: <http://ec.europa.eu/eurostat/web/products-press-releases/-/3-04032016-AP> Downloaded: 16.05.2017

European External Action Service, EU Guidelines for the Promotion and Protection of the Rights of the Child (2017) Leave no child behind, available at: [https://eeas.europa.eu/sites/eeas/files/eu\\_guidelines\\_rights\\_of\\_child.pdf](https://eeas.europa.eu/sites/eeas/files/eu_guidelines_rights_of_child.pdf) Downloaded: 09.05.2017

European Commission, Protecting all children in migration: Commission outlines priority actions, Brussels, 12 April 2017, available at: [http://europa.eu/rapid/press-release\\_IP-17-906\\_en.htm](http://europa.eu/rapid/press-release_IP-17-906_en.htm) Downloaded: 01.05.2017

European Commission Press release, Completing the reform of the Common European Asylum System: towards an efficient, fair and humane asylum policy, Brussels, 13.07.2016 available at: [http://europa.eu/rapid/press-release\\_IP-16-2433\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2433_en.htm) Downloaded: 09.05.2017

European Commission, Home Affairs, A Common European Asylum System, Luxembourg: Publications Office of the European Union, 2014, available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/ceas-factsheets/ceas\\_factsheet\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/ceas-factsheets/ceas_factsheet_en.pdf) Downloaded: 17.04.2017

European Commission: Reception Conditions: reforming the Common European Asylum System 13 July 2016, available at: [goo.gl/X4NPjt](http://goo.gl/X4NPjt) Downloaded: 09.05.2017

Canada: Immigration and Refugee Board of Canada, Eritrea: Military service, including age of recruitment, length of service, grounds for exemption, penalties for desertion from and evasion of military service, and availability of alternative service, 4 September 2012, ERI104179.E, available at: <http://www.refworld.org/docid/5084f3982.html> Downloaded: 09.05.2017

Missing Children Europe, Lost in Migration: working together in protecting children from disappearance, Conference conclusions, January 2017 available at: [http://lostinmigration.eu/Conclusions\\_Lost\\_in\\_Migration\\_Conference.pdf](http://lostinmigration.eu/Conclusions_Lost_in_Migration_Conference.pdf) Downloaded: 22.05.2017

## D. Studies and reports

European Parliament, The conditions in centres for third country national (detention camps, open centres as well as transit centres and transit zones) with a particular focus on provisions and facilities for persons with special needs in the 25 EU member states, December 2007, available at: <http://www.statewatch.org/news/2007/dec/eu-ep-detention-centres-report.pdf>, Downloaded: 19.03.2017

Eurostat, Asylum quarterly report, 15.03.2017 available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_quarterly\\_report](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_quarterly_report) Downloaded: 17.05.2017

European Parliament's Policy Department for Citizen's Rights and Constitutional Affairs publication on The Implementation of the Common European Asylum System, available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556953/IPOL\\_STU\(2016\)556953\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556953/IPOL_STU(2016)556953_EN.pdf) Downloaded: 10.04.2017

Report from the Commission to the European Parliament and the Council on the Application of 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, European Commission, Brussels, 16.6.2010, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52010DC0314>, Downloaded: 01.04.2017

European Parliament, Report on the situation of women refugees and asylum seekers in the EU (2015/2325(INI)), available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2016-0024+0+DOC+XML+V0//EN>

European Commission, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, The protection of children in migration, Brussels, 12.4.2017, available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412\\_communication\\_on\\_the\\_protection\\_of\\_children\\_in\\_migration\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412_communication_on_the_protection_of_children_in_migration_en.pdf) Downloaded: 11.05.2017

Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012 available at: <http://www.refworld.org/pdfid/4ff535f52.pdf> Downloaded: 12.05.2017

UNICEF, Terry Smith, Laura Brownlees, Age assessment practices: a literature review & annotated bibliography, April 2011, available at: [https://www.unicef.org/protection/Age\\_Assessment\\_Practices\\_2010.pdf](https://www.unicef.org/protection/Age_Assessment_Practices_2010.pdf)

The Asylum Information Database (AIDA), Detriment of the Doubt: Age Assessment of Unaccompanied Asylum-Seeking Children, December 2015, available at: <http://www.ecre.org/wp-content/uploads/2016/07/ECRE-AIDA-Detriment-of-the-doubt-age-asseessment-of-unaccompanied-asylum-seeking-children-December-2015.pdf>

A.RIGON, E. ERIKSSON, Policy Department for Citizen's Rights and Constitutional Affairs, European Parliament, Reception of female refugees and asylum seekers in the EU, Case study Belgium, 2016, available at: [http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/556946/IPOL\\_IDA\(2016\)556946\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/556946/IPOL_IDA(2016)556946_EN.pdf), Downloaded: 15.05.2017

Asylum Aid, Asylum Aid, Comisión Española de Ayuda al Refugiado (Spain - coordinator), France terre d'asile (France), Consiglio Italiano per i Rifugiati (Italy) and the Hungarian Helsinki Committee (Hungary), Gender Related Asylum Claims in Europe: Comparative Analysis of Law, Policies and Practice Focusing on Women in Nine EU Member States, May 2012, available at: <http://www.refworld.org/docid/4fc74d342.html> Downloaded: 24 May 2017

## E. EASO materials

EASO TOOL FOR IDENTIFICATION OF PERSONS WITH SPECIAL NEEDS, available online: <https://ipsn.easo.europa.eu/easo-tool-identification-persons-special-needs> Downloaded: 16.05.2017

European Union: European Asylum Support Office (EASO), EASO Age assessment practice in Europe, December 2013, available at: <http://www.refworld.org/docid/532191894.html> Downloaded: 16.05.2017

European Asylum Support Office, EASO Training Curriculum, Luxembourg: Publications Office of the European Union, 2014, available at: <https://www.easo.europa.eu/sites/default/files/public/BZ0413152ENC.pdf> Downloaded: 16.05.2017

EASO, Practical Guide: Personal interview, December 2014, available at: <https://www.easo.europa.eu/sites/default/files/public/EASO-Practical-Guide-Personal-Interview-EN.pdf> Downloaded: 16.05.2017

## F. Internet sources, webpages

UNICEF: Migrant and refugee children are often children in danger, available at: <https://www.unicef.org/emergencies/childrenonthemove/> Downloaded: 01.05.2017

UNICEF: Number of unaccompanied or separated children arriving by sea to Italy doubles in 2016, available at: [https://www.unicef.org/media/media\\_94399.html](https://www.unicef.org/media/media_94399.html) Downloaded: 01.05.2017

European Commission on the Rights of the Child, available at: [http://ec.europa.eu/justice/fundamental-rights/rights-child/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/rights-child/index_en.htm) Downloaded: 09.05.2017

European Council on Refugees and Exiles, Information Note on the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011, October 2013, p12, available at: [http://www.ecre.org/wp-content/uploads/2016/07/ECRE-Information-Note-on-the-Qualification-Directive-recast\\_October-2013.pdf](http://www.ecre.org/wp-content/uploads/2016/07/ECRE-Information-Note-on-the-Qualification-Directive-recast_October-2013.pdf), Downloaded: 03.04.2017

EASO History, EASO's webpage, available at: <https://www.easo.europa.eu/easo-history> Downloaded: 20.05.2017

EASO Relocation, EASO's webpage, available at: <https://www.easo.europa.eu/relocation-0> Downloaded: 20.05.2017

EASO Relocation, EASO's webpage, available at: <https://www.easo.europa.eu/relocation-0> Downloaded: 20.05.2017

EASO Vulnerable Groups, EASO's webpage, available at: <https://www.easo.europa.eu/training-quality/vulnerable-groups> Downloaded: 21.05.2017

The Guardian: Child asylum seekers may have been illegally detained, rules court, available at: <https://www.theguardian.com/world/2017/mar/07/-hungary-to-detain-all-asylum-seekers-in-container-camps> Downloaded: 11.05.2017

The Daily Mail: Asylum children held in detention centre available at: <http://www.dailymail.co.uk/news/article-132725/Asylum-children-held-detention-centre.html> Downloaded: 19.04.2017

End Child Detention, Abassi's Greek detention, available at: <https://vimeo.com/46354910> Downloaded: 11.05.2017

NGO Committee on Migration, Migrant Children's Issues, available at: <https://ngo-migration.org/children-in-detention/> Downloaded: 22.05.2017

Reuters: Female asylum seekers in Greece face sexual harassment, assault, available at <http://uk.reuters.com/article/uk-greece-refugees-women-idUKKCN10G0CV> Downloaded: 28.04.2017

## G. Other sources

Cambridge Dictionary online version

Oxford Dictionary online version

Immigration and Refugee Board of Canada, Guideline issued by the Chairperson pursuant to paragraph 159(1)(h) of the Immigration and Refugee Protection Act, Chairperson Guideline 8: Procedures With Respect to Vulnerable Persons Appearing Before the IRB, Guideline on Vulnerable Persons, available at: <http://www.irb-cisr.gc.ca/Eng/BoaCom/references/pol/GuiDir/Pages/GuideDir08.aspx#a2> Downloaded: 01.05.2017

Statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees, to the 51st Session of the United Nations Commission on Human Rights available at: <http://www.refworld.org/docid/4a54bc140.html> Downloaded: 22.05.2017

no 122/2006 on asylum in Romania, unofficial translation available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=544f8b206> Downloaded: 22.03.2017

Act LXXX of 2007 on Asylum, unofficial translation available at: <http://www.refworld.org/docid/4979cc072.html> Downloaded: 22.03.2017

Court Talks, Asylum, Council of Europe/European Court of Human Rights, 2016, available at: [http://www.echr.coe.int/Documents/COURTalks\\_Asyl\\_Talk\\_ENG.PDF](http://www.echr.coe.int/Documents/COURTalks_Asyl_Talk_ENG.PDF). Downloaded: 01.05.2017

The PROTECT-ABLE project, Questionnaire and observations for early identification of asylum seekers having suffered traumatic experiences, available at: <http://protect-able.eu/wp-content/uploads/2013/01/protect-questionnaire-english.pdf> Downloaded: 16.05.2017