Focus on International Migration nº 5

# Refugiados en movimiento: retos políticos, legales y sociales en tiempos de inestabilidad

## *«Refugees on the move: political, legal and social challenges in times of turmoil»*

Alisa Petroff, Georgios Milios, Marta Pérez (eds.)

UAB Universitat Autònoma de Barcelona
Servei de Publicacions

CER-Migracions

Universitat de Barcelona

# REFUGIADOS EN MOVIMIENTO: RETOS POLÍTICOS, LEGALES Y SOCIALES EN TIEMPOS DE INESTABILIDAD

# *«REFUGEES ON THE MOVE: POLITICAL, LEGAL AND SOCIAL CHALLENGES IN TIMES OF TURMOIL»*

Elaborated by:
Alisa Petroff, Georgios Milios, Marta Pérez (eds.)

La conferencia internacional «*Refugees on the move: thinking beyong the Euro-Mediterranean crisis*» (21 y 22 de abril 2016) que inspira esta publicación, fue organizada gracias a la subvención de la Generalitat de Catalunya, AGAUR, a través el proyecto GRC-SGR 2014 (1524).

The international conference «*Refugees on the move: thinking beyong the Euro-Mediterranean crisis*» (21st and 22nd of April 2016), which inspired this publication, was made possible by a grant from the Generalitat de Catalunya AGAUR, through the project GRC-SGR 2014 (1524)

How to quote this text: Petroff, A., Milios, G. and Pérez, M. (eds.). (2018). Refugees on the move. political, legal and social challenges in times of turmoil. Bellaterra: Universitat Autònoma de Barcelona. CER-MIGRACIONS, Servei de Publicacions (Focus on International Migration, 5). ISBN 978-84-490-7971-9. Retrieved from https://ddd.uab.cat

Cómo citar este texto: Petroff, A., Milios, G. y Pérez, M. (eds.). (2018). Refugiados en movimiento: retos políticos, legales y sociales en tiempos de inestabilidad. Bellaterra: Universitat Autònoma de Barcelona. CER-MIGRACIONS, Servei de Publicacions (Focus on International Migration, 5). ISBN 978-84-490-7971-9. Recuperado de https://ddd.uab.cat

**Focus on international migration** és una col·lecció d'accés obert promoguda i coordinada pel **CER-Migracions** de la UAB-UB, centre de recerca interdisciplinària per a l'estudi de les migracions internacionals. L'objectiu de la col·lecció és consolidar un espai online de divulgació acadèmica que permeti fer arribar a la comunitat científica i al públic general interessat, treballs inèdits individuals i col·lectius que suposin rellevants aportacions teòriques, empíriques i/o metodològiques per a l'estudi de les migracions internacionals.

**Focus on international migration** es una colección de acceso abierto promovida y coordinada por el **CER-Migracions** de la UAB-UB, centro de investigación interdisciplinar para el estudio de las migraciones internacionales. El objetivo de la colección es consolidar un espacio online de divulgación académica que permita hacer llegar a la comunidad científica y al público general interesado, trabajos inéditos individuales y colectivos que supongan relevantes aportaciones teóricas, empíricas y/o metodológicas para el estudio de las migraciones internacionales.

**Focus on international migration** is an open access collection promoted and coordinated by **CER-Migracions** (UAB-UB), interdisciplinary research center for international migration study. The main aim of the collection is to consolidate an online resource for dissemination of relevant individual and collective works to the academic community and the wider public. The collection will include relevant theoretical, empirical and/or methodological contributions for the study of international migrations.

**Focus on international migration** est une collection d'accès libre promue et coordonnée par le **CER-Migracion**s de l'UAB-UB, centre de recherche interdisciplinaire spécialisé dans l'étude des migrations internationales. La collection a pour mission de renforcer un espace en ligne de divulgation académique à la communauté scientifique et à tout public intéressé, des ouvrages inédits, individuels et collectifs, qui impliquent des contributions importantes au niveau théorique, empirique et/ou méthodologique concernant l'étude des migrations internationales.



For additional inquires and/or submission of proposals, send an email to: cr.migracions@uab.cat

Focus on International Migration nº 5

*Refugiados en movimiento: retos políticos, legales y sociales en tiempos de inestabilidad. «Refugees on the move: political, legal and social challenges in times of turmoil»*
Alisa Petroff, Georgios Milios, Marta Pérez (eds.) (2018)



**Diseño y maquetación:**
Joan Buxó

**Edición:**
Universitat Autònoma de Barcelona
CER MIGRACIONS / Servei de Publicacions
Edifici A. 08193 Bellaterra (Cerdanyola del Vallès). Spain
T. 93 581 21 20
sp@uab.cat
http://publicacions.uab.cat

ISBN 978-84-490-7971-9

# Índice / Content

Introducción . . . . . 6
Bibliografía . . . . . 16

Introduction . . . . . 18
References . . . . . 27

1. La UNRWA y los refugiados de Palestina. Protección y desarrollo humano en el contexto de las crisis de refugiados en el Próximo Oriente . . . . . 29
1.1 El origen de los refugiados de Palestina . . . . . 29
1.2 Organizar la ayuda humanitaria a los refugiados de Palestina . . . 30
1.3 Del desarrollo económico regional a la rehabilitación económica local . . . . . 30
1.4 Educación, sanidad y servicios sociales como herramientas de desarrollo . . . . . 31
1.5 La UNRWA en el contexto del proceso de paz . . . . . 33
1.6 La UNRWA y la protección de los derechos humanos . . . . . 34
1.7 Los refugiados palestinos en el Próximo Oriente . . . . . 34
1.8 La UNRWA y los conflictos armados en Oriente Medio . . . . . 35
1.9 Límites y retos: conflictos armados y refugiados de larga duración . . . . . 37
Bibliografía . . . . . 38

2. Syria's Refugee Crisis: History of a Mass Exodus . . . . . 39
2.1 Introduction . . . . . 39
2.2 The origins of a repression foretold . . . . . 40
2.3 2011: The turning point . . . . . 41
2.4 A more complex scenario . . . . . 42
2.5 Daesh and Al-Nusra: Syria as the Hotspot of International Jihadism . . . . . 43
2.6 Siege, mass destruction, forced exile and displacement . . . . . 44
2.7 A Political Solution? . . . . . 45
2.8 Conclusion . . . . . 48
References . . . . . 48

3. EU responses to refugees' secondary movements in times of crisis of international protection . . . . . 50
3.1 Introduction . . . . . 50
3.2 An overview of the multiple crises of the Dublin system: 2011 – 2014 . . . . . 53
3.3 The EU Agenda and the main responses to the Dublin crisis: hotspot approach and relocation . . . . . 55
3.4 Recasting Dublin Regulation and EU directives on asylum: a punitive approach . . . . . 57
3.5 Conclusive reflections: towards a crisis of international protection . . . . . 59
References . . . . . 59

4. The EU-Turkey Joint Statement of March 2016. An 'ad-hoc' solution to the Refugee crisis or a new pillar for the European Common Asylum System external dimension? 62
4.1 The ECAS' loopholes and the tensions within the EU when facing the 'refugee crisis' of 2014. 62
4.2 The Statement's content: analysis of six key issues 65
4.3 Some problems regarding the legal nature and implementation of the EU-Turkey Statement. 69
4.4 The implications of the Common European Asylum System to the agreement: Turkey as a safe third country for refugees? 72
4.5 Conclusions 75
References 76

5. Vulnerability in the context of EU asylum policies: the challenges of identification and prioritisation 78
5.1 The concept of vulnerable groups 78
5.1.1 Vulnerability as an emerging concept 78
5.1.2 The concept of vulnerability in case law 80
5.2 Vulnerability and asylum 81
5.3 Vulnerability in the framework of EU asylum policies 82
5.3.1 Reception Conditions Directive and asylum seekers with vulnerabilities or special needs 82
5.3.2 EU relocation and the prioritisation of vulnerable groups 83
5.4 Challenges of the concept of vulnerability in the framework of EU asylum policies 85
5.4.1 Identifying vulnerability in the Reception Conditions Directive 85
5.5 Conclusion 87
References 88

6. Refugees' reception in Italy: past and present of a humanitarian crisis 92
6.1 Introduction 92
6.2 Mixed-migration from North-Africa to Sicily 93
6.3 Refugee reception in Italy: a complex history 98
6.4 The reality of reception in Sicily 100
6.5 A humanitarian crisis stuck in time 103
References 104

7. Necesidades de Salud Mental y Psicosociales de los Refugiados en Europa 107
7.1 Introducción 107
7.2 Factores de riesgo que influyen en el estado de salud mental de inmigrantes y refugiados 108
7.3 Problemas comunes de salud mental y psicosociales 109
7.4 Competencia cultural: Cultura y Salud Mental 111
7.4.1 Implicaciones clínicas y de salud mental publica 112
7.4.2 Implicaciones clínicas. 112
7.5 Implicaciones en salud mental pública 113
7.6 Conclusión 113
Referencias 114

# 5. Vulnerability in the context of EU asylum policies: the challenges of identification and prioritisation

Natalia Caicedo | ncaicedo@ub.edu
*University of Barcelona, Spain*
Andrea Romano | andrea.romano@ub.edu
*University of Barcelona, Spain*

## 5.1 The concept of vulnerable groups

### 5.1.1 Vulnerability as an emerging concept

The concept of vulnerability is progressively acquiring greater relevance at both international and national levels, while that of vulnerable groups can be considered an emerging concept in International Law, with particular significance within the Council of Europe (Quesada, 2010), in the case law of the European Court of Human Rights (ECtHR) (Peroni and Timmer, 2013) and in EU Law. National legislations have also begun to address this concept as they seek to implement specific policy actions for disadvantaged social groups (Safeguarding Vulnerable Groups Act, 2006).

Vulnerability, as an inherent human condition (Fineman, 2008), implies that given people or groups are particularly exposed to harm (Suarez, 2013; Ortega, 2001; Peroni and Timmer, 2013) (or likely to suffer harm), and for various reasons are unable to react or to protect themselves (Ortega, 2001). On the basis of this definition, two different approaches to vulnerability have emerged, one in North America, the other in Europe. In the first of these approaches, Martha Fineman builds her concept of vulnerability on the autonomy myth and argues that it may be suitably adopted to tackle the weaknesses of American anti-discrimination law. Thus while according to the author, "A vulnerability approach (...) allows us to celebrate the progress toward racial, ethnic, and gender equality that has been made under the anti-discrimination model" (Fineman, 2008, p. 17), it also fills the gaps in the American anti-discrimination law, which has yet to incorporate discrimination based on social disadvantages, such as access to material goods, capacities and social relations. Additionally, Fineman claims that the concept allows us to identify positive obligations owed by the State to address the needs of certain groups, whose condition would not be considered by

simply adopting a formal equality approach as opposed to a substantive one.

Under the approach developed in Europe, vulnerability has been addressed from a different perspective – though one not excessively removed from the American approach. From a European standpoint, we need to consider that discrimination encompasses the concept of substantive equality, which imposes positive obligations on national legislations aimed at removing social and material disparities. Thus, vulnerability can be understood in a subsidiary context, arising when instruments adopted to avoid material inequalities have failed. In this respect, scholars argue that vulnerability can be profitably invoked to promote the principle of equal opportunities; that is, the vulnerable are those that face a series of obstacles that prevent them from competing on equal terms when seeking to access their rights and social goods (Suárez Llanos, 2013, p. 46). The same scholars refer to vulnerability when they present situations of social exclusion and marginality. Accordingly, they submit that vulnerability – real or potential – is relevant for a wide range of legal conditions, so that people belonging to certain vulnerable groups are subject to harm or submission. Likewise, vulnerability can also be invoked in cases of structural discrimination when multiple elements of disadvantage are transmitted from one generation to another (Office of the Deputy Prime Minister (UK), 2004). Scholars also tackle vulnerability by questioning how a person or group of people that are marginalized and socially excluded, suffering abuses, harm, prejudice and discrimination, can gain access to opportunities (Larkin, 2008).

To date, the only text to provide a legal definition of vulnerability is the Brasilia Regulations which provides access to justice for those deemed vulnerable (OSCE, Brasilia Regulation). According to these regulations, vulnerable people can be defined as "those who, due to reasons of age, gender, physical or mental state, or due to social, economic, ethnic and/or cultural circumstances, find it especially difficult to fully exercise their rights before the justice system as recognised to them by law". Additionally, the regulations recognise further causes of vulnerability, namely, "age, disability, belonging to indigenous communities or minorities, victimisation, migration and internal displacement, poverty, gender and deprivation of liberty".

However, the specific causes that might result in a certain group of people being identified as vulnerable can vary greatly, as is reflected in the many different classifications proposed by jurists, the Courts and, above all, by the Inter-American Court of Human Rights (IACtHR) (Estipiñan-Silva, 2014; Beduschi, 2015; Dembour, 2014). Here, however, we propose a classification based on three main grounds. The first recognises the existence of conditions that place a person in a situation in which they are likely to suffer harm: these conditions may include age (minors and the elderly) (*Heinisch v. Germany*, ECHR, 2011), abilities (the handicapped) (*Alajos Kiss v.* Hungary, ECHR, 2010), and sickness (*Kiyutin v. Russia*, ECHR, 2011). The second considers the existence of invariable characteristics placing groups in a situation of vulnerability, as a consequence of past discrimination. Here, we refer to skin colour, phenotype (*B.S. v. Spain,* ECHR, 2012), gender, sexual orientation and gender identity. Finally, the third considers the vulnerability people are placed under from belonging to a group that has been historically discriminated because of its constituting a minority or because of an unequal power relationship that places it in a condition of inferiority or dominance. We refer to ethnic groups (*Chapman v. United Kingdom,* ECHR, 2001; *D.H v. Czech Republic,* ECHR, 2007; *Timishev v. Russland,* ECHR, 2005), indigenous communities, migrants, religious groups and national minorities.

Yet, while vulnerability can be addressed in general terms, it is especially challenging to provide a precise definition, given that in so doing we run the risk of narrowing down attention to a specific group of people that might be considered vulnerable and consequently the object of protection (Ippolito and Iglesias Sánchez, 2015). In fact, dealing with vulnerability gives rise to more questions than it provides unequivocal responses: Which factors produce vulnerability? Are we dealing with a *numerus clausus*?

Should vulnerability be conceived as a temporary or permanent situation? Vulnerability from what? Is vulnerability inherent to the human condition or is it the social circumstances that make people vulnerable? When does a situation of exposure-to-risk become one that that needs to be addressed by public authorities?

Against the backdrop of the above discussion, we will proceed as follows. First, the origins of the concept of vulnerability in case law are outlined, with particular reference to the way it has been interpreted by the IACtHR and the ECtHR (1.2). Second, we turn our attention to the relationship between asylum and vulnerability, initially, in general terms (2) and, then, by focusing specifically on European Asylum Law (3), illustrating how vulnerability has been tackled under the Reception Conditions Directive and within the Relocation Decisions. Finally, the paper provides a number of concluding remarks and identifies various issues that remain open to debate (5).

## 5.1.2 The concept of vulnerability in case law

In recent years, the concept of vulnerability has acquired increasing importance in the courts, emerging as a pivotal concept that has allowed a series of judgments to be passed that seek to strengthen the protection of those individuals or groups susceptible to harm and who lack the physical and legal means to achieve that protection. This development in the case law has been referred to as a 'quiet revolution' (Timmer, 2013). Both the IACtHR and the ECtHR have recognised vulnerability in imposing positive obligations on States to protect those collectives that are in need, while various national courts have also made recourse to the concept in limiting State action and protecting vulnerable groups[18].

According to the IACtHR, groups or persons that are socially vulnerable are entitled to special protection. This protection arises from the State's duty to satisfy general obligations in respecting and guaranteeing human rights. Following the IACtHR's assessment, vulnerability is promoted by specific *de jure* and *de facto* situations. In the case of the former, the law is the instrument that recognises vulnerability; thus, for instance, irregular migrants are vulnerable because of the situation of *rightlessness* promoted by law. In the case of the latter, the IACtHR emphasises the structural inequalities that are critical for accessing public resources; hence, for example, the situations of widespread vulnerability that result from internal displacement during armed conflicts.

The IACtHR recognises the following groups as vulnerable: minors, women, indigenous people, persons with disabilities, migrants (especially those in an irregular situation), internally displaced, persons deprived of liberty, political opponents and human rights defenders and the homeless. However, if we examine specific cases before the IACtHR, the Court tends to deal with situations of vulnerability that are linked to a broadly defined context characterised by the absence of rights and goods. Thus, it is armed conflicts, cultural and social prejudices, poverty and social exclusion or inaction on the part of the State that trigger situations of vulnerability.

The ECtHR also recognises the vulnerability of various groups, including, the Roma minority, people living with HIV, people with mental disabilities and asylum seekers (Peroni and Timmer, 2013). For example, in relation to the Roma, in the case of *D. H. and others v. the Czech Republic* (2007), it was held that "as a result of their turbulent history, the Roma have become a specific type of disadvantaged and vulnerable minority"; in *Alajos Kiss v. Hungary* (2010) the Court held that people affected by mental disability are "a particularly vulnerable group in society, who have suffered considerable discrimination in the past"; and, finally, in relation to asylum seekers, in the case of *M.S.S. v. Belgium and Greece* (2011) the Court affirmed that they are members of "a particularly underprivileged and vulnerable population group in need of special protection" (*M.S.S. v. Belgium*

18 For the UK see, for instance, the landmark decision in R. v Camden LBC, ex p Pereira, 31 HLR 317.

*and Greece,* ECHR, 2011, par. 251; *Tarakhel v. Switzerland,* ECHR, 2014, par.99). However, while to date the IACtHR has adopted a very broad notion of vulnerability, the approach taken by the ECtHR is characterised by a greater degree of caution and selectivity, being concerned with identifying subgroups of people with special needs and, above all, attaching relevance to the specific circumstances of the case before the Court. The case of undocumented migrants is highly illustrative of these respective approaches. Thus, while the IACtHR recognises them as a vulnerable group, the ECtHR has, on occasion, recognised that irregular status is a condition that potentially enhances the harm and vulnerability of certain individuals, but it has not gone as far as identifying undocumented migrants as a vulnerable group (*Siliadin v. France,* ECHR, 2005)[19].

19 Concerning a Togolese woman performing domestic work under unbearable conditions. Importantly the Court stated that "she was entirely at Mr and Mrs B.'s mercy, since her papers had been confiscated and she had been promised that her immigration status would be regularised, which had never occurred", par. 126.

## 5.2 Vulnerability and asylum

As we can see from this brief overview, both Courts have examined the nexus between asylum and vulnerability – albeit from their different perspectives. In the framework of forced migration, certain people or subgroups are exposed to situations of fragility or manifest specific needs that have to be addressed by public authorities. Thus, asylum seekers and refugees alike, besides being persecuted, might be exposed to discrimination based on multiple personal characteristics – including, race, age, gender and disability – as well as their specific life experiences – including, torture, sexual abuse and trafficking. Thus, we could address this double exposure to harm in terms of an individuals' specific vulnerability within a context of their more widespread vulnerability (Crenshaw, 1991; Fassin, 2015).

The procedures provided for under national and European Asylum Law tend to ignore the particular circumstances of vulnerable groups. Consider, for example, the Dublin Regulation, where as late as 2013 no references to situations of vulnerability were contemplated (De Bauche, 2008). This omission leads to a double victimization in which the needs of the most vulnerable are ignored and their legal protection is addressed by general procedures that make them invisible. For instance, LGBTI asylum seekers face prejudice and social discrimination, as asylum decision-makers expect a prototype applicant manifesting certain patterns of behaviour and if the individual does not satisfy those expectations then asylum can be denied (CJUE, X, Y, Z, *Minister voor Immigratie en Asiel* and *A, B, C v. Staatssecretaris van Veiligheid en Justitie*)[20].

In addressing this situation, international law (in particular, the UNHCR) has recourse to various instruments that ensure its general procedures respond to the needs of the most vulnerable. This specific support is achieved by the establishment of specific legal frameworks that can respond to the particular circumstances of refugees at risk, or even by prioritising protection against other groups or people (UNHCR, 2005). Resettlement is paradigmatic in this regard. Over the course of its mandate the UNHCR has gained considerable expertise in identifying those refugees that need to be transferred from the country in which they seek asylum to another country on the grounds of their vulnerability or special needs (UNHCR, 2011)[21].

20 See also International Commission of Jurists (2011).

21 The UNHCR identifies several categories of people that may be resettled, including people with legal or physical protection needs, medical needs, women and girls at risk, children and adolescents at risk, family reunification, those with a lack of foreseeable alternative durable solutions.

## 5.3 Vulnerability in the framework of EU asylum policies

### 5.3.1 Reception Conditions Directive and asylum seekers with vulnerabilities or special needs

The vulnerability of asylum seekers as a matter of concern for the EU legislator is a recent phenomenon. Indeed, prior to 2013, none of the EU Directives on Asylum made any reference to the condition of vulnerability of asylum seekers; however, in recent years – in line with the growing relevance that the concept has acquired in other fields – EU law has begun to consider asylum seekers and refugees as vulnerable. In this section, we focus on two legislative instruments that are indicative of this new trend: the Reception Conditions Directive and the Relocation Decisions. In both cases, we examine how EU law addresses vulnerability, examining the virtues and pitfalls of this new legislative intervention.

In European Asylum Law the concept of vulnerability appeared for the first time within Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013, which lay down standards for the reception of applicants for international protection. According to the Directive (currently under reform) (Proposal for a Directive COM (2016) 465 final), in the implementation of the reception process of asylum seekers, State Members are required to take into account the specific circumstances of vulnerable persons. The Directive refers specifically to 'applicants with special reception needs' defined as vulnerable individuals in need of special guarantees in order to benefit from the rights and comply with the obligations provided for under the Directive.

In this regard, art. 21 of the Directive specifically recognises the special needs of the following vulnerable persons: 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.

The duty of assessing whether the applicant is one with special needs and of ensuring that the reception process indicates the nature of these needs lies with the national authorities. More specifically, Member States are required to:

- Provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed (art. 19)
- Take into consideration gender and age-specific concerns and the situation of vulnerable persons in relation to applicants within the [housing] premises and accommodation centres (art. 18)

In addition to these general requirements, the Directive includes specific regulations regarding three groups: minors, unaccompanied minors and victims of torture and violence.

In the case of minors, the Directive sets out that the best interests of the child should be of primary consideration for Member States when implementing its provisions. Moreover, Member States are required to guarantee a standard of living that is adequate for the minor's physical, mental, spiritual, moral and social development. In their assessment of what constitutes the child's best interests they need to take due account of the following factors:

- family reunification possibilities;
- the minor's well-being and social development, taking into particular consideration the minor's background;
- safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;
- the views of the minor in accordance with his or her age and maturity.

In the case of unaccompanied minors, the Directive requires Member States to take

measures, as soon as it is possible, to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for under the Directive. Moreover, the Member States must ensure that unaccompanied minors who make an application for international protection are, from the moment they are admitted to the territory until they are obliged to leave the Member State in which the application for international protection was made or is being examined, placed: (a) with adult relatives; (b) with a foster family; (c) in accommodation centres with special provisions for minors; (d) in other accommodation suitable for minors.

In the case of victims of torture and violence, the Directive only includes a general provision, according to which, Member States are required to ensure that persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care.

The Directive allows Member States to detain an asylum applicant when, and after conducting an individual assessment, it is shown to be necessary. In such instances, the protection provided for under the Directive needs to adhere to the following guidelines. First, the necessary health care, including mental health care, should be provided to all applicants. Second, minors should be granted the opportunity of engaging in leisure activities, including play and recreational activities appropriate to their age. Third, detained families should be provided with separate accommodation guaranteeing adequate privacy; likewise, detained women should be accommodated separately from male applicants. Finally, the Directive provides that unaccompanied minors can only be detained as an exceptional measure and, if deemed necessary, they should be accommodated separately from adults, and under no circumstances be detained in prison accommodation (art. 11).

In addition to the Reception Conditions Directive, other provisions of EU Asylum Law tackle vulnerability. For instance, Directive 2013/32/EU of the European Parliament and the Council of 26 June 2013 on common procedures for granting and withdrawing international protection establishes that Member States may prioritise an examination of an application for international protection where the applicant is vulnerable. This Directive also requires that interviewers of asylum seekers be sufficiently 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.

The current refugee crisis has led to significant reform of the European Asylum System (Peers, 2016). Thus, within the framework of Dublin IV, Member States are required to rethink the present scope of the concept of vulnerability and to provide a broader enforcement of it. Yet, to date, any special measures providing protection of vulnerable groups are limited. The Reception Directive Proposal (COM/2016/0222(COD)(currently under discussion) includes more detailed rules for assessing, determining, documenting and addressing applicants' special reception needs, as soon as it becomes possible, and throughout the period of reception. This includes the need for the staff of the relevant authorities to be adequately and continuously trained, and an obligation to refer certain applicants to a doctor or psychologist for further assessment. It also clarifies that any assessment may be integrated into existing national procedures or into the assessment undertaken to identify applicants with special procedural needs (art. 21).

### 5.3.2 EU relocation and the prioritisation of vulnerable groups

In response to the ongoing refugee crisis, in September 2015, the EU Council adopted two decisions regarding the relocation of asylum seekers from Italy and Greece to other EU countries. These decisions respond to the aim of the EU institutions to provide assistance to

these two Member States in managing the extraordinary arrivals of asylum seekers on their coasts. As such, both decisions seek to ensure the orderly, managed arrival of asylum seekers in frontline States.

Specifically, the Decision of 14 September 2015 provides for the relocation of 40,000 asylum seekers from Italy (24,000) and Greece (16,000) to other EU countries, which voluntarily accept to take charge of their asylum claims (Council Decision (EU) 2015/1523). Subsequently, the Decision of 22 September increased the number of people to be relocated up to 120,000. Moreover, the second Decision fixed specific mandatory quotas for each Member State (excluding Slovakia, Hungary and the Czech Republic) (Council Decision (EU) 2015/1601). The latest report from the EU Commission examining the implementation of the relocation programme concludes that it has yet to work properly, with an average compliance rate of 17% (European Commission. Press Release, 2017).

Both decisions ruled that relocation would only apply to asylum seekers that had submitted their application for international protection upon their arrival in Italy or Greece, and to the extent that these States are responsible for processing their applications in accordance with the Dublin criteria (Regulation 604/2013, Art. 7-11).

The criteria applied in establishing the country to which asylum seekers should be relocated involve examining their potential capacity for integration. The Decision holds that:

> "...in order to decide which specific Member State should be the Member State of relocation, specific account should be given to the specific qualifications and characteristics of the applicants concerned, such as their language skills and other individual indications based on demonstrated family, cultural or social ties which could facilitate their integration into the Member State of relocation (Recital nº. 34)."

After establishing the criteria that are to be followed, the Decision recognises that priority should be given to applicants deemed vulnerable under Directive 2013/33/EU, with particular reference to children and those requiring medical care. Thus, the preamble to both Decisions reads as follows:

> "When deciding which applicants in clear need of international protection should be relocated from Italy and from Greece, priority should be given to vulnerable applicants within the meaning of Articles 21 and 22 of Directive 2013/33/EU of the European Parliament and of the Council. In this respect, any special needs of applicants, including health, should be of primary concern. The best interests of the child should always be a primary consideration (Recital nº. 33)."

Furthermore, in deciding where vulnerable applicants should be relocated, the capacity of the States to address the specific needs of the applicant should be taken into consideration. In this regard, recital nº. 34 provides that:

> "In the case of particularly vulnerable applicants, consideration should be given to the capacity of the Member State of relocation to provide adequate support to those applicants and to the necessity of ensuring a fair distribution of those applicants among Member States (Recital nº. 34)."

Both decisions also recognise that Italy and Greece should be responsible for identifying asylum seekers that could be relocated to the other member States but that priority should be given to vulnerable applicants. However, the Member State of relocation retains the right to refuse to accept an asylum seeker if they can demonstrate that the person is a danger to their national security or public order.

## 5.4 Challenges of the concept of vulnerability in the framework of EU asylum policies

### 5.4.1 Identifying vulnerability in the Reception Conditions Directive

Directive 2013/33/EU identifies various categories of vulnerable people. But the question arises as to whether the Directive's intention is to provide an exhaustive list (*numerus clausus*), which would mean no other groups might be considered vulnerable, or, on the contrary, whether it can be conceived as an open list. An open list would offer the opportunity of incorporating other groups and so it could be adapted to the dynamics and realities of asylum seekers. In this regard, and as indicated above, the ECtHR has identified people living with HIV as a vulnerable group, so it is unclear whether asylum seekers living with HIV would also benefit from preferential protection in their relocation. The same applies to ethnic minorities, groups who find themselves in a position of disadvantage or women suffering gender-based violence.

A further issue raised by the identification of vulnerable groups is the absence under EU law of any specific methods, instruments or indicators to help in identifying a person as being a member of a vulnerable group and, hence, in prioritising their relocation. Beyond the general criteria laid down, there are as yet no further indicators. Directive 2013/33/EU provides a list of the vulnerable based on age, personal characteristics and experiences, which means some groups can be readily defined in line with these criteria. This is the case for example of minors, the elderly, the disabled and single-parent families. However, alongside these groups, we find a grey area comprising, for example, people who have been subjected to torture, rape and sexual violence, and victims of human trafficking, where the identification of the vulnerable is not so straightforward. It is to be hoped, however, that the current reform of the Reception Directive will go some way to making the condition of these latter victims more visible. The recast directive requires Member States to train competent interviewing officers and personnel with responsibility for assessing applications, and to provide medical, social and even specialised psychological services.

Identifying groups of people in situations of vulnerability requires a proper framework, so that legal certainty, as well as the necessary financial and human resources, can be guaranteed. The correct enforcement of the measures provided for under the Reception Directive will depend on the economic resources that State Members allocate to this end, as well as to the attention that the national authorities are prepared to dedicate to the drawing up of specifics protocols for defining vulnerability. These measures apply specifically to the national reception process provided by local authorities and to the relocation of asylum seekers from the so-called hotspots. However, given the current asylum crisis in Europe, we cannot stress enough the importance of the capabilities of the Greek and Italian reception centres to carry out an initial evaluation of vulnerability so as to guarantee the correct identification of people at risk. Thus, the main challenge is to provide adequate human (especially as regards the training of officers with responsibility for managing asylum claims) and economic resources, especially in light of the current situation faced by the asylum hotspots. Here, the EU and the UNHCR have a vital role to play in supporting these training activities.

Identification and prioritisation in Relocation Decisions

The smooth implementation of relocation procedures is affected by an obvious paradox. On the one hand, the UNHCR reports that identifying vulnerable persons can be a lengthy, complex procedure taking up to a year, involving as it does a wide range of actors, including asylum officers, doctors and psychologists; however, on the other hand, the 'proceduralization' of the identification process can consistently delay the whole relocation procedure, affecting the rights and interests of vul-

nerable asylum seekers. Likewise, some vulnerable groups, such as unaccompanied or separated minors, might find themselves undermined by protection procedures, especially as both in Italy and Greece assuming guardianship of a child can be a highly-protracted procedure. As a result, minors may well be excluded from relocation and not benefit from being considered a priority. Thus, seeking a balance between the need to protect the rights of the vulnerable and the need to ensure a rapid, smooth procedure is anything but easy (UNHCR, 2016)[22].

As discussed, both Decisions of September 2015 stress that the relocation process from Greece and Italy should take into account the ability of the Member States of relocation to provide adequate support to meet the special needs of the vulnerable applicants. In principle, procedures for the prioritisation of vulnerable groups are left very much to the discretion of Italy and Greece, yet it is highly improbable that they would have any real awareness of the services available for attending vulnerable groups in the country of relocation.

Relocation also aims at balancing an applicant's potential for integration (in terms of language skills and other qualifications) with their situation of vulnerability. Yet, in practice, such a balance is extremely difficult to achieve. How would such a balance be calculated? Should there be quotas for members of vulnerable groups? Moreover, any attempts at accommodating the interests of the Member States would further delay selection procedures for at least two reasons: first, reports from the EU Commission on the implementation of relocation show that Member States are already lagging well behind in satisfying quotas; and, second, Member States have taken to drawing up lists of preferences. While the main objective of preferences is to facilitate integration of the relocated person in the Member State of relocation, some Member States have expressed long or constraining lists of preferences for the profile of the applicants to be relocated. It has been reported that some Member States of relocation are reluctant to receive relocation requests concerning specific nationalities, single applicants, or unaccompanied minors, due to lack of interpretation, integration programmes or reception capacity; others clearly state that they would only accept families. In short, the majority of Member States use the preferences as "a means to exclude possible candidates rather than to allow for a better matching process for better integration" (European Commission, 2016; Guild et al, 2017).

Finally, it should be borne in mind that the whole procedure of the identification and prioritisation of vulnerable groups is based upon the registration of these people in the asylum hotspots. Indeed, relocation and the so-called hotspot approach are strictly intertwined. Greece and Italy need to provide the initial reception measures within their respective territories – with the financial aid of the EU and Member States (on a voluntary basis). In exchange, asylum seekers registered at the hotspots can be relocated to other Member States, according to a quota system. Yet, both parts of the procedure are only being partially implemented. However, after some initial difficulties, according to data provided by the EU Commission, the hotspots do facilitate the registration of a large number of asylum seekers – though serious concerns about the compatibility of this procedure with national, EU and international law have rightly been raised by scholars, experts and NGOs (Government of Canada, 2017). In contrast, relocation does not proceed at a swifter rate. As of April 2017, no State had complied with its assigned quota, the average rate of compliance with this legal commitment not even reaching 20% (European Commission, 2017). This is clearly illustrative of the different speeds of the migration policies, with security concerns proceeding at a faster rate than enhanced intra-EU solidarity (European Commission Italy, 2016, p.2).

In addition to the problems that vulnerability raises in the context of EU asylum poli-

22 However, there have been positive experiences involving the rapid relocation of refugees. For example, Canada has resettled 40,000 persons applying the criteria of vulnerability. This has been possible because of the decision taken by the new government elected in 2015 to make resettlement one of the priorities of Canadian migration policy.

cies, a further challenge that will have to be addressed concerns the relationship between the vulnerability of asylum seekers and the deprivation of their liberty. Article 8, par. 3 (e) of the Reception Conditions Directive allows Member States to detain asylum seekers and both the ECtHR and the ECJ have upheld the right of Member States to do so. In the leading case of *Saadi v. UK* (2008, par. 65), the ECtHR did not recognise the arbitrariness and disproportionality of the detention of asylum seekers, highlighting the power of State to control the entry of aliens in their territories[23]. As a consequence, States party to the Convention do not have to demonstrate that they have applied the least intrusive measure (Suso Musa v. Malta, 2013; Aden Ahmed v. Malta, 2013; Nabil v. Hungary, 2015)[24]. Last year, the ECJ was asked to rule on whether the detention of asylum seekers on grounds of "national security and public order" was in compliance with art. 6 of the Charter and with art. 5 of the ECHR (Progin-Theuerkauf, 2016; Posse Ousmane, 2016). The Court confirmed the validity of such detentions. However, the vulnerability of asylum seekers is clearly at odds with the deprivation of their personal liberty during the examination of their claims and their detention is particularly incoherent with the statement issued by the ECtHR which sees asylum seekers as "members of a particularly underprivileged and vulnerable group in need of special protection".

23 "To interpret the first limb of Article 5 § 1(f) as permitting detention only of a person who is shown to be trying to evade entry restrictions would be to place too narrow a construction on the terms of the provision and on the power of the State to exercise its undeniable right of control".

24 By contrast, the Court recognized Art. 5 was breached in a case involving the detainment of an unaccompanied minor: Mubilanzika Mayeka and Kaniki Mitunga v. Belgium.

## 5.5 Conclusion

The emergence of the concept of vulnerable persons and groups within the framework of the European Asylum System is to be welcomed. The prioritisation afforded vulnerable groups over other collectives gives them a comparative advantage that goes some way to compensating them for the challenges they face. Moreover, it can also offset the discriminatory selection criteria that Member States might adopt when selecting applicants from the hotspots and aid them in having their refugee status recognised. Indeed, the 2015 Relocation Decisions have ushered in something of a 'refugee shopping system', with Members States seeking to prioritise the selection of high skilled applicants, since in this way they hope to guarantee their better integration into internal labour markets. Thus, a refugee's work experience, age, job training, knowledge of languages can place them at the top of the list for relocation and resettlement to a Member State. For instance, requiring refugees to show "good potential for integration" in the Member State tends to be a fairly discriminatory criteria for collectives such as women[25], given that they may have had limited access to education and/or employment opportunities. This also obviously applies to those that are considered too old, sick or weak for the job market. Thus, prioritising vulnerable groups in the relocation process is a means of compensating for these disadvantages.

25 Potential for integration is similarly relevant to the question of resettlement. It is paradigmatic in Denmark's resettlement policies, as the country prioritises resettlement – inter alia – on the refugees' language background and education. Know Reset policy. However, the approach has been criticised by the UNHCR, stating, "The notion of integration potential should not negatively influence the selection and promotion of resettlement cases. For example, educational level or other factors considered to be enhancing the prospects for integration are not determining factors when submitting cases for resettlement", UNHCR Resettlement Handbook, p. 253 (emphasis added).

Yet, at the same time, prioritising vulnerability in the relocation decision is perhaps quite perverse when all refugees find themselves in a vulnerable position. After all, the ECtHR, in its ruling in the case of *MSS v. Greece and Belgium* stated that asylum seekers constitute a vulnerable population group. Therefore, if the relocation procedure is to be conducted in line with the Council's Decisions, those that do not have a good background or curriculum to suggest they have the potential to satisfy the Member States' integration criteria, and who also fail to meet the (poorly defined) criteria of vulnerability, are unlikely to find themselves selected for relocation and resettlement. In short, the danger is that under the seemingly protective mantle of vulnerability, the general protection of asylum will be reserved solely for those groups that are vulnerable. And, in this way, the framework to protect refugees in the current crisis is further undermined.

## References

Beduschi, A. (2015). The Contribution of the Inter-American Court of Human Rights to the Protection of Irregular Immigrants' Rights: Opportunities and Challenges. *Refugee Survey Quarterly, 34*(4), 45-74. doi:10.1093/rsq/hdv012

Crenshaw, K. (1991). Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color. Stanford Law Review, 43, No. 6 (Jul., 1991), pp. 1241-1299. doi: 10.2307/1229039

Council of the European Union (2015). Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece. Retrieved from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1601&from=ES

Council of the European Union (2015). Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece. Retrieved from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1523&from=EN

De Bauche, L. (2008). *Vulnerability in European law on asylum: A conceptualization under construction / La vulnérabilité en droit européen de l'asile : une conceptualisation en construction*. Bruxelles: Bruylant.

Dembour, M. (2015). *When humans become migrants: study of the European Court of Human Rights with an Inter-American counterpoint*. Oxford: Oxford Univ. Press.

Estupiñan-Silva, R. (2013). La vulnerabilidad en la jurisprudencia de la Corte Interamericana de Derechos Humanos: esbozo de una tipología. *Manual: Derechos Humanos y Políticas Públicas*, *3*(5), 193-232. Retrieved from https://www.upf.edu/dhes-alfa/materiales/manual_dhpp.html

European Commission. Press Release (2017). Relocation and Resettlement: Steady progress made but more efforts needed to meet targets. Retrieved from http://europa.eu/rapid/press-release_IP-17-908_en.htm.

European Commission (2017). Eleventh report on relocation and resettlement, 12.4.2017 COM(2017) 212 final ANNEX 3. Retrieved from https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412_eleventh_report_on_relocation_and_resettlement_annex_3_en.pdf

European Commission (2016). First report on relocation and resettlement of the European Commission Brussels, 16.3.2016 COM (2016) 165 final. Retrieved from https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-165-EN-F1-1.PDF

European Commission (2016). Italy ANNEX to the Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration 85 ANNEX 3, 10 February 2016, p. 2 Retrieved from: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_annex_03_en.pdf

European Parliament and of the Council (2016). Proposal for a DIRECTIVE laying down standards for the reception of applicants for international protection (recast) COM (2016) 465 final, 13.07.2016. Retrieved from https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/proposal_on_standards_for_the_reception_of_applicants_for_international_protection_en.pdf

European Parliament and of the Council (2013). Regulation (EU) No 604/2013 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 (recast), Art. 7-11). Retrieved from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=EN

Fassin, E., Goel, U., and Viveros, M. (2015). *Les langages de lintersectionnalité*. Paris: Presses de Sciences Po.

Fineman, M. A. (2008). The Vulnerable Subject: Anchoring Equality in the Human Condition. *Yale Journal of Law & Feminism, 20*(1).

Fineman, M. A., and Grear, A. (2013). *Vulnerability: reflections on a new ethical foundation for law and politics*. Farnham: Ashgate Publishing Group.

Quesada, L. J. (2010). La protección de los grupos vulnerables por el Consejo de Europa. In S. Sanz Caballero, L. J. Quesada, and J. H. Fischel de Andrade, *Colectivos vulnerables y derechos humanos* (1st ed., p. 15-42). Valencia: Tirant lo Blanch.

Guild, E., Costello, C., Moreno-Lax, V., Velentza, C., Vitiello, D., and Zaun, N. (2017). Implementation of the 2015 Council Decisions establishing provisional measures in the area of international protection for the benefit of Italy and of Greece. Retrieved April 09, 2017, from https://www.ceps.eu/publications/implementation-2015-council-decisions-establishing-provisional-measures-area

International Commission of Jurists (2011). Sexual Orientation, Gender Identity and Justice: A Comparative Law Casebook. ISBN: 978-92-9037-156-0. Retrieved from https://www.icj.org/wp-content/uploads/2012/05/Sexual-orientation-gender-identity-and-Justice-report-2011.pdf

Ippolito, F., and Iglesias Sanchez, S. (2015). *Protecting Vulnerable Groups: The European Human Rights Framework* (1st ed.). S.l.: Hart Publishing.

Larkin, M. (2008). Introducing vulnerable groups. In M. Larkin (Author), *Vulnerable Groups in Health and Social Care*. United Kingdom: SAGE. doi:10.4135/9781446279472.n1

Gonzalez Ortega, S. (2001). La dimensión europea de la protección de los Grupos vulnerables. In C. R. Fernandez Liesa and F. M. Mariño Menendez (Authors), *La protección de las personas y grupos vulnerables en el derecho europeo* (p. 449-490). España: Ministerio de Trabajo e inmigración, Subdirección General de Publicaciones.

Government of Canada (2017). #WelcomeRefugees: Key figures. Retrieved form http://www.cic.gc.ca/english/refugees/welcome/milestones.asp .

Herlitz, A. and Singer, E. (2013). Know reset – building knowledge for a concerted and sustainable approach to refugee resettlement in the EU and its member states. Denmark Country Profile. Retrieved from http://www.know-reset.eu/files/texts/00149_20130705130055_knowreset-countryprofiledenmark.pdf

Office of the Deputy Prime Minister UK (2004). Safeguarding Vulnerable Groups Bill, 2006, Social Exclusion Unit. Retrieved from http://webarchive.nationalarchives.gov.uk/+/http:/www.cabinetoffice.gov.uk/media/cabinetoffice/social_exclusion_task_force/assets/publications_1997_to_2006/seu_leaflet.pdf

OSCE. Brasilia Regulations Regarding Access to Justice for Vulnerable People. Retrieved from http://www.osce.org/odihr/68082?download=true.

Peroni, L., and Timmer, A. (2013). Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law. *International Journal of Constitutional Law, 11*(4), 1056-1085. doi:10.1093/icon/mot042

Peers, S. (2016). The Organization of EU asylum law: the latest EU asylum proposals. Retrieved April 4, 2016, from http://eulawanalysis.blogspot.com.es/2016/05/the-orbanisation-of-eu-asylum-law.html

Progin-Theuerkauf, S., and Posse-Ousmane, S. (2016). Rétention d'un demandeur d'asile et droits fondamentaux – L'arret J.N. de la CJUE (C-601/15PPU). Retrieved from https://europeanlawblog.eu/2016/02/23/retention-dun-demandeur-dasile-et-droits-fondamentaux-l-arret-j-n-de-la-cjue-c-60115-ppu/

Suarez-Llanos, L. (2013). Caracterización de las personas grupos vulnerables. In M. A. Presno Linera (Author), *La protección jurídica de las personas y grupos vulnerables* (p. 35-93). Oviedo: Universidad de Oviedo.

Timmer, A. (2013). A Quiet Revolution: Vulnerability in the European Court of Human Rights. In M. Fineman and A. Grear (Authors), *Vulnerability: reflections on a new ethical foundation for law and politics* (p. 147-170). Ashgate.

Participation, E. (n.d.). *Safeguarding Vulnerable Groups Act 2006*. Retrieved June 06, 2017, from http://www.legislation.gov.uk/ukpga/2006/47/contents

UNHCR (2016). Resettlement Handbook and Country Chapters. Country Chapter, Canada. Retrieved from http://www.unhcr.org/protection/resettlement/4a2ccf4c6/unhcr-resettlement-handbook-country-chapters.html

UNHCR (2015). Procedural Standards for Refugee Status Determination under UNHCR's Mandate. Retrieved from http://www.unhcr.org/publications/legal/4316f0c02/procedural-standards-refugee-status-determination-under-unhcrs-mandate.html

UNHCR (2011). Resettlement Handbook. UNHCR Resettlement Handbook Division of International Protection. Retrieved from http://www.unhcr.org/46f7c0ee2.pdf

Case Law of the Court of Justice of the European Union

CJUE (2013), C-199/12, C-201/12 X, Y, Z, *Minister voor Immigratie en Asiel* http://www.sogica.org/wp-content/uploads/2017/04/CELEX_62012CJ0199_EN_TXT.pdf

CJEU (2015), C-148/15, *A, B, C v. Staatssecretaris van Veiligheid en Justitie.* http://www.sogica.org/wp-content/uploads/2017/04/CELEX_62013CA0148_EN_TXT.pdf

Case Law of the European Court of Human Rights

*Aden Ahmed v. Malta, no. 55352/12, ECHR, 9 December 2013.* Retrieved from https://hudoc.echr.coe.int/eng?i=001-114704

*Alajos Kiss v. Hungary*, no. 38832/06, ECHR, 20 May 2010. Retrieved from https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-98800&filename=001-98800.pdf&TID=nlznbgtpxd

*B.S. v. Spain*, no. 47159/08, ECHR, 24 July 2012. Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-5579%22]}

*Chapman v. United Kingdom*, no. 27238/95, ECHR, 18 January 2001. Retrieved from https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-5061792-6227477&filename=003-5061792-6227477.pdf

*D.H v. Czech Republic*, no. 57325/00, ECHR, 13 November 2007. Retrieved from http://www.refworld.org/cases,ECHR,469e020e2.html

*Heinisch v. Germany*, no. 28274/08, ECHR, 21 July 2011. Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-112282%22]}

*Kiyutin v. Russia*, no. 2700/10, ECHR, 10 March 2011. Retrieved from http://www.refworld.org/cases,ECHR,4d9c38742.html

*Nabil v. Hungary,* no. 62116/12, ECHR, 22 September 2015. Retrieved from http://www.refworld.org/pdfid/5604e83c4.pdf

*M.S.S. v. Belgium and Greece,* no. 30696/09, ECHR, 21 January 2011. par. 251. Retrieved from https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-103050&filename=001-103050.pdf&TID=cwvzdogrzt

*Mubilanzika Mayeka and Kaniki Mitunga v. Belgium,* no. 13178/06, ECHR, 10 October 2006. Retrieved form http://www.refworld.org/cases,ECHR,45d5cef72.html

*Saadi v. United Kingdom*, no. 13229/03, ECHR, 29 January 2008, par. 65. Retrieved from http://www.asylumlawdatabase.eu/en/content/ecthr-saadi-v-united-kingdom-application-no-1322903

*Siliadin v. France,* no. 73316/01, ECHR, 26 October 2005. Retrieved from https://ec.europa.eu/anti-trafficking/legislation-and-case-law-case-law/siliadin-v-france-application-no-7331601_en

*Suso Musa v. Malta,* no. 32337/12, ECHR, 23 July 2013.

*Tarakhel v. Switzerland,* 29217/12, ECHR, 4 November 2014, par. 99. Retrieved from https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-148070&filename=001-148070.pdf&TID=hgffdqytsr.

*Timishev v. Russland*, no. 55762/00 and 55974/00, ECHR, 13 December 2005. Retrieved from https://wcd.coe.int/ViewDoc.jsp?p=&id=948059&direct=true