

GREVIO- Shadow Report on the Implementation of the Istanbul Convention in Germany

by Umbrella Association of
Migrant Women* Organisations

(Dachverband der Migrantinnen*organisationen e. V.)



Table of Contents

05	List of Abbreviations	42	Chapter IV – Protection and support
06	Definition of Terms	42	Article 23 – Shelters
08	DaMigra e.V. – Umbrella Association of Migrant Women* Organisations	50	Chapter VI: Investigation, prosecution, procedural law and protective measures
10	Introduction	50	Articles 49 to 58 – Investigations, prosecution, procedural law
12	Aytan Case Study	54	Conclusion
20	Chapter VII: Migration and asylum	58	Recommendations
20	Article 59 – Residence status	64	List of References
30	Article 60 – Gender-based asylum claims	69	Acknowledgments
39	Artikel 61 – Non-refoulement	70	Imprint

List of Abbreviations

art.	Article
AsylG	(Asylgesetz) Asylum Act
AVV	(Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz) General Administrative Regulation on the Residence Act
BAMF	(Bundesamt für Migration und Flüchtlinge) Federal Office for Migration and Refugees
BAFzA	(Bundesamt für Familie und zivilgesellschaftliche Aufgaben) German Federal Office for Family and Social Affairs
BIK	(Bündnis-Istanbul-Konvention) Istanbul Convention Alliance
BMFSFJ	(Bundesministerium für Familie, Senioren, Frauen und Jugend) Federal Ministry for Family Affairs, Senior Citizens, Women* and Youth
BMI	(Bundesministerium des Innern, für Bau und Heimat) Federal Ministry of the Interior
DaMigra	(Dachverband der Migrantinnen*organisationen e.V.) Umbrella Association of Migrant Women Organisations
GewSchG	(Gewaltschutzgesetz) Protection against Violence Act
GREVIO	Group of Experts on Action against Violence against Women* and Domestic Violence
GG	(Grundgesetz) German Constitution
IC	Istanbul Convention
MSO	(Migrantinnen*selbstorganisation) Migrant Women*-led Migrant Women* (Autonomous) Organisations
NGO	(Nichtregierungsorganisation) Non-governmental Organisations
RiStBV	(Richtlinien für das Strafverfahren und das Bußgeldverfahren) Guidelines for Criminal Procedure and Imposition of Fines
StGB	(Strafgesetzbuch) German Penal Code
StPO	(Strafprozessordnung) Criminal Procedure Code

Definition of Terms

Immigration Authorities

The official authorities who are responsible for the implementation of regulations according to the Residence Act (AufenthG) and Asylum Act (Asylgesetz), are actually called *Ausländerbehörde* in Germany. The literal translation would be 'Foreigner's Office,' with the term *Ausländer* referring to residents without German citizenship in a political context. In fact, the term 'foreigner' excludes people and does not represent those who have their centre of life in Germany, which is the case for most migrants. Therefore, we chose to translate *Ausländerbehörde* as 'Immigration Authorities' in this text.

Migrant Women*-led Migrant Women* (Autonomous) Organisations

In the light of the history of immigration in Germany, migrants and refugees have established their associations and organizations according to their goals and orientations (such as religious, sport, language, business, political, cultural, self-help, charitable, or leisure organizations). In German, they are called *Migrant*innenselbstorganisationen*, which could be translated into English as '*Migrant self-organizations*.' They are mostly self-financed and based on voluntary work. To highlight the political aspect of *Migrant*innenselbstorganisationen*, it is translated as Migrant Women*-led Migrant Women* (Autonomous) Organisations in this text.

Refugee Centres

Since August 2018, refugees in Germany are forced to live in accommodation centres called AnKER Centres (abbreviated for arrival, decision, and return) or other facilities (such as *Gemeinschaftsunterkünften*, *Wohneinheiten* and *Erstaufnahmeeinrichtungen*) until their asylum procedures are concluded. In fact, those centres are camps that refugees are not allowed to leave until they are being distributed to their assigned places of residence or are depor-

ted directly. The living conditions are not comparable with the refugee camps in other countries (i. e., Greece). However, the lack of independent procedural and legal advice mechanisms and months-long asylum procedures without the ability to move freely, solidify the fact that AnKER Centres are *de facto* refugee camps in a political sense. To prevent confusion with refugee camps in other countries, *AnKER-Zentrum* is translated as 'Refugee Centres' in this text.

Permission to Remain Until Deported

In cases, where non-German citizens, who consequently do not have a German passport, are forced to leave the country because their applications for asylum have been rejected, they are granted a particular type of residence permit. In German, it is called *Duldung*, which can loosely be translated to 'Tolerance.' *Duldung* is no residence permit; rather, it puts the deportation of the people affected on a temporary halt. Since that so-called 'Tolerance' presents a political power situation, *Duldung* is translated as 'Permission to Remain Until Deported' in this text.

The First Germany GREVIO State Report

The German government published their answers to the GREVIO-Questionnaire on September 1, 2020. It is initially called *GREVIO Erster Staatenbericht der Bundesrepublik Deutschland 2020*. Its English translation would be 'GREVIO First State Report of the Federal Republic of Germany 2020.' However, the official title of the documents published by GREVIO is 'GREVIO State Report'. To be coherent with the GREVIO publications, *GREVIO Erster Staatenbericht der Bundesrepublik Deutschland 2020* is translated as 'the First Germany GREVIO State Report' in this text.

Woman*

As the umbrella association by and for migrant women* organisations in Germany, we define ourselves as intersectional, and we act accordingly. Therefore, we use gender-sensitive and inclusive language and spelling marked with an asterisk. It is a symbol that emphasizes the existing gender diversity and rejects a binary gender system. Our offers are for women*. Hereby, we mean everybody who self-identifies as a woman* or has experiences in society as a woman*.

DaMigra e. V. – Umbrella Association of Migrant Women* Organisations

The Umbrella Association of Migrant Women* Organisations – known by its German acronym, DaMigra e.V. – is an advocacy group for migrant women*-led migrant women* (autonomous) organisations and their interests. Representing over 70 member organisations from a range of different countries, DaMigra is a nationwide point of contact for policy-makers, businesses and the media, providing policy guidance and critically monitoring migration policy processes. DaMigra advocates for equal opportunities, equal rights and gender equality of migrant or refugee women* in Germany.

DaMigra is a full member of the Istanbul Convention Alliance (*Bündnis Istanbul-Konvention*, BIK), an alliance of NGOs, initiatives and experts working on and researching the Istanbul Convention. DaMigra has worked on the joint shadow report¹ as an equal.

This paper adds to the BIK's work in greater detail. It is a selection of themes arising from the round table of experts initiated by DaMigra. This shadow report adopts the perspective of migrant women* and women* who have been migrants and refugees as a lens, and follows an intersectional approach.

This paper posits that people who are highly vulnerable owing to their physical and/or mental constitution and/or their particular social (or material) situation are particularly affected by (multiple) discrimination and violence. This applies to migrant and refugee women* and girls*, especially those who have

not been granted secure residency rights or those who are stateless, women* and girls* with disabilities, who have particular physical and mental health needs, women* and girls* with addictive disorders, elderly women*, women* of lower socioeconomic status, such as homeless women* or women* from other EU member states working in the care sector, women* and girls* who are affected by gender-based violence (genital mutilation / FGM, forced marriage) and trans women*, sex workers, but also women* and girls* affected by human trafficking.

These features, if concurring, exponentiate the sexist and racist pressure and strain on these women* in daily life, particularly and expressly when violence is being used. All women* from these groups have basic human rights, the right to full community participation, prevention, protection and health support. ■

¹ In progress to be published in 2021.

Introduction

To DaMigra, the Istanbul Convention is a comprehensive human rights Œuvre offering women* and girls* a set of substantial tools in the struggle against gender-based violence and discrimination. DaMigra expressly advocates the complete implementation of the Convention in Germany and opposes German government reservations regarding article 59 (2) and (3).

In a letter to the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*, BMFSFJ) dated 2 March 2020, DaMigra as part of this GREVIO shadow report put forward the following question:

[Is the German Federal Government considering a withdrawal of its reservations pertaining to article 59 of the Istanbul Convention ahead of a review by GREVIO in light of experiences had by migrant and refugee women*?](#)

In response, the BMFSFJ maintained that ‘at this stage, no need for consultation vis-à-vis a withdrawing of the reservations exists’, with the next review scheduled after five years (i. e. 2023). DaMigra and numerous other women’s rights organisations demand consultations, but particularly see an urgent need for action, as outlined in the following and under Recommendations.

Ministerial Ping-Pong Games

Given the lack of a co-ordinating body and independent monitoring to assess the implementation of the Istanbul Convention in Germany, dialogue between civil society and NGOs – particularly those working to protect migrant and refugee women* – on one side and the government on the other remains inadequate. While the Federal Ministry of the Interior (*Bundesministerium des Innern, für Bau und Heimat*, BMI) is

reported to be responsible for any reservations identified, the BMFSFJ is tasked with affairs pertaining to women*. To date, there is no institutionalised, cross-or regular exchange. As a consequence, the Federal Government fails to initiate measures to react to the *de facto* situation and needs of migrant women* affected by violence. Government organisations should however be aware of which groups of women* are affected by which forms of violence and where extant laws, guidelines and frameworks are not or only partially effective, and how these are being applied in practice to ensure that support schemes required exist at the Federal, State or local level in line with demands. The First German GREVIO State Report highlights in appendix 2.6. (Migration and Asylum) how heterogeneous data and measures are across Germany’s different States: a hotchpotch of odds and ends. It includes guidelines, recommendations and individual projects (mostly with no indication as to their duration or personnel resources) which in part describe violence prevention, but chiefly focus on protective measures devoid of a common theme or apparent country-wide master plan. In this, we are particularly concerned about keeping the conversation going.

To be able to translate the interests of migrant and refugee women* into action, migrant women* themselves need to be included from the get-go.

Buck-passing will not solve problems regarding the implementation of the Istanbul Convention for ALL women* – dialogue, however, will.

This shadow report presents merely a selection from a range of sensitive, burning issues pertaining to the needs and problems of migrant and refugee women*. In the following, we will comment on Chapters VII – Migration and asylum and VI – Investigation, prosecution, procedural law and protective measures as well as the highly topical article 23 – Shelters. DaMigra’s expertise and the expertise rising from the round table initiated by DaMigra include all chapters and articles of the Istanbul Convention.

We cordially invite GREVIO for a discussion on the status quo of migrant and refugee women* in Germany on the occasion of their visit to Germany.

Aytan Case Study

To illustrate the situation of refugee women*, DaMigra has chosen a case study from the project work of one of its member organisations. [Aytan's story is a case in point highlighting the structural multiple discrimination, secondary victimization and insufficient measures taken by German Federal, State and local governments.](#) Aytan's case is significant not least as it exemplifies the specific features and intersections frequently observed in such contexts. Individual compounded needs or a combination of needs and lack of access in this case are not uncommon, but are experienced by many migrant and refugee women* in Germany.

[In the following, this text sets forth a significant case and how the status quo in Germany](#)

[contradicts the Convention.](#)

DaMigra is expressly in favour of family reunifications. DaMigra does however oppose residence rights based on marital status for women* who experience violence. [Women* who have experienced gender-based violence in Germany must be able to obtain an autonomous residence permit reducing red tape to a minimum.](#)

Aytan entered Germany in early 2018 joining her spouse, who she had married in late 2017. Shortly after arriving in Germany, her husband turned violent towards her and her son from her first marriage. The woman* and her son then found refuge with an Azerbaijani family and stayed with them for a fortnight, until one of her son's teachers established contact with an MSO (women*-migrant-led helpdesk)

who identified a place in a women*'s shelter in the city of Siegen. On February 15, 2018, she and her son moved into the women's shelter.

- Aytan's protection was organized through unofficial channels. It was not recorded in any statistics. [Women* who do not have friends or family to support them are at risk of homelessness.](#) Women* who provide shelter to their friends might themselves be taking great personal risk by protecting the woman* affected. Not knowing about the German protection system (and, at times, not knowing much German), women* and those who help them are frequently left to their own devices. (cf. recommendations on the information system, awareness-raising measures and multilingual campaigns and programs as well as shortcomings within the support system).

Aytan had found an apartment and a job in Siegen. Cologne City Immigration Authorities (*Ausländerbehörde*) issued her with a temporary residence permit (*Fiktionsbescheinigung*) confirming that she had submitted an application for a residence permit that was still under review. She was granted permission to work. Without a final decision, Cologne Immigration Authorities sent her file to Immigration Authorities in the city of Siegen. Immigration authorities (in city of Siegen) refused to issue

Aytan with a work permit as she was no longer living with her violent husband in a joint apartment in Cologne, and the purpose of her residence permit ceased to apply. She was not allowed to accept the position.

- [Aytan herself had found a job which provided a route out of the women*'s shelter and to independent living.](#) Financial independence is the key to community participation.
- Opportunities and viable prospect of participating in the community considerably reduces [the risk of permanent mental illness stemming from experiencing violence and trauma.](#) It is necessary to verify the potentials relating to the application, grant and duration of the autonomous residence permit [art. 59 (1)].
- [Immigration authority decisions are frequently arbitrary](#) and entirely dependent on the sympathy of individual staff (see section on asylum proceedings and BIK report).

Immigration authorities refused her request for a residence permit as per section 31 (2) (*AufenthG*). Aytan appealed this decision at Arnsberg Administrative Court. Her appeal was refused on grounds that at the time of application Aytan had only had an entry visa for the purpose of family reunion. As the

visa was no residence permit, her application for a residence permit as per section 31 (2) of the Residence Act – hardship case due to domestic violence – was rejected. In the following, the immigration authorities (*Ausländerbehörde* – city of Siegen) set a date for deportation, even though the public prosecution service had initiated proceedings against her husband for assault.

- This approach violates articles 59 (2) and (3) IC, against which reservations have been levelled. Women* trying to escape from violent relationships *de facto* are punished for doing so. *De jure*, an appeal has to be launched: This requires not only financial resources, language skills and familiarity with the legal system and/or the respective support services. **It further asks for great courage to confront traditional role models, discriminating and at times racist clichés and attacks, particularly with experiences of violence still being very present and in most cases** – often in cases where custody and visiting rights are being negotiated – triggered every day. In many cases, the situation further deteriorates when men threaten to support the deportation / expulsion and keep the children with them in Germany.

- **Formal legislation and jurisdiction underpin the informal**

dependent relationships which further increases the women's dependency on the man.

- No comprehensive measures were taken to protect the woman*.
- Article 59 (1) IC declares that “in the event of the dissolution of the marriage or the relationship, [women*] are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship” and further that “[t]he conditions relating to the granting and duration of the autonomous residence permit are established by internal law.” This has not been verified in this case.

She brought her proceedings before the Commission on Hardship Cases (*Härtefallkommission*) in North Rhine-Westphalia. The Commission did not address the history of violence and did not issue a recommendation to the immigration authorities.

- It is undue for the Commission not to have issued a recommendation or a statement of particular hardship in this specific case of domestic violence. There was great risk of deportation / refusal. The violation of Article 61 of the Istanbul Convention was overlooked. This procedure

can only be understood as a lack of awareness of the implementation of the Istanbul Convention.

- Each German State has a Commission on Hardship Cases, reviewing such instances. Notwithstanding, recommendations to the immigration authorities (Ministry of the Interior) are not binding. The immigration authorities (Ministry of the Interior) heeds the recommendations in some cases but not others. There are no formal rules, no standard procedure in reviewing ‘hardship cases’.
- Commissions on Hardship Cases are the responsibility of the individual States in Germany. Most of these Commissions do not follow equal representation principles, neither achieving gender parity nor diversity. This has ramifications for the protection of women* affected by violence.
- **Commissions in charge not offering any recommendations is alarming for affected individuals. It creates a gap in the protection of women* not least because these commissions themselves hold the right of authority (*Selbstbefassungsrecht*).** Women* affected are not legally entitled to their request

being considered and decided.

- **Proceedings frequently take a long time** and final decisions are made solely by the respective case workers with the immigration authorities.
- This handling is by no means an isolated case and contradicts the First Germany GREVIO State Report claiming that “[o]n the definition of “hardship case”, Section 31.2.2.2.2 of the General Administrative Regulation on the Residence Act (*Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz, AVV*) states that it is unreasonable to expect continued conjugal cohabitation if, among other things [...] in particular if measures had already been taken under the provisions for protection against violence, e.g. if the spouse concerned had to seek refuge in a support institution (e.g. women*'s shelter) due to the mistreatment or if the holder of the right of parentage was barred from the marital home by the police or court.”² The existence of such a law and administrative provisions *de jure* does not mean that in practice *de facto* decisions observe them. Lack of access and resources, barriers and obstacles are reported to project staff and

² GREVIO First State Report Germany (September 1, 2020), BMSFSJ, p. 69: <https://rm.coe.int/state-report-from-germany/pdfa/16809f59c6> (last accessed November 7, 2020).

DaMigra members time and again.

- Vis-à-vis protection from violence, there is a lack of reliable statistics and German country-wide or even State-wide studies (cf. art. 11 of the Istanbul Convention); by the same token, State-specific monitoring processes are advised.

Aytan called the Committee on Petitions (*Petitionsausschuss*), which takes part of the North Rhine-Westphalia Parliament. Neither the hearing on May 29 2019 (with the members of the committee, representative / agents of the immigration authority [city of Siegen]) nor any binding recommendation paper addressed the fact that she had to seek refuge from violence she experienced in her marriage in a women*'s shelter.

- In spite of reservations raised, article 59 (1) IC demands a review of the case. In most known cases the review is insufficient, undue – given the pending court case – and arbitrary. Committees on Petitions are not transparent, they cannot be checked against minimum standards and are not gender-sensitive proceeding despite being subject to provisions under administrative law.
- The Committees on Petitions of the

German State Parliaments neither achieve gender parity nor diversity. Seats on the Committees would only by chance be given to someone who are experienced in dealing with prevention of or protection against gender-based and racist violence.

- The Committees on Petitions of the German State Parliaments are bound by legal provisions. In contrast to Commissions on Hardship Cases, they cannot make recommendations but 'only' remit cases following a review and that way express objection to the process or request another review. **This parliamentary committee however frequently is a final instance to avert impending deportation. Ultimately, immigration authorities (Ministry of the Interior) decide on the deportation.**
- Aytan this way has exhausted all legal appeal remedies.
- Such a handling is by no means an isolated case and contradicts the First Germany GREVIO State Report which posits that “[p]ursuant to Section 31 (2) second sentence of the Residence Act (*Aufenthaltsgesetz*, AufenthG) where further criteria are met the spouse who is a victim of domestic violence must be granted an independent residence

permit irrespective of the otherwise required minimum three-year period of marriage.”³ The Central Register of Foreign Nationals (*Ausländerzentralregister*) does not indicate any breakdown as to whether a permit was granted under Section 31 (1), (2) or (4) of the Residence Act (AufenthG), it even concedes that the same individuals might have been counted several times.

- The data presented in immigration authority statistics are hardly reliable as they – as this case shows – fail to reflect the number of unreported cases and particularly the reasons for this.
- Vis-à-vis protection from violence and residence status, there is a lack of German country-wide or even state-wide studies (cf. art. 11 of the Istanbul Convention); by the same token, State-specific monitoring processes are advised.

Instead, the woman* was told to leave Germany and apply for a Blue Card – she holds a recognized Master's degree in IT and computing.

- **To ask women* of uncertain residence status to work with dangerous and endangering 'loopholes' in the**

system and to accept the associated risks – to leave and restart from square one – is unreasonable.

This is due to German (asylum, residence, administrative) legislation and practice only recognising and accounting for sexual, sexualised and domestic violence under highly complicated conditions. It is upon the women* to provide evidence. Not to believe women* retraumatises them and is undignified. These multiple sources of stress can have physical and mental consequences, to which a set of measures was to be set up by the signatories of the Istanbul Convention. This has not been implemented sufficiently (see below for recommendations, cf. BIK shadow report).

Aytan and her son were deported in November 2019. Her son had attended a secondary school (Gymnasium) in Germany and was an outstanding student. Her husband could and would not be brought to justice despite having been indicted. Since the two only witnesses had been deported, the proceedings were terminated. ▶

- The violation of art. 59 and 61 should have been reviewed by the bodies mentioned above in light of the Istanbul Convention.
- Several legal bodies and committees have failed Aytan even though she and her son have been fully settled, and she found a job in Germany.
- German asylum proceedings and residence legislation in part are not compatible with measures on the implementation of the Istanbul Convention.
- Aytan reversal of the burden of proof to the effect that it is placed on women* affected by violence is a general problem in criminal law – be that in the context of asylum legislation or prosecution of sexual, sexualised or domestic violence (from the police service to the courts – cf. BIK report).
- In the context of asylum proceedings in particular we and our members observe it as striking that women* affected by violence out of all people are required to provide evidence. It is all the more crucial, then, for the courts to be leveraged to “reverse the burden of proof if the claimant cannot be expected to bear the burden of proof.”⁴
- Furthermore, this case shows that proceedings are more likely to be closed – this is not an uncommon in Germany –, where the respective bodies hardly ever decide to exercise their right to investigate *ex officio* and to prosecute as an *ex officio* offence owing to the particular public interest in prosecuting the accused. Under chapter VII *Migration and asylum, F. Introduction*, the First Germany GREVIO State Report lists all criminal offences which can be prosecuted *ex officio* as per section 234 of the Guidelines for Criminal Procedure and Imposition of Fines (*Richtlinien für das Strafverfahren und das Bußgeldverfahren*, RiStBV): “[...] prosecution of bodily injury [...] if the victim cannot reasonably be expected to file a criminal complaint because of their personal relationship with the offender [...] even during ongoing criminal proceedings – for example, after the criminal complaint has been withdrawn.” Further *ex officio* offences as per section 177 of the German Penal Code

(*Strafgesetzbuch*, StGB) as quoted in the report are sexual assault, sexual harassment, rape (art. 36 Istanbul Convention); further forced marriage as per section 237 of the StGB (art. 37 Istanbul Convention), genital mutilation (art. 38 Istanbul Convention) as per section 226a StGB and depending on graveness, bodily injury sections 224 (1.2), 226 and ill-treatment of persons subject to protection as per section 225 StGB. Consequently, legal provisions permit bringing the violent husband to justice for his actions.

The fact that frequently no *ex officio* proceedings are initiated violates article 55 of the Istanbul Convention which maintains that “the proceedings may continue even if the victim withdraws her or his statement or complaint” or that as per article 56 (Measures of protection) of the Istanbul Convention the victims can “testify [...] in the courtroom without being present”.

This is particularly socially and ethically objectionable as Aytan had not even been granted the right to defend her case as a plaintiff/ witness. ■

⁴ BIG e.V.: Leaflet 2 – legal frameworks for effective intervention against domestic violence [Broschüre 2 – rechtlichen Rahmenbedingungen effektiver Intervention gegen häusliche Gewalt] source: <https://www.bmfsfj.de/blob/94516/4cdaef230aefdc8d71a1cf4e812f077f/prm-14423-broschure-big--2---jetzt-erst-data.pdf> (last accessed October 11, 2020; own translation from the German original).

Chapter VII: Migration and asylum

Article 59 – Residence status

In the implementation of article 59 of the Istanbul Convention (IC) in Germany, there is some tension with asylum legislation, as the case of Aytan has shown. [Experience migrant and refugee women* have had show in practice that article 59 has been insufficiently translated into German national legislation and that there is a lack of adequate data and research \(art. 11 IC\)](#). Beyond this, practical implementation of article 59 (1) is highly flawed.

Reservations vis-à-vis article 59 (2) and (3) in Germany

In the First Germany GREVIO State Report, the German Federal

Government explained: National legislation tallies with responsibilities stemming from the IC and that the reasons for the reservations which have been agreed within the ratification of the convention remain. With this in mind, the German Federal Government feels incapable of lifting reservations on art. 59 (2) and (3) of the IC.⁵ The First Germany GREVIO State Report provides indiscriminate data of people who hold an autonomous residence permit without further distinguishing those who do so owing to the national implementation of art. 59 (1) of the IC as per section 31 (2) of the Residence Act (AufenthG). The Federal Government provides no data on the implementation of art. 59 (2) and (3) IK.⁶ Currently available statistics provided by the responsible offices do not allow any conclusions pertaining to the

respective granting of autonomous residence rights as per section 31 (2) or (1) or (4) of the Residence Act.

Article 59 (1) of the Istanbul Convention aims to ensure migrant women* can, following the spatial separation from the violent person, maintain their residence permit. This is to prevent women* from staying in violent relationships for fear of losing their residence rights.

[From practical experience, we know that autonomous residence rights reduce the danger / risk of a renewed escalation of violence and provide the social and financial independence women* / girls* and their children need for a recommencement.](#)

In the mind of the German Federal Government, Article 59 (1) of the IC is implemented fully through section 31 of the Residence Act (AufenthG). Section 31 of the Residence Act (AufenthG) is part of the regulations on family reunifications. Family reunifications (as per sections 27ff of the Residence Act) is one of the few options to legally enter Germany. Although family reunifications are meant as a means to protect marriage and family as per article 6 of the German Constitution (*Grundgesetz*, GG), the right to respect for family life as per article

8 (1) of the European Convention on Human Rights, a child's well-being as guaranteed under article of the UN Convention on the Rights of the Child and to protect victims of violence from deportation or expulsion proceedings (art. 59 of the IC), the standards contained within sections 27ff of the German Residence Act (AufenthG) are highly restrictive. For instance, only the core family (including spouses and their under-age children) are eligible for family reunification. [Additionally, German asylum and residence legislation is shaped by a general mistrust that migrants might abuse or circumvent regulations.](#) It operates by means of extreme controls and racist and discriminatory practices such as "investigations irrespective of direct suspicion of a crime" (*verdachtsunabhängige Personenkontrolle*), *racial profiling* or house searches in cases of suspected marriages of convenience (*Scheinehe*). [Due to this violence, migrants lose trust in the police. The police's role as a protector is inverted.](#) Violation of the physical and mental integrity of women* and girls* in the interest of securing evidence in cases of sexual, sexualised or domestic violence is to be understood as an additional attack. As a consequence of this mistrust, women* and girls* do not seek police protection. Maximum levels of control which takes place in prac-

⁵ GREVIO First State Report Germany (September 1, 2020), BMSFSJ, p. 69: <https://rm.coe.int/state-report-from-germany/pdfa/16809f59c6> (last accessed November 7, 2020).

⁶ *ibid.* p. 69-70.

tically every encounter of migrants and refugees with the authorities are a significant burden on migrants and refugees. **This further hampers women*'s access to the authorities in charge in cases of sexual, sexualised or domestic violence, to 'confide' in them time and again, and to withstand the mistrust throughout the drawn-out processes** (law enforcement, immigration authorities, formally convoluted and at times costly application processes, see 'hardship cases', and appeals deadlines with or without legal counsel).

Section 31 of the Residence Act (AufenthG) determines the cases in which people who have previously been granted residence rights through family reunification can obtain autonomous residence. The provision does however stipulate very strict conditions for autonomous residence rights not linked to the right of abode of the respective partner, and fails to reflect the large majority of the residence status of women* affected.

Section 31 of the Residence Act (AufenthG) first is to be criticised for this provision only applying to those people who derive their own residence status from a person who themselves hold a residence permit, settlement permit or permission to reside in the EU long-term as what

is known as a 'principal applicant'. This means that this provision in no way applies to the large number of migrant women* who exactly like their violent partners hold unsecure residence rights, such as temporary residence permits (*Aufenthaltsgestattung*), permission to remain until deported (*Duldung*), or a permit to cross the border (*Grenzübertrittsbescheinigung*).

If and in what way family reunification is possible ultimately depends on the reason for or status of the residence document – i. e. if the person concerned has been granted asylum on international law, humanitarian or political grounds (sections 22 to 26 of the Residence Act [AufenthG]). Residence documents granted based on sections 22, 23 (1) and (2), 25 (3) and IVa no 1, 25a (1) and 25b (1) impose considerable restrictions on family reunifications and subsequently no access to autonomous residence documents. Altogether excluded from family reunifications are people holding residence documents as per sections 25a (2) and 25b (IV) (cf. section 29 [3]).

Through these "exceptions to the rule" (as defined in sections 29 (1) and (2) and 31 (1.1), the German state avoids obligations as per article 4.3 of the IC, which stipulates

that measures to protect affected women* and girls* from violence must be applied IN TOTALITY without discriminating based on migrant or refugee or any other status.

Restrictions on the right to grant autonomous residence rights

This has a twofold consequence. The groups of people indicated above first have no autonomous right to have their family join them in Germany. That way, they can neither have their underage children nor spouses join them. Moreover, they cannot apply for autonomous residence rights as per section 31 of the Residence Act (AufenthG) in the event of a separation due to violence. This is why they cannot invoke the halt on deportation as assured in article 59 (2) of the IC, even if they risk reprisals in their country of citizenship.

- The option to gain autonomous residence rights is, however, equally important for women* who have yet to complete their asylum proceedings: Separation due to violence frequently impacts the result of the asylum claim of a woman* negatively, particularly if their grounds for asylum are assessed in conjunction with those of their (former) spouse.

- Women* affected by violence can submit a fresh application following the separation. **Owing to foreclosure rules, this in contrast to pursuing the initial asylum application however triggers *reformatio in peius*, i. e. they are effectively put in a worse position than they previously had been in.**

- The considerably limited prospect of success, time elapsing, and the anxiety to which women* and girls* (often with children) are subjected vehemently contradict the protection requirements for vulnerable groups as laid down in the IC.

A further restriction on the granting of autonomous residence rights as per section 31 of the Residence Act (AufenthG) stems from the fact that these rights will only be granted if the violent spouse, from whom the right to residence is to be derived, has not been excluded from an extension of their residence rights (cf. final provisions of section 31 (2.1) of the Residence Act).

- **If the perpetrator refused an extension of his residence rights, his wife* has no autonomous right to residence, even if she meets all other conditions for it.** In these cases the victim's residence rights will not be extended even in confirmed hardship cases, but rather both

are threatened with deportation.

- Migrant women* affected by violence are denied the right to prosecution (see Aytan's case).
- Migrant women* affected by violence are denied the human right to immediate protection of their physical and mental integrity (see Aytan's case).

Further, the right of women* affected by violence to autonomous residence rights are further restricted through the provision in section 31 (1.1.1.) of the Residence Act (AufenthG) stipulating that conjugal cohabitation must have been established for no less than three years on the territory of the Federal Republic of Germany. This was raised from two to three years in 2011 – purportedly on grounds of prevention of forced marriage. Only women* holding Turkish citizenship are exempted from this tightening. They still have to merely provide evidence of two years of marriage (article 13 of decision 1/80 of the EEC-Turkey Association Council).

- Article 59 (1) IC posits that “[spouses] in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship.”⁷ The status quo of the implementation of the Istanbul Convention contradicts the provisions regarding the term for which a marriage must have been established as per section 31 (1.1.1.) of the Residence Act. As practice has shown, this provision is given precedent.

- Here, too, is a disparity between universal human rights and protection from violence for minorities. Migrants are separated into two groups: those having to have been married for two, and those for three years. DaMigra advocates the abolishment of the provision on periods for which a marriage must have been established (see Aytan's case and recommendations).

Section 31 (2) sentence 2 of the Residence Act (AufenthG) does

contain a hardship provision at the end, according to which in certain cases – such as domestic violence – residence documents can be issued even if the marriage had been established within the territory of Germany for less than three years. However, ‘particular hardship’ as per section 31 (2) of the Residence Act (AufenthG) remains an undefined term requiring interpretation (see Aytan's case).

To support interpretations, sample cases are outlined in section 31 (2) sentence 2 of the Residence Act (AufenthG). Further, attention must be paid to whether “to return to the country of origin resulting from the termination of marital cohabitation threatens to substantially harm the foreigner's legitimate interests.”⁸ If the review suggests that a return might trigger considerable harm of the rights of the person, particular hardship is established. Yet, within the scope of section 31 (2) of the Residence Act (AufenthG) only these hardships are to be taken into account which are due to the dissolution of conjugal cohabitation – e.g. loss of the option to maintain contact with a child remaining in Germany, or a person facing disadvantages

in their country of citizenship due to their divorce.⁹ Section 31 (2) of the Residence Act (AufenthG) does however not account for the fact that upon return, divorcees might be facing other legal or societal forms of discrimination or even political persecution. This is only to be verified within asylum proceedings.

- As a consequence, migrant or refugee women* might be forced to apply for asylum following divorce from their violent partner – even though they had been residing in Germany legally for many years in some cases.
- The overlap of proceedings within the remit of different administrative bodies demands effective cooperation between all bodies involved (article 7 [2] of the IC). In Germany, this has not been implemented to the extent due.

Domestic violence is expressly given as a hardship case at the end of section 31 (2) sentence 2 of the Residence Act (AufenthG). However, immigration authorities frequently level excessive demands as to the evidence women* affected have to provide in domestic violence cases. ►

⁷ Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMSFSJ) Preventing and Combatting Violence against Women and Domestic Violence. Law on the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) [Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt. Gesetz zu dem Übereinkommen des Europarats vom 11. Mai 2011 (Istanbul-Konvention)], p 28: <https://www.bmfsfj.de/blob/122280/cea0b6854c9a024c3b357dfb401f8e05/gesetz-zu-dem-uebereinkommen-zur-bekaempfung-von-gewalt-gegen-frauen-istanbul-konvention-data.pdf> (last accessed November 10, 2020).

⁸ Section 31 the Residence Act (AufenthG) Independent right of residence for spouses: https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p0792 (last accessed November 12, 2020).

⁹ cf. Federal Administrative Court (BVerwG), ruling of 9 June 2009 - 1 C 11/08 - NVwZ 2009, 1432; BeckOK AusIR/Tewocht, 25th ed 1 March 2020, section 31 recital 20 of the Residence Act.

- Demanding extensive production of evidence from women* affected by violence triggers great risk of re-traumatisation / secondary victimisation.

Adding to this, this provision is applied rather restrictively. For instance, residence permits are frequently not issued in line with section 31 (2) of the Residence Act (AufenthG) **on the grounds that insufficient evidence has been provided for the causality of violent attacks by the partner and the dissolution of the marriage.** At times, doubt is cast over the women*'s accounts of domestic violence amid claims that the affected women* were still living with the perpetrator.

- However, the women* affected by violence whose residence rights are dependent on their spouses' cannot freely decide to move out since any departure would mark the end of the period for which marriage has been established as per section 31 sentence 1 no 1 of the Residence Act (AufenthG), with the woman* potentially failing to comply with residence rules as per section 12a of the Residence Act (AufenthG) and then being faced with deportation.

- Finally, immigration authorities often take months or even years to

decide n o applications on autonomous residence documents as per section 31 Residence Act (AufenthG), which further aggravates the residence status of the women*.

Applying hardship clauses as per section 31 (2) of the Residence Act (AufenthG) hence is associated with a great number of barriers and risks for migrant women* affected by violence (see Aytan's case – Hardship Case Commission processes and appeals processes at Committees on Petitions).

- These regulations reinforce existing dependencies and create unequal relations by treating perpetrators more favourably than those affected by violence.

In the event that a residence permit is issued as per section 31 of the Residence Act (AufenthG), women* have to produce evidence at the first renewal after one year that they are able to sustain themselves. Many women* find themselves practically unable to do so because of the multiple roles they are in (as single mothers, or carers for family members) and difficulty of access to the labour markets migrants commonly face.

- Through these regulations, migrant women* and girls* who have

experienced sexual, sexualised or domestic violence are left to their own devices confronting the financial consequences of the resulting spiral of discrimination on the labour and housing markets, and childcare.¹⁰ A review of suitable, nationwide measures as part of a masterplan is necessary (see recommendations). Equally, set-up of a compensation fund within the meaning of article 30 to offset the financial disadvantaging of migrant women* and girls* must be contemplated.

- In this context, care-work for family members – especially children – deserves particular emphasis. Considering the circumstances and daily lives of women* affected by violence in the context of custody and visitation rights (cf. BIK shadow report) means to turn over to yet another problematic chapter of insufficient implementation of the IC in Germany.

The German Federal Government justifies its reservations vis-à-vis art. 59 (2) of the IC by claiming that the option of applying for family residence documents does already exist. In the eyes of the German government, responsibilities arising

from art. 59 (2) of the IC are fully met through section 31 (1) and (2) of the Residence Act (AufenthG). Furthermore, section 81 (3) sentence 1 of the Residence Act (AufenthG) contains a provision according to which residence of an individual who has hitherto been residing in Germany legally and who has applied for fresh residence documents remains lawful to the point immigration authorities make a decision.

- In the event that an application is made late, i. e. after the expiration of the initial residence document, deportations are suspended from the point in time at which the application was made to the point immigration authorities reach a decision as per section 81 (3) sentence 2 of the Residence Act (AufenthG). The case study Aytan outlined above is representative of cases in which this provision has failed. DaMigra and other NGOs have been made aware of such cases.

The German Federal Government justifies its reservations vis-à-vis art. 59 (3a) of the IC by claiming that 'personal situation' which the article invokes as grounds on which those affected by violence should

¹⁰ cf. Second Federal Government Gender Equality Report, 2017 [Zweiter Gleichstellungsbericht der Bundesregierung 2017]: <https://www.bmfsfj.de/blob/117916/7a2f8ecf6cbe805cc80edf7c4309b2bc/zweiter-gleichstellungsbericht-data.pdf> (last accessed November 12, 2020) (in German).

be granted residence is too vague.

In Germany, women* affected by violence for this reason are **not granted a humanitarian residence permit** which would protect them from deportation owing to their personal circumstances. The German Federal Government has to date refused to implement responsibilities arising from article 59 (3a) of the IC.

- With this in mind, migrant women* in contrast to women* who have German citizenship receive less protection against gender-based violence.
- Women* in ongoing asylum proceedings are required to stay in refugee shelters, are subject to residence requirements as per section 12a of the Residence Act (AufenthG), are not permitted to work, receive fewer social benefits and their health insurance cover is limited to the most essential treatments.
- Women* who are exposed to gender-based violence in shared

accommodation and seek protection or a place in a women*'s shelter outside of the municipality where they reside commit the misdemeanour of violating residence restrictions (cf. the chapter on shelters; cf. problems of residence restrictions in Germany).¹¹

The German Federal Government justifies its reservations vis-à-vis art. 59 (3b) of the IC by claiming that in cases where perpetrators of violence are involved in ongoing investigations or criminal proceedings, **women* are granted permission to remain until deported (*Duldung*) for the entire duration of the proceedings under German national law.**

- **Permission to remain until deported (*Duldung*) does not imply right of residence**, it rather is a temporary halt on deportation. Any halt based on permission to remain until deported is not deemed lawful residence.

As such, those who remain in Germany as they have been

granted permission to remain until deported are legally disenfranchised in multiple ways:

- **Frequently, permission to remain until deported implies no permission to work and limited freedom of movement.** Furthermore, it is only ever valid for short periods of time, which further complicates access to women*'s shelters and social benefits (including an own contribution to stays at the women*'s shelter) to women* affected. Benefits are only paid in the municipality where the woman* has her place of residence. i. e. were she to find a place in a neighbouring municipality or district, **financing is not guaranteed.**

On the other hand, the instability and uncertainty arising from being granted permission to remain until deported further **substantially hampers access to the labour and housing market** – this way, affected women* in turn are less likely to be able to consolidate and stabilise their residence status (see above). ■

¹¹ DaMigra (February 21, 2019) DaMigra Statement on the draft bill on removing the time limit on approval of the Integration Act (Integrationsgesetz) [Stellungnahme DaMigra zum Referent*innenentwurf eines Gesetzes zur Entfristung des Integrationsgesetzes]: https://www.damigra.de/wp-content/uploads/DaMigra_Stellungnahme_Integrationsgesetz_210219.pdf (last accessed on November 10, 2020) (in German); Susan Thiel (April 11, 2019) Statement on the Federal Government draft bill on removing the time limit on approval of the Integration Act (Integrationsgesetz) [Stellungnahme zum Gesetzentwurf der Bundesregierung zur Entfristung des Integrationsgesetzes]: <https://www.der-paritaetische.de/fachinfo/stellungnahmen-und-positionen/stellungnahme-zum-gesetzentwurf-der-bundesregierung-zur-entfristung-des-integrationsgesetzes/> (last accessed November 10, 2020) (in German).

Article 60 – Gender-based asylum claims

Article 60 of the Istanbul Convention holds the German government responsible generally to provide subsidiary protection to women* affected by violence.

Recognition of gender-based grounds for refugee status

Gender-based persecution has been recognised as grounds for refugee status in Germany since 2005. The Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, BAMF) statistics do however show that out of 216,873 decisions, only 3,793 people were granted refugee status for gender-based persecution in line with section 3b (1.4) of the Asylum Act (AsylG). This accounts

for 1.74% of decisions.^{12 13} Prosecution based on being a woman* can be invoked through section 3b (1.4) of the Asylum Act and ‘membership of a social group’. **The low number of recognised cases of gender-based persecution is absurd, not least because women* are mostly affected by sexualised and gender-specific violence, e.g. due to sexualised violence in a war.**¹⁴

- The data raises doubt regarding the assessment of the interviews and sampling.

Beyond section 3 of the Asylum Act, the First Germany GREVIO State Report also states that subsidiary protection can be obtained by invoking section 4 of the Asylum Act, while gender-based grounds for refuge can be invoked under section 60 (5) and (7) of the Residence Act (AufenthG) and hence do justice to art. 60 (1) of the Istanbul Convention.¹⁵

- It must be pointed out that **reasons for which asylum is granted are not recorded.**¹⁶

In the absence of sufficient data collection (as per art. 11 of the IC), it remains questionable how the Federal Government can make any statements vis-à-vis the *de facto* implementation of art. 60 (1) of the Istanbul Convention or indeed the fact that protection or a stay on deportation on grounds of gender or the experience of violence can indeed be achieved through extant legislation.

Process and duration of asylum proceedings / gender-sensitive asylum proceedings

- **The current design of asylum proceedings does not earmark sufficient time to counsel applicants on the process and their rights within the proceedings.**

- Furthermore, trustful relationships must be built to empower people affected by violence to share their experience.

Neither it is reflected nor intended within the current processes. Beyond this, the BAMF has special envoys trained in matters of people affected by gender-based violence and persecution, **yet they are but a minority among decision-makers.**

- Interpreters most often have not received training to be able to work with those requiring particular protection. Frequently, not enough female staff is available. This leads to **grounds for protection often not being claimed within asylum proceedings.**

- While there are internal BAMF guidelines for working with those requiring particular protection and those having been affected by violence, specific implementation is unclear and in our view frequently insufficient.¹⁷

Minimum standards, special rules of procedure and use of the BAMF’s special envoys are to enable early detection, claiming and support of protection needs of particularly vulnerable groups. Since there are no assessments, there is no information on the quality of asylum proceedings. Consequently, ▶

¹² cf. Lorin Bektas und Tanja Kova evi , Hannover; Susann Thiel, Berlin. The situation of women* refugees in asylum proceedings: Current challenges in asylum hearings, accommodation and the protection against violence. [Die Situation geflüchteter Frauen im Asylverfahren: Aktuelle Herausforderungen bei der Asylananhörung, Aufnahme und beim Schutz vor Gewalt] In: Themenschwerpunkt: Geschlechtsspezifische Rechte im Asylverfahren – Teil II: Frauen. Asylmagazin, Zeitschrift für Flüchtlings- und Migrationsrecht 12/2019. p. 393.

¹³ For further information and comparisons, see response of the Federal Government of May 20, 2019 to a minor interpellation by the Left party parliamentary group, BT-Drs.19/9216.

¹⁴ Susanne Giesler and Sonja Hoffmeister, Frankfurt (Main). Recognition of persecution targeting women*: problems and obstacles in applying the law. [Anerkennung frauenspezifischer Verfolgung: Probleme und Hürden bei der Rechtsanwendung] In: Themenschwerpunkt: Geschlechtsspezifische Rechte im Asylverfahren – Teil II: Frauen. Asylmagazin, Zeitschrift für Flüchtlings- und Migrationsrecht 12/2019. p. 401- 411 (in German).

¹⁵ GREVIO First State Report Germany (September 1, 2020), BMSFSJ, p. 69: <https://rm.coe.int/state-report-from-germany/pdfa/16809f59c6> (last accessed November 7, 2020).

¹⁶ Ibid. p. 68.

¹⁷ cf. Letter to Decision-Makers [Entscheiderbrief] BAMF 04/2020, p. 8-9: <https://www.bamf.de/SharedDocs/Anlagen/DE/Behoerde/Informationszentrum/Entscheiderbrief/2020/entscheiderbrief-04-2020.html?nn=282658> (last accessed November 12, 2020) (in German).

there is no verification as to if and how aspects of gender are heeded during asylum proceedings. There is no data (art. 11 IC) on the extent to which the BAMF adheres to the following legal provisions in practice:

- Granting of one-on-one talks outside the presence of family members on the claiming of one's own grounds for refuge (art. 15 (1) of the *Asylum Procedures Directive*, Directive 2013/32/EU)
- Option to demand a case worker and interpreter of the applicant's own gender (art. 15 [3b] and [3c] of the *Asylum Procedures Directive*)
- gender-sensitive and trustful talk (art. 15 [2] and [3a] of the *Asylum Procedures Directive*)

Practical experience to the contrary shows that gender-based vulnerability is often not identified or asked for in refugee women*. Refugee women* themselves often do not dare ask for a female* case officer / interpreter and to interrupt the hearing for this, even though they have the right to do so. Many also are not aware of their right to a case officer and interpreter of the same gender.

- Even though an explicit request has been made for a woman* case officer and interpreter, e.g. through a counsellor, this is **often not granted for purported lack of staffing resources**.

Many refugee women* are not aware that their experience can be classified as gender-based violence and have not been prepared for their hearing and have not been informed of their rights during a preparatory meeting. Therefore, trauma is frequently not recognised – also due to lacking medical support – or is not accepted because of the high requirements for medical certificates to be produced.¹⁸

Fast-track processes for people from so-called 'safe countries'

From counselling practice we know that women* from so-called 'safe countries' in the sense of section 29a of the Asylum Act (AsylG) seeking asylum frequently do not do so on grounds of gender, even if seeking refuge as a family.

- Roma women* in Serbia for instance face existential dangers due to lacking social and healthcare provisions. Gender-based violence is often qualified by Serbian

police along ostensible cultural lines and as a consequence is not sanctioned. Racist attacks on Roma women* are trivialised and not identified as hate crimes.¹⁹

For women* from so-called 'safe countries', too, the BAMF hardly ever recognises gender-based grounds for asylum owing to the limitations in accelerated proceedings.

- There are no plans to overhaul the process in the interest of women* affected. Quite the contrary: ever more countries are rather added to the list of so-called 'safe countries'. This increases pressure on vulnerable groups.

Conditions of acceptance, housing, and violence prevention concepts

The respective Ministries of the Interior of Germany's States are in charge of setting up and operating initial reception facilities and AnKER centers ('anchor centers', 'arrival, decision and return facilities'). Following the legal amendments in the past couple of years, reception and shelter conditions have turned increasingly restrictive:

- Women* have to stay in initial reception facilities for up to two years.
- Nation-wide consistent and uniform processes to recognise and care for those in need of particular protection in the sense of the *EU Reception Directive* (articles 21 and 22 of Directive 2013/33/EU laying down standards for the reception of applicants for international protection) do not exist.
- Privacy, space to retreat and for protection for women* frequently do not exist or are poorly equipped.
- Facility staff Continuing Professional Development (CPD) is rare and violence prevention concepts are either inexistent or not established (legally).
- Shared rooms and bathroom facilities often cannot be locked, which further deepens a sense of insecurity and paternalism with many refugees.
- Women* affected by domestic violence are further frequently subjected to peer pressure in the facilities. ►

¹⁸ cf. Lorin Bektas und Tanja Kova evi , Hannover; Susann Thiel, Berlin. The situation of women refugees in asylum proceedings: Current challenges in asylum hearings, accommodation and the protection against

¹⁹ See Jean-Philipp Baeck, et. al. (2014) Abgeschobene Roma in Serbien. Journalistische, Juristische und Medizinische Recherche. http://www.alle-bleiben.info/wp-content/uploads/2014/03/serbien_2013_web.pdf, S. 6–64. (Stand: 12.11.2020)

■ In cases of gender-based violence, the perpetrator will merely be relocated to another section of the building, which means that perpetrator and affected will still meet in shared spaces (e.g. kitchen or canteen) and **there are no safe spaces for those affected**. Long-term separation can be achieved in theory through an application for reallocation, however this is at the discretion of the respective case worker.

■ **In cases of harassment or violence by other residents or staff there are no internal or external complaints bodies, nor is there any other option of effective complaints for those affected**. Owing to lacking support and trustworthy structures as well as shame and fear, attacks are hardly reported. Responsibilities and standardised processes among facility staff in response to an (acute) need for protection frequently do not exist. **Expert bodies are only rarely consulted, and often do not exist in the region** (cf. the First Germany GREVIO State Report, appendix 2).

Women* from so-called 'safe countries' are even more affected by these deficiencies as their asylum claims most often are refused while they continue to be required to remain in the reception facility to the end of asylum proceedings or to their departure or deportation.

Special attention is paid in reception centres to regulatory policy and residence rights measures and criteria. Organisational patterns of initial reception facilities have been restructured over the past couple of years chiefly along the lines of residence rights stipulations.

■ For instance, the time for which people remain in the large shared accommodation and the structure of the asylum process is not dependent on the individual need for protection of asylum seekers but rather their country of citizenship and their presumed 'prospect of permanent residence' in Germany.

Also if in great danger of violence and in the aftermaths of instances of violence, people affected will have to stay in large reception accommodation facilities. Restrictions e.g. for failing to cooperate are imposed **without any regard for special circumstances of the individual case** and expert organisations such as the refugee councils of the German States (*Flüchtlingsräte*) often identify **lack of expertise within the government bodies responsible for migration**. This renders correct protection from violence impossible.

Legal Provisions (section 44 (2a) and 53 (3) of the Asylum Act) in place since 2019 on the pro-

tection of vulnerable groups in reception facilities, to which the Federal government refers in the First Germany GREVIO State Report is ultimately but a discretionary provision that does **not require the State governments to implement it**.

Refugee housing facilities structurally foster conflict and violence.

■ The disadvantageous building structures, high occupancy rates, long stays, restricted daily life and the extant power relations governing life together (e.g. among residents as well as residents and facility / administrative / security staff) are cases in point.^{20 21}

■ Germany lacks a nation-wide, legally binding screening process to identify those in particular need of protection during asylum proceedings as prescribed by articles 21 and 22 of the *EU Reception Directive* (Directive 2013/33/EU).

As a consequence, the needs of vulnerable refugees are frequently overlooked at reception,

housing and care and in view of presenting grounds for protection. **Access to regular societal structures is often barred for affected women* and women* often bear the responsibility for identifying and meeting their needs themselves**.

■ For instance, initial reception facilities hardly offer any childcare. Since women* – travelling on their own or with related adults – tend to be the main carer for their children, they have very limited capacity to take up language classes, consulting services, information events on access to training and labour market etc. Participating in such programmes is however indispensable to take up work and access education programmes, be empowered and autonomous, participate in the community and be financially independent, especially if trying to escape spiraling violence.

■ Furthermore, there are hardly any protective facilities for refugee women* affected by violence (cf. the First Germany GREVIO State

²⁰ See Simone Christ, Esther Meininghaus und Tim Röig (2017) "All Day Waiting" – Conflicts in Refugee Accommodation in North Rhine-Westphalia. [Konflikte in Unterkünften für Geflüchtete in NRW]: https://www.bicc.de/uploads/tx_bicctools/BICC_WP_3_2017_web_01.pdf (last accessed November 12, 2020) (in German).

²¹ cf. Lorin Bektas und Tanja Kova evi , Hannover; Susann Thiel, Berlin. The situation of women refugees in asylum proceedings: Current challenges in asylum hearings, accommodation and the protection against violence. [Die Situation geflüchteter Frauen im Asylverfahren: Aktuelle Herausforderungen bei der Asylan hö rung, Aufnahme und beim Schutz vor Gewalt] In: Themenschwerpunkt: Geschlechtsspezifische Rechte im Asylverfahren – Teil II: Frauen. Asylmagazin, Zeitschrift für Flüchtlings- und Migrationsrecht 12/2019. p. 397ff. (in German).

Report, appendix 2) and there is little chance of access to women*'s shelters both for lack of funding as well as insufficient space to cater for all requests received.

Each State devises a separate protection concept. In addition, internal protection concepts are at times drafted by the individual facilities. Existing protection concepts are therefore neither nation-wide nor legally binding.

Example: Bavaria. In spite of the “Bavarian Protection Concept of Shelter Facility Administration for the Prevention of Violence” and Bavaria’s 19 violence prevention coordinators, the situation in Bavarian facilities is not amenable to protecting women* effectively from (additional) violence. In a (non-scientific and non-representative) survey carried out between January 2019 and approx. April 2019, the Munich Action Group for refugee women* (*Münchner Aktionsbündnis für geflüchtete Frauen**) identified great **deficiency in building and structural conditions**.²²

The violence prevention coordinators work at different facilities on facility-specific protection concepts and also advise other facilities. Notwithstanding, the implementation of violence prevention concepts in practice matters, but is handled in different ways and is neither nation-wide nor legally binding.

Example: Saxony-Anhalt. Here, too, there is a violence prevention concept and a range of other measures and projects. An analysis by Saxony-Anhalt’s refugee council (*Flüchtlingsrat Sachsen-Anhalt*) has however shown that there is room for improvement for violence prevention in refugee facilities and also considers the **expansion of decentralised modes of housing necessary**. In the publication, they show a range of serious examples that point to the **lack of complaints structures and management**.²³

■ Extension of compulsory residence in initial reception facilities and AnKER centres to 18 months (section 47 [1] of the Asylum Act [AsylG]) or indeed to undetermined period for people from safe countries implies a long stay for women* and those affected by violence in these violence-inducing structures.

Consideration and recognition of gender-based grounds for refuge, minimum standards and rules of procedure

The unclear taxonomy of section 3b (1.4) of the Asylum Act (AsylG) among others is as problematic as questionable decision-making practices interpreting these very terms.²⁴

■ Reasons for the low level of recognised cases with regard to gender-based persecution are, among others, the *way in which hearings are*

conducted and the high demands vis-à-vis the acquiring and recognition of medical certificates.²⁵

Counselling, evidence for diseases and provision of information

Asylum counselling is not offered nation-wide and is frequently carried out not by independent organisations, but by BAMF staff, i.e. a member of the very decision-making body which also conducts the hearings (cf. section 12a Asylum Act [AsylG]).²⁶ Welfare organisations criticise the quality of asylum process counselling.²⁷

■ Human rights organisations, including DaMigra, deplore that a growing number of NGOs who could provide unbiased information on asylum rights and specialised support on the prevention of

²² The questionnaire was sent to staff working at Bavarian facilities as well as AnKER Centres to obtain a qualified assessment of the living situation of refugee women* from staff at the facilities. Link to the open letter: <https://www.fluechtlingsrat-bayern.de/wp-content/uploads/2020/08/Offener-Brief-Gewaltschutz> (in German).

²³ Statement by the Council of Refugees of Saxony-Anhalt: On the status quo of the protection against violence in shared accommodation in Saxony-Anhalt. [Stellungnahme des Flüchtlingsrates Sachsen-Anhalt: Zum Stand des Gewaltschutzes in Gemeinschaftsunterkünften in Sachsen-Anhalt], published 29 June 2020: https://www.fluechtlingsrat-lsa.de/wp-content/uploads/2020/06/200629_stellungnahme-gewaltschutz-in-st_final.pdf (last accessed November 12, 2020) (in German).

²⁴ Susanne Giesler and Sonja Hoffmeister’s report discusses this in great detail: Susanne Giesler and Sonja Hoffmeister, Frankfurt am Main. Recognition of persecution targeting women: problems and obstacles in applying the law. [Anerkennung frauenspezifischer Verfolgung: Probleme und Hürden bei der Rechtsanwendung]. In: Themenschwerpunkt: Geschlechtsspezifische Rechte im Asylverfahren – Teil II: Frauen. Asylmagazin, Zeitschrift für Flüchtlings- und Migrationsrecht 12/2019, p. 401- 411 (in German).

²⁵ cf. *ibid.*

²⁶ See Answer of the Federal Government to the minor question of the Members of Parliament Ulla Jelpke, Dr. André Hahn, Gökay Akbulut, other Members of Parliament and the parliamentary group DIE LINKE - Printed Matter 19/18233 -Independent Asylum Procedure Counselling. [Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. André Hahn, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE – Drucksache 19/18233 – Unabhängige Asylverfahrensberatung]: <https://dip21.bundestag.de/dip21/btd/19/195/1919535.pdf> (last accessed November 12, 2020) (in German).

²⁷ Independent asylum process counselling reaching breaking point? AMBA Network criticises BAMF concept. [Unabhängige Asylverfahrensberatung vor dem Aus? Netzwerk AMBA kritisiert BAMF-Konzept], published November 12, 2019: <https://www.nds-fluerat.org/40777/aktuelles/unabhaengige-asylverfahrensberatung-vor-dem-aus-netzwerk-amba-kritisiert-bamf-konzept/> (last accessed November 12, 2020) (in German).

violence for women* are refused entry to shared housing facilities and initial reception facilities.²⁸

For this reason, many women* do not know about their rights during asylum proceedings, which has an impact on their making claims based on being persecuted for their gender.

- Specific expert advice centres are not automatically involved, even in cases in which persecution based on gender is suspected. Expert support throughout the hearing and preparation is however indispensable.

- Regular provision of gender-specific counselling is frequently insufficient to cover needs.

This is down to the geographic remoteness of the large-sized housing facilities and the distance from specialised counselling and support structures, as well as insufficient expertise and capacity of social workers in the facilities. There is little cross-linking between the two structures (as documented in articles 7 and 9 of the IC).

- Further, interpreting costs are frequently not covered by the authorities. Thus, access to adequate counselling for refugee women* is very limited.

- Statements from expert advice centres are frequently not accepted by BAMF decision-makers. This violates article 9 IC which calls for the inclusion of non-governmental organisations.

- Simultaneously, the passing of the legislative package on migration in June 2019 (Asylum Procedures Acceleration Act II, *Asylpaket II*) imposes even stricter requirements vis-à-vis medical certificates for refugees. Only certificates from specialist physicians such as psychiatrists are accepted for traumatised refugees, with certificates issued by psychotherapists or expert advice centres no longer being accepted. This is tantamount to pathologising people affected by violence. It is a considerable restriction regarding providing evidence and asserting their rights particularly by those affected by gender-based violence, psychological strain²⁹

from female genital mutilation and other forms of serious abuse.

Healthcare and material provision

- Generally, asylum seekers receive only minimal health care for 18 months after arriving in Germany, covering acute and pain treatment. Individual needs beyond this can be granted at discretion.

In Germany, this leads to strikingly insufficient provision of healthcare in many cases, as criticised by countless NGOs. Specialist treatment required is frequently not granted or only following ample support. Many refugee women* particularly suffer from mental health issues or traumatization and frequently have no access to psychotherapy, especially not in reception centres. Furthermore, grounded in migration policy, provisions have been reduced which hit vulnerable refugees particularly hard. The limitations on the validity of doctor's certificates are a case in point, which now may only be issued by specialists such as psychiatrists for traumatized refugees, but not by psychotherapists or expert advice centres.

In the same vein, there is considerable red tape in admitting refugees to women*'s shelters. First, such decisions are made at the discretion of the immigration authority, on the other hand shifts in accountability structures in administrative bodies cause delays and uncertainty vis-à-vis responsibilities and processes.

- By implication, admissions to a women*'s shelter at best are delayed, since covering of accommodation costs and other social benefits remain unclear for too long (cf. below, article 23 Shelters).

Artikel 61 – Non-refoulement

Asylum procedures in Germany and non-refoulement

Non-refoulement is grounded in article 3 of the European Convention on Human Rights (ECHR), as well as in article 4 of the EU Charter of Fundamental Rights. In German legislation, section 60 (7) of the Residence Act (AufenthG) includes a deportation barrier for people facing “substantial concrete threat to life and limb or

²⁸ On the lack of information and restricted access to independent, trauma and gender-sensitive counselling, cf BIK Shadow Report, chapter on asylum proceedings counselling.

²⁹ cf. Lorin Bektas und Tanja Kova evi , Hannover; Susann Thiel, Berlin. The situation of women refugees in asylum proceedings: Current challenges in asylum hearings, accommodation and the protection against violence. [Die Situation geflüchteter Frauen im Asylverfahren: Aktuelle Herausforderungen bei der Asylanhörung, Aufnahme und beim Schutz vor Gewalt] In: Themenschwerpunkt: Geschlechtsspezifische Rechte im Asylverfahren – Teil

II: Frauen. Asylmagazin, Zeitschrift für Flüchtlings- und Migrationsrecht 12/2019. p. 397 ff (in German).

liberty.”³⁰ However, application of the Dublin III Regulation undermines this non-refoulement in many cases. Since under Dublin III even those affected by human trafficking will frequently be issued with a negative Dublin note and are to be deported to the European country where they were exploited and where they are threatened with re-victimisation. As per article 17 of the Dublin III Regulation and respective administrative instructions, Germany can itself act as a principle under given circumstances, i. e. the asylum case can be processed in Germany in spite of the fact that another EU country is nominally in charge.

- This option to act as a principle (*Selbsteintrittsrecht*), does however not constitute a subjective right women* affected may invoke.³¹

Risk of revictimisation and renewed violence

In addition, Germany seizes this right to act as a principal (*Selbsteintrittsrecht*), as stipulated in art. 17 of the Dublin III Regulation too infrequently. Administrative court rulings in the past couple of years have furthermore shown that preventing deportation to another European country is only possible in extreme cases.

- If no domestic barriers to deportation exist – such as being unfit for travel – preventing Dublin deportations is essentially impossible.³²

This is despite the fact that the return of women* who have previously been victims of human trafficking as per the Dublin Regulation is associated with an enormous risk of revictimisation and renewed violence. The German NGO network against trafficking in human beings (*Koordinierungskreis*

gegen Menschenhandel, KOK),³³ for instance, reports that according to expert advice centres the number of negative decisions in the context of the Dublin Regulation against people affected by human trafficking has increased substantially. Specialist support services are concerned that those affected by human trafficking and being returned to the state in which they were exploited risk revictimisation. There is the risk of ending up in the clutches of human traffickers again.

- One well-known example is Italy. Doubt has been cast on the adequacy of protection of people affected. As the Swiss Refugee Council noted in a current report on the situation of asylum seekers in Italy, there continues to be a lack of adequate housing and appropriate support for people who were deported to Italy in line with the Dublin III Regulation.³⁴ While it remains unclear if people requiring protection in Italy are given support and accommodation

and in spite of assessments from some NGOs such as GRETA (Group of Experts on Action against Trafficking in Human Beings) claiming that Italy’s refugee system is incapable of protecting victims of human trafficking since policy changes effected under the Salvini decree, those requiring particular protection continue to be deported to Italy.³⁵

DaMigra has identified need for further clarification and review by the Federal Government in the context of the Dublin III Regulation.

Is it appropriate and in line with human rights to deport women* affected by violence and/or human trafficking to European countries where there has been credible evidence furnished by NGOs to highlight systemic shortcomings? DaMigra opposes this in countries where we know from practice that protection needs are not taken into consideration and the situation of women* continues to deteriorate.³⁶ ■

³⁰ Section 60 (7) of the Residence Act (AufenthG): https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p1269 (last accessed November 12, 2020).

³¹ See KOK - German NGO network against trafficking in human beings Information Service 2019 [KOK-Bundesweiter Koordinierungskreis gegen Menschenhandel e.V., Informationdienst 2019], p.3: https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/KOK-Infodienst_2019_WEB.pdf (last accessed November 12, 2020) (in German).

³² See KOK - German NGO network against trafficking in human beings (September 2019) Protection of fundamental rights against deportations according to the Dublin III Regulation of victims of human trafficking 2019 [KOK-Bundesweiter Koordinierungskreis gegen Menschenhandel e.V., Grundrechtsschutz gegen Abschiebungen gemäß der Dublin-III-Verordnung von Betroffenen des Menschenhandels], p. 42: https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/KOK_Rechtsprechungsanalyse_VG_Dublin_RuthMe ding_final.pdf (last accessed November 12, 2020) (in German).

³³ Ibid, p. 4.

³⁴ Swiss Refugee Council: Status quo of asylum seekers in Italy. [Schweizerische Flüchtlingshilfe: Aktuelle Situation für Asylsuchende in Italien], May 8, 2019: <https://www.fluechtlingshilfe.ch/assets/herkunftslaender/dublin/italien/190508-auskunft-italien.pdf> (last accessed August 9, 2020) (in German).

³⁵ See KOK - German NGO network against trafficking in human beings Information Service 2019 [KOK-Bundesweiter Koordinierungskreis gegen Menschenhandel e.V., Informationdienst 2019], p. 3: https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/KOK-Infodienst_2019_WEB.pdf (last accessed November 12, 2020) (in German).

³⁶ See Swiss Refugee Aid, Italy [Schweizerische Flüchtlingshilfe, Italien]: <https://www.fluechtlingshilfe.ch/themen/laenderinformationen/dublinlaender/italien> (last accessed November 12, 2020) (in German).

Chapter IV – Protection and support

Article 23 – Shelters

Migration and gender perspectives in shelter structures

A fundamental structural problem lies within the fact that refugee women* have limited access to shelters owing to residence restrictions as per section 12a of the Residence Act (AufenthG) (cf. section 12a below) and Germany's nation-wide system of funding for shelters on a case-by-case basis.

- If the shelter to which a refugee woman* turns to for refuge is located outside the area stipulated in her residence requirement as per section 12a of the Residence Act

(AufenthG) social service authorities as per art. 23 (5) of the Social Code (Book XII, *Sozialgesetzbuch*) are not required to cover the costs arising from her use of the shelter.

Since most women*'s shelters run on a tight budget in any case, they take great financial risks by accepting a refugee woman* nonetheless. Cross-funding through intake of other residents is impossible as shelters within the case-by-case funding system can only account for costs that stem from 'refinanceable' cases.³⁷ The sole option that remains for women*'s shelters providing protection for refugee women* regardless of residence requirements is to offset costs through donations – there is no assured financing.

- This is compounded by the fact that there is a shortage of shelter places in Germany.

At this point, there are around 6,700 beds in around 340 women*'s shelters in Germany. The IC envisages one 'family place' per 10,000 residents of the total population.³⁸ In the case of Germany, this would translate into approximately 8,200 family places at 16,400 beds. Thus, there is a shortage of 9,700 beds.³⁹ Since women*'s shelters are virtually the sole institution in Germany providing protection for women* and their children against violence, women* will often have to find space in a shelter across state borders. Residence restrictions adds a layer of difficulty to this search.

Practical case studies

A woman* finally having found a place in a women*'s shelter which is however located outside the area where she is allowed to reside as per section 12a of the Residence Act (AufenthG) risks having to return to the area stipulated in her residence

requirements. This is due to her stay at the shelter not being covered and she and her children not receiving any benefits to sustain themselves and not being provided with any health insurance.

Case Study from Hesse: In early 2020, a woman* with her two children finds refuge in a women*'s shelter in the State of North Rhine Westphalia even though under residence restrictions (*Wohnsitzauflage*) she is required to reside in a district in the State of Hesse, where she was unable to locate space in a women*'s shelter. Immigration authorities in North Rhine Westphalia refused her relocating to this State, pointing to residence requirements (*Wohnsitzauflage*), while her original district in Hesse asked her to find a place in a women*'s shelter in Hesse. Unfortunately, this is not an isolated case.

Frequently, women* will even be asked to return to the area where the perpetrator from whom they fled, too, is living. ►

³⁷ Research Service of the German Bundestag, Shelters in Germany [Wissenschaftlicher Dienst des Bundestages, Frauenhäuser in Deutschland], May 27, 2019, p 9 (in German).

³⁸ These recommendations in the comments within the IC are nearly met in some municipalities or larger cities. However, there are only very few women*'s shelters in smaller cities or the countryside, which is why urban women's shelters will have to also cover demand from rural areas, which renders the overall tally much more negative. Upscaling the demand to a rural/urban ratio, the demand is not met (cf. BIK Shadow Report).

³⁹ Central Information Point of Autonomous Women's Shelters [Zentrale Informationsstelle Autonomer Frauenhäuser], Press release on the Conference of Ministers of Equality and Women 2019 [Pressemitteilung zur Gleichstellungs- und Frauenminister*innenkonferenz 2019], May 21, 2019 (in German).

Case Study from Saxony: A woman* who has been living in refugee accommodation in Saxony with her three children was severely abused by her husband. Following a longer search, she was able to identify a place in a women*'s shelter in North Rhine Westphalia. The district in Saxony where she had originally been living trusted that local immigration authorities would be able to protect her by providing different accommodation, which was however situated in close proximity to her original accommodation. As she was scared and concerned about her youngest son who had already been traumatised by witnessing violence against his mother, the woman* decided against it. She instead stayed at the women*'s shelter in North Rhine Westphalia. **The provider did not charge any rent for the four of them for a year, securing financing through donations. Healthcare remained an unresolved issue. The scarce resources available having been exhausted, the woman* and her children had to return to Saxony. Her youngest son was severely retraumatized, stopped speaking and gradually refused any contact to the outside world. He**

is in a permanent state of panic. **Structural problems faced by migrant and refugee women***

In line with art. 23 of the Istanbul Convention, DaMigra demands binding guidelines for States and municipalities to ensure refugee women* have barrier-free access to women*'s shelters anywhere in Germany.

- Relocating to a women*'s shelter should not be deemed a breach of residence restrictions in the sense of section 12a of the Residence Act (AufenthG) going forward.

Women*'s shelter operators need clarity regarding financing (art. 8 of the IC).

- DaMigra considers Germany-wide regulations necessary since only that way nation-wide equal access to protection and support can be ensured.⁴⁰

To date, regulations and provisions pertaining to the work and financing of women*'s shelters are patchy; only some States have

specific state-wide rules in place.⁴¹ In North Rhine Westphalia, for instance, a decree from May 18, 2018 disposes that refugees residing in the State have access to all women*'s shelters in the State.⁴²

- In most other States, there are no such provisions. There is no uniform protective standard whatsoever.

Xenophobic and racist discrimination on the housing market means that women* and their children often will find themselves unable to leave the women*'s shelter.

- In some regions in Germany women* and their children face the issue that they often spend over a year (usually the maximum period for any stay at a women*'s shelter) at a shelter. In practice this means staying in a single unit, usually one single room, with their children regardless of their age (i. e. also children in puberty, not merely infants). **This is due to unclear residence documents (see asylum proceedings above), matters of social, health and financial security, xenophobic and racist discrimination on the labour market.**

- These structural shortcomings and gaps in the support system in some localities lead to women* of uncertain residence status and/or with many or older children and/or limited language skills not being accepted at the women*'s shelter in the first place. A set of measures is needed to counteract this!

Example: Social workers report an older child turning rebellious owing to cramped living conditions and subsequently reconnecting with their father/the perpetrator and that way breaching protective regulations. **The child followed their urge to rather stay with their father (and be exposed to violence) than to have to put up with living in a cramped space restricted by a catalogue of rules of communal living for the foreseeable future.** They wanted to be able to bring friends home again...

- This example also shows that the catchphrase 'women* and their children' (e.g. art. 22 and 23, as well as 26 IK) is frequently rendered hollow in light of the rights of the child. ►

⁴⁰ Also noted by Central Information Point of Autonomous Women*'s Shelters [Zentrale Informationsstelle Autonomer Frauenhäuser], Statement on the draft bill on a law to implement the Istanbul Convention [Stellungnahme zum Referentenentwurf eines Gesetzes zur Umsetzung der Istanbul-Konvention], February 10, 2017, p 3; German Women Lawyers Association, Implementation of the Istanbul Convention in Germany [Die Umsetzung der Istanbul-Konvention in Deutschland], November 26, 2019 (in German).

⁴¹ Research Service of the German Bundestag, Shelters in Germany [Wissenschaftlicher Dienst des Bundestages, Frauenhäuser in Deutschland], May 27, 2019, p 9 (in German).

⁴² Ministry of Children, Families, Refugees and Integration of North Rhine Westphalia, Residence allocation in so-called women* shelter cases [Wohnsitzzuweisung in sog. Frauenhausfällen], May 18, 2018 (in German).

Reduce language barriers — secure financing!

Furthermore, shelters need to be given sufficient financial means for them to also involve language professionals if required.⁴³ This is the only way to ensure functioning, confidential communication with women* refugees and their at times traumatized children seeking shelter.

- **Unprofessional translation work relying on volunteers carries the risk of retraumatisation.** The quality of intersectional diversity-aware communication is improved through language skills and quality interpreting.

North Rhine Westphalia in this context is an example of good practice, providing such means. It is on Federal Government, then, to set nation-wide standards.

Insufficient information, insufficient awareness-raising

Art. 23 of the IC (shelters) stipulates to “reach out pro actively to victims.”⁴⁴ The right to information “in a language they understand” is guaranteed under art. 19. For women* refugees who have only been in Germany for a short time and who might not have heard of women*’s shelters such awareness-raising and-education is particularly salient.

The German state does not sufficiently meet its duty to inform, report and prevent. Specific programmes do exist, such as a multilingual help line for victims of violence (the German Federal Office for Family and Social Affairs (*Bundesamt für Familie und zivilgesellschaftliche Aufgaben* [BAFZA]), provides counseling in 17 languages) as well as the nation-wide helpline for women* affected or threatened with violence.

- Whether refugee women* know about these schemes is however

entirely dependent on the commitment of civil society groups and initiatives and particularly committed social workers.

- **Refugees who reside in AnKER centres (*AnKER Zentren*) or similar institutions for the duration of their asylum proceedings find access to information to be highly restricted.** As civil society actors are barred from most camps altogether, awareness-raising and education is virtually impossible (see above, asylum procedure).⁴⁵

Train social workers and facility guards!

DaMigra calls on the German state to meet its responsibility arising from art. 15 of the IC and to ensure that shelter staff are provided with the training and CPD they need to be aware of the specific needs of women* refugees.

- **Often, staff will not know about particular forms of violence** experienced by refugees (in the country from which they fled or on route), the political and social situation (particularly of women*) in their countries of citizenship or countries

of transit, about potential sexual exploitation in refugee camps, by human traffickers or in the context of impending homelessness.

- Staff and guards are not required to participate in anti-racist and anti-bias CPD programmes. **Trainings on human rights matters or on how trusting relationships can be created with women* from different cultural, social or religious backgrounds** as a foundation for trusting referral to additional support schemes within the protection system are mere exceptions rather than the rule.

Prevention through safe housing during asylum proceedings

Art. 12 (2) of the IC (Prevention), if read in conjunction with art. 23 IC, stipulates that refugee women* and their children must be guaranteed accommodation in separate shelters throughout the asylum proceedings

Leipzig Case Study: In 2017, a heavily pregnant woman* was stabbed to death by her husband right in front of her two children in shared housing. Staff had been aware of ongoing violence and the

⁴³ Also noted by the German Women Lawyers Association [Deutscher Juristinnenbund], Implementation of the Istanbul Convention in Germany [Die Umsetzung der Istanbul-Konvention in Deutschland], November 26, 2019. (in German).

⁴⁴ Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMSFSJ) Preventing and Combatting Violence against Women and Domestic Violence. Law on the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) [Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt. Gesetz zu dem Übereinkommen des Europarats vom 11. Mai 2011 (Istanbul-Konvention)], p 17: <https://www.bmfsfj.de/blob/122280/cea0b6854c9a024c3b357dfb401f8e05/gesetz-zu-dem-uebereinkommen-zur-bekaempfung-von-gewalt-gegen-frauen-istanbul-konvention-data.pdf> (last accessed November 10, 2020).

⁴⁵ cf. Nomos Commentary on Legislation Pertaining to Foreign Nationals [Nomos-Kommentar Ausländerrecht/ Bender / Bethke], 2nd ed. 2016, Asylum Procedure Act section 44 recital 2 (in German).

potential of further escalation. Social workers and management decided to give separate housing to the women* and her children, but located in the same shared accommodation. Thus, both continued to live under the same roof. Owing to close proximity and the disregard for restraining orders (sections 1 and 2 of the Protection against Violence Act, *Gewaltschutzgesetz, GewSchG*) the perpetrator had unfettered access to the apartment. The support system has failed abjectly because the institutions responsible passed any responsibility to social workers and management who made utterly inadequate decisions about protective measures required.

For a detailed discussion of the precarious situation of people in refugee centres, see asylum procedures above. [As a vulnerable group, women* need particular support in initial reception centres.](#) One measure would be particularly protected accommodation for women* travelling alone and single-parent-families. The Federal Government has developed minimum standards in cooperation with UNICEF, however these are not binding across all States.

■ [A nation-wide pilot project to implement minimum standards in shared accommodation was discontinued after three years in 2018.](#) The programme allowed operators to apply for funding. Formally correct applications, application processes and recruitment processes ensured that the people in question would only be able to take up work after one or two years in many cases. They would then be in place only for a few months to develop sets of measures for the respective spatial and staffing situation (cf. BIK Shadow Report). [They would often not be tasked with implementation; assessment was inadequate by the perpetrators.](#)

[Leipzig Case Study:](#) A migrant woman*-social worker drafted a plan in line with the regulations indicated. This was met with great opposition by management, who refused implementation on grounds of space and costs. Although the arguments brought forward were factually wrong and disproven, implementation suffered heavy delays. Since the social worker appeared to be enthusiastic addressing cases of violence towards women* and – as the operator would have it – demanded implementation too vigorously she herself was subjected to psychological violence and bullying in the workplace. As she was afraid not to find subsequent employment, she

refrained from taking legal steps to claim her labour rights following her being made redundant. ■

Chapter VI: Investigation, prosecution, procedural law and protective measures

Articles 49 to 58 – Investigations, prosecution, procedural law

Section 12a residence rules and ban on movement of women* refugees seeking protection

At DaMigra's annual conference, Dr Esma Çakır-Ceylan related the [case study of a woman* refugee who was exposed to retraumatisation and secondary victimisation](#).⁴⁶ A family (mother, father, 9-year-old son, 10-year-old daughter) fled to Germany two or three years ago and applied for asylum. Conflict and violence had featured in the marriage before but became entirely unbearable

once in Germany. The husband did not appreciate the woman* empowering herself swiftly (taking German and swimming classes, etc.). He kidnapped the children. As the offence was reported immediately, the husband and the children were arrested at the Hungarian-Serbian border. The children could only be brought back to Germany after five or six weeks and following tremendous efforts. In the aftermath, the wife wanted to live in a women*'s shelter in the neighbouring city out of fear of further violence. Owing to residence requirements (residence rule, *Wohnsitzauflage*)⁴⁷ she was not permitted to leave the city. She was required to move into an apartment in the same street, which meant that she was living just over a hundred yards from her husband's place. She was threatened by her husband, and had no financial means or protection at her disposal. A "decision on the emergency appeal for protection" from violence which had been submitted by the lawyer was only decided on

four weeks later. In these four weeks, the woman* was followed by her husband after an appointment with her lawyer and stabbed eight times. Thanks to her youthfulness and due to sheer luck, she survived. She has now relocated to a city outside the scope of her residence restrictions.

- To refugee women*, the residence rules as per section 12a of the Residence Act (AufenthG) are the greatest barrier preventing them from equal participation in community life. [In particular their accessing extant support schemes and shelters for women* threatened or affected by violence is limited or rendered entirely impossible.](#)
- Women* affected by violence staying close to their previous place of residence run the risk of the perpetrators finding out the address of the local shelter or by intercepting the women* at places they frequent, such as their children's schools. ▶

⁴⁶ DaMigra Annual Conference records (2019), Stop violence against ALL women*! Implement the Istanbul Convention: UNCONDITIONALLY! [„Gewalt gegen ALLE FRAUEN* stoppen! Istanbul-Konvention umsetzen: VORBEHALTLOS!“]: <https://www.damigra.de/wp-content/uploads/Dokumentation-der-DaMigra-Jahreskonferenz-2019.pdf> (from September 15, 2020) (in German).

⁴⁷ Section 12a of the Residence Act, an amendment added in 2016, contains restrictions in the freedom of movement of women* refugees guaranteed in art. 11 of the German Constitution (GG), art. 26 of the Geneva Convention on Refugees and art. 33 of the EU Asylum Qualification Directive. As per section 12a (1) of the Residence Act, anyone recognised as qualifying for protection are required to take up residence for three years starting from the date on which they are recognised in the State to which they were assigned for the processing of their asylum claim (legal residence requirement, sog. *Wohnsitzauflage*). Subsections 2, 3 and 4 of section 12a Residence Act enable the state to require refugees to keep their residence for up to three years in one particular locality (e.g. a given municipality or district) or to prevent them from taking up residence in other particular locations. These requirements can only be lifted under extremely stringent conditions. Section 12a (5) sentence 1 no 2 of the Residence Act for instance stipulates that refugees can be granted the right to relocate if this is necessary to prevent hardship which would mean "intolerable restrictions" (Hardship Cases, *Härtefallregelung* 'Härtefall'). Also see the chapter on asylum procedures.)

- Women* themselves are obviously best able to assess their own situation. With this in mind, they must be able to freely choose from existing shelters. (On stipulations under section 12a of the Residence Act [AufenthG] also refer to asylum procedure and shelters in this report.)

Role of migrant women*-led migrant women* (autonomous) organisations within investigation, prosecution, procedural law and protective measures; chapter VI, articles 49-58 of the IC

To complement the report proposed by the BIK (Istanbul Convention Alliance), this report in the following will address the role of migrant women*-led migrant* women* (autonomous) organisations.

Through formal and informal structures, migrant organisations make a substantial contribution day in, day out in the struggle against violence targeting women*. In article 9, the Istanbul Convention demands that “Parties shall recognize, encourage and support, at all levels, the work of relevant non-governmental organizations and of civil society active in combating violence against women* and establish effective co-operation with these organizations.”

In the survey on legislative and other measures to implement the Council of Europe Convention on preventing and combatting violence against women* and domestic violence (Istanbul Convention) GREVIO highlights that NGOs and civil society organisations must be allowed to assist and support women* in court (e.g. as an intervening partner) who have become victims of violence.

- Yet, the First Germany GREVIO State Report indicates in no way that NGOs and civil society organisations such as migrant women*-led migrant-women* (autonomous) organisations are included and involved in criminal investigations and court proceedings affecting refugee and migrant women*.

Police authorities and police administration, respectively, are in charge of investigations; they act in line with relevant State legislation on the work of police forces. There is cooperation at the State level e.g. in healthcare and asylum rights counselling, in integration and the fight against domestic violence targeting women*, mostly as round tables, alliances or projects. **Uniform rules across the States and Germany as a whole vis-à-vis collaboration between police services and migrant women* organisations in investigations do however not exist.**

- In the same vein, there are no rules on migrant women*-led migrant women* (autonomous) organisations participating in court proceedings. **Germany’s Criminal Procedure Code (Strafprozessordnung, StPO) makes no provisions for NGOs and civil society actors neither as supporters nor in any other role.**
- No attention is paid to the fact that migrant women*-led migrant women*(autonomous) organisations have particularly good access to women* and girls* affected by violence, that they because of their expertise can support victims, gain their trust and give them a voice.

Beyond this, migrant women*-led migrant women* (autonomous) organisations have country-specific, intimate social and cultural understanding, especially from the perspective of those affected, that can be leveraged as pertinent knowledge to support the courts. Through their excellent connection with the women* affected and by assisting them closely throughout the process, migrant women*-led migrant women* (autonomous) organisations can particularly provide useful information and essential contributions to the assessment to be carried out by the relevant authorities of danger for life and limb and the gravity

of the situation as well as the risk of repeated violence as demanded in article 51 of the Istanbul Convention. ■

Conclusion

General Observations / Demands:

People with a history of migration or those who are read as such do not have access to preventive measures, protective and prosecuting measures to the same degree in Germany. Women* who have been migrants or women* who are attributed a cultural sphere or identity based on their looks, or women* of uncertain residence status face constraints or are denied access to one of the four pillars of the Istanbul Convention.

Measures for prevention, protection and support, legal aid and counsel and the coordination of these areas differ considerably across Germany and are insufficient nation-wide (see BIK shadow report).

Funding for prevention, protection and support, legal aid and counsel differs considerably across Germany and is insufficient nation-wide (see BIK report).

Awareness-raising, education, training and CPD for relevant professions, preventive intervention programmes, but equally aftercare programmes have been rolled out to a degree insufficient to implement in the long term gender-sensitive and diversity-focused work for ALL women* and girls* affected by violence. In social work, there is very little activity based on the principle of having the right to know one's rights.

The German Federal Constitutional Court (Germany's Supreme Court, *Bundesverfassungsgericht*) has ruled that human dignity must not be qualified in the context of migration policy. With this in mind, asylum and residence rights measures and legislation as well as administrative and social rights guidelines associated with them, must be reviewed as a matter of urgency in light of the question if these can cause unreasonable restrictions of the rights of individuals.

DaMigra demands that

nation-wide, sustainable frameworks, measures and funding (as stipulated in the IC) be established for ALL women* – bar none and without discriminating against women* who have been migrants or refugees.

gender-aware proceedings leveraging diversity policies be binding across all governmental and non-governmental institutions (training and CPD) and adequate operating and monitoring processes be developed and implemented. For instance, individually tailoring support programmes could be one way to respond to this intersectional task crossing the boundaries of gender and cultural awareness: addresses, activities and measures specifically tailored to the needs and specific requirements of the individual in question.

best practice cases and projects be implemented and developed more consistently.

best practice cases and projects as well as temporary, separately funded pilot projects as they are listed in the First Germany GREVIO State Report published by the Federal Ministry be expanded on, financed sustainably and evaluated.

prevention, protection and support measures, legal aid and counsel as well as the coordination of these areas be implemented in a Germany-wide masterplan.

housing in women*'s shelters be ensured: when relocating to a shelter, financing of the stay and social services must be ensured without delay and effectively. Decisions as to whether a woman* should be entitled to seek protection at a shelter must not be made at the discretion of immigration authorities. Safeguarding of physical and mental integrity is a human right that applies to everyone. Gaps in provision and protection must be closed as swiftly as possible.

comprehensive healthcare and other necessary social services for women* be guaranteed. These must not be at the discretion of the respective immigration authorities or even individual staff within those bodies. The Asylum Seekers'

Benefits Act (*Asylbewerberleistungsgesetz*) accounts for the bare necessities, which is why women* refugees must be able to claim benefits as per the 12th book of the Social Code (*Book XII Sozialgesetzbuch*) just as everyone else.

reservations pertaining to art. 59 (2) and (3) be withdrawn to ensure comprehensive protection for all women* living in Germany and experiencing violence, regardless of the residence permit they might hold.

conjugal cohabitation regulations as per section 31 (1) sentence 1 no 1 of the Residence Act (*AufenthG*) be withdrawn, in order to avoid disproportionately disadvantaging women* who have been migrants or refugees, particularly if they have been experiencing violence.

residence restrictions as per section 12a of the Residence Act (*AufenthG*) be withdrawn, in order to avoid disproportionately disadvantaging women* who have been migrants or refugees, particularly if they have been experiencing violence. Those affected by violence are able to assess their own situation themselves and choose their own domicile.

violence prevention legislation be prioritised over residence rights requirements, such as residence restrictions or residence obligations, and their application be mandatory.

article 61 of the IC be implemented consistently: non-refoulement / deportation for women* to war or crisis zones and countries in which their rights as women* are not safeguarded.

the right to residence permit on humanitarian grounds be made possible if the physical and mental integrity of a migrant or refugee woman* has come under threat.

specialist support services (Art. 22 of the IC) specifically for women* as well as childcare (includes specialist support services for children) and language services be financed, established and strengthened.

the work of women* migrant organisations in the preventing and combating against violence targeting women* and domestic violence at the local, regional, and national level be recognised and promoted, including adequate funding.

Germany-wide uniform regulations be determined on the inclusion

of women* migrant organisations in criminal investigation and court proceedings in cases in which those violated have been refugees or migrants. This inclusion can be providing information, assistance throughout the proceedings, the right to submit statements, the right to provide assistance.

coordinated exchange be set up between women* migrant organisations with other women*'s advice bodies as well as investigating and prosecuting authorities to analyse the level of danger or risk (art. 51 of the IC) of repeated violence and to ensure preventive measures to protect the women*, children and youth affected.

a fund for compensation and protection be initiated, particularly for healthcare and social services (as per art. 30 of the IC).

Recommendations:

It is necessary to verify if measures in place for migrant and refugee women* are sufficient, in order to ensure that women* who have been affected by female genital mutilation (FGM), rape, forced marriages, cyberviolence and other forms of gender-specific violence can claim their right to asylum and their civil rights.

It is necessary to verify if additional funding required to implement the Istanbul Convention for migrant and refugee women* is available.

The forms in which multiple discrimination and structural violence affects migrant and refugee women* should be assessed across all governmental and non-governmental institutions working to prevent, protect and prosecute. This includes AnKER centres, shared accommodation and decentralised spaces in which people are amenable to asylum and residence legislation.

In light of art. 60 of the IC – gender-based asylum claims – we recommend the Federal Office for Migration and Refugees (BAMF) include the following criteria for data gathering: experience of violence which might serve as grounds for asylum, categorised in line with needs and concerns of migrant and refugee women* and measured against the practice of asylum proceedings.

BAMF and BMFSFJ should assess the extent to which reservations regarding art. 59 (2) and (3) of the IC entail substantial disadvantaging of migrant and refugee women* affected by violence. We recommend independent scientific studies into the needs indicated above and the adversities of the asylum process.

Similarly, an independent study remains to be commissioned investigating the extent to which the following cases constitute unreasonable hardship for women* affected by gender-based violence:

- refusal of residence permits on humanitarian grounds for women* affected by violence,
- issuing of permissions to remain until deported (*Duldung*) which are not full residence documents,

- non-repeal of conjugal cohabitation regulations as per section 31 (1) sentence 1 no 1 of the Residence Act (AufenthG),
- non-repeal of residence requirements in a certain location as per section 12a of the Residence Act (AufenthG),
- deportation without due review processes (see Aytan's case above).

By extension:

A legal review must be conducted into whether residence requirements as per section 12a of the Residence Act (AufenthG), are reasonable in cases of sexual, sexualised and domestic violence, particularly in view of articles 22-23, 25, 31-32, 37, 50-53, 56, 59-61 of the IC among others.

A legal review must be conducted into whether conjugal cohabitation regulations as per section 31 (1) sentence 1 no 1 of the Residence Act (AufenthG) are reasonable and appropriate in cases of sexual, sexualised and domestic violence, particularly in view of articles 59 and 61 of the IC.

With regard to investigation, prosecution, procedural law and protective measures a review must be conducted into whether processes within asylum and residence legislation in cases of sexual, sexualised or domestic violence “are carried out without undue delay” (art. 49 [1] IC) and “in conformity with the fundamental principles of human rights” (art. 49 [2] IC).

This includes assessment and monitoring of

- the relevant authorities (immigration authorities (*Ausländerbehörde*), youth welfare offices, (*Jugendämter*), etc.) in view of excessive requirements on the furnishing of evidence for gender-based violence;
- timelines from filing an application to decision;
- hardship cases and the bodies involved (hardship commissions, committees on petition);
- the implementation of legally binding and effective screening throughout the entire asylum process for refugees requiring particular protection (after implementation, *nota bene*); ▶

- the processes to recognise doctor's certificates, expert reports and statements by advise bodies and psychotherapists and psychosocial services within the asylum process (assessment of claims put forward by those affected);
- the training and CPD for staff from decision-maker to case-worker level and their subject-area expertise as well as their ability to work with cases of trauma to avoid retraumatisation and secondary victimisation;
- the incorporation of experience and expertise of women* migrant organisations in criminal investigations and legal proceedings (hearings etc.).

For all processes migrant and refugee women* have to endure necessarily but within a reasonable scope, a review must be made to investigate if

- independent and confidential counselling on rights from EU guidelines (IC etc.) is guaranteed from day one;
- needs and grounds for refuge can be presented and deemed adequately and if appropriate care for the affected can be ensured;

- multilingual staff with sufficient training in psychology, diversity and gender matters – especially “independent and competent interpreters” (art. 56 [1] h IC) is being made available;
- expert advice bodies are included and their statements recognised, particularly if the expertise of women* migrant organisations is considered in criminal investigation and legal proceedings;
- barriers and obstacles restrict those affected, and if yes, what these are, as well as if access to relevant organisations and support through their services is available;
- independent confiding and complaint bodies are being made available for people in asylum proceedings and in asylum accommodation;
- the duration of stays of women* in initial reception centres and shared accommodation and protective institutions such as women*'s shelters is required;
- a sufficient amount of accommodation is available exclusively for women* which meet their needs and protect their privacy, such as

separate apartments, communal housing or shelters are provided;

- sufficient healthcare and material provision is ensured;
- right of associations to initiate proceedings must be claimed;
- social funds for people affected is to be set up.

The Federal Government should take care to expand and specify guidelines and legal foundations to ensure gender can indeed be recognised as grounds for asylum and for all grounds for refuge to be read in a gender-aware way. This needs to be supported through trainings and CPD of higher-level staff and decision-makers at the BAMF.

For people in particular need of protection, it must be ensured that people / women* from so-called ‘safe countries’ are able to present and claim gender-specific grounds for asylum in fast-track asylum proceedings.

Untangling asylum proceedings and longer independent counselling in the run-up to the hearing: To ensure gender-specific grounds for asylum can be claimed, those

affected need untangled asylum proceedings. Time is needed to make ample use of independent, gender-specific counselling and to provide women* with sufficient information prior to their BAMF hearing.

As per the *EU Reception Directive* (2013/33/EU) grounds for particular need for protection must potentially be identified at all stages of the asylum process. Accordingly, applicants must be able to present these grounds at any time during the process. This is all the more salient in the absence of institutionalised identification processes. Current practices render gender-based granting of protection impossible in many cases.

DaMigra urges the relevant bodies to conduct a serious, comprehensive, sustainable risk analysis which constitutes risk assessment and risk management in the sense of art. 51 IC. Protection orders or injunctions should not be decided or based on a standard approach. The specific situation of the woman* affected must be at the heart of the assessment. The period of protection for the refugee woman* should be appropriate regarding individual needs to ensure effective protection and to support women* better. ▶

Human trafficking, also to the end of sexual exploitation, as well as other gender-based reasons for persecution must be recognised fully as grounds for asylum and protection. Those affected must be granted adequate provisions regardless of their residence status.

Within the Dublin procedure, Germany must make use of its right to act as a principle as per art. 17 of the Dublin III Regulation more offensively and frequently. This must be ensured via the respective government instructions vis-à-vis the application of the Dublin III Regulation (see chapter on Article 61 above).

With regard to the implementation of article 61, systemic shortcomings in other European countries must be taken seriously, and named and treated as such. Those who are in particular need of protection, e.g. victims of human trafficking, women* who travel alone, are a single parent or are pregnant should only be deported to other European countries if the receiving accommodation can fully ensure medical and psychosocial provision to protect them from revictimization.

An independent monitoring body should be set up which is to be tasked with monitoring the implementation of the Istanbul Convention in the context of groups requiring particular levels of protection. It's necessary to be comprehensive in the sense that monitoring must encompass discriminatory, invasive, degrading or racist tests for LGBTIQ refugees and better quality of the asylum process.

It's necessary to conduct separate gathering of data and studies as per article 11 on needs and concerns of migrant and refugee women* and LGBTIQ people vis-à-vis gender-based violence.

Women* migrant organisations are reliable points of contact in Germany as they provide essential services towards the social, financial and cultural participation of migrant and refugee women* in the community. This is why a review is needed into whether funding and measures of violence protection, counselling and prevention are adequate in light of demand.

Measures, awareness-raising, education and access to information for migrant and refugee women* must be improved – in several languages and recognising the particular needs of illiterate and elder women* and women* with disabilities.

Awareness and education on multiple discrimination among majority population must be improved.

Women*'s rights are
human rights!
Everywhere, at all times,
UNCONDITIONALLY. ■

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Acknowledgments

We would like to express our gratitude to the expert round table for the inspirational conversations and discussions at our meetings. We owe all of you who have worked towards these texts and information a debt of gratitude. We would like to thank all other perennial supporters of our projects.

Round Table:

Duygu Bräuer, Dr. Hayriye Yerlikaya-Manzel, Ingrid Süße, Ivana Domazet, Jana Michael, Dr. Lisa Mazzi, Lourdes Martinez, Magdalena Benavente, Marion Böker, Olga Paul, Prof. Dr. Zeynep Kivılcım, Rosa Logar, Semsı Bilgi, Simone Eiler, Vicky Otto.

Imprint

DaMigra e. V.

Dachverband der
Migrantinnen*organisationen

Am Sudhaus 2 / 12053 Berlin
info@damigra.de / www.damigra.de



Text / Comments

Atmaca, Delal Dr. (v. i. S. d. P.)
Artan, Elif
Benavente, Magdalena
Deffner, Helen
Domazet, Ivana
Eiler, Simone
Graovac, Tajana
Huynh, Ngoc Ha
Müller, Laura
Otto, Vicky
Süße, Ingrid
Thies, Nicole

Editing / Proofreading

Atmaca, Delal Dr. (v. i. S. d. P.)
Artan, Elif
Graovac, Tajana
Otto, Vicky
Thies, Nicole

Date of publication

December 2020

