

Detection of vulnerabilities in the international protection procedure

(preliminary results of forthcoming EMN Luxembourg publication)

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“Detecting and protection vulnerable migrants”
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2 EMN Ad-hoc queries launched in April 2021 by EMN Luxembourg

- answered by 23 Member States (MS)
- AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, SI, SK, SE

Ad-hoc query 2021.28 (Part 1)

legal and procedural framework, follow-up of the detection of vulnerabilities, special procedural guarantees and impact on the international protection procedure

Ad-hoc query 2021.29 (Part 2)

medical examination concerning signs that might indicate past persecution or serious harm and most common vulnerabilities detected in the MS

Publication of the results forthcoming (mid-October 2021)



Who is considered a vulnerable person?

Recast Asylum Procedures Directive (2013/32/EU)

- applicants in need of special procedural guarantees

“(...) due, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence”
(recital 29)

Recast Reception Conditions Directive (2013/33/EU)

- applicants with special reception needs

“(...) such as, minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of



Most common vulnerabilities detected?

Age and family composition

- Unaccompanied minors (14 MS)
- Single parents with minor children (7 MS)
- Elderly (3 MS)
- Accompanied children (3 MS)

Psycho-medical conditions

- Mental health issues (14 MS)
- Victims of human trafficking, torture and/or other forms of violence (7 MS)
- Special medical needs or serious illnesses (5 MS)
- Disabilities (4 MS)



Most common vulnerabilities detected? (2)

Gender and sexual orientation

- Victims of rape, gender-based or sexual violence, human trafficking for sexual exploitation, or domestic violence (8 MS)
- Women, especially single and pregnant women (5 MS)
- LGBTQI community (4 MS)

BE: applicants may have several vulnerabilities

FI: percentage of mental health issues seems to rise steadily

FR: vulnerability may persist or arise once arrived in France

Data on vulnerabilities not specifically registered in 6 MS



What is the legal framework?

In nearly all MS = Asylum or Immigration Law (+ related legal provisions)

- BE, FI and LU have adopted a Reception Law
- No specific reference to Asylum or Immigration Law in:
 - IT : only single identification procedure of unaccompanied minors. For other vulnerabilities, adoption of specific operational guidelines (SOP)
 - SE : Swedish Migration Agency makes use of internal instructions describing a standard for identification and documentation of special needs

In addition, legal framework complemented by:

- Internal guidelines and/or standard operating procedures (11 MS)



What is the legal framework? (2)

In all Member States, primarily the responsibility of the authority in charge of asylum to detect and identify vulnerabilities of applicants

Additional stakeholders:

- Authorities in charge of reception or immigration
- Police and/or State Border Guard
- Medical professionals
- Other relevant stakeholders, particularly in the field of reception (such as NGOs managing reception facilities)



What is the procedural framework?

Detection of vulnerabilities may take place at any stage in the asylum procedure

a) Registration of the application

- first (visible) indications (age, family composition, psycho-medical state)
- CY and FR: vulnerability interview
- BE: special registration form, free space to specify ‘very vulnerable’ applicants

b) Medical examination

- Member States may require or offer such a medical examination on grounds of public health concerns



What is the procedural framework? (2)

c) Reception

- By the responsible authority or staff in the reception centres
- Upon agreement by the applicant, special reception needs that may result in special procedural guarantees are communicated to the responsible authority

d) During personal interview(s) or during examination of the application

- Situations in which these elements had not been detected before or occurred while the applicant was already present in the Member State (e.g. pregnancy, mental health issues or the identification as a victim of trafficking in human beings)



Follow-up of the detection of vulnerabilities?

Procedure in place to guarantee the follow-up of the applicant ?

- YES = 18 MS (BE, BG, CY, CZ, EE, ES, FR, HR, IE, IT, LT, LU, LV, MT, PL, SE, SI, SK)
- NO = 5 MS (AT, DE, FI, HU, NL)

YES

- Formalised follow-up procedure
(BE, BG, EE, ES, HR, IE, LT, MT, PL, SE, SI, SK)
- Less formalised/informal procedure
(CY, CZ, FR, IT, LV, LU)



Formalised follow-up (IP procedure and reception)

Example Belgium

- Immigration Office : (Re-)assessment of an applicant's vulnerability and specific procedural needs
 - Administrative file transferred to CGRS (IP procedure) and Fedasil (reception)
 - CGRS examines if appropriate support measures need to be taken
 - Fedasil : social and medical intake of the applicant (social and medical files)
Within 30 days, evaluation if the accommodation is adapted to the special reception needs of the applicant
Possibility to accommodate the applicant in an external institution
 - ↳ administrative and social follow-up guaranteed
- Fedasil can make recommendations to the CGRS and Immigration Office with regard to special procedural guarantees



Special procedural guarantees?

Special procedural guarantees when preparing, proceeding with, and following-up on a vulnerable applicant's asylum interview(s)

- Location, time and setting of the interview adapted to applicant's special needs
 - in the reception centre, alternative location or in writing
 - shortened, split into multiple hearings or postponed, if necessary
- Interview conducted with specific care
 - avoidance of trigger questions, additional explanations, sufficient breaks
- After the interview, extra time to provide medical evidence or alternative ways to present evidence
- Applications of vulnerable persons assigned to experienced cases workers



Special procedural guarantees? (2)

In accordance with the Recast Asylum Procedures Directive, particular attention is paid to the situation of unaccompanied minors

- Appointment of legal guardian, appropriate accommodation, access to education
- Asylum interview(s)
 - Specifically trained officer conducts the interview (child-friendly questions, sufficient breaks)
 - Guardian, lawyer, psychologist, or support staff generally present
 - PL: interview takes place at the care centre where the minor resides
 - DE: prioritisation of the applications by unaccompanied minors + only specifically trained officials decide on the outcome of the application



Impact on the IP procedure?

Apart from special procedural guarantees throughout the procedure, generally no direct impact on the assessment of the international protection procedure itself

- No general answer to this question, as the respective impact on the decision of the application entirely depends on the individual circumstances of each applicant
- In LT, law stipulates that standard criteria in the evaluation of the application (comprehensiveness, coherence, incontrovertibility, etc.) are not applied for most vulnerable persons (unaccompanied minors, victims of torture, rape or violence)
- Similarly, in IE, Staff Guidance on assessing credibility (e.g. shame, stigma, fear)



Thank you for your attention!

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