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Protecting female refugees through the German constitutional right to asylum

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I. Introduction

In 2016 officials counted 722.370 applicants for asylum in Germany.¹ Approximately 34.3% of them were women.² Many of these female refugees are seeking to escape war, gender-based persecution and gender-inequality. Therefore gender-sensitivity is an issue that needs to be taken into account within policymaking as well as the reception and asylum procedure.

Often victims of gender-based persecution arrive traumatized and insecure, nonetheless there is little assistance directed to their specific needs within the reception process and gender-related problems are largely neglected. Although especially women face great risks, challenges, and problems and are more likely to be vulnerable than males, authorities usually do not grant gender-based asylum claims since there is too little evidence. Numbers published by the German government for the year 2015 indicate this inequality: Only one percent of more than 135.000 people awarded with asylum or refugee status were granted protection due to gender-specific persecution.³

The following paper outlines the legal framework behind the asylum process in Germany. It shows the different legal provisions arising through international, EU and national law. Focusing on gender-specific issues within the procedure it tries to point out problems and gives recommendations for a more gender-sensitive reception and better protection of female refugees.

For the research legal norms of international, EU and German law and studies undertaken by the EU Commission, the Federal Authority for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF) and United Nation Commission on Human Rights (UNCHR) as well as news articles were analyzed. Furthermore existing literature was supplemented by conducting own research by talking to translators, officials from the BAMF and refugees about the reception and application process.

¹ <http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/201512-statistik-anlage-asylgeschaeftsbericht.html?nn=1694460>, p.2.

² http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics

³ [http://www.taz.de/!5368529./](http://www.taz.de/!5368529/)

II. Legal Framework for granting asylum

The main idea behind the law of asylum is that no one has the right to endanger or injure the physical, life or personal freedom of someone due to their political convictions, religious beliefs or physical features.⁴ Its legal framework builds up on the German, European and international law, each influencing the other.⁵ One may compare it to a carpet, woven with different strings of legislation of various backgrounds. In order to properly understand the whole pattern, it is important to explain the relationship and context in terms of sovereignty and enforceability between the different legal authorities.

1) Legal basis for granting residence as a refugee

Awarding a person with a certain legal position is the process of transferring obligations and rights upon him. The status of a refugee following the Geneva Convention is the right not to be deported into the country of persecution, the right to stay, the right to work, the right to move freely in the country and to have access to the same social services as any other resident of that country.⁶

In Germany a refugee may be granted these rights either as asylum under Article 16 a of the Basic Law or as Refugee Status under the CRSR.. According to § 2 I AsylG, people entitled to asylum are in the same legal position as someone awarded with the Refugee Status.⁷ The only differences lies in the specific requirements they have to fulfill in order to receive either legal position.

2) Refugee Status according to the Geneva Convention

The Refugee Status according to the Geneva Convention is granted according to § 31 II AsylG to whoever fulfils the characteristics and qualifications of the Geneva Convention (see § 3 AsylG). The Asylum Act is the inner-governmental implementation of the Geneva Convention. The 1951 Convention is the oldest convention on the status of refugees and is still of fundamental basis for granting a person international protection. Every member state of the EU, including Germany, is party to the Refugee Convention. It regulates two main principles: It states the definition of a refugee and sets out the principle of non-refoulement.⁸

⁴ https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en.

⁵ Reception of female refugees and asylum seekers in the EU - Case study Germany, p. 9.

⁶ Tiedemann_Skript_7_Aufl_2013_Skript_zur_Vorlesung-3.pdf, p. 22.

⁷ When referring therefore to the asylum application process and services it includes both people receiving asylum according to the Basic Law and those granted the refugee status in Germany.

⁸ Geneva Convention 1951

A foreigner is a refugee as defined in the Convention of 28 July 1951 on the legal status of refugee, if he or she,

- i. owing to well-founded fear of persecution in his country of origin on account of his race, religion, nationality, political opinion or membership of a particular social group,
- ii. resides outside the country (country of origin)
- iii. and does not fulfill the exclusion requirements in § 3 II, III AsylG.⁹

a) Well-founded fear of persecution

According to the new case law by the the Federal Constitutional Court (hereafter BVerfG) the fear does not have to only be an objective one, it can also be a subjective if justified by objective facts.¹⁰ In gender-specific terms the fear can for example be created by governmental officials writing threatening letters to a female refusing to stop promoting gender equality provisions in public. The persecution must either be present, imminent or threatening in case of deportation. Furthermore no domestic governmental protection alternative or private security measure is allowed to be possible. Its presence is the main reason for declining the granting of the refugee status. For female refugees coming from Afghanistan it is often reasoned that if they are forced to marry someone and are from rural areas they could just move to Kabul, which is considered as safe.¹¹

b) Persecution

Persecution is a human action. Hence, persecution untraceable to human action such as natural catastrophes or missing social infrastructure (i.e. healthcare) lie out of the scope of the definition.¹² The Geneva Convention does not say by whom this persecution has to be initiated. In Germany the old jurisprudence by the BVerfG assumed that only political persecution is possible, as it is according to Article 16 a GG.¹³ This was contradictory though to the thought behind international law, intending to give rise to persecution by anyone, not limiting it to political measures. With Article 6 of the Qualification Directive coming into force the German law was obliged to change this assumption.¹⁴

⁹ Federal Law Gazette II, pp. 559, 560

¹⁰ UNHCR HB 38.

¹¹ Asylmagazin 11/2015, S. 274 ff.

¹² Tiedemann_Skript_7_Aufl_2013_Skript_zur_Vorlesung-3.pdf, p.24.

¹³ Erbs/Kohlhaas/Hadamitzky/Senge AsylG § 1 Rn. 6-8.

¹⁴ Tiedemann_Skript_7_Aufl_2013_Skript_zur_Vorlesung-3.pdf, p.25.

Now according to § 3 c AsylG Agents of persecution may include:

- i. the state,
- ii. parties or organizations which control the state or substantial parts of the national territory, or
- iii. non-state agents, if the agents referred to under nos. 1 and 2, including international organizations, are demonstrably unable or unwilling to offer protection from the persecution within the meaning of Section 3d, irrespective of whether a power exercising state rule exists in the country.

Under the old assumption many victims of domestic violence or marital rape used to face problems receiving asylum since gender-specific prosecution is often not perpetrated by governmental actions, but in private, without any governmental involvement.¹⁵ Therefore, the inclusion of non-governmental actors as agents of persecution was a milestone in the gender-specific asylum law.¹⁶

c) Reason for persecution

This will be elaborated upon looking at the Article 16 a GG. For now on focusing on gender-specific persecution, it should be pointed out that the Geneva Convention does not expressly state gender as an aspect for persecution. However it is accepted and the UNHCR has pointed out, that gender-specific persecution is a reason for persecution.

3) Asylum law according to Article 16 a GG

a) Development

The basic law of asylum found in Article 16 II 2 GG (old) was developed as a reaction to the political persecutions during the Nazi regime as well as the communal dictatorship in East Germany.¹⁷ Which was intended as an attachment to the international law of asylum as an individual and subjective right that is enforceable in front of national courts. There was no aim to develop a new law independent of the international law of asylum.¹⁸ Due to the great amount of asylum seekers German legislators saw themselves forced to limit the wide interpretation of the basic law of asylum in 1993. Article 16 II 2 GG was changed into Article 16 a GG in 1993, limiting its application range.

Now Asylum is only granted if a politically persecuted person did not enter through a secure third country into Germany. A secure third country includes every member country of the European Union as

¹⁵ BeckOK AuslR/Kluth AsylG § 3c.

¹⁶ BeckOK AuslR/Kluth, 12. Ed. 1.11.2016, AsylG § 3

¹⁷ Maunz/Dürig/Randelzhofer Abs. 1 (2007) Rn. 4; Friauf/Höfling/Zimmermann/Tams Art. 16 Rn. 4.

¹⁸ BeckOK GG/Maaßen GG Art. 16a Rn. 1-4.

well as any country in which the application of the Convention Relating to the Status of Refugees and of the Convention for the Protection of Human Rights and Fundamental Freedoms are assured.¹⁹

b) Circumstances to provide asylum in accordance to 16 a GG

Granting of asylum is an administrative act. Article 16 a I GG does not give by itself rise to an administrative claim. Since this norm does not state whether there is a claim to an action of government, it has to be read in connection with § 31 II of the AsylG. According to § 31 II AsylG the BAMF is obliged to determine, whether a foreigner is recognized as a person entitled to asylum.

A person is entitled to asylum according to 16 a I GG in connection with § 31 II AsylG if he or she:

- i) is victim of political persecution,
- ii) escaped to Germany due to being a politically persecuted person,
- iii) has filed an application for asylum
- iv) and the facts constituting an exclusion in 16 a II GG do not apply

i) *Political Persecution*

The Basic Law does not define the meaning or scope of political persecution. The BVerfG decided that the meaning of political persecution should not be interpreted too narrowly. General requirement is that if the applicants are persecuted due to political reasons and this persecution is endangering their body, life or their personal freedom, then political persecution exists.²⁰ Furthermore the situation of the refugee has to be inescapable for them in their home country and there is other solution than escape.²¹

According to the BVerfG persecution is a targeted interference with legal assets of certain intensity.²² Already existing persecution is treated the same by law as the imminent threat thereof. Legal infringement, if it is only presented as limitation or disadvantage is viewed as negligible. However, for asylum to be granted, the intervention, depending on its kind, heaviness and intensity, must interfere with human dignity and has to be more severe than what other people from their country of origin have to accept due to their political or social system.²³ The German Courts reason that prohibition of living a western lifestyle is normal within their society and therefore not sever enough for granting asylum.

¹⁹ BeckOK GG/Maaßen GG Art. 16a Rn. 78.

²⁰ BVerfGE 54, 342 = NJW 1980, 2641 f.

²¹ BeckOK GG/Maaßen GG Art. 16a Rn. 47-48

²² BVerfGE 80, 315 = NVwZ 1990, 151.

²³ BVerfGE 54, 341 = NJW 1980, 264.

The test to determine whether there is a persecution or not, is an objective and not a subjective one. Hence, personal perception is not of relevance.²⁴ According to Article 16 a GG only political persecution gives rise to asylum. This differentiates the German basic law of asylum to the international laws. Politic, does not mean a figurative limited area of politics. Understood are characteristics and qualities of certain actions with a public connection implemented by someone with sovereign power.²⁵ Typically, political persecution is the misuse of sovereign power by exclusion of single persons or groups out of the overarching peace order due to the non-existence of certain personal features.²⁶ Therefore a persecution is only political if implemented by governmental or quasi-governmental action.

Another requirement is that the persecution must threaten a person due to asylum-specific features. Not every reason behind the persecution gives rise to asylum. These asylum specific features are based on the term in Article 1 A Nr. 2 of the Geneva Convention. According to it a persecution due to race, religion, nationality and belonging to specific social group, or having a certain political opinion are relevant in order to be granted asylum. Gender is seen as the belonging to a specific social group. Since asylum is only based on the terms in the Geneva Convention, it must only be interpreted in that light of it but is not limited to the given definition. The Federal Administrative Court (hereafter BVerwG) extends the meaning. That court takes the “being different due to unchangeable personal features” – such as homosexuality or skin color – into account.²⁷ Whether an asylum qualifying relevant feature is present or not has to be determined objectively according to the content of the character, following the principle of fairness and justice. Subjective reasons and other motives for persecution are irrelevant.²⁸

ii) *Relevance of gender-specific persecution for granting for asylum*

Gender-specific persecution becomes relevant, just like any other form of persecution if it deprives the victim of their rights in a way interfering with the Human Dignity principle.²⁹ The relevance of gender-specific persecution in granting for asylum will be looked at in light of international, European and German norms:

(1) International Level

²⁴ Maunz/Düringer/Randelzhofer Para 1, 2007.

²⁵ BVerfGE 76, 143= NVwZ 1990, 151.

²⁶ BVerfGE 80,315 = NVwZ 1990,151.

²⁷ BVerwGE 79, 143 = NVwZ 1988, 838.

²⁸ BVerfGE 80, 315= NVwZ 1983.

²⁹ Hoffmann, Ausländerrecht, 2016 nr. 13-17.

Since neither the Refugee Convention nor the Handbook guidelines are especially gender-sensitive, the UNHCR has specifically developed a series of documents to assist national authorities in considering gender-related asylum claims.³⁰ In 1991, the UNHCR Executive Committee (ExCom) first issued formal recommendations regarding expansion of the refugee definition to include individuals who have experienced sexual violence or other gender-related forms of persecution.³¹

The Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), which was adopted by the UN General Assembly in 1979, commits signatory States to incorporate the principle of equality between men and women into their legal system, and to ensure the elimination of acts of discrimination against women by persons, organizations or enterprises. It enshrines rights to equality between men and women and non-discrimination on the grounds of sex and makes them crucial components for the international protection of women refugees and asylum seekers. Germany is like any other EU member state party to the Convention.³²

Another instrument of international law of relevance is the Council of Europe convention on preventing and combatting violence against women and domestic violence of 2011 (hereafter Istanbul Convention). Article 60 of the Convention regulates the protection of female refugees against violence. It states that parties to the Convention must provide a legislative framework to recognise gender-based violence as a ground for persecution within the meaning of Article 1 of the Refugee Convention.³³ In addition, a gender-sensitive interpretation must be given to all of the other grounds named in Article 1. Furthermore, the application procedure for granting a refugee status must be gender-sensitive. Article 61 of Istanbul Convention gives rise to the non-refoulement principles to be applied to all victims of gender-based violence.³⁴ Germany is one of the countries that ratified the convention.³⁵

³⁰ <http://www.unhcr.org/3d58e13b4.pdf>.

³¹ Office of the United Nations High Commissioner for Refugees, Guidelines on the Protection of Refugee Women, U.N. Doc. ES/SCP/67 (1991).

³² <http://www.un.org/womenwatch/daw/cedaw/>.

³³ Council of Europe Istanbul Convention on preventing and combatting violence against women and domestic violence, 2011, Article 60.

³⁴ Council of Europe Istanbul Convention on preventing and combatting violence against women and domestic violence, 2011, Article 60, 61.

³⁵ Council of Europe, Chart of signatories and ratifications, version 20-01-2015.

In 2002 the UNHCR issued more comprehensive guidelines “Guidelines on International Protection: Gender-related persecution within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees”. These guidelines indicate that the definition of a refugee should be interpreted in a manner having regard to gender dimensions.

(2) European Level

The Qualification Directive of the EU sets out basic factors that have to be present in order for one to be granted asylum by a member country. It used to say that gender-specific aspects should be taken into account, but standing by them alone are not qualifying. After its amendments in 2011 the Qualification Directive is now officially giving rise to gender-specific persecution as reason for granting asylum. Defining the meaning of a social group such that a group shall be considered to form a social group where in particular:

“Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. Gender-related aspects, including gender-identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.”³⁶

Furthermore in Recital 30 concrete actions of persecution are announced. Recitals are not legally binding, but they give rise to ideas of interpretation. It says that:

” It is equally necessary to introduce a common concept of the persecution ground ‘membership of a particular social group’. For the purposes of defining a particular social group, issues arising from an applicant’s gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilization or forced abortion, should be given due consideration in so far as they are related to the applicant’s well-founded fear of persecution.”

(3) Germany

Even though in 1950 gender equality became a basic right in Germany, gender-specific persecution did not become a part of the asylum law. All of the Human Rights violations happening within private spheres were left out. In 1996 a German court granted for the first time asylum to a female fearing genital mutilation.³⁷ The claimant, a refugee from the Ivory Coast, had been selected to become the queen of the

³⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>.

³⁷ <https://www.gender.hu-berlin.de/de/.../gender.../texte28pkt11.pdf>.

tribe of her origin. Becoming queen she would have had to undergo gender mutilation; fearing this and having no other option to escape this situation she came to Germany and requested asylum. The Administrative Court in Magdeburg reasoned its decisions in the non-usage of protection measures by the government and hereby stated that oblique persecution is to be treated the same as direct persecution.³⁸

Until 2005 gender-specific persecution was not an official reason to be granted asylum. With the Act of Residence coming into force in 2005, gender-specific and non-governmental persecutions are expressed as a reason for asylum. The 2008 Asylum Act expressly states in Article 3 a, paragraph 2 (6), that acts, which are of a gender-specific nature or are directed against children are acts of persecution.

iii) Categories of gender-specific persecution

Women fearing imminent persecution, because of choosing a western lifestyle which is colliding with the religious or normal norms of the society qualify for asylum. For example the Administrative Court in Stuttgart granted an Afghan woman asylum in 2010 after receiving threats of death from the Taliban and being forced to resign from her job as a TV speaker and singer.³⁹ Another case is the one of an Iraqi Christian woman, who grew up in Germany. Accustomed to a modern life, which includes the not coverage of the head and making a living on her own, she had a reasonable fear, because this way of life is not accepted and threatened by death in Iraq. Therefore was granted asylum.⁴⁰ Although choosing a western lifestyle is an official reason for asylum, asylum is often not granted in these cases because courts tend to reason that a traditional non-western lifestyle is what is expected from them by the norms of society they are obliged to follow. Furthermore it is sometimes reasoned, that facing trouble for not following the social order does not interfere with the human dignity principle.⁴¹

A very common case of gender-specific persecution is the one of women disobeying their families.⁴² For example an Afghan woman leaving her husband had to fear the imminent threat of violence by her family. Forced marriage is another infringement of personal freedom and autonomy of choosing their husband.⁴³ Furthermore a violation of sexual integrity has to be expected since sex is usually expected as part of martial obligations.

³⁸ VG München, 06.03.2001, M 21 K 98.51167

³⁹ VG Stuttgart, 15.06.2010

⁴⁰ VG Göttingen, 5.7.2011 – 2 A 215/09, BeckRS 2011, 52532

⁴¹ Asylmagazin 11/2015, S. 274 ff.

⁴² VG Gelsenkirchen, 18.7.2013, [5 a K 4418/11.A.](#)

⁴³ Hoffmann, Ausländerrecht, 2016 nr. 13-17.

Another reason to grant asylum includes female gender mutilation, which has the necessary intensity feature, since the woman will suffer severe physical pain and it is a serious interference within her personal integrity and it is undergone against the woman's will.⁴⁴ Recently sexual orientation becomes a more present reason for granting asylum. The Administrative Court in Stuttgart granted a female, lesbian applicant from Iran asylum, which could not live her sexual identity in her home country and lost due to her sexuality her job and was flogged.⁴⁵

⁴⁴ VG Aachen, 12.8.20031 X 23.3, ANA-ZAR, Dok. Nr. 51

⁴⁵ VG Stuttgart, 29.06.2006, Az.: A 11 K 10841/04

III. Asylum application procedure and its deficiencies

The BAMF is the responsible institution for dealings with asylum claims. They determine whether an applicant fulfills the requirements for asylum. If the BAMF rejects the application, the applicant may appeal the decision in front of an administrative court. In exceptional circumstances the applicant may further appeal at the High Administrative Court. And thereafter go to the Federal Administrative court.⁴⁶

The Dublin procure, which determines whether the member state is responsible for examining an application for international protection lodged in one of the member states by a third country national or stateless person.⁴⁷ Its applicability is usually discovered via interview or fingerprints taken during registration, where the state of initial registration is identified. Afterwards a transfer request is sent to the member state, which has to consider and possibly accept this request. However the applicant can appeal against it and the procedure will be suspended. Furthermore there are countries such as Greece and Hungary who do not have a refugee registry system. In these countries refugees are not registered upon entering and the Dublin procedure does not apply. This is the most common case.⁴⁸

During the application period asylum seekers are obliged to stay at the reception center, but not longer than three months.⁴⁹ For the period of time of the process, applicants are awarded with a temporary residence status (§§ 55, 56 AsylG), which is limited to the area of the reception center.⁵⁰ Interviews for asylum usually take place at the reception center itself but sometimes may be moved to a different location, when there are too many applicants.⁵¹ An asylum application process takes 5-7 Months, but it is more likely due to shortage of staff at the BAMF to take longer.⁵²

⁴⁶ <http://www.bamf.de/DE/Fluechtlingsschutz/AblaufAsylv/ablauf-des-asylverfahrens-node.html>.

⁴⁷ https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants_en.

⁴⁸ Michael Kalkmann, AIDA Country Report Germany, November 2015, p. 24.

⁴⁹ BeckOK AuslR/Heusch AsylG § 47.

⁵⁰ http://www.bmi.bund.de/EN/Topics/Migration-Integration/Asylum-Refugee-Protection/Asylum-Refugee-Protection_Germany/asylum-refugee-policy-germany_node.html.

⁵¹ Michael Kalkmann, AIDA Country Report Germany, November 2015, p. 11.

⁵² Michael Kalkmann, AIDA Country Report Germany, November 2015, p. 16-17.

1. Initiating the Application procedure

Every application constitutes an application for recognition of entitlement to asylum and to international protection. The BAMF usually has its location in the reception centers, where the applicants can register. Prior to entering the Federal Republic of Germany one cannot request asylum.

When an application for asylum has been made, it is determined from the foreigner's written or otherwise expressed desire that he is seeking protection from political persecution or that he wishes protection from deportation or other removal.⁵³ This application has to be made in person in front of an official, which can be a border guard, police officer or official at the BAMF.⁵⁴

At the reception center his fingerprints and pictures are taken in order to identify the person.⁵⁵ Furthermore they undergo a basic medical check. This is focusing only on finding contagious diseases that might spread in reception centers. However they do not check for traumas or evidence of violence. If reception staff should recognize signs of trauma or special features of vulnerability, they may warn other staff members. In these cases they can try to give special medical attention and psychological care.⁵⁶

Prior to the hearing applicants have to fill out a basic form, where it is possible to ask for a special or female official due to gender-specific reasons.⁵⁷ There is no official information or advice given to applicants prior to the hearing. Though there are social service workers who try to advise the refugees in the reception centers before.⁵⁸

Applicants are entitled to have a translator given to them by the BAMF or can bring their own. In addition one may request a female translator. The translators only follow their task as an objective "bridge of communication" but are not further involved in the application process nor have contact to the applicant or to the public official prior to the hearing.⁵⁹

⁵³ Tiedemann_Skript_7_Aufl_2013_Skript_zur_Vorlesung-3.pdf,p. 59.

⁵⁴ BeckOK AusIR/Haderlein AsylG § 18.

⁵⁵ BeckOK AusIR/Kluth AsylG § 7.

⁵⁶ [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536497/IPOL_STU\(2016\)536497_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536497/IPOL_STU(2016)536497_EN.pdf), p. 22.

⁵⁷ Jane Freedman, *Gendering the International and Asylum and Refugee Debate*, Palgrave Macmillan: London, 2015.

⁵⁸ Interview Translator BAMF.

⁵⁹ BeckOK AusIR/Sieweke AsylG § 17.

Only officials of the BAMF can conduct the hearing. They are usually lawyers and have received specific training in the social and cultural background of different countries in accordance with §24 VwVfG.

In the hearing procedure the foreigner has to present himself and the facts justifying his fear of political persecution or risk of serious harm he faces and provide the authority with the necessary details.⁶⁰ These details include all the information concerning residences, travel routes, time that was spent in other countries and whether a procedure aimed at obtaining recognition as a foreign refugee or international protection already has been initiated or completed in other countries. The length of the hearing depends on the willingness and cooperation of the applicant.⁶¹ He is given as much time as needed with breaks if necessary to present the full case. Furthermore he is not obliged to say anything and only needs to share as much information as he wishes.⁶² If the case arises and the foreigner exposes certain facts at a later state, the Federal Office is entitled to ignore these if it would constitute a delay in the process.⁶³

Usually the hearing takes place at the reception center within the day of applying for asylum. If it does not take place on the same day, the foreigner and his authorized representative will be informed of the delay.⁶⁴ If he misses the hearing, without an adequate excuse, the Federal Office has to make its decision based on the information of the foreigner as it stands, taking into account his failure of cooperation.

Hearings are not open to the public and there is no public record kept. Beside the applicant, his social worker or legal adviser (very uncommon, because they usually do not have the financial basis to pay one) only people who are representatives of the Federation, of a Land or the United Nations High Commissioner for Refugees are allowed to attend. The head of the Federal Office or his deputy may allow other persons to attend in special circumstances.⁶⁵

⁶⁰ BeckOK AuslR/Schönenbroicher AsylG § 25 Rn. 1-2.

⁶¹ BeckOK AuslR/Schönenbroicher AsylG § 25 Rn. 3-6.

⁶² BeckOK AuslR/Schönenbroicher AsylG § 25 Rn. 7-7a.

⁶³ BeckOK AuslR/Schönenbroicher AsylG § 25 Rn. 9-10.

⁶⁴ BeckOK AuslR/Schönenbroicher AsylG § 25.

⁶⁵ BeckOK AuslR/Schönenbroicher AsylG § 25 Rn. 19.

The Federal Office issues the decision to the applicant. It is legal in nature and is an administrative act of the BAMF.⁶⁶ The decision and the report of the hearing are given to the applicant in writing. It not only has to contain the decision but also a justification.⁶⁷ Moreover it has to contain a legal remedy instruction in case the applicant wants to appeal against the decision.⁶⁸ If there is no authorized representative for the procedure and the decision will be translated into the foreigner's language and information for legal remedy will be enclosed. Also there is the option for woman claiming domestic abuse, to receive her notice in a confidential way so that the husband will not find out.⁶⁹

An application is rejected when it is considered as manifestly unfounded if the prerequisites for granting asylum status and the prerequisites for granting international protection are obviously not met.

2. EU Law and international law on the Asylum procedure:

The hearing is further governed by European and international norms. However, Germany has not implemented most of the EU Directives governing the process.

The Qualification Directive (2011/95/EU) and the Dublin Regulation (604/2013) have been implemented into German law. However, the Reception Condition Directive (2013/33/EU) and the Common Procedures Directive (2013/32/EU) have not yet been implemented. The Commission of the EU has therefore initiated an infringement procedure, which is still ongoing.⁷⁰ Although these Directives are not implemented it can be assumed with the ruling of the ECJ that those parts that are clear and unambiguous are directly applicable in Germany and therefore creating rights for asylum seekers and obligations for the administrations.⁷¹

⁶⁶ BeckOK AuslR/Preisner AsylG § 6.

⁶⁷ BeckOK AuslR/Heusch AsylG § 31.

⁶⁸ BeckOK AuslR/Heusch AsylG § 31 Rn. 12-16.

⁶⁹ Interview BAMF

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[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536497/IPOL_STU\(2016\)536497_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536497/IPOL_STU(2016)536497_EN.pdf), p.20.

⁷¹ Marei Pelzer, Maximilian Pichl, Die Geltung der EU-Aufnahme- und Asylverfahrensrichtlinie, Asylmagazin, 10/2015.

a) The Reception Condition Directive (2013/33/EU)

The Reception Directive regulates the reception conditions of refugees. It lays down the minimum conditions for the reception of asylum seekers. There are a few references for the reception of female asylum seekers. Article 11 requires EU member states, that in case of detention, female applicants are detained separately from men, however families can be exempted from this requirement.

Article 18(3) obliges member states to take into account gender and age specific housing of the applicants in reception and accommodation centers. Furthermore based on Article 18(4) member states have to undertake measures in order to prevent assault and gender-based violence, such as sexual assault and harassment, in reception and accommodation centers.

In Addition member states must give consideration to the situation of vulnerable persons, who include, amongst others: minors, pregnant women, single parents with minor children, victims of human trafficking, victims who have been subject to rape, sexual, physical or psychological violence. According to Article 11 (1) the health of vulnerable persons shall be of primary concern to the authorities and therefore has to be given special attention. Where vulnerable persons are detained, Member States shall ensure regular monitoring and adequate support taking into account their particular situation. Also they are required to offer special housing for these persons. Article 29 requires that authorities implementing the Directive should have receive the necessary training to deal with specific needs of both male and female applicants.⁷²

Moreover the implementation of the Reception Condition Directive obliges member states are to respect the EU Charter of Fundamental Rights. Some of these are of relevance with regard to female asylum seekers. Article 2, protecting the right to integrity, may be violated if a member state doesn't provide gender-sensitive reception conditions. For example gender-based violence within reception centers can fall within this Article. Furthermore the right to family unity is relevant, when it comes to keeping a family together in reception centers. Also Article 5 prohibits human trafficking. Member States are obliged to protect women and girls against this.⁷³

b) The Directive 2013/32/EU

In point 32 it says that all procedures should be gender-sensitive and have to provide equal chances to male and female applicants. Interviews have to be conducted in a form that both male and female applicants

⁷² Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180.

⁷³ Charter of Fundamental Rights of the European Union, ECRE, Reception and Detention Conditions of applications for international protection in light of the Charter of Fundamental Rights of the EU, January 2015, pp. 14-20.

feel comfortable telling their past. Article 10 states that officials dealing with asylum application should be able to receive amongst other things information on issues relating to gender. Furthermore there is the possibility to grant a woman who has been a victim of gender-based persecution with an individual status, even though her family has applied for asylum as a whole. This is also important in marital rape case asylum seekers. In Addition Article 15 requires the process to be capable of taking into account personal and general circumstances such as gender. Article 15(3) obliges Member States to have the possibility and availability of a female interviewer and translator.

The Directive expresses in Recital 29 that Member States should identify vulnerable persons and provide special procedural guarantees for these persons. Vulnerability can be determined by, gender or age, but among other things it can also be a consequence of rape.⁷⁴

Situations of pregnancy or experiences of violence are not necessarily obvious and therefore, member states are obliged to pay particular attention to female asylum seekers to identify their possible vulnerabilities. Especially long asylum procedures are crucial because the recognition as vulnerable might be just at a very late place.⁷⁵

Refugee asylum seekers with special needs and physical and emotional handicaps present another category of vulnerable people. Special needs are not by itself qualifying for asylum. Moreover the determination of special needs is not the same as the one of the refugee status and must therefore be also provided to vulnerable people who are not awarded with the refugee status.⁷⁶ Once a person is identified as vulnerable they have special rights, in regard to access to doctors, housing and other aspects care.

Furthermore the directive recognizes the need of specialized officers dealing with gender cases, especially after the applicant has been categorized as a vulnerable person. These special officers shall either conduct the process themselves or shall be part of it as an adviser to the leader of the interview.⁷⁷

⁷⁴ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ L 180.

⁷⁵ [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536497/IPOL_STU\(2016\)536497_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536497/IPOL_STU(2016)536497_EN.pdf), pp.23-24.

⁷⁶ <http://www.unhcr.org/4d93528a9.pdf>.

⁷⁷ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ L 180.

3. Deficiencies within the reception and asylum application process:

First of all it has to be recognized that the German government as well as society did an extraordinary job trying to handle the unexpected great amount of refugees coming from Syria in 2015. Further it is of importance to point out that the reception process, living conditions of asylum seekers and qualification of officers differs from one place to another greatly. This is partly due to the fact that the Länder are financially responsible for the reception centers.

However, there have been several reports of terrible reception conditions and wrongful conducted hearings⁷⁸. The following points out a few of these areas that need to be improved, especially in light of gender-sensitive aspects:

a) Living conditions in reception centers

The overcrowding in reception centers is the biggest problem with the reception process refugees face in Germany. This fact highlights the lack of resources and leads to negligently conducted asylum application processes.

Reception centers were not built to provide its inhabitants with long term housing. However the asylum application procedure turns out to take a lot longer than it expected and therefore refugees stay longer in these centers than initially intended.⁷⁹ The lack of staff and resources gives rise to the prolonged procedure since they have to wait much longer in order to be heard and for follow up proceedings to be initiated. The actual hearing process is rushed through so as many people as possible can be heard in one day. This leads to neglecting of necessary care, that it takes to identify and support victims of gender-specific persecution.

Aggression and tension in the reception centers are created by the inability to exit the center, little private space and being almost nonstop surrounded by the same by people.⁸⁰ There have been numerous fights and disputes reported over access to food, sanitary facilities and theft. There are also discrimination problems among the reviews.

⁷⁸ <https://www.proasyl.de/news/qualitaetsskandal-beim-bundesamt/>

⁷⁹ Die Landesflüchtlingsräte and Pro Asyl, AusegeLAGER, Zur Unterbringung von Flüchtlingen in Deutschland, Sonderheft der Flüchtlingsräte, 2011, pp. 4-7.

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[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536497/IPOL_STU\(2016\)536497_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536497/IPOL_STU(2016)536497_EN.pdf), pp. 25-26.

The lack of activities offered to the asylum seekers also enhances the negative environment. Refugees are scared about the uncertainty of the procedure, worried about their family members and have little to do during the day instead of waiting.⁸¹

Cases of sexual violence and abuse of women and children have been reported in Germany.⁸² Even cases of forced prostitution and human trafficking occurred. The lack of space and privacy, create an environment where such occurrences are likely. There is a majority of men present and this puts women in a difficult position. Because the centers are overcrowded the usual standard of separate housing cannot be offered. Sexual harassment of women is also part of the daily occurrences in reception centers. It was noted by “Women in Exile” that these assaults were not taken seriously and there was little done within the centers to prevent future assaults. Moreover perpetrators of sexual violence are sent back to reception centers after they were in prison. This increases the risk that something like this will happen again.⁸³

The fact that there should be special housing for vulnerable people is often neglected. The BAMF should mention during the first screening or hearing, that there is the possibility of staying in a battered women’s shelter.⁸⁴ It is very problematic that females can be brought back to their families by whom they were originally victimized. Out of fear, women sometimes marry during their escape a man who offers to protect her in exchange of marriage and sexual pleasures. These women should be given a clear chance to live separate from their unloved husbands.

b) Identification of vulnerability

Women can be recognized as vulnerable persons. This entitles them to specific aid such as separate living space (as noted above), therapy and medical treatment.⁸⁵ Especially vulnerable persons are in need of a hearing held by specialist who is sensitive towards their issues. Authorities try to find out whether someone is a vulnerable person upon arrival. However they often do not check whether there is a possible

⁸¹ <http://www.spiegel.de/politik/deutschland/fluechtlinge-warnung-vor-sexueller-gewalt-in-asylheimen-a-1055435.html>.

⁸² <https://www.welt.de/regionales/hamburg/article147461333/Wie-Frauen-in-Fluechtlingslagern-zu-Freiwild-werden.html>.

⁸³ Die Landesflüchtlingsräte and Pro Asyl, AusegeLAGER, Zur Unterbringung von Flüchtlingen in Deutschland, Sonderheft der Flüchtlingsräte, 2011, p. 34.

⁸⁴ <http://www.loc.gov/law/foreign-news/article/germany-parliament-adopts-legislative-package-on-asylum-andrefugees/>.

⁸⁵ Andreas Muller, The organization of Reception Facilities for Asylum seekers in Germany. 2013, pp.23-28.

trauma or evidence of violence. There is only some further research conducted if it is expressly stated or obvious, that something has happened to her.⁸⁶

c) Training of officials

With the great amount of refugees coming to Germany, the government was forced to expend the capacities of the BAMF on very short notice. This led to hiring people, who were not sufficiently skilled and trained to conduct the hearings.⁸⁷ Many of them purely took the position for economic reasons and not out of interest. This leads easily to a disinterest in the cases they are deciding upon and makes it more likely for not give every hearing the proper amount of attention it needs and mistakes are easily made.⁸⁸

A problematic point is that officials hired by the BAMF do not receive a proper training to conduct the hearing. Most of them do not have the required background knowledge of the countries that it takes to understand the situation the applicants are escaping from and also are not specially advised on how to conduct a hearing with a vulnerable or traumatized person. For a legal professional to become an official at the BAMF, without any previous experience in working with refugees, he only has to do a three-week training course. It used to take at least half a year but with the lack of staff the whole procedure was fast tracked. In this very short time frame it is practically impossible to acquire the required skills for the position.⁸⁹

Even though there were new people hired in 2015, in the year of 2016 many positions were reduced again. According to the President of the BAMF there are still not enough officials working to conduct the hearings properly. His request for more officials was however ignored by the government.⁹⁰

Furthermore translators do only need to be certified by the BAMF, and as such and do not need to have an official license.⁹¹ The foundation of the problem resides in the fact, that there are just not enough

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[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536497/IPOL_STU\(2016\)536497_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536497/IPOL_STU(2016)536497_EN.pdf), pp. 23-24.

⁸⁷ <http://www.zeit.de/politik/deutschland/2017-01/asylverfahren-bamf-mitarbeiter-unqualifiziert-entscheider-jutta-cordt>.

⁸⁸ <https://www.proasyl.de/news/qualitaetskandal-beim-bundesamt/>.

⁸⁹ Interview official from BAMF

⁹⁰ <http://www.zeit.de/politik/deutschland/2015-11/asylverfahren-fluechtlinge-bamf-indentitaetspruefung-kritik>

qualified translators present, to accompany an applicant at every hearing, doctors appointments and other places. Therefore the requirements are set far below these required in the Directive in order to at least provide some form of communication.⁹² Low standards for translators make the qualities of a translation vary. There are cases where translators were used who did not understand the language of the applicant and did not notify the official about it. However, many times already small differences in wording can make the needed distinction of whether the official believes the reported persecution or not.⁹³ Since victims of gender-specific persecution lack many times pieces of evidence providing proof of their situation, their report during the hearing becomes of outermost importance. Therefore it is essential that the translation can present the exact wording and meaning for the applicant's testimony.

It was reported that vulnerable applicants often do not care as much about who the official is, but rather about the person of the translator, since he or she is the person they are actually talking to.⁹⁴ However translators do not receive any training from the BAMF, nor are there any especially trained ones for these gender-sensitive cases. Moreover cases regarding vulnerable people should be forwarded to specialized officials immediately after they have been identified as such. However this does not happen often because there are not as many specialized officials as needed and forwarding a case to a different official means more bureaucracy and a lengthier procedure.⁹⁵

It should be mentioned that even the specialized officials are not psychologists. They are officials within the authority who obtained more specific training on how to deal with these kind of cases compared to the others. Evidence was brought up, that even among those specialized officials there are some who are not sensitive enough and not taking the amount of time necessary for the hearing. There seems to be the tendency that specialized officials are those taking the least account of gender-based persecution issues and therefore social workers even advise the refugee to prefer to be heard by a normal official.⁹⁶

⁹¹ <http://www.sueddeutsche.de/politik/asylverfahren-in-der-hand-des-dolmetschers-1.3143237-2>.

⁹² BeckOK AuslR/Sieweke AsylG § 17 Rn. 5-9.

⁹³ Interview with Official BAMF.

⁹⁴ Interview with translator for BAMF.

⁹⁵ Interview with official from BAMF.

⁹⁶ <http://www.budrich-journals.de/index.php/feminapolitica/article/viewFile/729/526>.

d) Application proceeding

The process of the hearing lacks oversight and public openness.⁹⁷ The public officials decide the cases on the evidence presented to them, in accordance to the law. However a higher official regulation does not bind them with specific instructions. Problematic is that members of the public are not able to attend the hearings and reports and results are not published. This leads to an insecurity of the process, because there are few checks and balances. Whether the officer actually takes the amount of time and care that is expected from them and based their decision on reasonable grounds is not documented or obvious.⁹⁸

Inside information indicates that there were occasions where officers did not follow their procedural obligations.⁹⁹ For example an officer may neglect to inform the applicants of their procedural rights, or does not forward a vulnerable person to a specialized official.¹⁰⁰ Very problematic is the time and staff issue. Officers used to be specialized for one specific country or region, but due to the great amount of applicants the whole system failed. Now every official has to be prepared to hear applicants from all over the world. With only 20 minutes of preparation time for each hearing, this is not enough to conduct research on the specific problems an applicant from this country may be facing. Moreover the lack of time within the hearing unit leads sometimes to the neglecting of investigating hints for gender-specific persecution rigorously. Those who take extra time to take sufficient care of the application process often face trouble from their supervisor for doing so. This also led to the development of the so-called fast track proceedings. According to these refugees escaping from a list of safe countries of origin are immediately declined, unless further evidence is provided. Women's rights organizations are trying to raise awareness that women can still be victims of gender-based persecution from these "safe" countries, because their government fails to protect them sufficiently.¹⁰¹ For example Albania is considered a "safe", although forced prostitution, forced marriage and trade of females occurs daily and there is no governmental protection.¹⁰²

Indeed it is expected from the refugee that they will present all of their history with evidence at the hearing at once. However a traumatized person does not usually share their history at once. It takes time for

⁹⁷ http://www.aktiv-fuer-fluechtlinge-rlp.de/fileadmin/Dateien/news/20160825_Artikel_Anhoerungsbegleitung.pdf.

⁹⁸ <http://www.bamf.de/DE/Fluechtlingsschutz/Entscheider/entscheidungen-node.html>.

⁹⁹ <https://www.proasyl.de/news/qualitaetsskandal-beim-bundesamt/>.

¹⁰⁰ https://www.proasyl.de/wpcontent/uploads/2015/11/Hastig_unfair_mangelhaft.pdf.

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[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556929/IPOL_STU\(2016\)556929_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556929/IPOL_STU(2016)556929_EN.pdf)

¹⁰² <http://www.zeit.de/2015/33/fluechtling-balkan-frauen-gewalt>

them to open up and to feel comfortable enough (sometimes it may take until a second or third hearing). Often applicants are not given this time and rushed through the hearing by the official. In addition a lot of times females are not expressly enough presented with the option to be heard by a female official. A lot of times they are afraid of requesting one, because they were not given any of these options in their country of origin. It is a given fact that females feel a lot more comfortable to share their traumatizing history among other females than before man. Male officials tend to fail forward female applicants to female officials, because some do not believe that it actually makes a difference in front of whom the applicant speaks.

Although applicants are supposed to be heard without their family members among them, this principle is often ignored. Having hearings with only the applicant in the room is of essence though. A lot of times, applicants who are victims of domestic violence are scared asking to be heard without their family present, because they fear greater trouble. Another issue is, that it cannot always be ensured that reports of women claiming domestic abuse by their husband or another member of the family member will not get into the hands of one of the family. Providing women with independence of their family members must be guaranteed to them in order to feel the freedom to report domestic abuses. Currently this independence can only be guaranteed if an official takes extra time, that is normally not given to them by the BAMF, to make sure to request a separate housing for the applicant or to hand the report to her in person with the request to destroy it before anyone else can read it.¹⁰³

Women who are victims of gender-based violence often need special attention since they often only have their story and no physical evidence. This makes them a lot of times less credible, than victims of for example of political persecution, due to the fact that they are able to prove membership of a political party. Even though there are no official numbers proving this by the BAMF it is well known that women are much less likely to be awarded with asylum due to their insensitive proceedings.¹⁰⁴

e) Awareness of rights

A great issue is that many refugees are not aware of their rights in Germany. Even though there are all sorts of free information (such as apps and handbooks published by the BAMF in various languages) and social workers (who are trying to help but unfortunately usually also are not experts), there are still too many refugees who are not aware of the asylum procedure and what their obligations and rights may be.¹⁰⁵

¹⁰³ Interview BAMF.

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[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536497/IPOL_STU\(2016\)536497_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536497/IPOL_STU(2016)536497_EN.pdf)

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[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536497/IPOL_STU\(2016\)536497_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536497/IPOL_STU(2016)536497_EN.pdf)

This is especially severe, since it is evident that those applicants, who were sufficiently prepared by a legal advisor prior to the hearing, are more likely to be granted with asylum than others.¹⁰⁶

There is a severe lack of knowledge how to prepare for the hearing. For example a woman, if she wants to be granted asylum due to gender-based persecution, she has to collect sufficient evidence of gender-based persecution, for example by requesting to see a specialized doctor.¹⁰⁷

Also officers frequently fail to inform the asylum applicant before the hearing about the procedure or the benefits they are entitled to. In terms of gender-related issues women are often not aware that it is better have an individual application apart from their family members, in order to receive special protection due to vulnerability, or have the right to be questioned by a female or specialized officer. Generally there are no specific measures taking unless the applicant does expressly address those.¹⁰⁸

Wrong information regarding the process is one of the greatest problems. This is often created among the refugees in the reception center itself. Since many of them just arrived in Germany prior to the hearing and have problems communicating with officials due to the language barriers they are scared and overwhelmed by the new environment. Moreover most of the refugees who had traumatizing experiences and did not always have good experiences with the staff are likely to feel unwanted and often see officials as an opponent instead of a friend who is trying to help. This creates distrust and fear towards officials and social workers. Instead they rely on the information presented to them by their fellow travelers in the same plight.¹⁰⁹

Some of the false advice is also given with malice of intent due to jealousy and miscommunication among each other. When people from different countries, cultures and social groups are living together it is likely for tensions to rise. Especially when it comes to the allocation of benefits and rights.

f) Communication

Within the whole asylum process communication is a big problem. There are just not enough translators present to serve the amount of refugees with language problems. There can also be problems

¹⁰⁶ Interview Official of BAMF

¹⁰⁷ Emma feministische Zeitschrift, " Die Frauen brauchen Schutz!", no. November/December 2015, p. 25.

¹⁰⁸ <http://www.bamf.de/SharedDocs/Stellenausschreibungen/DE/ei-ausschreibung-8-16.html>.

¹⁰⁹ <https://www.women-in-exile.net/wp-content/uploads/2015/12/Brosch%C3%BCre-klein.compressed-1.pdf>.

communicating with the translator due to the various regional dialects. Another major problem is the access to translators when seeing a doctor.¹¹⁰

Language problems create inequality among the refugees, since those who are able to communicate without a translator can speak with the public authorities and social workers whenever they want and not just when a translator is present. Women disproportionately suffer from the communication problem, since they tend to be less educated. Depending on their country of origin and social background many female refugees did not receive sufficient education and therefore cannot read, write, speak no English and mostly only rural dialects. In many countries women are seen as housekeeper, without any rights. Often they lack trust and belief in themselves that they have the right to communicate with others.¹¹¹ However communication is essential, in order for the applicant to be aware of their rights, make their case and receive all the help necessary.

Furthermore most translators are male and female refugees feel uncomfortable speaking in front of them about their specific needs or traumatizing experience. For example having a male translator going with them to a gynecologist or having to tell them how they were raped increases their already existing discomfort.¹¹² Since the doctor usually does not speak the victim's language it is important in order to give the right diagnosis and treatment that the communication with the translator is functioning without problems, especially in regard to psychological care. This can only be achieved if the female feels like she can trust the translator and the translator has some training on how to deal with such cases, because in the end it is not the doctor who talks to the patient but the translator.

g) Access to health care

The problem is the same as in most other areas. The demand exceeds the supply. Mostly refugees are only allowed to see doctors in case of acute disease or emergency.¹¹³ If that is not the case they have to wait for the decision of the public authority whether they are allowed to see a doctor, which always takes more time.

¹¹⁰ <https://www.proasyl.de/hintergrund/was-im-asylverfahren-passiert-und-was-dabei-alles-falsch-laeuft/>.

¹¹¹ Women in Exile, 'Frauen in brandenburgischen Flüchtlingslagern: Eine Dokumentation von Women in Exile and Friends, October 2015, pp. 6-7.

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[http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/556946/IPOL_IDA\(2016\)556946_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/556946/IPOL_IDA(2016)556946_EN.pdf).

¹¹³ http://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-weekly-compilation-7_en.pdf, p. 21.

The EU Fundamental Rights Agency (FRA) points out the situation in Berlin, where at the beginning of October 2015 women with advanced pregnancies, ill persons and children were left untreated because there was a lack of doctors and nurses who could provide medical care and attention.¹¹⁴

¹¹⁴ http://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-weekly-compilation-2_en.pdf, p. 19.

IV. Recommendations

After analyzing the legal framework and the reception process giving rise to deficiencies within the process there are a few recommendations on how to improve the reception process:

As pointed out above, many refugees are not aware of their rights and what to expect from the hearing. In order to avoid misleading information among refugees and make female applicants aware of their rights, I strongly recommend that every refugee has access to see a qualified legal advisor prior to the hearing. This advisor can inform them on the process, rights and obligations and tell them ways of collecting and presenting evidence to make their history more truthful and believable.

Analyzing the hearings undergone by the BAMF I think it is important to ensure that there are enough officials and specialized people present. The system lacks transparency and officials should be checked on a frequent basis that they conduct the hearing in the right manner. Awareness concerning victims of gender-specific persecution and training on handling of these cases should be increased, for example by conducting workshops.

The hearing process standards should be published, and a supervisor should check on a frequent basis the protocols of the hearings

In addition, refugees should have access to translators at any time. Translators should receive special trainings by the BAMF. Furthermore translators working for the BAMF should have an official working license and not just acknowledged by the BAMF as being capable of working as a translator.

Also it is of utmost importance that the EU Guidelines regarding the reception be implemented into the German law. Even though parts of them have direct effect already, Germany should follow its obligations, making sure that the minimum requirements for the reception process are guaranteed.

Looking at the situations in the reception centers I think it is essential that having a supervision system, ensuring that men and women and minors, who are not members of one family, have separate housing is essential. Furthermore, a greater amount of activities offered to the refugees that will help them think about a future is important. Offering and encouraging women to take part in educational programs can help make a difference. Often female asylum seekers lack education and learning makes them more confident and independent.

Even though there are already German courses offered in the reception centers, they are often not very well attended. Applicants tend to think that as long as no decision is made on their application, it is not worth learning the language. I think that the attendance of the language and integration courses should be mandatory from the day of registry as a refugee. Not only will it help with the communication but it will also show applicants that they are expected to be willing to integrate into society.

In addition there should be medical and psychological advice present for refugees at any given time. Also offering support groups for victims of gender-specific violence within the reception center could help overcoming the traumatic experiences.

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- Interviews were conducted with two translators and officials from the BAMF (personal information was requested to be contained)

