

## Cahiers de l'EDEM

*Les Cahiers sont rédigés par l'EDEM, l'équipe Droits européens et migrations, constituée à l'UCL au sein du CeDIE.*

*Chaque mois, ils se proposent de présenter quelques arrêts récents d'une juridiction nationale ou européenne dans ses domaines d'études, à savoir la mise en œuvre du droit européen de l'asile et de l'immigration en droit belge.*

*Les Cahiers contiennent des commentaires en français et en anglais.*

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*These Commentaries are written by the European Law and Migration team (EDEM), which is part of UCLouvain.*

*Each month, they present recent judgments from national or European courts in the field of the implementation of European asylum and immigration law in Belgian law.*

*The Commentaries are written in French and/or English.*

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### Editorial : Between Borders and Territories: Situations of Vulnerability and Vulnerable Groups

In the context of the international conference [Time of Territories](#), held on the occasion of the 10 years of the research team, the EDEM launched a [call for papers](#) addressed mainly to PhD students. As we have received a great number of proposals, we were able to organize [two Young Researchers' Workshops](#). The workshop format resulted in rich exchanges among peers and senior academics on the broad topic of Law and Migration. For many of the researchers we have hosted in Louvain-la-Neuve, this was the first chance to meet in person.

We have now invited the Workshop participants to contribute to two consecutive Special Issues of the Cahiers de l'EDEM. In thanking all the contributors, we hope that this was a valuable opportunity to further develop their own's research skills and nourish their respective research projects. We also thank the members of EDEM who supported us during the Workshops and during the coordination of this Special Issue.

Unlike our usual Cahiers de l'EDEM, most of these contributions present ongoing research, mainly drawn upon PhD research projects. This Special Issue is dedicated to the topic of vulnerability, as several EDEM members are part of the Horizon 2020 [VULNER project](#)<sup>[1]</sup>, which aims at investigating how the law assesses, addresses, shapes, and produces the vulnerabilities of protection seekers<sup>[2]</sup>. Vulnerability is a concept that has been used in the context of migration and refugee protection especially through soft law instruments and Acts of international organizations. Nevertheless, and notwithstanding the growing references to the concept and the spread of the language of vulnerability in the field of migration and refugee protection since the end of the 20th century, there is still a lack of clear understanding of its concrete meaning, practical consequences and legal implications. A thorough and non-stereotyped understanding of this concept is necessary given that every protection seeker is vulnerable to some extent in light of the entire migratory context (including the situation in the country of origin, along the migratory road and in the country of destination), their resources and the intersecting social identities. VULNER aims to address this gap through a socio-legal research with the objective of examining the use and of vulnerability in hard and soft legal sources, its implementation by decision-makers as well as the ways vulnerability is experienced by protection seekers. It provides scientific data on the content of vulnerability, its legal interpretation as well as its strategic use and practical experiences in order to prevent, as far as possible, a stereotyped understanding and implementation of this concept.

The five contributions of this special issue focus on a wide variety of legal topics in which the concept of vulnerability and the "categories" of people considered as vulnerable play a role. This special issue starts with a broad philosophical reflection on the role of legal categories and their consequences in migration law. In this account, categorization appears as a technique of control that tends to make individuals vulnerable (**Maria Gkegka**). This Special Issue then looks at an illustration of situations of increased vulnerability at the EU external borders where the special needs of vulnerable groups are often neglected (**Cécile Pierson**). Victims of human trafficking are considered as one of the most vulnerable groups as well as one of the hardest to detect. In this perspective, one of the contributions in this edition stresses the importance of an EU-wide common victim identification system (**Georgina Rodríguez Muñoz**). Among those vulnerable groups of people, vulnerability can also raise problems of selectivity. This Special Issue addresses this challenge through refugee resettlement practices and criteria (**Tano Kassim Acka**). Last but not least, this Special Issue ends with a criminological analysis of the preventive and punitive

measures which aim to criminalise acts of solidarity toward specific vulnerable migrants, namely, those in irregular situations (**Mathilde du Jardin**).

Underlying that the contributions hosted in this Special Issue are part of ongoing research projects, we hope that they will foster further exchanges and contacts among researchers. In the meantime, our team hopes that these contributions will be of further interest to you, at the crossroads of themes dear to all those interested in the rights of people who often have the least, and more generally, to human rights supporters.

Comments and feedback are more than welcome.

On behalf of the EDEM,

**Zoé Crine, Eleonora Frasca and Francesca Raimondo**

[1] The project, headed by Dr. Luc Leboeuf from the Max-Planck Institute for Social Anthropology, brings together partners from various research institutions, both within and outside Europe, and focuses on the following case studies: Belgium, Canada, Germany, Italy, Lebanon, Norway, South Africa and Uganda.

[2] In line with the conceptual framework of the VULNER project, the designation “protection seekers” is adopted with the objective of including the migrants seeking protection, but who do not necessarily fall under the definition and requirements to apply for international protection.

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## Juillet 2022 - Édition spéciale

### [Les catégories juridiques des étrangers et leurs frontières.](#)

**Maria Gkegka**

Si le juriste est traditionnellement accoutumé à appréhender l'étranger au prisme des catégories juridiques, les évolutions qu'elles connaissent dans le contexte contemporain l'invitent à en interroger les conséquences. Car le raffinement de plus en plus sophistiqué qui les caractérise est loin d'être anodin pour les individus. Érigées en piliers de l'inclusion et de l'exclusion en matière de séjour et de droits, les catégories juridiques instituent pour l'étranger des sphères personnelles qui délimitent les horizons et les frontières de son humanité.

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### [The assessment of vulnerable asylum seekers' rights at the external borders of the European Union.](#)

**Cécile Pierson**

In European asylum law, the legal notion of vulnerability carries with it a particular and protective impact as it aims to identify the correlated [special needs](#) and to derive State obligations from them. The protection and care that these special needs require are hardly addressed at the borders; thus, the trend towards the development and streamlining of border procedures at the external borders of the European Union entails that the vulnerable asylum seekers are less likely to be identified and taken care of. Furthermore, this border reinforcement outweighs the protection of asylum seekers' rights, and is particularly true for those vulnerable. The border procedures foreseen by the [New Pact on Migration and Asylum](#), although encompassing measures for vulnerable groups, are in fact incompatible with the complete and systematic identification and care of these groups, and, in this regard, are far from corresponding to the protective standard set out by the Common European Asylum System. The legal basis, that has been slowly

developed and articulated in this respect and thereby allowing for a growing legal incidence of the notion of vulnerability, is now largely questioned.

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### **In the light of the Commission's intention to modernise the current anti-trafficking framework: a common victim identification system?**

**Georgina Rodríguez Muñoz**

As witnessed by Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, the identification of victims has never been of great importance to the European Union or its Member States, who have prioritised security concerns at the expense of a human rights approach towards trafficked victims. The directive leaves the choice of victim identification measures to the Member States, resulting in insufficient compliance with human rights obligations. If victims of human trafficking are not identified, they will not access any protection or assistance systems and they will remain in a situation of violation of their rights. They may even be deported or fall back into the hands of traffickers. In view of the European Commission's intention to reformulate the current framework, this article proposes a new common EU-wide victim identification system, a mechanism capable of detecting victims who are potentially vulnerable to exploitation, especially in highly sensitive locations, such as refugee camps, border crossing points or asylum centres. To this end, the weaknesses of the current legal framework will be pointed out, and it will be analysed to what extent International Human Rights Law obligations can contribute to the creation of this new system.

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### **La réinstallation : entre réponse utile et menace subtile à l'accueil des réfugiés.**

**Tano Kassim Acka**

Un vent nouveau souffle. Après avoir perdu ses lettres de noblesse à la fin des années 1990, le mécanisme de réinstallation des réfugiés renaît de ses cendres. Ramené au-devant de la scène internationale à partir des années 2000, il interpelle et interroge. Aussi bien en raison de la ferveur qu'il rencontre auprès des États que des critiques dont il est l'objet. Est-il un instrument captieux permettant aux États de reprendre la main totale sur leurs politiques en matière d'asile, au mépris des droits reconnus aux réfugiés ? C'est à cette question que cette chronique a tenté de répondre. Au-delà d'une réponse tranchée, l'analyse révèle que ce mécanisme recouvre une réalité complexe en matière d'accueil des réfugiés. D'une part, il peut être vu comme une réponse utile à certaines carences du droit international des réfugiés, telle que sa logique réactive et parfois rigide. De l'autre, il peut être perçu telle une menace certaine mais surtout subtile à l'accueil des réfugiés. S'il se développe davantage encore sans corriger ses faiblesses, il risque de placer l'accueil des réfugiés sous le prisme d'une sélectivité prononcée, elle-même au service exclusif des États.

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### **Criminological analysis of the Commission Guidance on the implementation of the Facilitators Package in the EU Pact on Migration and Asylum of 2020: Between legal perspectives and empirical realities.**

**Mathilde du Jardin**

This paper analyses the communication from the European Commission named "[Commission Guidance on the implementation of European Union \(EU\) rules on definition and prevention of the facilitation of unauthorized entry, transit and residence 2020/C323/01](#)" in the EU Pact on Migration and Asylum presented on the 23rd of September 2020, with regard to current research on the criminalization of humanitarian aid, also known as the criminalization of solidarity with irregular migrants. This analysis aims to propose a criminological reading of the phenomenon as well

as highlighting its complexity, which has not been emphasized by the Commission in its policy recommendations to the Member States. A reflection on the benefits of a multidisciplinary approach is made, taking into account the empirical realities that the Facilitators Package has not yet been able to grasp, and thus showing the gap between the practices of criminalization and the regulatory framework of the European Union.

#### [Vie privée](#)

Le présent courriel contient des éléments de traçabilité poursuivant une finalité exclusivement statistique. Ils répondent aux exigences du Règlement général sur la protection des données (RGPD). Pour plus d'informations, merci de nous contacter à l'adresse suivante:

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