

The role of European union law in ensuring the protection of vulnerable groups during humanitarian crises

*Anastasiia Subbota*¹

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Abstract. The weaknesses in a legal system are showing when a humanitarian crisis occurs, and especially, when it comes to the safeguarding of an individual and/or group in a position of vulnerability. The crises in Europe over the last couple of years, especially the European Union's multi-phase crises of mass displacement due to war, have challenged the Centre of EU Law to respond to the Displacement and Protection Crisis in a timely manner, and in a framework of effective and entitled protection. The Purpose of this Paper is to illustrate the impact of EU law on the protection of the vulnerable in times of humanitarian crisis, particularly of vulnerable asylum seekers, refugees, displaced persons and/or children. The authors rely solely on the legislative acts and legal instruments of the European Union, and the legal doctrines of the most recent literature on the legal protection of the vulnerable, to assess the degree of attention that the legal systems of the European Union devote to vulnerable protection. Besides the attention given to the Protective Measures of the European Union in response to the Ukraine Crisis, this Paper intends to document the story of the European Union's legal protection of the vulnerable in a humanitarian crisis. While the author recognizes the finesse of the European Union's legal system in designing rules to protect the vulnerable, the author stresses that the rules have severely neglected consistent application, individual consideration, and collaboration to protect the vulnerable at the intra and inter-state levels. The author proposes the creation of effective mechanisms of protection, along with legal clarity, by providing a structure to the application of the concept of vulnerability that is humanitarian, inter-sectional, and focused on the rights of the vulnerable.

Key Words: vulnerability, humanitarian crises, EU law, temporary protection, asylum, vulnerable groups, displacement.

¹ Law Enforcement Activities,
Kryvyi Rih Educational and Research Institute of Donetsk State University of Internal Affairs,
ORCID: 0009-0000-1017-2314
subbotanastia@yahoo.com

Introduction

The humanitarian crises that affect the European Union show the inability of the Union's legal and institutional mechanisms to safeguard individuals from increased harm. Armed conflicts, mass displacements, and environmental and public health emergencies create situations where individual groups, such as asylum seekers, refugees, children, people with disabilities, and trafficking victims, are more insecure and experience more violations of their rights [8; 20].

Vulnerability within the EU legal discourse has become an important normative and analytical concept to define people in need of more protection. Vulnerability, more than a descriptive concept, qualifies people in the context of EU migration and asylum law and defines their rights, access to legal processes, and available protection [4; 11]. At the same time, more reliance on vulnerability as a concept brings the concern of less legal certainty and equality and more un protection or protection incongruently.

The importance of EU law in relation to a crisis remains twofold. On the one hand, the EU establishes common standards via legally binding acts, and on the other hand, it remains reliant on the Member States to implement them. This particularity of the EU generates both the possibility for lawfully coordinated action and the risk of lawfully uncoordinated action. The example of the activation of the Temporary Protection Directive (Directive 2001/55/EC) in relation to the War in Ukraine demonstrates the benefits and drawbacks of the EU's ability to respond to a humanitarian crisis [10; 18].

This paper seeks to examine EU law's response to the humanitarian crisis and in particular the protection of disadvantaged groups, to evaluate the shortcomings of the current legal framework, and to offer suggestions for improvements (see Figure 1). The research is limited to the scope of EU law and relevant international law, and how it is interpreted and applied within the EU legal framework.

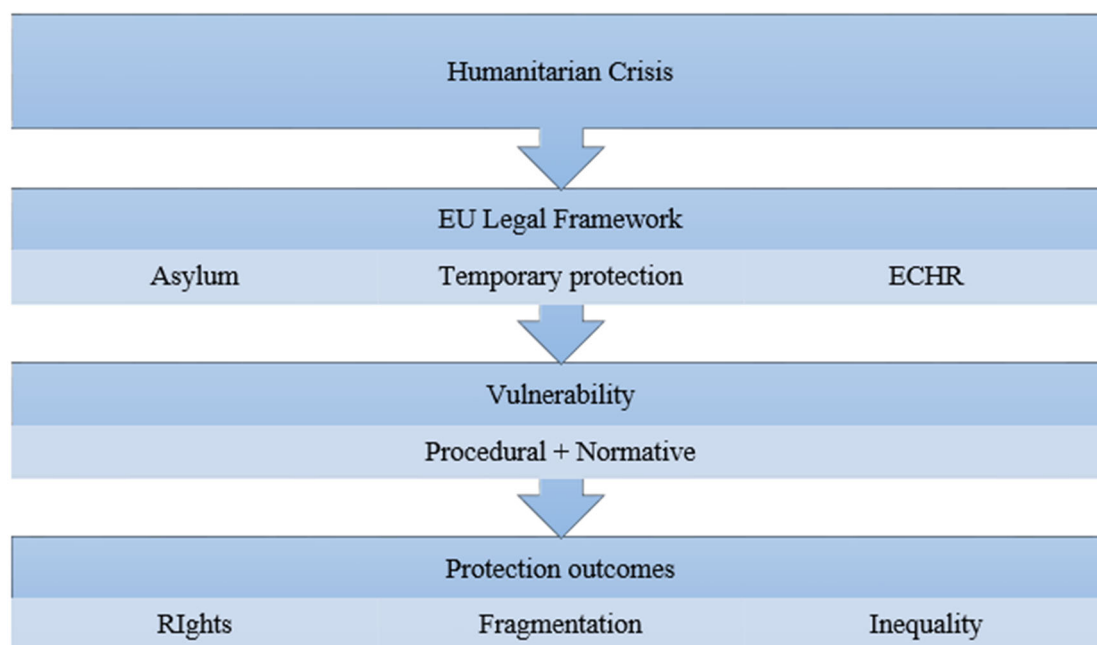


Figure 1. Vulnerability as a Mediating Legal Concept

2. Literature Review

2.1. Conceptualising Vulnerability in EU and International Legal Scholarship

Recently, European legal scholarship, particularly in the fields of asylum, migration, and humanitarian protection, has been paying attention to the idea of vulnerability. Although, in the past, vulnerability used to refer to an individual personal characteristic, more recently,

vulnerability has been understood as a particular framework of legal, social, and power relations that are institutionalized. (See Table 1). In the European legal context, the instrumentalization of vulnerability is twofold. On the one hand, it serves as a normative basis for protection and, on the other hand, serves as an operational tool of legal control.

Leboeuf (2022) analyses the ascendancy of the law on the vulnerability of refugees in the European Union and explains how such a notion has been absorbed, over the years, into the various pieces of secondary legislation and administrative bureaucracies [11]. This trend attempts to bridge the gap between the legal standard and the reality of the asylum seekers. Nonetheless, Leboeuf cautions that the law on the vulnerability of refugees will serve a narrow purpose of making vulnerability a mere tick in the box of legal administrative procedures [11]. In *Between Protection and Harm*, this critique is more pronounced, where Leboeuf et al. (2025) maintain vulnerability is often “traded” in asylum bureaucracies in a manner that produces divergent outcomes between care and control [12].

Da Lomba and Vermeylen (2023) state that from an ethical point of view, the concept of vulnerability is a radically ethical construct that reveals structural injustice and not simply individual weakness [3]. The authors state that responses to crises in the EU often misuse the concept of vulnerability to create divisions between “deserving” and “undeserving” migrants, which violates the fundamental principle of human rights [3]. This conflict between ethics and governance is at the core of many writings on the concept of vulnerability.

Table 1. Approaches to Vulnerability in EU Legal Scholarship

Author(s)	Conceptualisation of Vulnerability	Legal Function	Key Critique
Leboeuf (2022)	Juridified, procedural vulnerability	Access to asylum procedures and safeguards	Risk of checkbox formalism
De Stefani (2022)	Contextual and legally constructed vulnerability	Identification of risk in mixed migration flows	Conceptual ambiguity and uneven use
Da Lomba & Vermeylen (2023)	Ethical and structural vulnerability	Normative critique of EU crisis governance	Instrumentalisation of deservingness
Jacobsen & Karlsen (2025)	Governance-oriented, mobile policy concept	Policy coordination and administrative filtering	Adaptability to restrictive state agendas

Intersectionality, Equality, and Differential Protection

Recent scholarship has focused on outlining the complexities of intersecting vulnerabilities (See Figure 2). Flamand, Raimondo, and Saroléa (2023) illustrate how asylum seekers find themselves in overlapping categories of vulnerabilities, including gender, age, health, disability, and legal precarity [6]. However, EU legal structures continue to be largely

categorical, focusing on pre-defined categories and missing the less apparent or 'other' types of vulnerabilities.

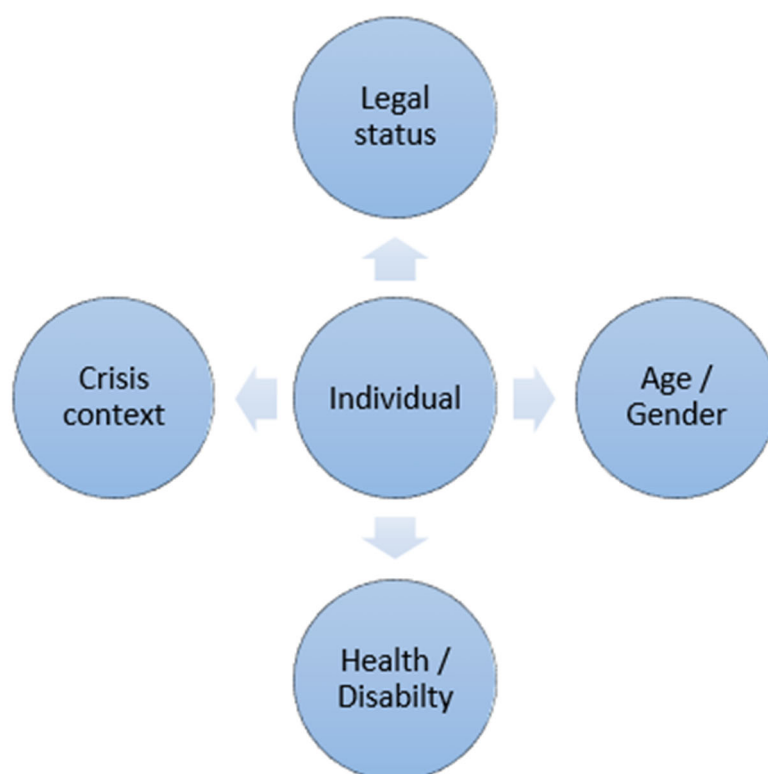


Figure 2. Intersectional Vulnerability Layers

Mayrhofer, Ammer, and Wladasch (2025) examine the concept of vulnerability from the perspectives of equality and non-discrimination, arguing that, in some instances, vulnerability as an analytic framework offers a critique of paternal protective barriers, or in other instances, offers a critique of formal equality [13]. Their conclusions echo those of Thomas and Nicholson (2022) in regard to the use of the term vulnerability in the context of international protection processes, in which the term functions as a metaphor which cannot be converted into a legal status, thereby creating a disparity in how it is applied across different decision-making bodies [17]. Jacobsen and Karlsen (2025) examine the '*mobility of vulnerability*' as a concept and describe it as a form of globally circulating governance [9]. While this characteristic is largely beneficial, it also allows states to justify the use of adverse policy goals that narrow the parameters of who is considered vulnerable, particularly in the context of the EU's complex legal arrangements.

EU Asylum Law, Temporary Protection, and Legal Fragmentation

The EU protection and asylum laws have been closely examined in the context of vulnerability studies. In her analysis of the international and temporary protection frameworks in the EU, Bondarenko (2024) detects ongoing legal design and implementation [2]. Since the activation of the Temporary Protection Directive (TPD) in response to the Ukraine war, it has been the focus of renewed scholarship. Among others, Vitiello (2022) analyses the TPD in the context of its predecessors as part of a history of collective protection and the Nansen passport and comments on its legacy in relation to the rights of solidarity and mobility [18]. Despite temporary protection including rapid residence, social services, and healthcare access, the extraordinary character of such protection leaves many in a state of legal insecurity.

Ali et al. (2025) empirically address these concerns by demonstrating that, despite formal legal harmonization, the pathways to legal permanence for refugees in the EU are unequal [1;

15]. Stoyanova (2025) offers a further case of fragmentation by secondary movements and the uniformity of refugee status, where disparate national practices bolster the disunity of EU protection standards [17]. In the most recent scholarship on vulnerability, Stoyanova offers a case on fragmentation in relation to secondary movements and uniformity of refugee status; disparate national practices strengthen the disunity of EU protection standards [17]. In the context of the most recent EU asylum reforms, Peers (2024) contends that in the contemporary asylum processes of the EU, new and extended procedures operate alongside the weakening of substantive safeguards [14]. These reforms have resulted in a paradox where the recognition of vulnerability does not extend the protective framework.

Humanitarian Crises, Ukraine, and the Reconfiguration of EU Protection

The invasion of Ukraine has changed the EU's approach to migration and humanitarian law. Guild and Groenendijk (2023) describe how the war affected the EU's migration governance by demonstrating unprecedented empathy and exposing structural inequalities [8]. On the one hand, the use of temporary protection showed the EU has the ability to respond to crises collectively. On the other hand, it showed the EU policies were discriminatory towards certain groups of the displaced.

In Sweden and Finland, Koikkalainen et al. (2025) study national practices concerning temporary protection and how it works in conjunction with restrictive migration policies [10]. The scholars argue that in most cases, emergency protection lacks the prospect of social and economic integration and, thus, deepens the uncertainty of the people affected. Children's vulnerability in humanitarian crises is also the focus of Garayová's (2025) study about youth in Central and Eastern Europe [7]. Despite the existence of child-centered protection measures in the EU and the ECHR, child-specific protection measures remain underdeveloped and, in some cases, are ignored altogether [5]. This highlights the need for measures that do not circumvent the emergency and address the situation of the people in need of protection in a more permanent way.

Health, Detention, and Expanding Crisis Contexts

The scholarship on vulnerability is extending further than displacement and armed conflict. For example, Van Hout (2023) illustrates the consequences of the COVID-19 pandemic on the structural vulnerabilities of immigration detainees' environmental health rights. This illustrates that crises can exacerbate pre-existing structural vulnerabilities. This research expands the understanding of the humanitarian dimensions of crises and of the relevance of vulnerability in different fields of law.

While Welfens (2024) examines the European Union (EU) criteria for the protection of migrants, the author critically evaluates the normative justifications for the relocation of refugees [19]. The study demonstrates the unease in articulation of solidarity *vis-a-vis* state sovereignty and the rights of the people, which equally concerns the asylum and the temporary protection systems.

International Humanitarian and Human Rights Law Foundations

The EU's protection based on vulnerability is strictly international law. The humanitarian law, which seeks to protect people in war and other situations of violence, is found in the Geneva Conventions and its Commentaries, while the European Convention on Human Rights provides a framework for the treatment of people, which is directed to the protection of the vulnerable [16]. These documents emphasize the need to protect people, regardless of their legal status.

Synthesis and Research Gap

The empirical literature identifies a paradox. On the one hand, the ambiguity and discretionary use of the so-called 'vulnerability' concept has enabled more fragmentation and

discrimination. On the other, the flexibility of EU law points to a more responsive and individualized protection. Most of the existing scholarship, while rich in empirical and conceptual terms, still manages to avoid addressing the tension in EU law during a humanitarian crisis. This article responds to this by focusing on EU law's potential to construct vulnerability as a coherent, rights-based framework that achieves positive and concrete protective results.

Materials and Methods

This paper uses qualitative doctrinal legal research with a critical and normative approach to analyze how European Union law engages with the protection of vulnerable people in humanitarian crises. This approach is not meant to be a simple description of the legal options available. Rather, it aims to illustrate how the term 'vulnerability' functions as a legal term shaping the scope of available protection, and the varying legal consequences that arise from it.

The most significant element of the methodology is the legal doctrinal analysis of the primary and secondary EU laws on asylum, temporary protection, and migration-related social rights. The analysis focuses on the legal construction of 'vulnerability' and its legislative and administrative adoption, as well as the constructive gaps that such adoption fails to eliminate in terms of the provision of protection and the equality of such protection. Legal provisions are analyzed in terms of their posited structures and the legal rights and entitlements they may, or may not, provide to the identified vulnerable subjects.

The author relies on the analysis of the relevant case law and associated literature to the extent that it pertains to the European Union Court of Justice. Vulnerability is understood as an interpretative construct rather than a stand-alone legal concept. This allows the author to examine how advocacy of certain judicial discretion brings to the fore, or diminish, the fragmentation of standards of protection. In assessing the adequacy and consistency of the EU's level of rights protection, the jurisprudence and interpretative mechanisms of the European Convention on Human Rights are employed as a guiding standard.

Also, as a complement to the description of the EU's policies and institutions, the author assesses the roles of EU institutions, agency, and the use of temporary protection schemes in crisis response during mass displacement. This specializes the intersection of normative legal frameworks, institutional discretion and the implementation gap. The author analyzes the divergent national frameworks of the EU's protection policies through a selective comparative approach.

For the purpose of illustrating the disparity in the protection of the right to the legal certainty and balancing access to the protection within and among the Member States, the author has opted not to aim for a holistic approach, but rather, to present a limited number of frameworks for unequal access to the protection of rights. The notion of vulnerability, employed as an analytical device at the confluence of law, courts, and the institutions, is, in the author's view, an original and useful contribution. It uncovers systemic gaps and makes evaluative normative recommendations for the refinement of the EU's crisis response mechanisms.

Findings and Discussion

EU Legal Instruments Protecting Vulnerable Groups During Humanitarian Crises

The analysis shows EU law has increasingly integrated the concept of vulnerability since humanitarian responses have incorporated it the most in the areas of asylum and temporary protection. Vulnerability functions as the most important concept since it mediates access to settlement, social support, health services, and procedural safeguards [4; 11]. This attempt to

'for humanitarian reasons' justify the relocation of EU legal structures to the realms of international law, international humanitarian law, and human rights law, including the Geneva and the European Convention of Human Rights [16].

On the other hand, the results of the analysis suggest the overwhelming majority of the time, vulnerability, as applied in EU law, has been more procedural than substantive. Categories of vulnerability are recognized in legal instruments, but, even more, the recognition of such categories is not really transformed into any legally guaranteed rights (Table 2). This is especially so with temporary protection where legal entitlements are rapidly accessible but there are legal gaps regarding the duration, integration, and longitudinal status of those entitlements [2; 18]. Thus, vulnerability is more about access than the rights it is meant to denote.

Table 2. Key EU Legal Instruments Addressing Vulnerability

EU Instrument	Target Groups	Type of Protection	Key Limitations
Temporary Protection Directive (2001/55/EC)	Mass influx of displaced persons	Residence, social assistance, healthcare	Temporary status, limited long-term security
Reception Conditions Directive	Asylum seekers	Material reception conditions and safeguards	Divergent national implementation
Qualification Directive	Refugees and subsidiary protection beneficiaries	International protection status and rights	Complex vulnerability assessment
EU Charter of Fundamental Rights	All persons within EU jurisdiction	Fundamental rights guarantees	Indirect enforceability in practice

Fragmentation and Inequality in the Application of Vulnerability

A major issue found in this study is the persistent fragmentation in the use of the term vulnerability across Member States of the EU. Even with the aim of achieving a common understanding of the term, the results in terms of protection continue to be unequal in a systemic way, especially in relation to the legal certainties and the access to durable solutions. Empirical data demonstrate that the paths refugees take towards legal certainty are extremely varied and depend largely upon the national practices of implementation and not on the individual need for protection [1].

This fragmentation is even more pronounced when there are differences of legal and bureaucratic interpretations when it comes to the concept of the vulnerability (See figure 3.). Member States possess a notable degree of latitude with respect to the definition and implementation of the term vulnerability, which clearly weakens the cohesion of the Common European Asylum System [15], as it has been pointed out in the studies focused on secondary movements and the uniformity of refugee status. Thus, the term vulnerability has different meanings legally, which results in unequal protection and, more importantly, unequal treatment.

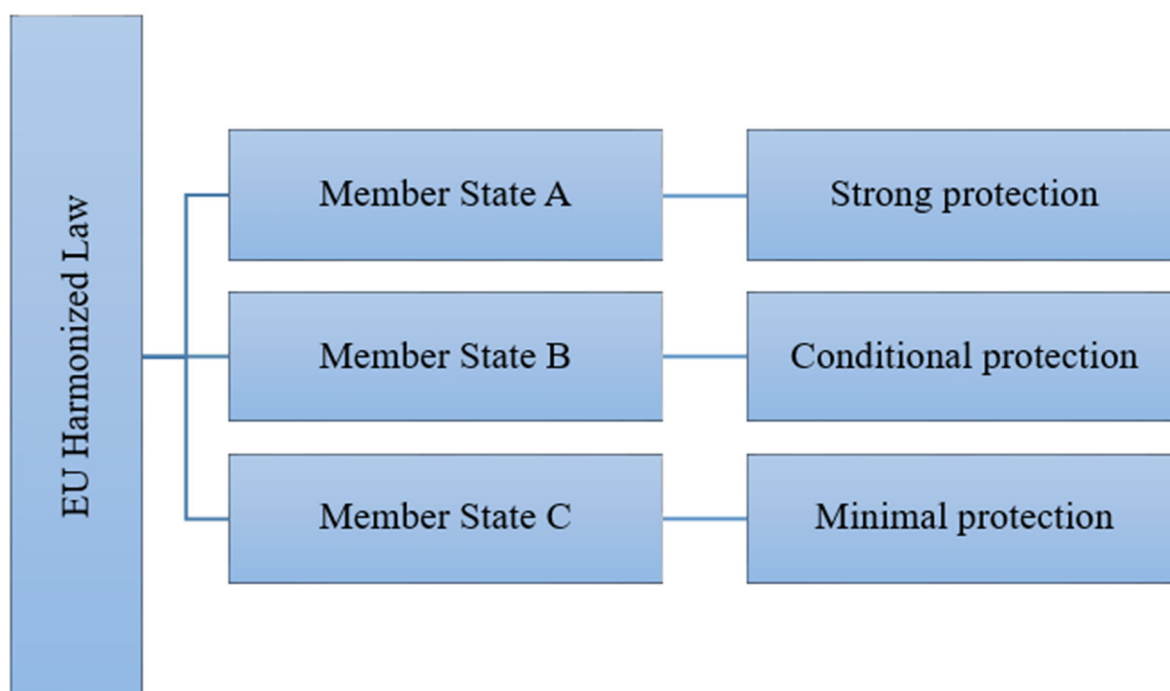


Figure 3. Fragmentation between EU Law and National Practice

Analytically, this is an indication that the phenomenon of vulnerability in EU law has been to some degree reversible especially with respect to the legally enshrined inequalities in the EU migration governance. A degree of protection in the phenomenon of migration governance is inherently flexible in the face of a crisis, but it is also flexible in terms of selective inclusion and the exclusion of individuals.

Institutional Discretion and the Negotiation of Vulnerability

The results tell us that there is no single definition of vulnerability. It is legally articulated and institutionally and bureaucratically constructed. This means that EU agencies and national actors shape the practice of defining, prioritizing, and dealing with vulnerability. Most scholarship has documented these negotiations as taking place in administrative and politically constrained environments during significant displacement events [12]. The most recent example that demonstrates the merits and shortcomings of EU crisis governance is the activation of the Temporary Protection Directive in the context of the war in Ukraine. Most notably, the EU has shown unprecedented levels of both coordinated response and rapid allocation of rights [8].

Conversely, within the EU, most studies in implementation reveal that temporary protection is often situated in closed border environments that are restrictive of migration, and often do not offer pathways to permanence and integration [10]. This institutional analysis shows that protection on the basis of vulnerability remains reliant on administrative discretion, instead of being based on legal entitlements. This reliance on administrative discretion runs the risk of turning vulnerability into a tool of management, rather than a protective legal framework.

Intersectional Vulnerabilities and Invisible Groups

The analysis maintains that the legal frameworks of the European Union undoubtedly have a hard time dealing with the complexities of intersectional and ‘other’ forms of vulnerabilities (see Table 3). There are, of course, some categories that are ‘officially’ recognized, such as unaccompanied children or victims of trafficking. Yet, those suffering from cumulative vulnerabilities lie outside the legal classifications that have been pre-emptively set [6].

Children, especially, fall into this exceptional situation. Child-specific vulnerabilities are, paradoxically, often managed through emergency measures rather than built into long-term legal protections. The EU and European Court of Human Rights have extensive legal frameworks and measures that protect children, yet promote emergency measures rather than set long-term protections [5; 7]. Similar patterns emerge in detention contexts, where EU legal frameworks are insufficiently designed to address the amplification of crises (or their absence) with respect to humanitarian and health-related frameworks [20].

These assertions do not suggest that legally defined vulnerabilities do not capture destroy the piece- and cross-cutting violence of structural and intersectional violence. The author views this as a substantial shortcoming of the European Union's present policies, which choose administrative manageability over substantive equality.

Table 3. Recognised vs “Invisible” Vulnerabilities in EU Law

Vulnerability Type	Explicitly Recognised in EU Law	Typical Protection Measure	Identified Gap
Unaccompanied minors	Yes	Guardianship and child-specific procedures	Weak transition to durable solutions
Victims of trafficking	Yes	Special procedural guarantees	Inconsistent identification
Health-related vulnerability	Partially	Medical assessment and support	Uneven access across Member States
Environmental exposure	No	Ad hoc humanitarian measures	Lack of legal categorisation
Detention-related harm	Partially	Detention safeguards	Limited crisis-sensitive standards

Normative Tensions: Solidarity, Ethics, and Rights

The analysis shows the most persistent tensions between solidary humanitarian actions versus entitlements derived from the law. The EU is often criticized for its protection measures framed within narratives of compassion and solidarity in emergency situations, particularly in relation to relocation and temporary protection [19]. While such narratives allow for a political compromise, they arguably reduce the legal responsibility of the state to provide protection, thus, leaving it to their discretion.

Critiques of the Reform of EU Asylum Policy illustrate that, empirically, the extension of the scope of procedures is inversely proportional to the protection of the substantive rights of the most disadvantaged [14]. This also justifies the more comprehensive ethical critique that, if the notion of vulnerability lacks *ins positif* rights, it becomes a vehicle of paternalistic and discretionary provision of protection, and worse, selective protection [3].

Authorial Observations and Proposals for Strengthening EU Protection

Within this context, the author makes three observations. First, within the context of EU law, the notion of vulnerability must be reconceptualised as a legal status that triggers rights, and not as an administrative classification of a temporary nature. Second, it is necessary to have a more coherent alignment of EU law and the ECHR with humanitarian law to provide predictability and legal certainty in times of crisis [5]. Third, the EU must provide more concrete parameters for minimum standards for the assessment of vulnerability so that there is less discretion for Member States to diverge. These proposals seek to adjust the parameters of flexibility within more certain and predictable legal structures that provide responsive and equitable outcomes.

This study has some limitations due to the nature of the research, both doctrinal and normative. The first limitation is based on the absence of primary empirical data collection, meaning the analysis is based exclusively on a combination of legal texts, jurisprudential analysis, and some existing scholarly publications. Most of the publications in the existing literature do provide some evidence of a systematic approach to the assessment of legal frameworks of the EU and the concept of vulnerability, but the literature on humanitarian crises is largely absent of the studies that illustrate the challenges faced by the humanitarian crisis. Hence, there are some legal analyses that demonstrate the challenges faced by the vulnerable, but the practical criticism of legal analyses is that they are largely unobserved, or perhaps almost completely unobserved, in the formulation of legal analyses to demonstrate the challenges faced by the vulnerable.

Another limitation is that the comparative aspect of the study is selective. The choice of specific examples of implementation at the national level within the EU is intended to highlight some of the more significant divergent structural elements, rather than to provide a description of all of the elements in all of the EU Member States. There are, therefore, some national administrative practices that are not covered by the specific example.

Yet another limitation is concerned with the continuously changing nature of the mechanisms of asylum and crisis response in the EU. There is a need for ongoing and regular updating of the findings in these areas of the legal operating system, specifically on the Asylum Legislation in the European Union, as well as changes to policies and procedures implemented to manage frameworks of temporary protection. Future studies will address these limitations, which must in some way include empirical research, particularly the use of primary data collected from qualitative interviews with persons affected by the crisis and with institutional actors, in addition to the doctrinal analysis.

Conclusions

This paper has focused on the involvement of European Union law in the recognition and protection of vulnerable groups during humanitarian crises while paying special attention to the legal definition and application of the concept of vulnerability. The analysis shows that EU law has made considerable strides in the recognition of vulnerability as an area of law deserving attention, more so in the context of asylum and temporary protection. Legislative evolution, judicial activism, and institutional praxis have constructed vulnerability as an important entry point for the acquisition of protection and social rights.

Nonetheless, the study has identified a paradox in the current EU response to humanitarian crises. The concept of vulnerability is still largely procedural and discretionary, and not an enduring status that confers rights or the protection that comes with it. Thus, there remains a considerable protection gap on a Member State level, which results in an inequitable and legally volatile situation for those suffering humanitarian crises. The implementation of temporary protection following the Ukrainian conflict is a case in point to demonstrate the EU's ability to act swiftly and the protection gaps in response measures that lack the prospect of enduring legal clarity.

The author illustrates that the legal framework of the EU considers the listing of the points of EU law that identify children, detainees, the sick, or the endangered in an unsatisfactory manner. Outcomes of protection remain the prerogative of the institutions and bureaucratic workarounds, at the expense of the logical conclusions the EU should draw and the predictability of its outcomes. The politically motivated, legal, and ethical, solidaristic overtones prefer discretionary, non legally bound humanitarianism over support legally required.

The author derives a euro law practice gap: If EU law is to be taken seriously, at times of humanitarian crises, the concept of vulnerability must legally be viewed as a demand generating mechanism, and not an administrative sieve. This refers to the need to set clear, not vague, and most importantly legal, in ECHR terms, minimums to the juxtaposition of the practice of evaluating the phenomenon of vulnerability, termination of the legally recognized gap of politically driven unilateral arbitrary approaches of nation states. It is essential that during the humanitarian crises, the EU views vulnerability as legally inscribed to the processes of Crisis Regulation of the EU, to ensure the effectiveness and the legitimacy of the protection. Only then can the EU law be aligned with the emergent management principles, and humanitarian protection of a sustainable humanitarian the EU be prepared to implement within the crises to come.

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