

THE CONVERGENCE BETWEEN EUROPEAN LAW AND INTERNATIONAL LAW IN THE PROTECTION OF VULNERABLE MIGRANTS: THE PREPONDERANT ROLE OF ECHR CASE LAW

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Abstract

The Article analyzes the convergence between European Union law and international human rights law in the context of the protection of vulnerable migrants, emphasizing the preeminent role of the European Court of Human Rights (ECtHR). Focusing on practical issues — returns, Dublin transfers, reception conditions and access to asylum procedures — the study demonstrates how the ECtHR, through landmark rulings (e.g. M.S.S., Hirsi Jamaa, Tarakhel), builds a protection standard grounded in the assessment of a real risk of inhuman or degrading treatment (Article 3 ECHR) and the principle of non-refoulement. These standards inform the interpretation and application of EU rules by national authorities and the Court of Justice of the European Union (CJEU), both through direct judicial dialogue and doctrinal mechanisms such as the presumption of equivalent protection (Bosphorus doctrine). The paper also addresses key tensions — notably transfers between Member States under the Dublin Regulation and situations where domestic or EU protection is deemed insufficient — and proposes practical criteria for assessing vulnerability in return procedures. The conclusion underlines that the ECtHR decisively shapes a common European protection standard for vulnerable migrants. At the same time, effective safeguarding of rights ultimately depends on coherent implementation at national and EU levels.

Keywords —vulnerable migrants; European Convention on Human Rights; European Court of Human Rights; Court of Justice of the European Union; non-refoulement; Article 3 ECHR; Dublin Regulation; Bosphorus.

Introduction

In our days, migration is a daily topic because of armed conflicts and other contemporary wars, such as the Israel–Gaza and Ukraine–Russia wars. The terminology of “migration” comes from Latin: *migro* means “I move.” A migrant is a person who moves away from their country either voluntarily, [1] to improve their living conditions) or involuntarily [2] (because of climate change or conflict). The main difference between migrants and refugees is that the latter fall under the 1951 Geneva Convention relating to the Status of Refugees [3]. Whereas the former do not. A migrant is a vulnerable person because they generally benefit from fewer protections under international law. In many cases, a migrant has a different origin and, when moving away from their country, leaves part of their family behind, entering a new country with a new language and traditions.

In 1990, the United Nations adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. [4] to establish fundamental legal standards and to ensure that all people are equal without exception in the primary areas of security, education, employment, and health care. The main problem with this Convention is that many states, such as most European Union [5] and North American states [6]—have not ratified it. This highlights a persistent global challenge.

The notion, often referred to as “absolute risk,” has been developed in the case law of the European Court of Human Rights (ECtHR) and is particularly relevant to Articles 2 and 3 of the European Convention on Human Rights in vulnerable contexts, such as those involving migrants or refugees. This terminology was discussed notably in *Chahal v. the United Kingdom* (1996) [7], where the ECtHR affirmed the absolute character of Article 3 in situations where there are substantial grounds for believing that a person would face a real risk of serious harm upon removal.

Altogether, contemporary migration pressures, uneven treaty ratification, and the ECtHR’s jurisprudence on the absolute nature of protection under Article 3 remind us that safeguarding human dignity must remain central to migration governance and state practice, even in the most challenging times.

From Security to Rights: Prioritizing Human Protection in ECtHR Migration Case Law

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In the last decades, the ECtHR has established clear rules to limit a state's liberty in favor of the protection of human rights. More precisely, the ECtHR started to put human rights in a superior place at the detriment of national security. In this context, 3 (three) law cases help us to understand the essential direction of contemporary protection of human rights: *M.S.S v Belgium and Greece* [8], *Hirsi Jamaa and Others v. Italy* [9], *și Tarakhel v. Switzerland* [10].

The case of *Hirsi Jamaa and others* explains the extent of the ECHR's dispositions in the context of the protection of migrants. First, any push-back needs to be monitored and reviewed by the authorities of the host state to ensure that there is no real risk of torture or other prohibited treatment; in practice, each transfer must be assessed on an individual basis, not collectively. [11]. The Court also acknowledged the applicability of *Article 4 of Protocol No. 4* to interceptions at sea. It emphasized that collective expulsion practices are prohibited: any removal must be accompanied by procedures for identification, information, screening, and, above all, adequate protective safeguards for the persons concerned.

The proposal for a cumulative screening test for migrants arriving in Europe directly addresses these practical requirements. The test should be applied consistently by Member States — especially those at the external borders (Greece, Italy, Spain) — and should look for visible signs of trauma or violence, vulnerable age (very young children or elderly persons), and evident illnesses or disabilities. Individuals identified as vulnerable should benefit from expedited procedures and priority in the recognition of protection needs.

States transferring a person under the Dublin rules cannot treat the decision to transfer as a mere administrative formality. Even when the rules allocate responsibility, the transferring authority must, before transfer, carry out a genuine, individual and concrete assessment of whether the person's life and dignity will be protected in the receiving State — including reception conditions, risk of ill-treatment or degrading treatment, access to accommodation and protection, and exposure to violence or extreme destitution. Where there is evidence of systemic failings in the receiving State and no such individual check has been carried out, the transferring State may be held responsible under Article 3 ECHR. In short, Dublin does not remove the duty of care [12].

The judgment in *Tarakhel v. Switzerland* reiterates and operationalizes these principles in the context of interstate transfers under Dublin: the Court requires an effective and individualized verification of the qualitative standards in the state that is to receive the person, particularly where families with minors are concerned; the authorities must obtain concrete guarantees (not merely general statements) that reception will ensure tailored conditions and the preservation of family unity, failing which the transfer would breach Article 3.

The interaction between the European Court of Human Rights and the European Union Court of Justice

There is a close interdependence between the ECtHR and the CJEU in judicial practice, and the CJEU is obliged to respect the ECHR under Article 6(3) TEU. Through the judgments in the cases discussed above, we observe a dialogue driving changes in European legislative systems between these two major authorities (the ECtHR and the CJEU). Owing to the *M.S.S* case, the Dublin Regulation underwent amendments to its asylum procedures, migration, and the best interests of the child [13]. States cannot expel individuals without assessing any potential risks in the state that is hosting them.

In 2013, the European Union procedures (32 and 33) set firm objectives for the asylum procedure, establishing minimum reception conditions for vulnerable persons in line with ECHR law. The rules on sea surveillance, Frontex, and the operations of maritime authorities must respect human rights by ensuring identification and interstate cooperation when persons or groups of persons are found in international waters [14].

The CJEU has indirectly incorporated ECtHR's decisions into its rulings. Thus, while in *M.S.S.* the judges held that the transferring state remains responsible for the victim status that a person may acquire by being sent to another state without an *in concreto* assessment of the conditions to which they are subjected, the CJEU held in *N.S. & M.E.* that the automatic transfer of a person to a state with deficiencies in reception and asylum conditions engages the responsibility of the transferring state for failing to respect the rights derived from the Charter of Fundamental Rights of the European Union.

As regards the individual assessment of vulnerability, the decision in *Tarakhel* emphasized the need for enhanced protection in cases involving vulnerable persons, including minors, and the CJEU in *Căldăraru* explained that the transferring state is responsible for the limitations on rights imposed on individuals, especially minors.

Since the European Union cannot apply the ECHR directly, EU legislation has delineated clear limits for maritime operations and migrant transfers through its migration and asylum legislative policy, based on both the Charter of Fundamental Rights of the European Union and relevant legislative frameworks such as Frontex and the Dublin Regulation. We should view the ECtHR–CJEU relationship as mutual cross-referencing, in which the ECtHR sets out principles and subsidiary protection standards. At the same time, the CJEU and EU law operationalize them into concrete procedures for use by state authorities.

Bosphorus Hava Yollari v. Ireland, dated 2005, had a Europe-wide impact on the application of human rights, linking the guarantees afforded by the ECHR with those provided by EU law through the Charter. At that time, the issue of the equivalence of human rights protection was debated: the Court recognized a rebuttable presumption that acts implemented under EU law provide a level of protection comparable to that of the Convention. This presumption, however, is relative and may be overturned by contrary evidence [15].

The presumption's relative nature should be seen as a precautionary measure intended to avoid permanent conflict between the ECtHR and the CJEU over the rights and freedoms of individuals. A potential violation of rights is not established on the basis a single isolated element, but rather through a complex assessment of effective protection in practice. Consequently, the presumption does not apply automatically. [16]: in *Michaud v. France* (2012), the Court held that the Bosphorus presumption cannot be invoked when the EU mechanism in question (for example, a directive or the manner of its implementation) does not, in practice, ensure a direct and equivalent protection of the rights guaranteed by the Convention. The cause, *Avotiņš* (2016) explained that, to rebut the presumption, the applicant must demonstrate that the protection afforded by EU law, viewed “as a whole,” is manifestly and seriously inadequate, that is, “manifestly deficient,” compared to the standards of the Convention [17].

It is essential to view the Bosphorus as a balancing mechanism between recognizing the European value of human rights protection and placing the ECtHR system as a supervisory instance when an individual's rights and freedoms are not evidently safeguarded.

Conclusion

European institutions responsible for migration and asylum should apply a uniform, clear, and foreseeable procedure at external borders for vulnerable persons. This should include a rapid mechanism for collecting and registering personal data in compliance with data protection requirements, as well as an individual health assessment followed by the prompt provision of necessary treatment. In the event of the transfer of a family with children or other vulnerable people, the authorities should request adequate and verifiable guarantees from the destination state, preferably in written form, regarding compliance with minimum standards and with the obligations under the ECHR and the relevant EU instruments.

In recent decades, the dialogue between the ECtHR and the CJEU has progressively aligned: the ECtHR's standards on the prohibition of refoulement, individual assessment, and adequate safeguards are reflected, to a significant extent, in the interpretation of the Charter and in EU legislation applicable to migration and asylum. This dialogue strengthens the protection of fundamental rights through a dual layer of review: directly by the ECtHR and indirectly through the EU's normative and jurisprudential framework.

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