Vulnerable Persons as a New Sub-Group of Asylum Seekers?

Lyra Jakuleviciene*

1 Introduction

Back in 2010, the Stockholm Programme of the European Union (EU) called for better protection of vulnerable persons and groups be they citizens or non-citizens, and has set it as a central priority of EU policies by the European Council.1 Immigration and asylum policies are an integral part of this priority.2 More specifically in the asylum field, second generation asylum instruments seem to take a more substantive account of the vulnerability of asylum seekers. Also, the concept of vulnerable groups is gaining momentum in the case law of the European Court of Human Rights (ECtHR).3 This raises a question – is a new category of asylum seekers emerging?

Not long ago the EU Directive on Reception Conditions of 20034 (Reception Conditions Directive or Reception Directive) was the only first generation EU asylum legal instrument that devoted substantive attention to the situation of vulnerable asylum seekers, establishing that a special treatment must be given to asylum seekers identified as vulnerable persons with special needs5 (emphasis added). There were no provision in the Reception Directive defining the notions of vulnerable asylum seekers and asylum seekers with special needs. Nor did the directive contain any provision compelling the Member States to

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* Professor, Faculty of Law, Mykolas Romeris University, Lithuania.

1 European Council, The Stockholm Programme – An Open and Secure Europe Serving and Protecting the Citizens, OJ C 115/1, 4 May 2010, para 1.1, 4 and paras 2.3.2 and 2.3.3, 9 and 10.

2 Ibid paras 2.3.2 and 2.3.3, 9 and 10, paras 5.1, 26 and 6.1.7, 31.


implement any procedure for the identification of vulnerable asylums seekers – or asylums seekers with special needs.\textsuperscript{6} EU Asylum Procedures Directive of 2005\textsuperscript{7} (Asylum Procedures Directive) gave little interest to a potential vulnerability of asylum seekers. Dublin II Regulation\textsuperscript{8} also did not contain explicit provisions that protected vulnerable persons except indirect sovereignty\textsuperscript{9} and humanitarian clauses,\textsuperscript{10} which were at the discretion of the Member States.

This Article focuses on the new provisions of the Recast Reception Conditions Directive\textsuperscript{11} (Recast Reception Directive) in line with related provisions in Dublin III Regulation\textsuperscript{12} (DRIII), the Recast Asylum Procedures' Directive\textsuperscript{13} (Recast Procedures Directive) and the Recast Qualification Directive\textsuperscript{14} in order to clarify two points:

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  \item[6] There was no consistency in the Reception Conditions Directive, as throughout the text it referred either to applicant's 'vulnerability' or to 'asylum seeker [who] has special needs'.
  \item[9] Article 3(2): 'By way of derogation from paragraph 1, each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in this Regulation'.
  \item[10] Dublin Regulation II Article 15(1): 'Any Member State, even where it is not responsible under the criteria set out in this Regulation, may bring together family members, as well as other dependent relatives, on humanitarian grounds based in particular on family or cultural considerations'.
  \item[12] 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 (recast), OJ L 180/31, 29 June 2013.
  \item[14] Directive No. 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons
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