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Section 5. Children and people with special needs in the asylum procedure

Section 5. Children and people with special needs in the asylum procedure

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EU legislation contains provisions to address the special needs of applicants who may be considered particularly vulnerable in the asylum system. These provisions ensure that vulnerable applicants receive adequate support to benefit from their rights and comply with the obligations which are defined under CEAS so that they can be on an equal footing with other applicants.

The recast APD, Article 2(d) defines applicants in need of special procedural guarantees as those with a limited ability to benefit from rights and fulfil the obligations granted in the directive due to individual circumstances. Recital 29 gives examples of these circumstances: age; gender; sexual orientation; gender identity; disability; serious illness; mental disorders; consequences of torture, rape or other serious forms of psychological; and physical or sexual violence.

The term ‘unaccompanied minor’ refers to “a minor who arrives on the territory of the Member State unaccompanied by the adult responsible for them by law or by the practice of the Member State concerned, and for as long as they are not 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 State”.

The recast APD, Article 24 outlines the special procedural guarantees for applicants in general, and Article 25 specifies the guarantees for unaccompanied minors. Member States are required to assess within a reasonable time whether there is a need to implement these guarantees for individual applicants and provide adequate support.

The recast RCD defines applicants with special reception needs. It also lists examples, which are non-exhaustive, but they cover a slightly different scope. It explicitly mentions unaccompanied minors, single parents with minor children, victims of human trafficking and victims of FGM, but it does not refer to gender, sexual orientation or gender identity. Detailed provisions are listed in the recast RCD, Chapter IV and require Member States to take into account the specific situation of a vulnerable applicant, assess vulnerabilities within a reasonable period and ensure that the needs are addressed. Chapter IV also lists specific provisions for minors, unaccompanied minors

and victims of torture and violence. Article 11 lists the conditions for detaining vulnerable persons and applicants with special reception needs.

All instruments of the EU asylum acquis must be applied and interpreted by taking into consideration the Charter of Fundamental Rights of the European Union, as it is part of primary EU law. Article 24 of the Charter concerns the rights of the child and specifies that children have the right to protection and care as necessary for their well-being. The right to express their view freely and have them taken into consideration are also guaranteed. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. Every child has the right to maintain a personal relationship and direct contact with both parents on a regular basis, unless it is contrary to the child’s interests.

Read overview...

Since persons in need of temporary protection comprised mainly women and children, EU+ countries needed to adjust their support services in 2022, which were generally geared towards applicants for international protection who are predominantly men.1306 Women and children fleeing Ukraine were at a heightened risk of being trafficked, so several EU+ countries revised legislation, policies and practices on prevention and identifying victims more rapidly and providing them with adequate support.1307

With the increased arrivals of both persons in need of international and temporary protection, the majority of EU+ countries needed to mobilise additional resources – staff, budget, reception places and experts – to meet the new demand in needs. The dramatic situation in reception *(see Section 4.7)* meant that identifying special needs and offering timely accommodation and support to the most vulnerable became even more challenging. In addition, several Member States and civil society organisations noted that applicants for international protection arrived in the EU in worse states of health than in previous years. Undue delays in the asylum procedure *(see Section 4.4)* can risk negatively impact the integration perspectives of vulnerable applicants and children *(see Section 4.14)*.

Compared to 2021, even more countries reported an alarming increase in the number of unaccompanied children, putting a strain on specific processes, such as appointing a guardian, assessing the age of self-proclaimed minors, remaining within the time limits for processing and providing them with adequate material reception conditions and support.

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