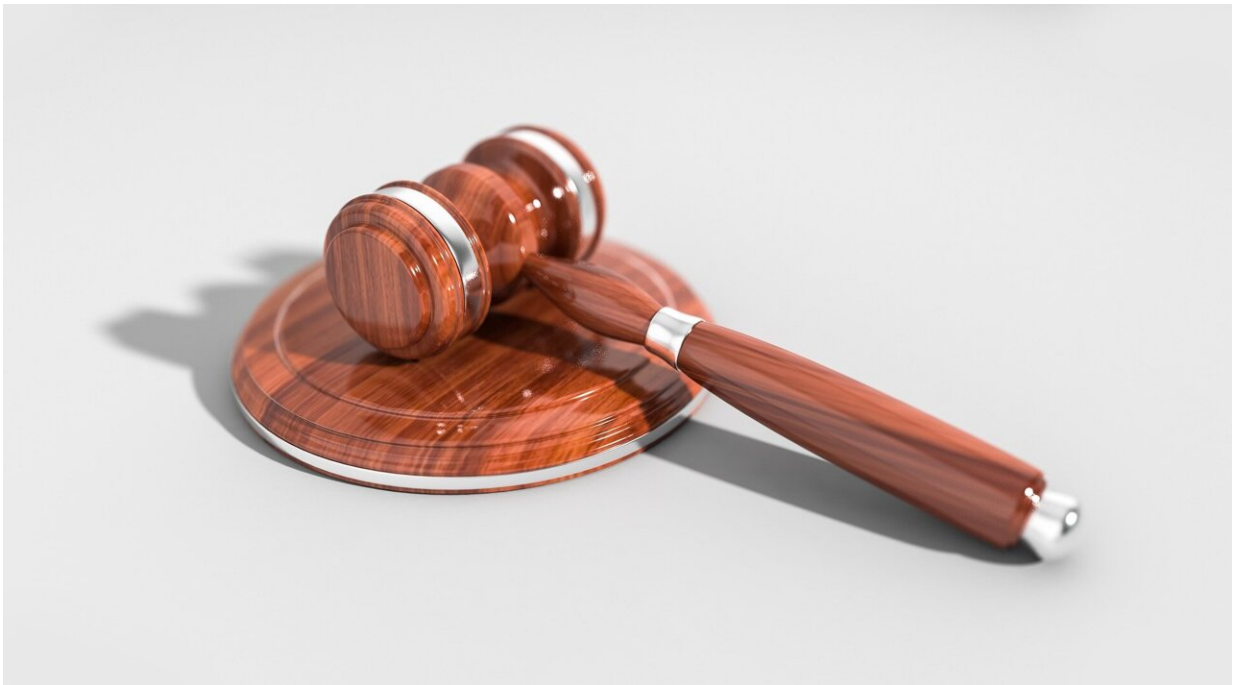


European Court of Human Rights is 'backsliding' on legal protections for asylum seekers, study says

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The European Court of Human Rights is "backsliding" by surreptitiously reversing its principles established to protect asylum seekers, a new study says.

It is a decade since the Court first established that asylum seekers are inherently and particularly vulnerable in law.

The research shows that in recent years the Court has moved away from this position, albeit without actually acknowledging this or explaining why. The research warns that it is now uncertain what exactly is needed for any particular asylum applicant to be judged as sufficiently vulnerable to receive special protection under the European Convention on Human Rights.

[The study](#), by Dr. Ben Hudson from the University of Exeter Law School, is published in the *International Journal of Law in Context*.

Dr. Hudson says, "The consequence of this backsliding is not only that the judicially recognized concept of asylum vulnerability is undermined, but that some of the most vulnerable applicants that come before the Court suffer renewed marginalization, and in some circumstances, exclusion from the 'special protection' to which they were previously afforded.

"The ECtHR is backsliding in its asylum-related jurisprudence when this is viewed through the lens of vulnerability. In the years since the Grand Chamber first affirmed asylum vulnerability the Court has subtly, but markedly, reversed its position to the point where it is now at risk of disappearing altogether."

In some [judgments](#), the "particular vulnerability" of asylum seekers as a group has been recognized, but the Court has caveated this through a comparison with other asylum seekers in the same situation. The research says this has resulted in some applicants being excluded from special protection. It criticizes the use of this caveat as causing uncertainty and being "highly impractical".

Dr. Hudson says, "It is improbable that the Court will ever have equivalent information pertaining to the situation of every asylum seeker within a particular detention center or confinement zone for comparisons to be meaningful or warranted. There is seemingly nothing to stop the Court from introducing more and more points of contrast to distinguish between otherwise similarly located asylum seekers."

In other judgments, the Court has failed to mention or give due regard to the inherent and particular vulnerability associated with being an asylum seeker under the Convention.

In others the Court has linguistically altered its vulnerability principle, that particular vulnerability is inherent to one's situation as an asylum seeker, to the detriment of claimants.

Most of the judgments examined as part of the research came after 2018. In 2011 asylum seekers were classed by the court as "a particularly underprivileged and vulnerable population group in need of special protection," with that vulnerability being inherent in their situation as asylum seekers.

Dr. Hudson says, "The Court appears to have tacitly normalized the failure to recognize the vulnerability of [asylum seekers](#) and the resistance to employ its own vulnerability reasoning. Being an asylum seeker is no longer by itself determinative of particular vulnerability. On the Court's discretion, an indeterminate range of other factors may also be considered such as being a minor or in fragile health.

"Without a pronounced turn of direction by the ECtHR, the hope that many had for [vulnerability](#) reasoning to provide a more inclusive, more humane response to the threats to Convention rights of persons seeking refuge in Europe will be dashed forever."

More information: Ben Hudson, Asylum Marginalisation Renewed: 'Vulnerability Backsliding' at the European Court of Human Rights, *International Journal of Law in Context* (2024). [DOI: 10.1017/S1744552323000332](https://doi.org/10.1017/S1744552323000332)

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