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The Juridification of 'Vulnerability' through EU Asylum Law: The Quest for Bridging the Gap between the Law and Asylum Applicants' Experiences

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Abstract: 'Vulnerability' is flooding EU asylum law. Based on the analysis of the ECtHR's case-law in deportation cases, the EU Directives' provisions towards 'vulnerable' asylum applicants, and their implementation in the domestic legislations and practices of two EU member states that were studied as part of the VULNER project (Belgium and Italy), this contribution establishes a typology of the various legal and bureaucratic functions that 'vulnerability' has received in the EU. It also reflects on the 'juridification' trend at play, the implementation challenges that have emerged as a result, and how they are currently being addressed in the EU.

Keywords: vulnerability; asylum law; human rights law; EU law; European Union; Court of Justice of the European Union; Council of Europe; European Court of Human Rights; European Convention of Human Rights; asylum applicants; UN Global Compacts; refugees; juridification

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1. Introduction

This article aims to contribute to the overall thinking launched by the special issue on the promises, challenges, and pitfalls of mobilising 'vulnerability'[1] to guide the development and implementation of asylum and migration policies, with a focus on European Union (EU) asylum law. It results from the analysis of EU asylum law provisions concerning 'vulnerable' asylum applicants, and of their implementation through the domestic legislation, case-law, and practices of two EU member states: Belgium and Italy, which were selected as case-studies.[2]

The study also includes the European Court of Human Rights (ECtHR) case-law on deportation cases for two reasons. First, the EU Directive's provisions must be interpreted and implemented in line with the EU Charter of Fundamental Rights (EUCFR), which equates its protection standards to those established in similar provisions of the European Convention on Human Rights (ECHR) (Art. 52(3) EUCFR).[3] The ECtHR case-law is thus of direct relevance to determining the content of relevant EUCFR provisions, such as the

[1] When referred to as a concept, 'vulnerability' is used in quotation marks, to underline the diversity of sometimes conflicting understandings that hide behind this seemingly self-explanatory notion.
[2] The VULNER reports result from an extensive analysis of relevant domestic legislations and administrative guidelines, as well as interviews with public servants in Europe (Belgium, Germany, Italy, and Norway), Canada, Lebanon, and Uganda. In this article that has a focus on EU asylum law, I rely on the VULNER reports on Belgium and Italy. The findings of these reports allow me to deepen the analysis of EU asylum law provisions towards 'vulnerable' asylum seekers, by reflecting on two different bureaucratic approaches in implementing them at member state level: one that includes standardised vulnerability assessment tools and processes (Belgium), and one that relies on a flexible and elastic use and understanding of the 'vulnerabilities' faced by asylum seekers (Italy).
[3] The ECtHR was established by the Council of Europe, an international organization that gathers EU member states and other European countries (such as the UK, Turkey and, until recently, Russia) in the objective of promoting human rights in Europe. The ECtHR can be seized by individuals and states who are victim of violations of the European Convention of Human Rights (ECHR).

right to asylum (Art. 18 EUCFR) and the protection in the event of removal, expulsion, or extradition (Art. 19 EUCFR). Second, the ECtHR case-law plays a major role in shaping the implementation practices at the national level, where state actors must abide by both EU law and the ECHR. The ECtHR case-law must thus be studied to reach a more profound understanding of the legal meanings and functions of 'vulnerability' in EU asylum law, including how it shapes implementing practices on the ground.

The study of ECtHR case-law and of EU asylum law is complemented by findings from the research reports on two EU member states, Belgium and Italy, that were developed as part of the VULNER project (Sarolea et al. 2021; Marchetti and Palumbo 2021). These reports analyse and document the legal and bureaucratic processes and tools in place to identify 'vulnerable' migrants seeking protection, and to address their specific protection needs. To that end, the authors identified the legislative provisions pertaining to 'vulnerable' asylum applicants in domestic law, and they tracked down the uses and references to 'vulnerability' in the case-law of domestic asylum courts. They also studied how (in)formal 'vulnerability' assessments are mobilised through the practices of social workers in their daily encounters with asylum applicants in the state-run reception centres, and by public servants in charge of deciding on asylum applications during asylum interviews. They did so based on 104 semi-structured interviews (60 in Belgium and 44 in Italy). The research participants include key institutional actors with the relevant expertise within the relevant state institutions, which are in charge of organising the reception conditions for asylum applicants and/or to decide on the merits of asylum applications.[4]

Based on these data and analyses, I show how 'vulnerability' is becoming an increasingly important concept within EU asylum law, and how this impacts bureaucratic practices concerning asylum applicants in the EU. First, I map the legal and bureaucratic functions of 'vulnerability' as mandated by EU law, and the implementation challenges and pitfalls that emerged at the member state level. I then situate these developments within the broader legal and policy trends that shape European asylum policies—in which growing Europeanisation sustains and gives new forms to the juridification of 'vulnerability'. I therefore mobilise the Habermasian understanding of 'juridification', which refers to the development of legal and bureaucratic categories by the welfare state to identify those in need of state support. In Habermas' theory, 'juridification' serves to show how legal and bureaucratic categories constrain citizens when communicating with the state on their needs, which they must fit within these categories (Habermas 1984; Loick 2019).

Therefore, the first section of this article dissects the various legal functions that 'vulnerability' has been given in EU asylum law and in ECtHR case-law. It maps its manifestations in the ECtHR case-law on deportation measures, the EU Directives on asylum, and the corresponding implementing legislation and practices in Belgium and Italy. The second section questions the concrete consequences of the increasing reliance on 'vulnerability' in EU asylum law. It highlights the juridification process at play, and how 'vulnerability' changes in nature as it permeates EU asylum law and meets with broader legal and policy dynamics, which have the effect of turning 'vulnerability' into a selection tool that allows the identification of those who will benefit from a more favoured treatment. It also highlights the tensions that have emerged as a result, and how they have been addressed in the EU—while underlining the commonalities with the Canadian approach to 'vulnerable' asylum applicants that was discussed in other contributions to the special issue.

2. The Legal Functions of 'Vulnerability' in EU Asylum Law

It has become common, in the EU policy discourse on asylum and migration, to emphasise the policy objective of protecting vulnerable migrants and refugees. This tendency has been illustrated once again by policy debates and reactions to the COVID-19 pandemic,

[4] For additional information on the research participants' profile and how they were selected, see (Sarolea et al. 2021, p. 14; Marchetti and Palumbo 2021, p. 21).

such as the EU Commission's action plan to relocate unaccompanied minors living in unsanitary conditions on Greek islands to other EU member states (European Commission 2020a; FRA 2020; Odink 2020), and the Resolution by the European Parliament calling on the European Commission and member states to consider the impact of the measures adopted to combat the pandemic on groups and people in vulnerable situations (European Parliament 2020, RSP, at para. 4). It has also been illustrated by the EU's answer to people fleeing the war in Ukraine: The EU Commission Operational Guidelines for the implementation of the temporary protection encouraging EU member states to adopt specific measures to protect 'particularly vulnerable categories of persons fleeing Ukraine, with a view to preventing the trafficking in human beings' (European Commission 2022, at section 6; see also GRETA 2022).

The trend is not unique to the EU. The Council of Europe adopted an Action Plan on protecting vulnerable persons in the context of migration and asylum in Europe (Council of Europe 2021). At the United Nations (UN) level, the UN Global Compact on Migration (UNGCM) requests that states address the 'vulnerabilities' of migrants in the implementation of its objectives, including by enhancing legal pathways (Objective 5), preventing smuggling and human trafficking (Objectives 9, b and 10, e), coordinating the management of borders (Objective 11, a) and providing access to basic services (Objective 15, b). The UNGCM also asks states to 'review relevant policies and practices to ensure they do not create or unintentionally increase vulnerabilities of migrants' (Objective 7). The 2016 New York Declaration for Refugees and Migrants likewise refers no less than 15 times to the vulnerabilities of migrants. It does so with respect to various issues, including the specific needs of migrants in a vulnerable position during the migration process (such as women, children, and migrants with health issues).

'Vulnerability' is, indeed, one of those fuzzy notions that generates broad acceptance, precisely because its vagueness allows for mobilisation in varying ways depending on the political agenda. Very few will oppose protecting the 'vulnerable' as such. However, this also results in much skepticism among stakeholders in Europe, which they voiced during a focus-group discussion organised in Brussels in preparation for the VULNER project application: What does a focus on 'vulnerable' migrants and refugees add to existing human rights protection norms and mechanisms? Does t it not risk downplaying the protection standards established in human rights law and refugee law, by limiting them to the most 'vulnerable'? Are migrants and refugees not already in a more vulnerable position than citizens, irrespective of other social and personal circumstances? (Hruschka and Leboeuf 2019)

Because of these uncertainties, 'vulnerability' is often perceived as a 'buzzword' allowing policymakers to justify and communicate certain policy choices, rather than as a coherent policy approach that guides these choices from the outset. Yet, the increasing use of 'vulnerability' in the EU policy discourse also reflects and sustains concrete legal developments in Europe, where 'vulnerability' increasingly shapes states' obligations towards asylum applicants.

This section thus analyses the legal manifestations of 'vulnerability' in EU asylum law through a study on the case-law of the European Court of Human Rights (ECtHR) and relevant legal commentaries (Section 2.1), and of EU legislative provisions on asylum-seekers (Section 2.2). After the analysis of the EU legal framework, I study how the legal developments at EU level impact domestic legal provisions and the practices of public servants in Belgium and Italy, based on the findings of the corresponding VULNER reports (Section 2.3).

2.1. 'Vulnerability' in the ECtHR Case-Law: A Tool of Judicial Interpretation That Guides the Individual Assessment of the Specific Circumstances of the Case

As is widely noted in legal commentaries on the ECtHR case-law, 'vulnerability' increasingly plays an explicit role in the interpretation of human rights law provisions by the ECtHR (Association Henri Capitant 2020; Baumgärtel 2020; Ippolito 2020; Heri 2020;

Flegard and Iedema 2019; Neven 2018; Carlier 2017; Arnardóttir 2017; Nifosi-Sutton 2017; Al-Tamini 2016; Blondel 2015; Ippolito and Iglesia-Sanchez 2015; Ruet 2015; Zimmermann 2015; Besson 2014; Timmer 2014; Peroni and Timmer 2013; Sijniensky 2013; Truscan 2013; Chardin 2011).[5]

Legal commentaries often criticise that trend for lacking consistency. For example, Carlier argues that 'vulnerability' is such a fuzzy concept that excessive reliance on it in legal reasoning risks 'substituting human rights with a vague charity, and weaken [their effects]' (Carlier 2017, p. 177). Others advocate in favor of a more systematic mobilisation of 'vulnerability' in the ECtHR's reasoning (Peroni and Timmer 2013; Al-Tamini 2016; Baumgärtel 2020; Heri 2020). There nonetheless seems to be a consensus, among legal scholars, that 'vulnerability' is not a legally binding concept that shapes the content of legal obligations under the ECHR in definite ways, but has become one of the conceptual tools that guides legal reasoning when implementing human rights provisions in specific cases. It is among those flexible legal concepts that shape ECtHR's rulings in various direct and indirect ways.

This begs the question of what the concrete consequences of the increasing reliance on 'vulnerability' in the ECtHR's legal reasoning are. Some legal scholars, such as Francesca Ippolito, noticed a connection between 'vulnerability' and the ECtHR's doctrine on 'positive obligations' (Ippolito 2020). In the ECtHR case-law, 'positive obligations' imply an obligation of states to adopt measures that guarantee the effective enjoyment of a right, whereas a 'negative obligation' refers to the state's obligation to refrain from interference in the enjoyment of a right (Mowbray 2004; Akandji-Kombé 2007; Klatt 2011).[6] Ippolito argues that:

> [Vulnerability] implies a recognition [. . .] of privileges and the distribution of resources, not only with the aim of correcting imbalances which affect vulnerable persons (groups and individuals) disproportionately, but it serves also for tailoring upon social constructions positive obligations—both procedural and substantial (Ippolito 2020, p. 48).

In its case-law, the ECtHR connected 'vulnerability' and positive obligations in non-discrimination cases, where it recognised additional state obligations towards 'vulnerable groups' (Peroni and Timmer 2013). In cases involving Roma people's access to education and housing, for example, the court has consistently emphasised the 'vulnerability' of Roma communities to support legal arguments in favour of the obligation of states to develop dedicated social programmes, which address the specific difficulties that Roma people face in accessing education and housing (App. 57325/00 D.H. and Others vs. The Czech Republic ECHR GC 13 November 2007; App. 27238/95 Chapman vs. the UK ECHR GC 18 January 2001).

I thus sought to identify cases that concern migrants and asylum applicants, and that were adjudicated by the ECtHR using legal reasoning that establishes a connection between the applicant's 'vulnerability' and states' positive obligations to adopt dedicated measures. Over 100 cases were identified through HUDOC, the ECtHR's online database. A search was carried out by selecting the keywords '(Art. 3) expulsion' and '(Art. 5-1-f) expulsion',[7] among the keywords established by the ECtHR's registry to classify its case-law—yielding 835 and 1180 results, respectively. The search was then refined by combining each of the ECtHR's registry keywords with a search for occurrences of the word 'vulnerable' in the

[5] Within the framework of the Council of Europe, various Conventions other than the ECHR have been adopted to protect people and groups that are generally considered as particularly vulnerable, such as the Convention on Action against Trafficking in Human Beings, the Convention on Preventing and Combating Violence Against Women and Domestic Violence, the European Convention on the Exercise of Children's Rights, and the Framework Convention for the Protection of National Minorities.

[6] The ECtHR exercises a lower degree of judicial control in the case of 'positive obligations', as states retain their leeway of identifying the policy measures that are the most appropriate in the domestic context.

[7] These keywords were selected because they refer to the two ECHR provisions, which are most discussed in ECtHR expulsion cases.

text of the rulings—yielding 122 results in total (87 under 'Art. 3′, and 35 under 'Art. 5-1-f expulsion'). The search covered judgements in Chamber and in Grand Chamber exclusively, and not inadmissibility, decisions which do not contain extended reasons. The search was not limited to a specific time period, but it yielded no occurrence before the year 2000. This shows that the trend of explicit reliance on 'vulnerability' in ECtHR legal reasoning is a relatively recent one.

The first line of identified cases concerns the deprivation of liberty in view of the deportation, or pending the examination of the asylum application (e.g., App. 13178/03 Mubilanzila vs. Belgium ECHR 12 October 2006 and App. 8687/08 Rahimi vs. Greece ECHR 5 April 2011—detention of a minor child; App. 36760/06 Stanev vs. Bulgaria ECHR GC 17 January 2012—detention of a mentally disabled individual; App. 16483/12 Khlaifia and Others vs. Italy ECHR GC 15 December 2016). In those cases, it has become common for the ECtHR to assess the applicant's 'vulnerability' explicitly or implicitly, and to give due consideration to the specific protection needs of those whose personal and intrinsic characteristics (such as their age, gender, and health) put them in a position of increased weakness.

Cases that relate to the deprivation of liberty of asylum applicants and migrants show that the ECtHR mainly relies on 'vulnerability' when evaluating whether the state treatment they were subjected to meets the severity threshold to qualify as a violation of human rights law provisions (e.g., due to its arbitrary and/or inhumane and degrading nature). 'Vulnerability' is then used as a criterion that justifies lowering the threshold to finding a violation of the ECHR.

The second line of cases that were identified concerns the reception conditions of asylum applicants pending a decision on their asylum application. In the landmark ruling M.S.S. vs. Belgium and Greece, the ECtHR mobilised 'vulnerability' in its ruling on an asylum applicant who was not deprived of his liberty, and who did not show additional personal characteristics that make him (relatively) more 'vulnerable' than other asylum applicants (App. 30696/09 M.S.S. vs. Belgium and Greece ECHR GC 21 January 2011). It held that the applicant, an Afghan adult man who was left to live on the streets in Greece without any kind of state support or assistance, suffered inhuman and degrading treatment in violation of the ECHR. The ECtHR then noted that it 'attaches considerable importance to the applicant's status as an asylum-seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection' (M.S.S., at para. 251).

In the M.S.S. ruling, 'vulnerability' was used as an explicit criterion that justified expanding the protection of the ECHR, which generally does not protect against material deprivation in such a way that it requires states to set in place social policies. It served to justify why such policies must be established for asylum applicants, who must benefit from adequate reception conditions. Such use of 'vulnerability' has led to controversies, as it also highlights the blurred distinction, under international human rights law, between civil and political rights as guaranteed by the ECHR, and socio-economic rights, including the right to social assistance, that are protected under other human rights instruments such as the European Social Charter. The M.S.S. ruling was nonetheless confirmed in later cases, where the ECtHR likewise concluded to the existence of a violation of Art. 3 ECHR as a result of the lack of any kind of reception conditions system for asylum applicants, while reminding that they are a 'vulnerable' group (App. 28820/13, 75547/13 and 13114/15 N.H. and Others vs. France ECHR 2 July 2020).

In other cases, the ECtHR refined its assessment of the 'vulnerabilities' of asylum applicants to evaluate whether adequate reception conditions were in place (App. 29217/12 Tarakhel vs. Switzerland ECHR GC 4 November 2014; App. 47287/15 Ilias and Ahmed vs. Hungary ECHR GC 21 November 2019; App. 36037/17 R.R. and Others vs. Hungary ECHR 2 March 2021). In these cases, the applications submitted to the ECtHR complained of insufficient and/or inappropriate state assistance, not of a complete lack thereof. The ECtHR looked for additional personal characteristics that render the applicants particularly

vulnerable, for example, because they are a family with minor children (Tarakhel), or because there is an additional element of constraint, for example, because the applicants are deprived of their liberty (R.R.). When such vulnerabilities were missing, it rejected the application (Ilias and Ahmed).

What is common to all of the cases in which the ECtHR relied on 'vulnerability' to assess claims from migrants and asylum applicants is that they relate to individuals who are more dependent upon the state because of the coercion it is exercising over them either directly, through a deprivation of liberty, or indirectly, through the legal constraints placed upon asylum applicants who do not have a residence permit and access to the labour market pending a decision on their application for asylum. As noted by the ECtHR in R.R. vs. Hungary, state responsibility to provide for basic needs mainly arises in situations where the applicants are 'wholly dependent on State support [and] found [. . .] [themselves] faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity' (para. 50).

Lastly, and as noted in some legal commentaries, there is a long-lasting tradition of the ECtHR performing flexible 'vulnerability' assessments as an implicit part of the individual assessment required when trying to determine whether the principle of non-refoulement is being complied with in deportation cases (Battjes 2009; Smet 2013). In such cases, 'vulnerability' is not used to justify states' positive obligations to adopt dedicated integration policies in favour of some groups that are identified as 'vulnerable'. Rather, 'vulnerability' is mobilised as part of the individual assessment of all the relevant circumstances of the case, which is required to identify whether the treatment someone is receiving from the state complies with the ECHR. For example, in the S.H.H. case, the ECtHR evaluated whether the expulsion of an Afghan national suffering from physical disabilities would violate the ECHR. In its reasoning, it laid the emphasis on the applicant's vulnerable position as a disabled individual, among other relevant circumstances (App. 60367/10 S.H.H. vs. the United Kingdom ECHR 29 January 2013).

In the ECtHR case-law in the field of asylum and migration, 'vulnerability' thus remains an open-ended and flexible notion, which allows the ECtHR to tailor the legal reasoning to the specific circumstances of the case at hand while being more sensitive to the additional challenges faced by some individuals because of their (relatively more) disadvantaged positions. The concept refines the requirement that individual assessments identify whether the ill treatment received from the state is serious enough to qualify as a violation of the ECHR, and it brings attention to positions of acute dependence on the state, especially when applicants are deprived of their liberty. The only clear legal consequence is a positive obligation to provide adequate reception conditions to asylum applicants.

The Court of Justice of the European Union (CJEU) seems to endorse a similar approach when ruling on cases involving 'vulnerable' asylum applicants (EASO 2021). In the C.K., H.F., and A.S. case, for example, it was asked by a Slovenian court if the EUCFR prevents the transfer of an asylum applicant with a serious medical condition to Croatia, which, under the Dublin Regulation, is responsible for examining the asylum application (Case C-578/16 PPU C.K., H.F., and A.S., 16 February 2017, EU:C:2017:127).[8] In its ruling, the CJEU refined the overall requirement that no 'Dublin transfer' be implemented in violation of the prohibition of inhumane and degrading treatment (Art. 4 EUCFR; Joined Cases C-411/10 and C-493/10 N.S. and M.E., 21 December 2011, EU:C:2011:865). It laid the emphasis on the circumstance that Croatia provides access to specific healthcare for vulnerable asylum applicants (para. 39)—thus acknowledging that the risk of ill-treatments in case of a Dublin transfer to the responsible member states must be assessed depending on the asylum applicant's specific vulnerabilities, and the extent to which they will be adequately addressed in the reception system of the responsible EU member state.[9]

[8] Reg. EU 604/2013. The Dublin Regulation serves to identify the EU member state that has the responsibility to examine an asylum application made on EU territory.

[9] See also the ruling in the Case C-146/17 *Jawo*, 19 March 2019, EU:C:2019:218, in which the CJEU opposes the transfer of asylum seekers when they risk finding themselves in extreme material poverty following the

It is not uncommon for courts to rely on such fuzzy yet flexible notions that evolve over time and depend on broader developments in society, to adjudicate on the applications it receives. When it comes to 'vulnerability', however, an additional step has been made under EU law by enshrining it in the relevant legislative instruments, as is shown in the next sub-section.

2.2. 'Vulnerability' and EU Legislative Provisions on Asylum: A Focus on Addressing 'Specific Needs'

Three EU Directives harmonise the conditions under which third-country nationals, i.e., non-EU citizens, may benefit from 'international protection' in the EU. Under EU law, 'international protection' includes refugee status, as established in the 1951 Geneva Convention, and subsidiary protection status. Subsidiary protection status benefits those who cannot be recognised as refugees because they cannot show an individualised risk of persecution, but who are facing a risk of serious human rights violations in their home country, for example, because of a situation of indiscriminate violence resulting from an armed conflict (Art. 15 Dir. 2011/95/EU; Art. 78 TFEU; Art. 18 and 19 EUCFR).

The 'Qualification Directive' (QD) specifies the conditions under which third-country nationals may benefit from refugee status or subsidiary protection status, and the corresponding rights (Dir. 2011/95/EU). The 'Asylum Procedures Directive' (APD) establishes the procedures to be followed when evaluating applications for both of these types of protection status (Dir. 2013/32/EU). The 'Reception Conditions Directive' (RCD) details the state support that asylum applicants[10] are entitled to pending a decision on their application (Dir. 2013/33/EU). The provisions of these Directives were screened and analysed in view of identifying their provisions that explicitly refer to 'vulnerable' asylum applicants. The CJEU case-law on the interpretation of these Directives was also screened for rulings interpreting the specific provisions towards 'vulnerable' asylum applicants. None was found.

Article 15 APD requires that due consideration be given to the specific needs of 'vulnerable' asylum applicants when conducting interviews, and Article 31(7)(a) RCD allows the EU member states to prioritise the examination of the applications introduced by vulnerable asylum applicants. Article 21 RCD requires the EU member states to assess the 'special reception needs' of 'vulnerable' asylum applicants. Article 17 RCD requires the EU member states to consider these needs when identifying the services that asylum applicants should benefit from to guarantee adequate living standards pending a decision on their application. Finally, article 11 RCD extends that obligation to the asylum applicants who are detained, and requires 'regular monitoring and adequate support taking into account their particular situation, including their health'. These provisions have the overall effect of requiring EU member states to identify the special needs of 'vulnerable' asylum applicants (EASO 2021).

Neither Directive specifies clearly who should be considered as 'vulnerable'. Rather, they opt for an open-ended and category-based approach, which focusses on personal characteristics (such as being a minor, a pregnant woman, a victim of torture and violence, etc.) (Dir. 2013/32/EU, recital 39, Art. 2(d), 15(2)(a), 31(7)(b); Dir. 2013/33/EU, Art. 21 and 22).[11] These categories are listed by way of example, and not in an exhaustive way.[12]

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recognition of a protection status (the refugee status or the subsidiary protection status) in the responsible EU member state, on account of their particular vulnerability (para. 95).

[10] I am using the term 'asylum applicant' to refer to those who applied for international protection, and who are awaiting a decision on their application.

[11] See also, outside the scope of the Common European Asylum System: Dir. 2008/115/EC, art. 3(9).

[12] The Returns Directive 2008/115/EC, which harmonises the processes to remove irregularly staying migrants from European territory, provides for an exhaustive list. The list includes 'minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape, or other serious forms of psychological, physical, or sexual violence' (Dir. 2008/115/EC, art. 3(9)).

The list of examples can vary slightly, depending on the instrument in question. The RCD offers the most elaborate exemplative list, which includes:

> 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 (Dir. 2013/33/EU, Art. 21).

The legislative approach at the EU level to define the 'vulnerable' asylum applicants with special needs is thus similar to the one used in the 1951 Geneva Refugee Convention to define the grounds for persecution to be taken into consideration when determining refugee status. These include race, religion, nationality, political opinions, and belonging to a 'particular social group'. The 'particular social group' criterion is not exhaustively defined in the Convention; in fact, it was intentionally left open enough to be able to take the social context into account, and so that protection can be guaranteed in the face of persecution motivated by grounds that were not foreseen when the Convention was drafted (Hathaway 2021; UNHCR 2002).

This legislative approach to 'vulnerability' prompted debate among EU member states' administrations (Fedasil 2016) and among legal scholars, who pointed out a lack of clear indications on how to identify 'vulnerable' asylum applicants and their 'special needs', and on how to address them (Costello and Hancox 2016; Jakuleviciene 2016; Pétin 2016; Brandl and Czech 2015; De Bauche 2012).

The proposed recast of the RCD, which is currently under discussion, therefore scraps any reference to 'vulnerable' persons. It refers to 'applicants with special reception needs' instead (European Commission 2016b, 465 final, Art. 2,13), following a trend which can also be found in the UN Global Compact on Refugees (UNGCR). The UNGCR refers to 'persons with specific needs', who are defined by reference to personal characteristics that are similar to those identified in the RCD and APD:

> Persons with specific needs include: children, including those who are unaccompanied or separated; women at risk; survivors of torture, trauma, trafficking in persons, sexual and gender-based violence, sexual exploitation and abuse or harmful practices; those with medical needs; persons with disabilities; those who are illiterate; adolescents and youth; and older persons (UNGCR, para. 59).[13]

However, the recast RCD does not identify the 'special needs', nor how they should be assessed and addressed. It is thus doubtful that the recast RCD, if adopted, will resolve existing discussions on how to identify 'vulnerable' asylum applicants and address their specific protection needs—which might be a debate that cannot be solved through legal provisions alone, as it relates to the discretionary leeway that must be afforded to state actors on the ground to allow them to implement the law in a way that duly considers relevant individual circumstances and protection needs.

The analysis of the provisions of the EU Directives nonetheless demonstrates a legal approach to 'vulnerability' that is slightly different from that of the ECtHR. In the ECtHR case-law, 'vulnerability' is mobilised as an all-encompassing concept that refers to all kind of socially disadvantaged positions, which lead to a greater degree of dependance on the state (for example, because of a deprivation of liberty), and which should be considered in the court's legal reasoning depending on other relevant circumstances. Under the EU Directive, the approach is practically oriented towards solutioning some specific needs that may arise as part of the asylum procedure. The sub-section below analyses what the consequences of this two-fold legal approach are on the ground, taking two EU member states (Belgium and Italy) as case studies.

[13] Contrary to the UNGCR, the UNGCM and the 2016 New York Declaration make numerous references to migrants' 'vulnerability'.

2.3. 'Vulnerability' in Domestic Laws and Practices That Implement EU Directives on Asylum: The Belgian and Italian Cases

EU Directives must be transposed into domestic law to produce their full legal effects (Art. 288 of the Treaty on the Functioning of the EU). The transposition process leaves some leeway to the EU member states, who may decide on how best to adapt their domestic legislation and bureaucratic practices to comply with EU law. In some instances, domestic provisions may not require modifications to their content and/or interpretation if the domestic context is already compliant with the EU Directive requirements. The studies conducted by Sarolea, Raimondo, and Crine, in Belgium and by Marchetti and Palumbo in Italy (Sarolea et al. 2021; Marchetti and Palumbo 2021), show that Belgian and Italian law were amended to transpose the APD and the RCD's provision that mandates an assessment of the specific needs of vulnerable asylum—as is the case in most, but not all, other EU member states (ECRE 2017; EMN Luxembourg 2021).

Belgium included specific legal provisions in its domestic legislation that provide for the identification of asylum applicants' 'special reception needs' and 'special procedural needs'. The Belgian Reception Act, which regulates the reception conditions to which asylum applicants are entitled pending a decision on their asylum application, sets a 'vulnerability' assessment procedure in place (Art. 22 of the Law of 12 January 2007). The Royal Decree organising the procedure before the asylum authority also requires that public servants conducting asylum hearings be trained to identify and respond to the specific needs of 'vulnerable' groups (Article 3(3) of the Royal Decree of 11 July 2003).

The 'vulnerable' asylum applicants are defined in a cross-cutting way in the Belgian Migration Act, which states the conditions under which foreigners may access Belgian territory and obtain a residence permit in Belgium. The act uses a definition that is similar to the one established in the EU Directives, however, without following their open-ended approach. Under Belgian law, the definition of 'vulnerable' persons is restricted to:

> accompanied minors, unaccompanied minors, disabled persons, elderly persons, pregnant women, single parents with minor children, victims of torture, rape or other forms of severe psychological, physical or sexual violence (Article 1, 12°, of the Law of 15 December 1980).

Italian law also includes specific provisions regarding 'vulnerable' asylum applicants, outlining which specific needs must be addressed as part of the reception conditions and the asylum procedure (Marchetti and Palumbo 2021, p. 37). The 'vulnerable' asylum applicants are defined following the same group-based approach as the one followed by the EU Directives, with an extension to persons who are victim of 'violence related to sexual orientation or gender identity' (Marchetti and Palumbo 2021, p. 38).

The bureaucratic approach to identifying 'vulnerable' asylum applicants, and to assessing and addressing their specific needs, differs greatly between Belgium and Italy. In Belgium, a standardised and systematic bureaucratic process has been established (Sarolea et al. 2021, p. 25). It includes a dedicated 'vulnerability' questionnaire, which is completed by the immigration office when registering the asylum application, following a first individual interview with the asylum applicant. The objective is to identify the most prevalent protection needs from the outset, and the questionnaire therefore focusses on practical and immediate needs that must be addressed (Sarolea et al. 2021, p. 26).

Findings from the questionnaire inform the choice of the reception centre (such as a reception centre with a dedicated section for single women, or one with the infrastructure required to host unaccompanied minors). The questionnaire findings also allow the asylum authority to organise accommodations and the asylum hearing from a practical viewpoint (for example, should the room be accessible to a wheelchair? Should the hearing be conducted by a public servant with specialised training, for example, to interview minors?). Lastly, the questionnaire findings inform the relevant issues that should be addressed and/or considered during the asylum interview, in relation to both the risk of persecution in the home country (for example, does a medical condition result from acts of torture?) and the credibility of the asylum applicants' statements (for example, does a trauma impact

their ability to recollect past events and make consistent declarations?) (Art. 48/9 of the Law of 15 December 1980; Art. 22 of the Law of 12 January 2007).

The interviews conducted in Belgium by Sarolea, Raimondo, and Crine with social workers in reception centres, public servants in charge of deciding on asylum applications, and asylum judges, show that the findings of the questionnaires are considered as preliminary and not definitive. Each state actor later performs their own vulnerability assessment, on a pragmatic and flexible basis. They rely on the findings from the questionnaire, which they sometimes reverse and/or expand upon. Social workers in reception centres are aware of the limitations inherent in evaluating 'vulnerabilities' through a short interview organised when the asylum application is introduced—they commonly emphasise that a proper identification of vulnerabilities requires time, as most traumatic events are not revealed without first establishing a sphere of trust. Moreover, observations over a longer period of time are sometimes needed to detect some particularly vulnerable individuals, for example, who suffer from trauma (Sarolea et al. 2021, pp. 135, 201).

Moreover, while the 'vulnerability' questionnaire focusses on some 'vulnerable' groups—such as minors, single women, and asylum applicants with health issues—later vulnerability assessments are more flexible. During interviews, social workers usually emphasise that 'vulnerability' results from numerous factors that intersect in complex ways and constantly evolve over time (Sarolea et al. 2021). The analysis of the Belgian case-law by Sarolea, Raimondo, and Crine also demonstrates that the Belgian asylum court mobilises 'vulnerability' as an all-encompassing concept, to label any individual circumstance which has the effect of increasing the risk of ill-treatment in the home country (as opposed to general circumstances, that relate to the overall situation in the home country and/or faced by the social and/or ethnic group the asylum applicant belongs to). There does not seem to be much difference between 'vulnerability' and the individualised assessment required when evaluating the risk of persecution and other serious human rights violations in the home country.

In contrast, in Italy, no systematic bureaucratic process is in place to identify 'vulnerable' migrants and assess their specific needs. However, the domestic case-law analysis and the interviews with social workers, public servants, and asylum judges, which were made by Marchetti and Palumbo, show that they nonetheless regularly perform 'vulnerability' assessments on a pragmatic basis, and adapt their practices accordingly. They also consider these vulnerabilities when deciding on the substance of the claim. Marchetti and Palumbo qualify such assessments as 'elastic', for they rest on an understanding of 'vulnerability' that is based on the individualised assessment of each case (Marchetti and Palumbo 2021, p. 83).

In both countries, two legal and bureaucratic approaches to asylum applicants' 'vulnerabilities' coexist. The first one focusses on immediate and practical needs, which can be addressed through adapting the reception conditions and through minor procedural accommodations—such as hosting the asylum applicant in a dedicated section of a reception centre, or organising the asylum hearing in a room that is adapted to children (with toys, drawings on the wall, etc.). This approach reflects the one mandated by the relevant EU Directives, and their focus on 'specific needs'.

The second approach focusses on the individual circumstances, which warrant deviations from usual bureaucratic norms and practices. In such cases, public servants and asylum judges mobilise 'vulnerability' to justify their decisions in specific cases—following an approach that has also been identified by Brown in her work on the 'governance of vulnerability', which she based on interviews with social workers in charge of youth programmes in the United Kingdom (Brown 2017). From that perspective, 'vulnerability' is one of these blurred concepts that gives bureaucrats the leeway to show compassion and alleviate human suffering when implementing existing norms—and, thus, also to express and channel their own emotions within the existing bureaucratic system and categories. It is used as an adaptative tool that serves to tailor, justify, and legitimise state intervention in specific cases, depending on the individual circumstances.

3. The 'Juridification' of Vulnerability in the European Union

In this section, I analyse the research results while mobilising the Habermasian understanding of 'juridification' as an analytical framework. In his work on the ethics of communication, Habermas defines 'juridification' as the process through which human interactions are regulated through law and the legal system, with the overall result that empirical realities become encapsulated in legal concepts and categories, which can be operationalised in more or less similar ways by state bureaucracies in individual cases (Habermas 1984; Loick 2019). Habermas connects that evolution with the development of the welfare state, the functioning of which requires legal concepts that allow state actors to identify the citizens who are eligible for state support. This affects, in turn, the behaviour of citizens, who are required to mobilise legal concepts when communicating their needs—and who will thus seek to frame their needs within existing legal categories and using bureaucratic labels.

The intent of mobilising 'juridification' as an analytical framework is to reveal the conceptual tensions that underpin the increasing legal and bureaucratic success of 'vulnerability' in the field of asylum in the EU, and its concrete consequences on the ground; it is not to claim that 'vulnerability' has become a fully-fledged legal concept with definitive and clear legal effects. To the contrary and as discussed above, 'vulnerability' is among these fuzzy notions that guides legal reasoning in various direct and indirect ways, and thus impacts the implementation of legal provisions by state bureaucracies, as well as the judicial control over state action.

By the 'juridification' of 'vulnerability', I thus refer to the increased reliance on 'vulnerability' in legal reasoning and as a bureaucratic label. I show how the nature of 'vulnerability' is evolving following its juridification through EU asylum law (Section 3.1). I then highlight the implementation challenges that have emerged as a result, and how they have been addressed in the EU (Section 3.2). I do so while showing similarities between the European approach and the one developed in Canada, as identified in other contributions to this special issue.

3.1. 'Vulnerability' from a Diagnosing Concept to a Legal and Bureaucratic Tool of Resource Allocation

'Vulnerability' has long and often been used as an analytical framework in empirical research on migration to highlight the specific challenges encountered by migrants, refugees, and asylum applicants within host societies (Aysa-Lastra and Lorenzo 2015; Cunnif Gilson 2015; Ciobanu et al. 2017; Busetta et al. 2019) or during the migration process (Kuschminder and Triandafyllidou 2019; Paasche et al. 2018; IOM 2017; ICRC 2016).

In these studies, 'vulnerability' is conceptualised as a fluid notion that allows researchers to depict the complexities of human experiences and to deepen and elaborate the overall finding that 'vulnerabilities' are unevenly allocated through a 'natural and social lottery' (Cortina and Conill 2016) that comprises, inter alia, corporeal conditions, and social inequalities.

This body of literature allows us to understand how the experiences of 'vulnerability' encountered by migrants and refugees are continuously shaped in social interactions and are ever-evolving, multi-dimensional, and context-specific. There is a multi-layered continuum of 'vulnerabilities', as everyone is affected by 'vulnerabilities' of some kind in different ways, depending on their resources and intersecting social identities. 'Vulnerabilities' cannot be isolated from the situation within which they arise, nor from the specificities of the situations of the persons concerned, including their resources and abilities to develop resilience and coping strategies.

This socially-embedded understanding of 'vulnerability' is closely connected with the ethics of care, which advocates attention to and solicitude for others as the main ethical paradigm (Held 2005; Tronto 2009; Tong and Williams 2018). From that perspective, 'vulnerability' is intended to serve as an 'equaliser', that is, as a means to secure equal treatment. It provides the grounds for a theory of justice that considers and accounts

for the 'vulnerabilities' of each member of society. 'Vulnerability' then provides a moral justification for legal and policy prescriptions aimed at correcting some social disadvantages and weaknesses, with a view to guaranteeing equality.

According to Martha Fineman, for example, 'vulnerability [. . .] is a powerful conceptual tool with the potential to define an obligation for the state to ensure a richer and more robust guarantee of equality' (Fineman 2008). It serves both to attract the attention to our shared human condition as vulnerable beings, as all of us can end up in a position where we need the care from others, and to underline our shared moral responsibility to guarantee universal access to care (Fineman et al. 2016).

This approach to 'vulnerability' as a shared human characteristic raises the question of identifying the specific positions of 'vulnerability' that require state action. In Fineman's theory of 'vulnerability', the emphasis should be on those who find themselves in positions of 'vulnerability' that affect their abilities to develop their own resilience strategies (Fineman 2017). From that theoretical perspective, state action should aim at strengthening resilience, and at putting individuals in a position where they can lead their own independent life.[14]

Yet, the translation of this conception of 'vulnerability' into concrete legal and bureaucratic provisions means that it meets with broader legal and bureaucratic constraints and dynamics, and that it evolves as a result. As showed above, the increased reliance on 'vulnerability' in EU asylum law has the overall effect of turning 'vulnerability' into a conceptual tool that assists state actors in identifying the asylum applicants who will receive some kind of preferential treatment—be it through adaptations to the reception conditions and the asylum procedure, or through the recognition of some specific individual challenges they may be facing and that have relevance when evaluating the legal conditions under which a residence permit may be obtained.

'Vulnerability' then changes in function and nature. It becomes limited to some 'vulnerabilities' in particular, which are prized over others: if everyone can claim the 'vulnerability' label, then it has no particular legal and bureaucratic effects and it cannot play a role in identifying those who will benefit from favoured treatment. Like any other tool of selection, 'vulnerability' acquires implied exclusionary effects, as some people will not be entitled to claim the 'vulnerability' label and the corresponding advantages. This raises, in turn, additional conceptual tensions and practical issues for state actors on the ground as 'vulnerability' that was conceptualised in a socially embedded way that reflects contextual specificities becomes encapsulated in law. These tensions and the way they have been channelled through EU asylum law are further explored below.

3.2. 'Vulnerability' in Law: Beyond Immediate and Practical Needs?

The juridification of 'vulnerability' through EU asylum law implies its standardisation, to guarantee legal certainty and a (relative) uniformity in the bureaucratic practices. If each state actor can decide freely on who should be considered as 'vulnerable' and how they should be treated, this would give rise to uneven (if not arbitrary) practices, which would vary greatly depending on the public servant in charge. Some administrative discretion may be inevitable. It is part of the normal functioning of any legal system to leave a certain margin of appreciation to its actors. However, if it becomes too wide, divergent practices are likely to become the norm and affect legal certainty and trust in the legal system—as shown by Delisle and Nakache in their contribution to this special issue that analyses how Canadian public servants assess the applications for a residence permit on 'humanitarian and compassionate' grounds, which are introduced by vulnerable applicants.

Moreover, the establishment of consistent bureaucratic practices across the EU member states is a major EU policy objective, which relates to the broader attempt at integrating the

[14] Fineman's vulnerability theory has also been criticised for laying the emphasis on individuals, which are expected to be responsive, and for overlooking the broader constraints that stem from the overall social conditions in which they evolve (Cole 2016). On that criticism, see also the contributions from Anderson, and Soennecken, and from Klassen to this special issue.

EU member states' asylum policies into a 'common European asylum system'—in which asylum applicants would benefit from a similar treatment irrespective of the EU member state they find themselves in (European Commission 2008, 360fin; European Commission 2016a, 197fin; Chetail 2016). The integration of the EU member states' policies into common EU policies requires domestic legislative provisions to be harmonised in a way that is sufficiently precise to generate similar implementation practices by the EU member state actors in charge.

This broader EU policy objective may explain in part why the EU Directives have sought to clarify the legal and bureaucratic approaches to 'vulnerability' through an overall focus on the 'special needs' that are of a practical and immediate nature, and on some personal characteristics that are (relatively) straightforward to identify, such as age, gender, or health status. This trend is similar to the one that has been observed regarding the asylum procedure in Canada, where numerous administrative guidelines assist public servants in identifying and addressing the immediate and practical needs, through procedural accommodations mainly (Kaga et al. 2021, p. 27).

Yet, the focus on special needs does not suffice to reflect human experiences of vulnerabilities, which are far more complex and often depend on numerous intersecting and ever evolving social factors (Aysa-Lastra and Lorenzo 2015; Cunnif Gilson 2015). Should this focus become exclusive and prevent more flexible bureaucratic approaches (for example, because the assessment of vulnerabilities can only occur when registering the asylum application and/or at border crossing points), it would risk sustaining practices on the grounds which fail to account for positions of vulnerability that result from multiple, complex social factors and circumstances. It may lead to vulnerability assessments that are made in a somewhat 'sanitised' way, that is, in a way that focusses on some abstractly defined characteristics without considering how they relate to the broader social context and other relevant individual circumstances—thus amounting to a check-list exercise (Barbou des Places 2021). In Europe, this phenomenon was documented as part of the VULNER project, through interviews with social workers in Belgium (Sarolea et al. 2021), Italy (Marchetti and Palumbo 2021), and Norway[15] (Liden et al. 2021). For example, a social worker interviewed in Norway by Liden, Schultz, Paasche, and Wessmann testified that:

> We are capturing the more serious things, such as disabilities and whether a person is deaf. In these cases, we know where to start. You know in these cases that something needs to be done. Less visible needs are more difficult to discover. Vulnerabilities caused by what happened in their home country or on the journey to Norway are not easy to voice. They need to settle down before opening up to difficult experiences and feelings (Liden et al. 2021, p. 59).

The ECtHR's case-law shows that the juridification of 'vulnerability' is not bound to generate public servants' practices that focus on special needs exclusively. 'Vulnerability' can also be developed as a loose and flexible interpretative notion, which draws state actors' attention to the additional life challenges that some applicants may face–a potential that Purkey also identified in her contribution to this special issue, with respect to the Canadian migration case law. Such a flexible and open legal approach bears the promise of introducing flexibility into legal reasoning in a way that improves its connection with human experiences and reduces the gap between legal conceptualisations and lived realities. However, it also risks generating uneven, if not arbitrary, practices that fail to guarantee legal certainty and to support EU's objective of harmonising member states' practices.

To fulfil the promise of reducing the gap between the law and empirical realities, without producing uneven and unfair practices, state actors and judges should avoid falling into the trap of a stereotyped understanding of asylum applicants' and migrants' experiences. This trap has been documented in the literature that analyses humanitarian policies from a critical perspective, and that addressed the increasing mobilisation of 'vulnerability' as

[15] Although Norway is not a EU member state, its state actors have developed similar bureaucratic practices of 'vulnerability' assessments.

a policy concept that guides the development and implementation of humanitarian aid programmes. It has been noted that such programmes often fail to reflect aid beneficiaries' experiences, thus leading to aid practices that are not centred solely on their own understandings and knowledge of their needs (Turner 2019; El Daif et al. 2021; Nakueira 2021)—a criticism which Klassen also voiced in her contribution to this special issue.

Falling into that trap is likely to raise serious issues in the context of asylum and migration law, in which the fundamental purpose is to select between those who will benefit from a residence permit and integration policies, and those who will be targeted by exclusion measures—including deportation. The higher the stakes for individuals, the more likely that they will engage in a 'vulnerability competition', i.e., a fierce fight to present themselves as more vulnerable than others. This phenomenon has already been identified and documented empirically in the context of resettlement programmes to the benefit of refugees living in the Global South, when they are confronted with dire living conditions in overcrowded camps (Jansen 2008; Nakueira 2019). The effect of such competition is to exclude the most vulnerable persons, who find themselves lacking the mental and social resources to compete.

It is likely that the solution to this challenge is to be found outside EU asylum law and its technical provisions, in state practices that acknowledge the specificities of legal conceptualisations and their exclusionary effects, as well as the contribution that empirical knowledge can bring to legal reasoning—including by bringing attention to migrants' and refugees' main life challenges. Such empirical knowledge would also gain from being deepened and refined in ways that consider the degree of consciousness that migrants and refugees have of the legal and bureaucratic approaches to identifying and addressing their 'vulnerabilities', and of how they mobilise them when exercising their agency.

4. Conclusions: The Challenges, Promises, and Pitfalls of the Juridification of 'Vulnerability' through EU Asylum Law

It has become fashionable, in the EU policy discourse on asylum and migration, to emphasise the need to protect 'vulnerable' migrants and refugees. The trend has resulted in some concrete legal developments, through EU legal provisions on asylum and the ECtHR case-law, which were analysed in this contribution that also studied how they were implemented in two EU member states (Belgium and Italy). More legal developments may come in the near future given current EU legislative plans, as detailed in the European Commission's 2020 New Pact on Migration and Asylum (European Commission 2020b, 609fin).

These EU legislative plans include developing a common approach to resettlement, which would focus on the most vulnerable refugees in line with the UNHCR Resettlement Handbook and current resettlement policies in most of the EU member states (UNHCR 2011; European Commission 2016c, 468fin). They also include establishing a border screening procedure, which would involve a systematic vulnerability assessment to better address special needs, and an accelerated asylum border procedure, which would allow the member states to fast-track the asylum applications made at the border. If it appears necessary based on the vulnerabilities that were identified following the border screening, the asylum authorities will refrain from examining the asylum application made at the border following the accelerated procedure—thus giving access to the regular asylum procedure for 'vulnerable' applicants (European Commission 2020b, 609fin; European Commission 2020c, 611fin; European Commission 2020d, 612fin).

So far, the juridification of vulnerability has mainly resulted in a focus on the practical and immediate needs that are relatively straightforward to identify, and that can be addressed through minor accommodations to the asylum procedure and the reception conditions. This trend is similar to the one observed in Canada, and which was identified and discussed in the other contributions to this special issue. It presents the potential to better tailor state practices to the specific challenges faced by the most vulnerable asylum applicants.

Yet, the focus on the 'specific needs' also feeds the risk of sustaining sanitised approaches to asylum applicants' vulnerabilities, which would fail to consider their socially embedded nature. A more flexible and open approach would leave more room for the state actors on the ground to address actual experiences of vulnerabilities, which cannot be properly encapsulated through clear and definitive legal and bureaucratic categories because of their ever evolving and highly contextual nature. However, such an approach is not without challenges. Leaving too wide a discretionary leeway to state actors may generate arbitrary practices, that rely on stereotyped understandings of asylum applicants' experiences. It may also feed a vulnerability competition, as asylum applicants will feel the need to portray themselves as more vulnerable than others to secure their chances at obtaining access to protection. Lastly, it may fall short of producing harmonised practices across the European Union.

It remains doubtful that such challenges can be tackled through legislative modifications. A clear legal definition of 'vulnerability' that also reflects asylum applicants' experiences might well be an illusion. What may be needed instead is a greater realisation of the need to rely on empirical knowledge to guide state action on the ground—for example, by improving practical training in a way that offers the opportunity of the state actors involved in the various stages and dimensions of asylum processes to reflect on their daily practices, share their experiences, and exchange with actors from the civil society that can testify on asylum applicants' understandings of their main life challenges.

Such knowledge can bring attention to the broader context in which vulnerability assessments are performed—and, thus, remind of their implied exclusionary effects that may also exacerbate existing vulnerabilities, or even produce new ones (as pointed out by Depatie-Pelletier, Deegan, and Berze; and Frenyo, in each of their contributions to this special issue). It can also increase the awareness of asylum applicants' experiences, thereby assisting the design of state responses that strike an adequate balance between humanitarian considerations and broader legal and policy dynamics that relate to the conduct of state affairs as well as the channelling and controlling of migration and refugee movements.

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