

Identification of Vulnerable Persons with Special Needs

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European Developments...

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«Guide»

- Presentation of context: reception conditions for asylum seekers international law/EU law
Common European Asylum System (CEAS)
- The concept of vulnerability
- More specifically as introduced in the Reception Conditions Directive (RCD 2003 and the 2013 recast)
- Follow-up
- Where do we go from here?

Sources of international law

- Refugee Convention Geneva Convention
- Convention on the Rights of the Child
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- ECHR + case law - The ECtHR (M.S.S. judgment) elaborated on asylum seekers as a vulnerable group due to their traumatic experience of flight, their unfamiliarity with language and legal framework of the country in which they find themselves and their lack of economic means
- Charter of Fundamental Rights - carries same weight as the treaties and must be taken into consideration when other EU instruments are interpreted. Protection in accordance with charter must minimum be equal level (or og further) than ECHR (charter art 52(3))

CEAS

- Dublin Regulation «Dublin II»(Reg 343/2003)
Recast «Dublin III» (Reg 604/2013) - 1 January 2014
- Eurodac Regulation(Reg 2725/2000) Recast (Reg 603/2013)- 20 July 2015
- Qualification directive (2004/84/EC) Recast (2011/95/EU) – implementation by 21 Dec 2013
- Procedures directive (2005/85/EC) Recast (2013/32/EU)

CEAS cont.

- Reception Conditions Directive (RCD) (2003/9/EC) Recast (2013/33/EU)
- Directive on Temporary Protection (2001/55/EC)
- Tampere 1999 aim: «uniform status of asylum» for Europe as a whole.
- Now: TFEU art 78 The Union shall develop a common policy on asylum, subsidiary protection and temporary protection in accordance with the GC...
- EP + Council shall adopt measures for CEAS comprising the various CEAS instruments and under (f) «standards concerning the conditions for the reception of applicants for asylum and subsidiary protection

Why should implementation be ensured and how?

- Avoid secondary movement
- Ensure minimum std of treatment, ref. Charter art 1: human dignity must be respected and protected. Common European HR heritage?
- EASO
- FRA
- CJEU –most important forum for interpretation of the asylum acquis
- ECtHR – Common European Human Rights Platform. Negotiations ongoing on EU acceding to ECHR
- Cross references, for example in the M.S.S. v Belgium and Greece case (2011), the Hirsi Jamaa case v Italy (2012) and in the Sufi & Elmi case v UK (2011). Although different mandates: CJEU: EU «asylum acquis» and ECtHR: ECHR + protocols
- Commission – guardian of the treaties role

Recognition of vulnerability and special needs in RCD + recast

- RCD contains general provisions in regard to e.g. health care (art 15) which includes «»...at least , emergency care and essential treatment of illness» - and in recast, mental health care is included in gen prov, recast art 19 in ch II
- Specific provisions on vulnerability otherwise contained in RCD ch IV arts 17-20 and in ch IV of recast artd 21-25

Critiques

- In 2007, Commission noted that MS had not lowered previous std of assistance to asylum seekers as result of DCD. Evaluation of CEAS +
- Wide discretion undermining objective of a common practice in EU MS
- Odysseus network research report revealed significant divergencies: scope of application of CRC; detention issue and implementation of provisions in favour of vulnerability. Only 6 MS complied with implementation

Research findings

- 2009-2010: cross cutting team of researchers, lawyers and practitioners made Odysseus rapport "Identification of (Vulnerable) Asylum Seekers with Special Needs" –
- 6 participating countries: Belgium, Finland, Malta, the Netherlands, Poland og Spain + Norway (UNHCR, ECRE observers)
- Aim: to systematise information on practical + legal implementations in the MS + Norway

Laurence De Bauche, "Vulnerability in European Law on Asylum: A Conceptualization under Construction", Bruylant, 2012

RCD art 17

- (1) MS **shall** take into account the specific situation of vulnerable persons **such as** minors, unaccompanied minors, disabled 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,...
- (2) Para 1 shall apply **only** to persons found to have **special needs** after an individual evaluation of their situation.

Recast proposal 2008

- Aims:
 - To ensure higher std of treatment with regard to reception conditions in line with int law
 - To limit secondary movement amongst MS if generated from diverse national reception policies
 - Vulnerability: Obligation to establish identification procedures

Recast art 21

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

Recast art 22

1 In order to effectively implement article 21, MS **shall assess** whether the applicant is an applicant with **special reception needs**. MS shall also indicate the nature of such needs.

That assessment shall be initiated within a reasonable period of time after an application...MS shall ensure that those special reception needs are also addressed...if they become apparent at a later stage in the asylum procedure

2 The assessment referred to in para 1 need not take the form of an administrative procedure

3 Only vulnerable persons in accordance with art 21 may be considered to have special reception needs and thus benefit from the specific support provided in accordance with the Directive

4 The assessment shall be without prejudice to the assessment of int protection of the QD

Identification

- List is open-ended (some additions since 2003)
- Persons with special reception needs is a subcategory of vulnerable persons
- Identification is implicit: in order to effectively implement art 21
- «assessment» of special reception needs
- Assessment may be part of existing national procedure (not necessarily adm procedure)
- Findings: without prejudice to asylum procedure findings

Recast cont. specific categories

- Art 23 Minors CRC art 3
- Art 24 Unaccompanied minors
- Art 25 Victims of torture and violence
- Art 11 Detention of vulnerable persons and of applicants with special reception needs (gen provisions on detention arts 8-10)
- 1 «The health, including mental health, of applicants in detention who are vulnerable persons shall be of primary concern to national authorities.
- Regular monitoring and adequate support shall be ensured
- 2 Minors: «...only as a measure of last resort...» Best interest reminder –
- 3 unaccompanied minors «...only in exceptional circumstances»
- 5 female applicants apart from male

Examples of "good practices"

- Observation – a continuous process (medical examination, interview with social worker, psychologist, keeping record of what happens during the night e.g. sleeping problems. Hand over information to daycare employees (ex from Finland)
- Arrange informal workshops, for ex artgroups, groups with mothers and children, etc. Seen as useful in order to identify vulnerability (examples from Finland, Spain) – informal gatherings facilitate observation possibilities

Good practices cont.

- Mobilise sensitivity in all employees at reception centre – report to health personnel, social worker . Discuss in team meetings (Belgium,Finland)
- Everyone's involvement increases chance to identify vulnerability
- Someone must have main responsibility (Belgium, Finland, Spain) – external experts can be consulted

Good practices cont.

- In Belgium, each applicant is dedicated a social worker – ensures better chance of identification and follow-up
- Personnel needs special training – those with experience should train the newcomers
- Reception interviews with social worker carried out many times in order to identify vulnerability
- Creation of handbook/guidelines useful(Finland)

The Norwegian research example

Norwegian research in 2007 and 2010 revealed a need for legislation and focus in regard to identification of vulnerable asylum seekers, including in Dublin cases, thus there is a need for:

- A mechanism for identification
- A definition on vulnerability
- Establishment of rights for those who are vulnerable
- Establishment of routines for communication between vulnerability and special needs between those responsible for reception, health care and asylum procedures
- Learn from EU developments
- Ensure documentation of torture
- Increase competency and knowledge

Legal prospects

- Further legal harmonisation (RCD III)?
- EASO
- CJEU
- ECtHR

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