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Section 4. Children and people with special needs in the asylum procedure

icon presenting children and people with special needs in the asylum procedure

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 female genital mutilation. It does not refer explicitly to gender, sexual orientation or gender identity, but special reception needs often arise based on these considerations. 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.

In 2023, several EU+ countries reported a continued high number of applicants with special needs, ranging from applicants with physical or mental disabilities to victims of gender-based violence and children arriving to the EU alone. While waiting times for a decision on an asylum application often lengthened (*see* *Section 3.4*) and the dramatic situation in reception remained (*see* *Section 3.6*), governments continued to look for solutions to ensure dignified conditions and security to those in the most vulnerable situation. At times, this led to legislative and policy changes which allowed for a derogation from higher standards, while international and civil society organisations highlighted the risks of this for the longer term. ECtHR judgments pronounced in 2023 which related to situations in 2018-2020 serve as a reminder that gaps in identification and support to applicants with special needs may have a dramatic impact on their lives.

National authorities undertook initiatives to improve asylum and reception systems for applicants with diverse sexual orientation, gender identity or expression, and sex characteristics (SOGIESC). Nonetheless, the courts overturned several negative decisions on asylum applications to ensure protection for this profile of applicants.

Combatting the trafficking of human beings remained at the forefront of discussions in 2023. The continued arrival of displaced persons from Ukraine triggered further prevention and protection measures in 2023.

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