



MAX PLANCK INSTITUTE
FOR COMPARATIVE PUBLIC LAW
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From rhetoric to legal concept and back: vulnerability in the case law of the European Court of Human Rights

MPIL Agora

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Would you consider yourself to be *vulnerable*? Do you think the European Court of Human Rights would qualify you as a *vulnerable person*, and if so, on what grounds? If you have ever wondered – or if you are wondering now –, then perhaps you should attend the next Agora, where Nesa Zimmermann will discuss part of her Ph.D. dissertation on the concept of vulnerability in the case law of the European Court of Human Rights.

Over the last fifteen years, the European Court of Human Rights has increasingly used expressions like “vulnerable individuals”, “vulnerable groups”, or “situations of particular vulnerability”. These or similar terms have been applied to children, women about to give birth, people with mental or physical disabilities, persons living with HIV, victims of torture, detainees, asylum seekers and members of religious, sexual and national minorities. This is not purely rhetorical: in a growing amount of cases, vulnerability has become an important, and sometimes decisive consideration, effectively extending the applicants’ procedural and substantive rights. The recognition of an applicant’s particular vulnerability has, for example, led to a more flexible approach on the rules governing admissibility, to the enhancement of positive obligations, to the reduction of the State’s margin of appreciation or to a lowering of the “minimum level of gravity”-threshold under Article 3 ECHR. Yet, despite its ever more frequent use, vulnerability remains a somewhat elusive notion in the Court’s case law – an *emerging* concept at best. Not only has the Court refrained so far from defining it; the Court’s reliance on vulnerability also suffers from inconsistencies, with regard to both the identification of vulnerable subjects and the consequences following from it.

The aim of this presentation is to provide a short overview of the Court’s case law before discussing in more detail some particularly interesting cases, concluding with some thoughts on the potential and limits of vulnerability reasoning within the ambit of the European Court of Human Rights.



Nesa Zimmermann is a fourth-year Ph.D. candidate at the University of Geneva, where she also works as a teaching and research assistant in constitutional and human rights law (currently on leave for a research stay at the Max Planck Institute for Comparative Public and International Law).

Her Ph.D. examines the concept of vulnerability in the case-law of the European Court of Human Rights. Her research interests focus more generally on human rights, minority rights, and constitutional law. She holds a bachelor and a master degree in law from the University of Neuchâtel as well as a LL.M. in Public International Law from King’s College, London.

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