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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 especially 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 Asylum Procedures Directive, 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 Asylum Procedures Directive, 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 Reception Conditions Directive 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 Reception Conditions Directive, 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 his/her interests.

As in previous years, approaches to applicants with special needs were impacted by national legislative frameworks and the different flows and profiles of applicants. Some countries focused on improving identification and support in a comprehensive manner for all applicants with special needs. Others launched new initiatives or continued with earlier ones for specific groups of applicants.

Guidelines for assessing cases were updated and fine-tuned to ensure that claims related to gender-based violence, FGM/C, sexual orientation and gender identity, and trafficking in human beings were adequately taken into account by case officers. Specialised training for staff continued to equip them with the knowledge to identify and address specific needs in a swift and appropriate manner.

Some reception systems were once again faced with the challenge of adequately supporting applicants while reception places were limited *(see Section 4.7).* Thus, finding a place for applicants with vulnerabilities was a priority, but the available places might not have been the best fitted for the specific profiles.

Several countries reported an alarming increase in the number of unaccompanied children, which put the spotlight on any pre-existing gaps in the procedure to appoint a guardian, age assessments of self-proclaimed minors and the legal framework to ensure that a child’s best interests are heard and taken into account in the context of asylum. The rapid inclusion of children into mainstream education remained a challenge in several countries, which can have a multiplying impact on their future perspectives as recognised beneficiaries of international protection and the possibility to obtain other types of permits related to study or work, in case their asylum application is rejected or their protection needs cease after a certain period.

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