



Bündnis
Istanbul-Konvention

Alternative Report

on the Implementation of
the Council of Europe Convention
on Preventing and Combating
Violence Against Women and
Domestic Violence

German Istanbul Convention Alliance

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Severability clause

The statements and claims made within this report are upheld by the NGOs that support this report according to their respective areas of responsibility and objectives. The NGOs involved are united by their intention of making a joint report from a civil society perspective. Nevertheless, not all of the NGOs who are involved can support every assessment and recommendation made here.

List of Abbreviations

AGG	General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz)
AsylIG	Asylum Act (Asylgesetz)
AufenthG	Residence Act (Aufenthaltsgesetz)
BAMF	Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge)
BGH	Federal Court of Justice (Bundesgerichtshof)
BIK	German Istanbul Convention Alliance (Bündnis Istanbul-Konvention)
BMAS	Federal Ministry of Labour and Social Affairs (Bundesministerium für Arbeit und Soziales)
BMBF	Federal Ministry of Education and Research (Bundesministerium für Bildung und Forschung)
BMEL	Federal Ministry of Food and Agriculture (Bundesministerium für Ernährung und Landwirtschaft)
BMF	Federal Ministry of Finance (Bundesfinanzministerium)
BMFSFJ	Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend)
BMG	Federal Ministry of Health (Bundesministerium für Gesundheit)
BMI	Federal Ministry of the Interior, Building and Community (Bundesministerium des Innern, für Bau und Heimat)
BMJV	Federal Ministry of Justice and Consumer Protection (Bundesministerium der Justiz und für Verbraucherschutz)
BMVg	Federal Ministry of Defence (Bundesministerium der Verteidigung)
BMVI	Federal Ministry of Transport and Digital Infrastructure (Bundesministerium für Verkehr und digitale Infrastruktur)
BMWi	Federal Ministry for Economic Affairs and Energy (Bundesministerium für Wirtschaft und Energie)
BMZ	Federal Ministry for Economic Cooperation and Development (Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung)
BVerfG	Federal Constitutional Court (Bundesverfassungsgericht)
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
DIMR	German Institute for Human Rights (Deutsches Institut für Menschenrechte)
ECHR	European Convention on Human Rights
FamFG	Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit)
FGM	Female Genital Mutilation
GBV	Gender-based violence
GewSchG	Protection against Violence Act (Gewaltschutzgesetz)
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
IC	Istanbul Convention
Länder	Germany's sixteen states
LBTI*	Lesbian, Bisexual, Trans*, Intersex*
LKA/LKÄ	Länder Criminal Investigation Authorities (Landeskriminalamt/Landeskriminalämter)
NGO	Non-Governmental Organisation
OEG	Crime Victims Compensation Act (Opferentschädigungsgesetz)
PKS	Police crime statistics (Polizeiliche Kriminalstatistik)
RKI	Robert Koch Institute (Robert Koch-Institut)
SGB	Social Security Code (Sozialgesetzbuch)
SGBV	Sexual and Gender-Based Violence
StGB	Criminal Code (Strafgesetzbuch)
StPO	Code of Criminal Procedure (Strafprozessordnung)
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
WHO	World Health Organisation

Preliminary remarks

In 2018, leading women's rights organisations, federal associations and experts specialising in violence against women and girls in Germany, all joined forces under the German Istanbul Convention Alliance. The aim of the Alliance is to support and promote the implementation of the Istanbul Convention in Germany and to raise public awareness of the Convention. This includes jointly providing Alternative Reports to GREVIO.

The new German Istanbul Convention Alliance is seeking to increase its membership in order to ensure that particularly vulnerable groups can be adequately represented and that their voices are heard. Based on the membership structure in place while this report has been prepared, the scope of the analysis is inevitably limited. The Alliance is aware that it cannot do justice to the numerous issues, especially given their complexity and intersectionality (e. g. in relation to sex workers).

Prevalence of violence against women and girls in Germany

The high incidence of violence against women and girls is documented in a representative study from 2004¹: 40% of the women interviewed stated that they had experienced physical and/or sexual violence since the age of 16. Every fourth woman in Germany has experienced violence at the hands of a current or former partner (domestic violence). Girls are also strongly affected by violence; by way of example, they are up to three times more likely to be victims of sexual abuse than boys (15%–30%), with this mainly occurring in a family context. In March 2014, the European Union Agency for Fundamental Rights published a study on violence against women², which showed similar results. In a study on the situation of women with disabilities undertaken in 2011³, almost half of the respondents stated that they had experienced sexualised violence during their lives. Women with disabilities also experience physical violence during adulthood almost twice as often as non-disabled women. Trans people and non-binary people are also very much affected by violence. Currently available studies on gender-based violence do not take these gender identities into account, nor do they ask about trans identities.

Women who are particularly vulnerable as a result of physical or psychological impairments, their profession, social status, origin, ethnic or racial attributions, sexual identity or orientation, nationality or residence status are – as illustrated by the following remarks – at the same time particularly poorly protected in Germany.

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- 1 Schröttle, Monika & Ursula Müller 2004: Lebenssituation, Sicherheit und Gesundheit von Frauen in Deutschland. Eine repräsentative Untersuchung zu Gewalt gegen Frauen in Deutschland, [online] <https://www.bmfsfj.de/blob/jump/84328/langfassung-studie-frauen-teil-eins-data.pdf> (accessed on 09.09.2020).
 - 2 Agentur der Europäischen Union für Grundrechte (FRA) 2014: Gewalt gegen Frauen: eine EU-weite Erhebung. http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-factsheet_de.pdf (accessed on 09.09.2020).
 - 3 Schröttle, Monika et al. 2013: Lebenssituation und Belastungen von Frauen mit Beeinträchtigungen und Behinderungen in Deutschland, Hrsg. BMFSFJ, [online] <https://www.bmfsfj.de/blob/jump/94206/lebenssituation-und-belastungen-von-frauen-mit-behinderungen-langfassung-ergebnisse-der-quantitativen-befragung-data.pdf> (accessed on 10.09.2020).

The political system and its impact on protection against GBV in Germany

The system providing protection against violence and assistance in Germany is largely organised on the federal level.

The different responsibilities of Federal Government, German Länder (states) and municipalities mean that the responsibilities of these actors are often shifted between political levels. The different responsibilities of Federal Government, German Länder (states) and municipalities mean that the responsibilities of these actors are often shifted between political levels. For this reason, protection against violence in Germany is structured very differently from region to region. German Länder and municipalities are not coordinated when they draw up action plans and they have different priorities.

Concept of “Domestic Violence”

The term “domestic violence” is used in the provisions and articles of the Istanbul Convention. That is why the explanatory sections of the report reference this term alongside “intimate partner violence”, “gender-based violence”, etc.

In general, the term “domestic violence” should be reconsidered from a critical viewpoint since it obscures, neutralises and does not even name the underlying issue of violence against women. The term “domestic violence” has now been established across institutions, yet it does not take into account the socio-political dimension of violence against women.

Explanatory notes on spelling in the German-language version of the report

Instead of the so-called “generic masculine” form being used, the Alliance Istanbul Convention uses the gender star (*) in the middle of the German word to overcome gender stereotypes and take into account multiple gender identities.

In the German language text version of the report, only the masculine form of “perpetrator” is used in order that it is linguistically clear that an overwhelming majority of perpetrators are male. It should also be noted at this point that female perpetrators also use gender-based violence against women and girls, especially sexualised violence against girls.

CHAPTER I

Purpose, definitions,
equality and non-discrimination,
general obligations

Article 3 f

Definition of terms

Requirements

Article 3 f states that the term “women” includes girls who are younger than 18 years of age.

Challenges

In the explanatory memorandum to the Act that incorporates the Istanbul Convention into German law, the Federal Government explicitly notes that the above quoted inclusive definition is necessary because “violence committed against persons of the female sex is not subject to any age limit”⁴. An age limit for the implementation of all measures is thereby explicitly excluded.

The reality, however, is different. The inclusive definition is not put into practice and consequently neither the needs, the social circumstances, nor the special vulnerability of girls are being addressed; not naming them rather renders them invisible.

Time and again we have commented that the Istanbul Convention has not been taken account of among child and youth welfare services and that there appears to be no sense of responsibility for implementing it. In addition, the definition stated in Article 3f is hardly known. Female minors cannot be subsumed under the term women because legally speaking, they are in a different position from adult women: minors often do not have the possibility, therefore, to take advantage of any help unless their parents or the child and youth welfare office give their consent to it. They also cannot go to a girls’ refuge on their own, since this requires the consent of the child and youth welfare office. In rape situations, girls who are capable of giving consent cannot safely expect that they will receive confidential documentation and securing of evidence independent of parents or guardians. Migrant or refugee girls have particular difficulties in accessing counselling and shelters. Among other issues, there is a lack of multilingual, diversity-sensitive counselling, and regular data collection on migration-related issues. Uncertainties related to their residence permits aggravate the situation for the girls in question.

Since child and youth welfare services are responsible for minor girls in Germany, victim protection institutions for girls are not often taken into account when looking at (support) infrastructures for women. In 2019/20, for example, the state government of North Rhine-Westphalia carried out a “state-wide needs analysis on the adequacy of women’s support infrastructure”⁵. Shelters for girls experiencing violence were not included in this study. It is therefore not possible to identify where there might be any gaps in the (support) infrastructure for girls.

Measures to combat violence against women and thereby to support the implementation of the Istanbul Convention usually fall under the responsibility of gender equality departments at federal and state level, while measures put in place to assist girls – if they exist – become the responsibility of children’s and youth departments. There is no cooperation between the various departments to work in a coordinated manner to implement the Istanbul Convention.

4 Federal Ministry for Family Affairs, Senior Citizens, Women and Youth 2017: Gesetz zu dem Übereinkommen des Europarats vom 11. Mai 2011 zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt [Law on the Council of Europe Convention of 11 May 2011 on the Prevention and Combating of Violence against Women and Domestic Violence] Bundesgesetzblatt Jahrgang 2017, Teil II Nr. 19, Bonn, p. 49. [Bundesgesetzblatt 2017 Edition, Part II No. 19, Bonn, p. 49.]

5 Federal Ministry for Family Affairs, Senior Citizens, Women and Youth 2020: GREVIO – Erster Staatenbericht der Bundesrepublik Deutschland, Anhang Länderbeiträge, p. 39.

In the implementation measures of the Istanbul Convention, minors are primarily taken into consideration within the context of child protection activities, e.g., the protection of children in connection with domestic violence against women. These measures are not gender-specific and do not focus on the specific needs of girls and boys. Although girls are seen as a target group in specific thematic areas such as genital mutilation, there is no consistent approach to important chapters of the Convention, such as those covering sexualised violence, and in particular how that relates to the context of childhood and adolescence.

Our experience shows that if girls are not specifically mentioned, they are not taken into consideration.

Recommendations

We recommend the following to the Federal Government:

- » For future national reports, provide information on which of the measures have explicitly reached girls and also which programmes are targeted at girls who are affected by violence.
- » Establish a collaborative working process between the departments for equality and for child/youth policy in order to implement the Istanbul Convention.

Article 4

Fundamental rights, equality and non-discrimination

Requirements

With Article 4, the Federal Government commits itself to protecting and promoting the right of women to live a life that is free from violence and discrimination. In this regard, special attention needs to be directed towards women and girls who experience multiple forms of discrimination.

Challenges

40 years after the adoption of the UN Convention on the Elimination of All Forms of Discrimination against Women and despite significant progress, the right to equality for women and girls has still not been fully realized in Germany⁶. Gender-based discrimination manifests and reproduces itself for example through gender-stereotyped education, unequal participation in the labour market or unequal pay, but also through violence against women and girls. The high incidence of violence against women and girls in Germany is confirmed by representative studies^{7 8}.

Violence affecting particularly vulnerable groups

In a study on the living conditions of women with disabilities undertaken in 2011,⁹ almost half of the respondents stated that they had experienced sexualised violence during their lives. Women with disabilities experience physical violence during adulthood almost twice as often as non-disabled women. However, when it comes to violence protection measures, statistical surveys, etc., a consistent consideration of this group is lacking. In addition, trans-gender people and non-binary people are also very much affected by violence. Current studies on gender-based violence do not take these gender identities into account, nor do they include enough respondents who identify as trans in order to produce meaningful results on their exposure to violence.

Women who are particularly vulnerable as a result of physical or psychological impairments, their profession, social status, origin, ethnic or racial attributions, sexual identity or orientation, nationality or residence status are, at the same time, particularly poorly protected in Germany.

6 CEDAW-Allianz Deutschland 2019: Recht auf Gleichstellung, [online] https://www.frauenrat.de/wp-content/uploads/2019/12/Webversion_A5_191121_AlternativBericht.pdf (accessed on 30.9.2020).

7 Schröttle, Monika & Ursula Müller 2004: Lebenssituation, Sicherheit und Gesundheit von Frauen in Deutschland. Eine repräsentative Untersuchung zu Gewalt gegen Frauen in Deutschland, [online] <https://www.bmfsfj.de/blob/jump/84328/langfassung-studie-frauen-teil-eins-data.pdf> (accessed on 9.9.2020).

8 Agentur der Europäischen Union für Grundrechte (FRA) 2014: Gewalt gegen Frauen: eine EU-weite Erhebung. http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-factsheet_de.pdf (accessed on 9.9.2020).

9 Schröttle, Monika & Hornberg, Claudia et al. 2014: Lebenssituation und Belastungen von Frauen mit Beeinträchtigungen und Behinderungen in Deutschland, [online] <https://www.bmfsfj.de/blob/jump/94206/lebenssituation-und-belastungen-von-frauen-mit-behinderungen-langfassung-ergebnisse-der-quantitativen-befragung-data.pdf> (accessed on 10.9.2020).

No access for homeless people to shelters offering protection against violence

Homeless women and women in a housing emergency often suffer from multiple problems, and therefore need appropriate support services. They are not able to access specific services for women affected by violence. As women who have experienced violence and who are in a housing emergency situation often suffer from multiple problems, including mental illness, substance abuse, poverty, gender-specific disadvantages and a lack of personal, material and social resources, what they need is low-threshold access to support systems. Women's shelters and counselling services are often not adequately equipped for this purpose. Services for homeless people do often not provide enough safe spaces for women survivors of violence. Women who have experienced violence in a housing emergency situation experience many different forms of discrimination.

There is also a lack of low-threshold, gender-specific support services for girls who are living on the streets or in unprotected shelters.

Women who have experienced violence, humiliation and discrimination in their past often find that they continue to experience this in a housing emergency situation. In particular, homeless women who are living on the streets or in regulatory shelters are vulnerable and they are at risk of, and affected by, sexual abuse and violence.¹⁰ When they request support from the authorities and the state, they are repeatedly confronted with situations that are derogatory and demoralise them. Advocating for the rights and integration of affected women is the responsibility of society as a whole, especially of politicians and the public administration, as well as that of providers and institutions within the support system.¹¹

Lack of gender-sensitive and trauma-sensitive measures for refugee women

Over the past years, an increasingly restrictive asylum policy, which is oriented towards deporting refugees and preventing migration, has contributed to the reality that refugee women in Germany are impacted by various forms of multiple discrimination.

Gender- and trauma-sensitive measures, in addition to anti-racist measures, are seldom implemented in current asylum policy. Consequently, refugee women cannot benefit from violence protection measures available to women in Germany. A current example of how refugee women are blatantly treated unequally is the lack of protection provided for refugee women in refugee camps. Due to residency restrictions that oblige refugees to stay in a certain area or live in refugee camps, they are not able to protect themselves from contracting COVID-19, nor can they protect themselves from gender-based violence¹². While the German Federal Government acknowledges the fact that lockdown measures in Germany have resulted in an increase in domestic violence against women, there are no concurrent protective measures designed for refugee women¹³, even though they are hugely at threat from domestic and sexual violence in the camps¹⁴.

10 Bundesarbeitsgemeinschaft Wohnungslosenhilfe e. V. 2019: Sicherstellung bedarfsgerechter Hilfen für Frauen in einer Wohnungsnotfallsituation, position paper by BAG W, [online] https://www.bagw.de/de/publikationen/pos-pap/postion_frauen.html (accessed on 23.10.2020).

11 Compare to Rosenke, Werena et al. 2017: Frauen in Handbuch der Hilfen in Wohnungsnotfällen, Entwicklung lokaler Hilfesysteme und lebenslagenbezogener Hilfeansätze, im Auftrag des Ministeriums für Arbeit, Gesundheit und Soziales des Landes Nordrhein-Westfalen, BAG Wohnungslosenhilfe e. V., p. 302 et seq.

12 Centre of Excellence for Public Health COVID 19 2020: SARS-CoV-2 in Aufnahmeeinrichtungen und Gemeinschaftsunterkünften für Geflüchtete. Epidemiologische und normativ-rechtliche Aspekte, [online] https://www.public-health-covid19.de/images/2020/Ergebnisse/FactSheet_PHNetwork-Covid19_Aufnahmeeinrichtungen_v1_inkl_ANNEX.pdf (accessed on 15.10.2020).

13 BMFSFJ press release: Bundesministerin Giffey verabredet mit den Bundesländern konkrete Hilfsmaßnahmen für Frauen in der Corona-Krise, 27.03.2020, [online] <https://www.bmfsfj.de/bmfsfj/aktuelles/presse/pressemitteilungen/bundesministerin-giffey-verabredet-mit-den-bundeslaendern-konkrete-hilfsmassnahmen-fuer-frauen-in-der-corona-krise/154100> (accessed on 15.10.2020).

14 Rabe, Heike 2015: Effektiver Schutz vor geschlechtsspezifischer Gewalt – auch in Flüchtlingsunterkünften, in: Policy Paper No. 32, Deutsches Institut für Menschenrechte (Ed.), [online]

Structural discrimination against LGBTI* people

Violence against women and domestic violence does not only affect cisgender women in heterosexual relationships, but also LGBTI*, who also frequently experience multiple discrimination. Figures on intimate partner violence and domestic violence, however, are predominantly collected in a heteronormative manner. There is not sufficient data on how often LGBTI* are victims of domestic violence, whether that be at the hands of their partner or their own family (see challenges to Article 11).

The support system and with its counselling and support services does not usually target LGBTI* specifically. For example, the explanatory report on the Istanbul Convention also notes that “gay, lesbian and bisexual victims of domestic violence are often excluded from support services because of their sexual orientation.”¹⁵ “Certain groups of individuals may also experience discrimination on the basis of their gender identity, which in simple terms means that the gender they identify with is not in conformity with the sex assigned to them at birth.”¹⁶ This particularly affects trans* and inter* people.

Violence against LGBTI* as gender-based violence

LGBTI* people are often victims of hate crime in the public sphere.¹⁷ Perpetrators also sometimes use sexual violence to “correct” the sexuality of victims.¹⁸ Even today in Germany, it can still be dangerous to be recognised as LGBTI* or to be mistaken as being LGBTI*. Gender-based violence is e.g. directed against women who are not afraid to openly show that their appearance, demeanour or non-heteronormative partnerships go against prevailing norms and conventions.¹⁹

Article 4 of the Istanbul Convention obliges the Parties involved to take measures to implement the Convention in accordance with the guiding principle of non-discrimination, and to specifically consider the needs of vulnerable people and those people affected by multiple discrimination – it explicitly includes LGBTI* people.

Recommendations

We recommend the following to the Federal Government:

- » Ensure that all measures to protect women from violence are made accessible to all target groups, including refugee women, women with disabilities, LGBTI*, girls, while also taking into account their specific needs.
- » Take a firm stand against the discrimination and disadvantages that homeless women face: appropriate solutions are needed to overcome structural violence.
- » Change German asylum policy to ensure that it is gender-sensitive, trauma-sensitive and anti-racist.

https://www.ssoar.info/ssoar/bitstream/handle/document/44425/ssoar-2015-rabe-Effektiver_Schutz_vor_geschlechtsspezifischer_.pdf?sequence=1&isAllowed=y&lnkname=ssoar-2015-rabe-Effektiver_Schutz_vor_geschlechtsspezifischer_.pdf (accessed on 15.10.2020).

15 Europarat 2011: Übereinkommen des Europarats zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt und erläuternder Bericht, Council of Europe Treaty Series, No. 210, Istanbul 2011 para. 53.

16 Ibid.

17 European Agency for Fundamental Human Rights 2020: A long way to go for LGBTI equality, [online] <https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results> (accessed on 14.12.2020).

18 LSVD 2017: UN-Übereinkommen zur Beseitigung jeder Form der Diskriminierung der Frau (CEDAW): LSVD-Stellungnahme zum CEDAW-Staatenbericht der Bundesregierung, [online] <https://www.lsvd.de/de/ct/543-UN-Uebereinkommen-zur-Beseitigung-jeder-Form-der-Diskriminierung-der-Frau-CEDAW> (accessed on 14.12.2020).

19 LSVD 2018: Internationaler Tag gegen Gewalt an Frauen: Lesben- und transfeindliche Gewalt ist geschlechtsspezifische Gewalt, Pressemitteilung vom 24.11.2018, [online] <https://www.lsvd.de/de/ct/545-Internationaler-Tag-gegen-Gewalt-an-Frauen> (accessed on 14.12.2020).

We recommend the following to the Länder and municipalities:

- » Establish and finance low-threshold services such as women's cafés, counselling centres, housing assistance and ensure that they implement gender-sensitive working methods that also take into account the needs of particularly vulnerable groups. For girls who are experiencing a housing emergency, for example, gender-specific services under the child and youth welfare framework are required.
- » Develop and implement violence protection standards in public institutions such as public authorities, regulatory accommodation and public hospitals, as well as in support services and institutions for persons with disabilities. When it comes to institutions for persons with disabilities, compulsory training for staff and users is necessary.
- » Employees working in public authorities and the judiciary should undertake compulsory training on gender-based violence and the needs of particularly vulnerable groups, such as women facing a housing emergency, refugee women, LGBTI* people and sex workers.

Article 6

Gender-sensitive policies

Requirements

The Federal Republic of Germany undertakes to implement the Istanbul Convention with a gender perspective and to promote gender equality policies as well as women's rights.

Challenges

Increasing gender-blindness of measures against domestic violence

Both at a federal level and that of the Länder and municipalities, it can be seen that domestic violence against men is being increasingly equalised with that of violence against women in violence protection measures. The expansion of support structures for men is justified, among other things, by pointing to the fact that intimate-partner violence against men is socially tabooed and therefore presumably greatly underestimated. Within this context, it is often noted that police crime statistics on intimate partner violence (PKA) regularly report the proportion of male victims to be around 15-20%²⁰. However, firstly, this statistic overlooks the fact that male children are also included in the list of victims. Secondly, there is no differentiation made as to whether this involves a counter complaint by a male perpetrator of violence, an action that is often advised by lawyers if charges are filed.

Although the Istanbul Convention states that "women and girls are exposed to a higher risk of gender-based violence than men (...), that domestic violence affects women disproportionately, and that men may also be victims of domestic violence" (IC Preamble) and despite the fact that it only makes a recommendation, for example, for the number of places in women's shelters (Explanation 135 IC), gender-blind violence protection measures sometimes make explicit reference to the Convention²¹. There are Länder in Germany, where counselling centres to support survivors of domestic and sexualised violence must be explicitly open to all genders. The BMFSFJ's "Stronger than Violence" campaign also applies to all genders, which therefore implies an equivalence regarding forms of violence.

It is only right that there should not be a social taboo surrounding the fact that women can be violent, especially with regard to sexualised violence against children and young people, nor should experience of domestic violence by men be a social taboo – all genders must have access to protection and support. Nevertheless, it cannot be ignored that when looking at domestic violence, "the forms, severity, context and consequences of violence experienced by men and women in couple relationships" are considerably different²². It has been argued, for example, that "men and women

20 For an undifferentiated interpretation of PKA see, e.g., Ministerium für Heimat, Kommunales, Bau und Gleichstellung in Nordrhein-Westfalen 2019: Ministerin Scharrenbach: Landesregierung baut Angebote zur Unterstützung für von Gewalt betroffene Männer auf, [online] <https://www.mhkgb.nrw/ministerin-scharrenbach-landesregierung-baut-angebote-zur-unterstuetzung-fuer-von-gewalt-betroffene> (accessed on 9.10.2020); see also Bayerisches Staatsministerium für Familie, Arbeit und Soziales o.D.: Bayern Gegen Gewalt: <https://bayern-gegen-gewalt.de/hilfe-bei-gewalt/#sec2> (accessed on 25.10.2020).

21 O.A. Welt.de 2020: Ministerin kündigt weitere Pläne für Frauenschutzhäuser an, 30.9.2020, [online] <https://www.welt.de/regionales/sachsen/article216925230/Ministerin-kuendigt-weitere-Plaene-fuer-Frauenschutzhaeuser-an.html> (accessed on 10.10.2020).

22 Schröttle, Monika 2010: Kritische Anmerkungen zur These der Gendersymmetrie bei Gewalt in Paarbeziehungen, in GENDER – Zeitschrift für Geschlecht, Kultur und Gesellschaft, 2 (2010) 1, p. 135.

should be perceived equally as victims and perpetrators”²³, but that does not correspond to the gender-sensitive perspective on violence as set out in the Istanbul Convention. A perspective on violence that does not take into account gender power relations, fails to recognise that violence against women is linked to control of women. We need to overcome both – gender-based violence and unequal power-relations based on gender.

Apart from being affected by violence to a different degree, women can may find it more difficult to break from violent relationships due to gender hierarchies and structural inequalities. A woman who works part-time because she attends to her young children, for example, might fall into poverty if she separates from her violent partner²⁴. In addition, the German reservation against Article 59, paragraphs 2 and 3 of the IC also means that migrants who do not have individual residence permits independent of the marriage relationship, may be deported if they leave a violent relationship (see Article 59).

Insecure and underpaid employment in the protection against violence sector

The Istanbul Convention recognises the fact that “violence against women is a manifestation of historically unequal power relations between women and men” (Preamble IC). In practice, however, the German support system ends up reproducing economic gender inequality because underfunding and unsecured project financing²⁵ means that the almost exclusively female members of staff are often employed in low wage groups, on fixed-term contracts, in part-time roles and as mini-jobs (see Articles 7, 22 and 23). This same scenario even continues within state services, as the appeal for better pay by the employees of the government victim-support helpline underlined.²⁶.

Gender pay gap and gender care gap

In the Federal Republic of Germany, structural inequality between genders manifests itself particularly clearly in terms of unequal pay for work of equal value, and the unequal distribution of care work, as well as the lack of appreciation for care work, the majority of which is performed by women. The gender pay gap in Germany has remained unchanged at 20 % for almost 20 years²⁷. The German gender pension gap of 46 % is the highest in the OECD²⁸. On average, women in Germany spend 52.4 % more time per day on unpaid care work than men (gender care gap)²⁹. Single mothers, migrant women, older women and women with disabilities continue to be particularly impacted by

23 Bayerisches Staatsministerium für Familie, Arbeit und Soziales o. D., [online] <https://www.stmas.bayern.de/gewaltschutz/maenner/index.php> (accessed on 25.10.2020).

24 Habermalz, Christiane 2018: Alleinerziehende in Deutschland - Wenn die Armut droht, 2.8.2018, [online] https://www.deutschlandfunk.de/alleinerziehende-in-deutschland-wenn-die-armut-droht.1766.de.html?dram:article_id=424473 (accessed on 12.10.2020).

25 See, for example, FHK 2014: Qualitätsempfehlungen für Frauenhäuser und Fachberatungsstellen für gewaltbetroffene Frauen, [online] https://www.frauenhauskoordinierung.de/fileadmin/redakteure/PDF/FHK_Qualitaetsempfehlungen_fuer_Frauenhaeuser_und_Fachberatungsstellen_2014_web.pdf (accessed on 23.10.2020), p. 5 et seq.

26 Müller, Ann-Katrin 2020, Streik beim Hilfetelefon „Gewalt gegen Frauen“, in: Der Spiegel, 6.10.2020, [online] <https://www.spiegel.de/panorama/gesellschaft/hilfetelefon-gewalt-gegen-frauen-mitarbeiterinnen-wollen-streiken-a-101324c3-693b-4d7b-928c-bde259ae3857> (accessed on 14.1.2021).

27 Statistisches Bundesamt 2020: Gender Pay Gap, [online] <https://www.destatis.de/DE/Themen/Arbeit/Arbeitsmarkt/Qualitaet-Arbeit/Dimension-1/gender-pay-gap.html> (accessed on 12.10.2020).

28 OECD 2019: Pensions at a glance 2019. How does Germany compare?, [online] <https://www.oecd.org/germany/PAG2019-DEU.pdf> (accessed on 25.10.2020).

29 BMFSFJ 2019: Gender Care Gap – ein Indikator für die Gleichstellung, [online] <https://www.bmfsfj.de/bmfsfj/themen/gleichstellung/gender-care-gap/indikator-fuer-die-gleichstellung/gender-care-gap---ein-indikator-fuer-die-gleichstellung/137294> (accessed on 25.10.2020).

poverty in Germany³⁰. Economic inequality cements the gender hierarchies in place and engenders dependency in relationships whereupon it is difficult for women to break free from violent relationships.

No regulatory gender impact assessment

Gender equality can only be achieved if it is taken seriously at all political levels. Germany needs gender-based impact assessments of legislative proposals at the federal and the Länder level. This is especially apparent when looking at the federal budget. An expert report commissioned by the Deutscher Frauenrat (National Council of German Women's Organisations) concluded that the way in which public funds are allocated at federal level still creates a barrier to achieving equal opportunities between genders³¹.

No violence or gender sensitivity in the digital transformation

The distinction between analogue and digital gender-based violence is likely to become obsolete in the medium term. Once digital media and information and communication technologies become even more integrated into our lives as a matter of course, and the majority of the population will have grown up with them, a distinction like this will no longer remain relevant when describing gender-based violence. It can already be seen that, in practice, there is an increasing digitalisation of violence, e.g., spy software being used when couples are separated, stalking, or taking the form of image-based sexualised violence.

A systematic integration of the topic of digital violence in digitisation processes and strategies, however, has not yet taken place. Digital transformation processes are equally lacking a systematic gender-equality perspective.

Recommendations

We recommend the following to the Federal Government, Länder and municipalities:

- » All measures to protect and prevent violence against women need to be based on a gender-sensitive perspective.
- » Violence against women should not be equated with violence against men.
- » Improve the working conditions of employees in the field of violence protection and survivor support by providing regular and secure funding.
- » Ensure the mainstreaming of gender equality policies by means of gender impact assessments and gender-sensitive budgeting.
- » When dealing with digitalisation processes and allocating related funds, the potentially abusive use of new technologies and strategies to prevent digital violence should be taken into consideration.

30 Cf. Nationale Armutskonferenz 2017: Armutsrisiko Geschlecht, [online] https://www.nationale-armutskonferenz.de/wp-content/uploads/2017/10/NAK_Armutsrisiko-Geschlecht.pdf (accessed on 12.10.2020).

31 Deutscher Frauenrat 2019: Gutachten: Geschlechtergerechter Bundeshaushalt, [online] <https://www.frauenrat.de/wp-content/uploads/2020/05/Gutachten-Geschlechtergerechter-Bundeshaushalt.pdf> (accessed on 9.10.2020), p. 23.

CHAPTER II

Integrated policies and
data collection

Article 7

Comprehensive and coordinated policies

Requirements

The Istanbul Convention sets out comprehensive and coordinated policies to provide a holistic response to violence against women and girls.

Challenges

At a federal level, now that the Istanbul Convention has come into force, there is no action plan nor integrated policies based on the provisions of the Istanbul Convention that set out an interdepartmental overall strategy. The Federal-Länder Working Group on Domestic Violence and the “Stronger than Violence” initiative do not come close to meeting this demand.

The last action plan (Action Plan II of the Federal Government to combat violence against women) was drawn up in 2007³². The 2007 Action Plan II set out the following objectives, among others: Enhanced protection for migrant women affected by violence; greater focus on women with disabilities; specific attention to special risks (women separating from their partners); easy access to the welfare system for those affected; appropriate design of health care to support affected women and mandatory qualification of professionals.

This Alternative Report shows that little progress has been made in these areas. Action Plan II lacked an overall strategy, clearly defined responsibilities across departments and binding time limits for the policies. There is an urgent need to draw up an overall strategy in the form of Action Plan III; using the Istanbul Convention as a starting point and for justifying and developing policies. To date, there is no binding plan for implementing the Convention, which thereby obliges all ministries to draw up, coordinate and implement specific policies. All ministries and civil society should be involved in the preparation of the interdepartmental overall strategy.

At the start of 2019, the German government announced by request that it was preparing an action plan, which would also involve civil society³³. At the time of this report, civil society was not aware of a timetable or information on the formats of participation.

At state level, individual Länder have various action plans or policies in place to combat violence against women, but these vary greatly in terms of focus and duration. Many action plans at Länder level still lack any reference to the Istanbul Convention³⁴. In Lower Saxony, even after the Convention came into force, an action plan was drawn up that only covers domestic violence leaving out other forms of gender-based violence. In addition, many action plans at state level do not sufficiently take into account marginalised groups. The specific impact on intersex and trans people is only explicitly mentioned in Hamburg with reference to the Istanbul Convention and research. In Hamburg, there is no action plan in the conventional sense, but instead a policy paper to combat violence against

32 BMFSFJ 2012: Aktionsplan II der Bundesregierung zur Bekämpfung von Gewalt gegen Frauen, 4. Aufl., [online] <https://www.bmfsfj.de/blob/93228/77ac63e8f600d39c8fb5ae9ed2080653/aktionsplan-ii-zur-bekaempfung-von-gewalt-gegen-frauen-data.pdf> (accessed on 23.06.2020).

33 Deutscher Bundestag: Drucksache 19/7816 vom 15.02.2019, [online] <https://dip21.bundestag.de/dip21/btd/19/078/1907816.pdf> (accessed on 23.06.2020), p. 4.

34 For a listing of all action plans see Rabe, Heike & Britta Leisering 2018: Die Istanbul-Konvention: Neue Impulse für die Bekämpfung von geschlechtsspezifischer Gewalt, Deutsches Institut für Menschenrechte, [online] <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-56238-3> (accessed on 23.06.2020), p. 65 et seq.

women and girls, trafficking in human beings and violence taking place in nursing or care contexts. Comparatively little attention is paid to the situation of girls under the age of 18 or to the representation of the interests of women with disabilities and the situation of women and girls without secure residence permits.

In this context, it should be noted that the European Charter for Equality of Women and Men in Local Life is an international instrument that provides a structured framework for action plans for the implementation of gender equality, including the prevention of, and intervention in, cases of violence against women. It is increasingly used by local authorities. The necessary financial resources and required specialist support have not yet been backed up by an action plan at federal level.

It is still unclear how civil society and NGOs at a federal level are to be involved in the design of a new federal action plan. In addition, due to the lack of a coordinating body (see Article 10), there is no responsible actor at federal level to initiate the process with an intersectional perspective and in coordination with ministries, authorities, civil society organisations and academia.

Recommendations

We recommend the following to the Federal Government and the Länder:

- » Ensure that the focus is on a nationwide, cross-Länder and cross-departmental overall strategy rather than on individual measures. This process should be initiated and developed by the coordinating body (Article 10) and supported by civil society.
- » The rights of the victim should sit at the centre of all actions and be the focus of effective co-operation between all relevant authorities, institutions and organisations by establishing and implementing an interdepartmental overall strategy.

The overall strategy should:

- » set verifiable goals,
- » set out timelines,
- » include clearly defined responsibilities,
- » provide comprehensive funding.

Article 8

Financial resources

Requirements

Article 8 sets out the requirement for adequate financial and human resources to be made available to prevent and fight against gender-based violence. This also applies to activities carried out by NGOs.

Challenges

Financial resources made available by the Federal Government, the Länder and local authorities for preventing and combating gender-based violence and protecting survivors of GBV is simply not enough.

Nationwide cooperation and networking centres

The federal associations or organisations in which NGOs working on the issue of violence against women have come together are important non-governmental organisations for the purpose of the Istanbul Convention. These cooperation and networking centres pool practical experience, feed this expertise into federal policy, organise the flow of information between policy and practice, and raise awareness of violence against women in politics and society. Some of the NGOs are financially supported by the BMFSFJ (bff, FHK, KOK, Weibernetz, DaMigra) or support is planned (BAG Täterarbeit – Federal Working Group on Perpetrator Work). Nevertheless, these funds are temporary project funds (in the form of “deficit funding”): they must be reapplied for every three years and are not structurally secured. Neither is reapproval after three years guaranteed, meaning that there is no guarantee for ongoing work against GBV. For example, DaMigra’s project funding of #selbstbestimmt is not even explicitly aimed at combating violence against women and girls. Furthermore, some project implementation criteria prevent survivors of GBV from taking part, e. g., the list of participants. Women and girls with insecure residence status or without papers need special protection and anonymity when they seek support.

The same applies to the Länder networks of, and for, women with disabilities. Of the eleven existing state networks, four networks operate on a voluntary basis. Thus, they are barely able to advocate for enhanced protection from violence for women with disabilities. Only four state networks or coordinating bodies receive funds from the state or municipality for peer counselling, a service that can also be used by women with disabilities who have experienced violence. Another four networks receive funding to represent the interests of women with disabilities, which includes improved protection against violence. Only in the State of Berlin was an additional part-time position granted for the implementation of the Istanbul Convention.

Funding of specialist advice centres and women’s shelters

See Articles 18, 22 and 23.

Research funding

See Article 11.

Funding of coordination in health care

The outstanding role of health care in providing first-line support to people affected by violence is well known. Financial resources are needed to promote intervention and prevention in cases of domestic and sexualised violence through the qualification and coordination of health care. These are currently not provided at federal, state or local level. Only the state of Berlin funds a corresponding coordinating agency. Nationwide networking of NGOs active in the field is not financed.

Funding the work of federal ministries in the field of combating GBV

The issue of violence against women falls under the responsibility of the BMFSFJ, where it is handled by the Equality Division. Likewise, the BMFSFJ personnel resources dedicated to working on ending violence against women and girls does not appear sufficient with regards to the importance of the topic since the ratification of the Istanbul Convention. It is for this reason that NGOs experience that their requests or concerns can only be dealt with after long delays.

It is for this reason that NGOs experience that their requests or concerns can only be dealt with after long delays.

Given that the main responsibility for GBV lies with the BMFSFJ, it is not yet understood that the issue intersects with responsibilities of different ministries (BMF, BMI, BMWi, BMJV, BMAS, BMVg, BMEL, BMG, BMVI, BMBF, BMZ, BAMF). However, an inter-ministerial approach is necessary to create sustainable and effective programmes. For this reason, the other ministries must also have designated financial resources that are used exclusively to combat violence against women. So far, it is not transparent for civil society to understand whether – to what extent – financial resources are available to other federal ministries.

Similarly, it is not clear whether the federal ministries taking part in the various federal-Länder working groups on combating GBV have budgets and staff that they can draw on to implement the recommendations that are developed there.

Funding of civil society / NGOs

In order to jointly promote and monitor the implementation of the Istanbul Convention as civil society / NGOs, the Istanbul Convention Alliance (BIK) was founded in February 2018. Women's rights organisations, other federal associations and experts specialising on violence against women and girls have joined forces in this alliance. To coordinate the work of the Alliance, the Alliance has established a coordinating office.

The coordinating office supports the work of the BIK committees and cooperation with political players. Most organisations and experts have no additional human or financial resources available for their work in the Alliance: the work is done using their own individual resources and is partly voluntary work. The coordinating office supports the work of the BIK committees and cooperation with political players. There is also no public funding available for the work of the BIK coordinating office – it is financed by private third-party funds.

Financial resources of the Länder and municipalities

Financial resources made available by Länder and municipalities for preventing and combating gender-based violence always depend on political majorities and the current local fiscal situation. Money is often granted in the form of project funds or for model projects, which by their nature, do not allow for sustainable planning and work continuity.

Recommendations

We recommend the following to the Federal Government, Länder and municipalities:

- » Increase the overall financial gross volume made available for preventing and combating gender-based violence and protecting survivors. The amount must be sufficient to meet the standards required by NGOs for adequately implementing their work, or the standards and instructive documents of the IC and other guides. The distribution of finances must not be dependent on political majorities and budgetary situations.

We recommend the following to the Federal Government:

- » Structurally secure the funding of nationwide coordination and networking centres for the protection against violence (NGOs) so that it is possible to ensure the work they do is continuous.

We recommend the following to the Federal Government and the Länder:

- » Make funding available for a nationwide coordination and network centre, as well as for Länder centres that will promote intervention and prevention in the health care system in cases of domestic and sexualised violence.

Article 9

Non-governmental organisations and civil society

Requirements

Article 9 sets out the obligation to promote the work of civil society and NGOs combating violence against women and girls and to establish effective collaborative working with them.

Challenges

The funding of civil society work against gender-based violence in Germany is both insufficient and project-bound: this contradicts recognising its societal significance in accordance with the Istanbul Convention. When NGOs regularly have to invest time, staff and financial resources to secure their very existence, these resources are not available when it comes to political and social effectiveness (see Article 8). At a municipal and Länder level, political participation of staff of survivor support NGOs is often explicitly not financed and must, therefore, be carried out on a voluntary basis by staff.

When looking at cooperation with NGOs, in some cases there are very good, trusting and long-standing collaborative efforts in municipalities, Länder and at Federal Government level (see Article 10). Collaboration between NGOs and the “equal opportunities commissioners” in municipalities and “equal opportunities departments” at Länder and federal level is close and equitable in many places. Information is exchanged with these bodies, e. g., through local round tables, “prevention councils” at Länder level, or the Federal Government-Länder working group on “Domestic Violence”. What is evident at all political levels, however, is that there is a limited extent to which gender equality departments can influence political decisions, a factor that regularly restricts how effective cooperation can be.

So far, there has been no nationwide involvement of NGOs in implementing the Istanbul Convention. The Federal-Länder-Municipality round table entitled “Together against Violence against Women”, which was newly founded in 2019, and in which NGOs are explicitly not involved, sets a negative precedent in this respect (see Article 7). In addition, civil society was barely involved in developing the 2007 “Action Plan II of the Federal Government to combat violence against women”.

At a federal level, there is neither an overall interdepartmental political strategy to combat violence against women and girls, nor an impact assessment of equality policies. It is for this reason that NGOs working in the field of women’s rights and protection against violence are repeatedly not involved in relevant political processes. The “Working Group on the Reform of Custody and Access Law”, which produced a thesis paper in 2019 on behalf of the BMJV, is an example of this. Although protection against violence should be a priority (see Article 31), there was no involvement of an expert in the field and the topic was not mentioned³⁵.

The trend towards “omnibus procedures” in legislation at a federal level hinders the involvement of associations, which are otherwise very well regulated on a formal basis in Germany. If, for example, a decision on health insurance funding for medical treatment after sexualised violence is

³⁵ BMJV 2019: Thesen zu einer Reform des Sorge- und Umgangsrechts, [online] https://www.bmjv.de/SharedDocs/Downloads/DE/News/Artikel/102919_Thesen_AG_SorgeUndUmgangsrecht.pdf;jsessionid=D9702A40A5AB-45932FD3995FD5AE6974.2_cid289?__blob=publicationFile&v=2 (accessed on 9.10.2020).

incorporated into a law on protection against measles, it is practically impossible for women's and violence protection organisations to have a voice in the legislative process³⁶.

In addition, preparing multilingual information materials and providing an interpreter for talks and discussions in workshops, seminars and panels, for example, constitutes a special cost component and a special funding requirement for such NGOs. Finally, another important task and funding area for respective organisations is to carry out empirical studies that address the challenges and needs of marginalised women, including migrant and refugee women and girls, women and girls with disabilities, LGBTI* people, and homeless women.

Recommendations

We recommend the following to the Federal Government, Länder and municipalities:

- » Establish political cooperation to prevent and combat violence against women and girls in all relevant departments.
- » Provide multilingual information material and pay for the cost of interpretation services.
- » Provide additional resources to NGOs who work on behalf of minorities, which have better access to the target groups.

We recommend the following to the Länder and municipalities:

- » Ensure NGOs working in the field of women's rights and protection against violence adequately participate in political processes by providing financial resources.

36 BMG 2019: Bundestag beschließt Masernschutzgesetz, 14.11.2019, [online] <https://www.bundesgesundheitsministerium.de/presse/pressemitteilungen/2019/4-quartal/masernschutzgesetz.html> (accessed on 23.10.2020).

Article 10

Coordinating body

Requirements

Article 10 provides for the establishment of one or more official bodies who are responsible for the coordination, implementation, monitoring and evaluation of policies and measures to prevent and combat violence against women and domestic violence.

Challenges

A consistent and coherent implementation of the Istanbul Convention requires there to be an overall political approach at both federal level and that of the Länder. Germany still lacks the structures for this to happen.

Coordinating body

At the federal level, there is no coordinating body to ensure government action takes place to implement the Istanbul Convention across ministries and in conjunction with the Länder and municipalities³⁷.

Department 403 in the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) is responsible for the Istanbul Convention. However, the department does not have sufficient financial and personnel resources to carry out coordination tasks; it also lacks necessary authority within the bureaucratic hierarchy. Department 516 is responsible for protecting children and young people against sexualised violence. Policies relating to girls are not aligned enough with those relating to women.

Cooperation with other federal ministries jointly responsible for implementing the Istanbul Convention is not institutionalised at higher administrative levels, something that reflects and reinforces the low political priority given to violence against women and girls.

Various federal-Länder working groups each work on individual aspects of protection from violence, but this does not engender coherence either. In addition, their mandates and decision-making power are very limited.

In the Federal-Länder Working Group on Domestic Violence, various federal ministries are represented at a working level as well as civil society representatives. The idea behind it is to bring about exchange and consultation. The working group can only make recommendations and has no authority to issue instructions. Participation of the Länder is voluntary.

The National Council for “Protection of Children and Young People against Sexual Violence and Exploitation” met for the first time in autumn 2020 and is set to formulate political goals and a road-map by summer 2021. It is unclear how binding these targets will be for Länder and municipalities and to what extent they are backed by financial resources. Nor is it clear whether the National Council will be made permanent during the next legislative period.

37 Rabe, Heike & Britta Leisering 2018: Die Istanbul-Konvention: Neue Impulse für die Bekämpfung von geschlechtsspezifischer Gewalt, Deutsches Institut für Menschenrechte, [online] <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-56238-3> (accessed on 12.06.2020).

Apart from the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) and the Federal Ministry of Labour and Social Affairs (BMAS), no other federal ministries, including civil society representatives, are involved in the “Together against violence towards women” Round Table, which comprises the Federal Government, the Länder and municipalities. Moreover, the Round Table only deals with the expansion and financial security of the support system for survivors of GBV.

Länder level

In most of the Länder, coordinating bodies have been in place for some time now to initiate and further develop specialist support services and to implement (preventive) policies to stop domestic violence. They are organised by civil society (Brandenburg, Bavaria, Berlin, Mecklenburg-Western Pomerania, Saxony-Anhalt, Rhineland-Palatinate) or located in ministries (Baden-Württemberg, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Saarland, Thuringia, Saxony, Schleswig-Holstein). Their political effectiveness is limited in both cases by their institutional set-up. Moreover, these bodies do not have a mandate to deal with the implementation of the Istanbul Convention in its entirety. They often face a shortage in personnel and time resources. In the case of coordinating bodies run by civil society organisations, funding is often not secured in the long term.

In some states, the coordinating bodies or specifically established project offices were explicitly given the task of supporting the implementation of the Istanbul Convention. In Bavaria and Schleswig-Holstein, these are based with civil society organisations, and in Rhineland-Palatinate they are based with the ministry. However, even these bodies lack access to official reports and data to some extent. Since 1 September 2020 there has been a coordinating body in Berlin, located within the Senate Administration for Health, Nursing and Equality. It comprises one post and will be responsible for the coordination and implementation of the necessary measures to implement the Istanbul Convention. The Berlin House of Representatives has also decided to convene an interdepartmental committee with the aim of developing an action plan for Berlin to implement the Istanbul Convention. Civil society actors should be explicitly involved in this process.

Municipality level

In the vast majority of cities and counties, committees (round tables, expert groups, intervention and coordination centres, etc.) have been working on the tenets of the Istanbul Convention for years, especially with regard to domestic violence. Members of the committees are representatives from the administration, institutions, authorities (police), women’s shelters, specialist counselling centres and social institutions.

The committees aim to jointly establish effective strategies against domestic violence in the interest of survivors (and their children), to coordinate procedures, to improve guidelines and to examine legal options. Policies are developed in an interdisciplinary, interinstitutional, authoritative and equitable manner and include the views and functions of all institutions involved. In this way, better networking of institutions and projects at a municipal level is achieved for the benefit of survivors of domestic violence.

In many municipalities and rural districts, the committees are managed by women’s and equal opportunities officers. With regard to the implementation of the Istanbul Convention, however, it must be noted with some criticism that these working groups have no political decision-making authority and that part of their work is based on volunteers.

Monitoring body

The establishment of an independent monitoring body at federal level for the implementation of the Istanbul Convention is being prepared in 2020. The basis for effective monitoring in the sense of comprehensive and uniform data collection in the Länder has not yet been established (see Challenges Article 11). Monitoring bodies at the level of the Länder are not provided for in any of them.

Recommendations

We recommend the following to the Federal Government:

- » Promptly set up a state-level coordinating body to facilitate communications between the various departments at federal and Länder level, and organise respective (shared) responsibility for combating violence against women. This body should have a clear mandate and should be positioned high up within the administrative hierarchy. In addition, care must be taken that the role is fulfilled from a diversity-sensitive perspective.
- » Provide the monitoring body with the authority and resources to request statistics from authorities and institutions and to regularly collate and publish information on how the Istanbul Convention is being implemented by working with already-established research projects and those funded in the future in Germany.

We recommend the following to the Länder:

- » Establish state level coordinating bodies to implement the Istanbul Convention and to provide existing coordinating bodies with a corresponding mandate.

We recommend the following to the Federal Government and the Länder:

- » Sustainably secure sufficient staffing and financial resources for the co-ordinating bodies at federal and Länder level, as well as for the federal monitoring body .

Article 11

Data collection and research

Requirements

In Article 11, Germany committed itself to regularly collecting data on gender-based violence, reviewing the effectiveness of measures and laws, and promoting research.

Challenges

Continuous data collection and research on a scientific basis form a vital basis for determining whether the requirements of the Istanbul Convention are, or will be, not only implemented formally but also in reality and from the perspective of survivors as well as different fields of practice. To date, there has been no continuous scientific research, collection or evaluation of data on violence against women and domestic violence in Germany.

There is also no university research centre or cluster nor a professorship under which research on gender-based violence has been able to be sustained. Data collection requirements of international instruments (such as the Istanbul Convention and the EU Victim Protection Directive) are in essence ignored and not systematically evaluated supposedly because of difficulties of the federal system in Germany. Other EU countries are much further ahead in this respect. For example, Spain, Portugal and Greece, as well as the Netherlands, are continuously working on the collection of data on crime victims and on measures being taken to protect and defend victims' rights, including with regard to crimes against individual groups of victims. Germany still lacks the political will to support and develop appropriate data collection and research and to promote them in the long term.

Furthermore, there is a lack of continuously collected data on the prevalence of violence against vulnerable groups. For example, there are no current figures on how often LGBTI* people experience domestic violence carried out by partners, parents or siblings. The same applies to refugee women, homeless women and other particularly vulnerable groups (such as women with disabilities).

Development trends cannot be depicted

Since the beginning of the millennium, Germany has primarily carried out selective commissioned studies, predominantly commissioned by the BMFSFJ and state ministries, but not updated on an ongoing basis. As a result, little up-to-date data is available and hardly any comparisons over time are possible. The first comprehensive representative survey on violence against women in Germany was carried out between 2002 and 2004 with more than 10,000 women interviewed³⁸, followed by special evaluations with regard to patterns, severity and consequences as well as risk factors of violence, and studies on particularly vulnerable groups³⁹. A representative survey repeating the 2004 prevalence study, which could reflect developments over time, is still missing. There is also a lack of methods and activities that provide for regular collection of data on unreported cases. Comparable data is missing on the situation of refugee women affected by violence, and women with a history of migration, who are also affected by multiple forms of discrimination.

³⁸ see Schröttle, Monika & Ursula Müller 2004.

³⁹ see Schröttle, Monika & Nadia Khelaifat 2008; Schröttle, Monika & Nicole Ansoorge 2009; Schröttle, Monika et al. 2013.

Requirements regarding data on unreported cases

Nationwide, there is no collection “at regular intervals of relevant, precisely disaggregated statistical data on cases of all forms of violence falling within the scope of this Convention” (Article 11, paragraph 1a of the IC). To this end, the Federal Government needs to regularly collect both official data and data on unreported cases, analyse it comparatively, and evaluate it with regard to the requirements of the Istanbul Convention.

In terms of data on unreported cases, it will be necessary to undertake ongoing population-wide surveys of women on their experiences of violence, measures to protect them, health consequences and psychosocial support, as well as police intervention (Article 11, paragraph 2 of the IC). In addition, the Federal Government should promote setting up national and international databases to collect detailed information on femicides in order to acquire information that could be used to prevent crimes in the future.

Only by regularly collecting this data on unreported cases and by interviewing survivors using quantitative and qualitative methods, will it be possible to interpret and classify the significance and relevance of official data with regard to successful prevention, protection and support. In order to ensure a more comprehensive picture and to include particularly vulnerable groups, these surveys must be conducted in multiple languages, must be easy to understand (“Leichte Sprache”), and should take place both inside and outside of institutions.

Gaps in regulatory and institutional data

In terms of official administrative data, particularly with regard to police crime statistics in the area of domestic violence, data is already being collected and published, but could be further processed, differentiated and developed. There are significant gaps in data collection and research with regard to police data on sexual offences, police protection orders and the whole area surrounding the judicial processing of cases. In particular, there is a complete lack of statistics on the course of criminal prosecutions. This also applies to the protection and support system, health care, as well as to perpetrator work and the various prevention approaches. There is initial research on the support available to women affected by violence and service provisions at federal and state levels. However, to date, these have only been selective and not continuous time-comparative surveys and evaluations. There is also a lack of continuous user surveys that provide information on how the various support and protection measures are perceived and evaluated by those needing to use them.

There is little research on the health situation of women and girls affected by violence in Germany. As a result, there is a lack of basic knowledge about the health situation, the need for care and the care situation of survivors of GBV in Germany. There is also a lack of research on the impact of intervention services and training for professionals, which should also take into account the needs and wishes of victims and survivors of violence. An overview of existing health care services and qualifications of professionals is also not available. The issue is not part of the regular health reporting surveys undertaken by the Robert Koch Institute.

Lack of funding for long-term research and practice exchanges

To date, the federal and state ministries for science and education have not funded long-term research into the implementation of the Istanbul Convention and “all of the forms of violence falling within the scope of this Convention [...] with the aim of investigating their root causes and effects, their incidence and the rate of convictions, and the effectiveness of measures taken to implement this Convention” (Article 11, paragraph 1b of the IC). Germany lacks long-term and institutionalised focus and continuity in education and research around the themes of the Istanbul Convention (for example, through funding programmes, professorships, research training groups and support for young researchers, embedding the topic in higher education); in part, this is because the issue has not been sufficiently included in research funding to date.

It is also necessary to hold regular networking and transdisciplinary exchanges between science, politics and social practice so that the Convention can be implemented in research areas. Until now, there has been no federal funding for regular interdisciplinary knowledge exchanges in research and practice on the development and advancement of strategies and measures with regard to prevention, protection and support for women affected by violence and their children.

There is also very little monitoring undertaken by health care institutions on their “services and provision of care after experiences of violence”. Thus, no data is available for planning or the further development of the health care system’s service provision.

Femicide

Efforts to raise awareness, to track and to systematically combat femicides have not been undertaken by the German government. Homicides against women and girls are not classified as “femicides” and documented accordingly, but are simply listed in the statistics as intimate partner killings. Killings of women and girls on the basis of their sex, for example in the context of sexual offences, are not recorded in the statistics, despite the fact that these are also femicides. Moreover, there is no reporting on important additional information on how the femicides came about and the measures taken by the police and the support system, all of which are key to preventing femicides. Likewise, evaluations are still missing on how high-risk cases are handled and on the effects of interventions as well as the preventative measures taken. These could provide an important knowledge base for the prevention of further femicides.

Recommendations

We recommend the following to the Federal Government and the Länder:

- » Support scientific research into gender-based violence and to work towards the consolidation and long-term institutionalisation of research in universities. This includes in particular:
 - The financing and establishment of scientific hubs at universities and research institutions looking into violence against women,
 - The announcement by the Federal Ministry of Education of corresponding funding schemes, academic chairs and research training groups,
 - Long-term funding of an interdisciplinary nationwide research network on thematic areas and nationwide research networking meetings to be held annually.
- » Use research to regularly collect, collate and analyse reported and unreported cases on gender-based violence:
 - In-depth representative surveys on violence of the entire population at intervals of 7 to 10 years, and an annual snap poll on how institutions are being used in cases of violence.
 - Collate and analyse all available administrative data on gender-based violence.
 - An annual report in which data from reported and unreported cases is mapped and interpreted comparatively, thereby making it possible to document and compare developments over time.
 - Commissioning of an expert report to clarify how meaningful routine data can be collected in a safe way for survivors in the health care sector and used to plan services.

- » Scientific evaluation of all measures and laws aimed at the prevention and sanctioning of gender-based violence, as well as support for survivors regarding impact and effectiveness.
- » Expansion and promotion of research on significant areas of issue faced when implementing the Istanbul Convention (e.g. in terms of prevention, contact and custody rights, femicides).
- » Establish gender-based violence as an integral part of federal health research and health reporting.

We recommend the following to the Federal Government, Länder and municipalities:

- » Make necessary arrangements to collect more accurate data regarding the incidence, causes and impact of gender-based violence and publish the results on an annual basis. In particular, ensure there are records of residence status, the imposition of any restrictions on freedom of movement, and the place at which the offence took place. It must also be ascertained as to whether an act is racially motivated. Furthermore, the situation around transmen* and transwomen* must be considered. Femicides should be referred to as femicides because of gender-based causal connections.

CHAPTER III

Prevention

Article 12

General obligations

Requirements

Article 12 asks for the promotion of gender equality and the empowerment of women and girls. It also includes the prevention of violence, especially against vulnerable groups, and working with perpetrators to prevent future instances of violence.

Challenges

A comprehensive concept for the prevention of violence against women and domestic violence, which effectively reduces male violence against women and brings about cultural and social changes in behaviour, has not yet been developed or implemented throughout Germany. It is true that corresponding approaches at a local and, in some cases, a supraregional level have been financed on a selective and temporary basis (for example in the form of campaigns and public relations work, neighbourhood work and offender prevention work). It is true that corresponding approaches at a local, and in some cases a supra-regional level have been funded on a selective and temporary basis (for example in the form of campaigns and public relations work, neighbourhood work and offender prevention work).

Nevertheless, what is still missing is the development and implementation of a comprehensive, continuous and sustainable prevention strategy that encompasses primary, secondary and tertiary prevention. Many of these campaigns particularly lack any element of multilingualism or diversity. The effects of the latter should be regularly assessed as part of an in-process evaluation. To date, a government-funded, nationwide strategy for actions related to the primary prevention of violence against adult women in Germany has only been implemented in the form of information campaigns. To date, a government-funded, nationwide strategy for actions related to the primary prevention of violence against adult women in Germany has only been implemented in the form of information campaigns.

These have thus far mainly encouraged survivors to seek help or have provided information about GBV to the wider public in general, as well as to social networks of survivors. Many of these campaigns particularly lack any element of multilingualism or diversity. There are no current campaigns addressing (potential) perpetrators in Germany. Particularly vulnerable groups, such as LGBTI* people and homeless women are rarely addressed. Neither the effectiveness nor the sustainability of these campaigns is usually evaluated.

As research shows, the effectiveness of information campaigns as a singular strategy in the primary prevention of GBV is questionable⁴⁰. Primary prevention (i. e. during the time period immediately prior to the emergence of violence) in the form of educational programmes has thus far only addressed violence against children, and has even done little of that. cf. inter alia Senn, Charlene Y. et al. 2015:

The fact that there are so few primary preventive information campaigns and educational services on violence against women produces a double short come: on the one hand, women who are not affected directly by violence, but only indirectly through the ever-present threat of possible violence, are not taken into account. On the other hand, women who have already experienced vio-

40 see Senn, Charlene Y. et al. 2015: Efficacy of a Sexual Assault Resistance Program for University Women, *New England Journal of Medicine* 372(24), pp. 2326-35.

lence in the course of their life are named exclusively as victims. Women are therefore not addressed or empowered as independent actors; moreover, they do not participate in the role of an expert in developing preventive measures.

Campaigns exclusively addressing women affected by violence are not sufficient for eliminating stereotyped gender roles suggesting female inferiority and/or them being defenceless. Campaigns must not address one gender or target group only.

Education in the field of violence prevention must in future also take into account adult education and not just children and young people. There is an urgent need for action in this area because, on the one hand, prevention of violence against children lies with the responsibility of adults / adult caregivers, while on the other, adult women (and men) must also be provided with access to this knowledge. What is required is a more comprehensive approach that addresses all ages and target groups, including boys and men, as well as addressing potential perpetrators and the social networks of survivors; it must also be co-developed by and with women and girls who are and have been affected by violence. Preventive measures are also needed to provide information on the causes, forms and effects of violence against women, men and children who have experienced migration or displacement and to raise awareness among all sections of the population. These preventive approaches should be developed and designed in cooperation with migrant women's organisations working in these areas.

Without exception, refugee women who have "exceptional leave to remain", as well as undocumented, illegalised women should be part of the target group.

Prevention of violence in institutions and services for persons with disabilities

A comprehensive policy to protect people with disabilities from violence, as already called for by the United Nations Convention on the Rights of Persons with Disabilities (CRPD), is still missing. Under the coalition agreement of 2018, the creation of guidelines for protection from violence was restricted to institutions in the field of services for persons with disabilities. According to current planning, federal recommendations for corresponding guidelines are to be presented by the end of the legislative period. In some Länder (Bremen, Hamburg, North Rhine-Westphalia, Hesse) legal obligations asking for the provision of such guidelines already exist. In Schleswig-Holstein, measures to prevent violence and abuse are part of the quality standards for all integration-assistance services in the field of disability assistance. In most of the Länder, however, corresponding obligations are still outstanding. There is also a lack of independent supervisory and complaints bodies for institutions in the field of services for persons with disabilities at both federal and state level. Since 2017, all sheltered workshops for disabled people must have elected women's representatives of their employees. One of their tasks relates to protection against violence. However, this cannot be guaranteed without there being guidelines on protection from violence by facility management, as well as sufficient support by the management. In three Länder (Bremen, Rhineland-Palatinate, Thuringia) women's representatives must also be elected in residential facilities. One challenge for the proper handling of cases of violence against women and girls in institutions are differing bureaucratic and legal responsibilities and classifications. Gender-based violence in institutions is not defined as domestic violence, which is why it is not often considered within the context of gender equality policy. However, the relevant disability policy departments are often not sensitized to the issue of violence against women and girls.

There is also a lack of mandatory preventive measures with regard to sexualised violence in the inpatient and the day-care sector. Measures to protect against violence are neither anchored nor standardised in care facilities or care services. There is no right to be able to have a free choice of carer or to choose the carer's gender, even if a woman has already experienced sexualised violence in care.

Promoting empowerment

Article 12, paragraph 6 of the Istanbul Convention calls for empowerment measures to prevent gender-based violence. It identifies the need for direct empowerment and self-determination of women to prevent and protect them from violence. The German version, “Stärkung der Rechte der Frauen”, does not 100% convey the notion of “Empowerment of women”. The German text narrows the perspective to the legal system and weakens the pro-active role of women in the development of independent action strategies to reduce and prevent violence against women. In contrast, direct empowerment makes it possible to overcome former patterns of behaviour and gendered role assignments. By providing new options for action, it also has a primary preventive effect against violence (Article 12.1 of the IC).

With the exception of the North Rhine-Westphalia State Action Plan, empowerment to combat violence against women is not taken into account in the action plans of any of the Länder, nor is it named as an objective. This has a negative impact on funding options for empowerment activities in the respective municipalities of the individual Länder. Activities for women’s empowerment such as feminist self-assertion and self-defence classes that meet quality standards and are proven to be effective in preventing gender-based violence do exist⁴¹. Due to a lack of state funding, however, they are not offered nationwide. Consequently, only a few women can access these services, and they are particularly difficult to access for women with disabilities, for women on a low income or for women with refugee or migration experiences.

Empowerment of women and girls to reject violence, unequal power relations and discrimination, as well as the ability to successfully fight against them should be promoted, implemented and consolidated at all levels – in families, educational and leisure institutions, and health care. It should be supplemented by empowering boys so that it is possible to establish and actively enforce equal, non-violent relationships with girls and women, and to promote solidarity between the sexes.

The active political involvement of women who have experienced violence in developing prevention measures and public relations work, where they can take on a role of experts with experience and knowledge, is also an important empowerment measure and one that has very seldom been made use of in Germany to date. This also applies specifically to marginalised and discriminated groups.

Recommendations

We recommend the following to the Federal Government, Länder and municipalities:

- » Develop and establish a comprehensive, cross-sectional and effective overarching concept looking at the prevention of gender-based violence.
- » A comprehensive concept of violence protection for women and girls with disabilities, homeless women and refugee women and girls.
- » Empower all women and girls living in Germany to be able to successfully defend themselves against violence, discrimination and unequal power relations.
- » Empower boys and men so that they live in equal, non-violent relationships with girls and women and so that they actively advocate for gender equality and solidarity.
- » Ensure these prevention measures are designed in a non-discriminatory manner, irrespective of social and educational class and the origin of the target groups.

⁴¹ see Kelly, Liz & Nicola Sharp-Jeffs 2016: Knowledge and Know-how: the Role of Self-defence in the Prevention of Violence against Women, [online] [https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2016\)571385](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2016)571385) (accessed on 23.09.2020).

Article 13

Awareness-raising

Requirements

Article 13 sets out the obligation to raise awareness among the general public about forms of violence covered under the IC, the impact of said violence and the need to prevent it. To this end, information campaigns and awareness-raising programmes will be carried out and promoted.

Challenges

Looking at many of the awareness-raising/information campaigns that have been implemented or financed by federal, Länder, and local governments in Germany, it is not clear whether the recommendations in the Council of Europe's handbook "Raising awareness of violence against women: Article 13 of the Istanbul Convention" were taken into account in the planning and implementation stages⁴². It should be particularly noted that awareness-raising campaigns appear to be designed without an overarching strategy being in place, or without them being clearly integrated into a comprehensive action plan intended to end violence against women and domestic violence; in addition, the necessary resources are not always made available and often, the impact of the campaign is not evaluated. All relevant forms of violence are yet to be covered and at many levels all relevant target groups have not yet been addressed.

As part of the "Together against Violence towards Women" action programme, EUR 2 million was made available by the Federal Government for a nationwide public campaign to condemn violence against women and to raise awareness and provide information. Although the goal of the nationwide "Stronger than Violence" initiative is included in the State Report as the third part of the "Together against Violence against Women" action programme intended to "raise awareness among the general public about the extent of violence against women," it addresses both violence against women and violence against men⁴³.

While raising awareness on the issue of violence against men is also important, it is counter-productive for there to be a different focus in a campaign that is explicitly funded as part of the action programme on violence against women. This is particularly worrying in the context of the tendency across Europe to neglect the gender dimension of violence against women in policy approaches. It is contrary to the principles of the Istanbul Convention, which clearly states that violence against women must be addressed in the context of existing gender relations.

42 Heisecke, Karin 2014: Raising awareness of violence against women: Article 13 of the Istanbul Convention, Council of Europe, September 2014, [online] <https://edoc.coe.int/en/violence-against-women/7142-raising-awareness-of-violence-against-women-article-13-of-the-istanbul-convention.html> (accessed on 14.1.2021). See in particular the "Checklist" on p. 31 et seq. of the handout.

43 The "Stärker als Gewalt" (Stronger than Violence) initiative (<https://staerker-als-gewalt.de>) was launched in November 2019. It is part of the Federal Government's action programme "Gemeinsam gegen Gewalt an Frauen" (Together against Violence towards Women) and aims to ensure that more women and men find the courage to defend themselves when they experience physical, sexual or psychological violence, that more people in the vicinity of those affected pay attention and help, and that all those who are affected or threatened by violence in the home find help.

Selective campaigns instead of a coordinated approach

The State report continues to say that “the initiative brings together partner organisations, social actors, businesses and individuals to participate in public outreach activities that promote awareness and education”⁴⁴. From the perspective of the relevant NGOs, however, their involvement was not guaranteed early on in the planning stage of the campaign (see Article 13, paragraph 1); rather, the concept was only presented to them a short time before the launch of the campaign, along with an invitation to promote the campaign far and wide. Recommendations from NGOs to create a campaign that focussed on (potential) perpetrators, instead of yet another campaign urging survivors to seek help, were not taken up. The campaign launch in 22 cities was not coordinated with local actors. This led to confusion resulting from the lack of local coordination and in many places it was not possible to work in synergy with local actors (round tables, municipal equality officers, women’s projects, etc.), a number of whom had prepared their campaigns for months.

The proliferation of campaigns with neither an overarching strategy nor coordinated actions between actors on the ground, risks diminishing rather than enhancing the impact of each campaign. Furthermore, during the later steps which saw the development of the “content” of the website, input from specialist organisations was not taken into account. It would have been necessary to have had better cooperation between the communications agency who had been hired for the campaign and the civil society actors who could provide technical expertise on the subject.

The numerous campaigns organised at country or local level are often on a one-off basis, e.g., to mark International Day Against Violence Against Women (25 November) or V-Day / One Billion Rising (14 February), rather than part of a comprehensive, coordinated approach to ending violence against women and domestic violence.

These initiatives are even explicitly referred to as “public relations”. This does raise the question of whether their principal objective is to raise awareness about how committed the (Länder or municipal) government is in respect of violence, or whether it is to provide information about forms of violence, how wide-reaching it is, the different help services available, and how violence can be prevented by raising awareness.

The focussing on domestic violence marginalises other forms of violence

In terms of content, most campaigns deal with the issue of domestic violence. Other forms of violence, such as sexualised violence, are much less often explicitly addressed. Even the ‘baker’s bag’ campaign “Vergewaltigung kommt nicht in die Tüte” (“Rape – No Way”, literal translation: “Rape doesn’t come in a bag”), which was first implemented in Germany in 2001, is still being rolled out in many cities and districts today, albeit with the slogan “Violence doesn’t come in a bag” and with a focus on domestic violence and with a shortened adaptation of the original idea. Its implementation was deliberately planned over a period of several months in order to disseminate facts about sexualised violence, as well as telephone numbers for help services over a longer period of time. The aim was also to introduce the topic to different target groups in different ways, supported by a programme of events. Other forms of violence are also neglected, such as genital mutilation or forced marriage, the impact on children as witnesses and other less-examined aspects, including the link between violence and health. In terms of how digital violence, psychological violence and institutional violence interface with migration, gender, skin colour and social affiliation, it is also clear that there is a great need for raising awareness, both among the general public and among specific professional groups such as the police and the judiciary.

44 BMFSFJ 2020: GREVIO 1. Staatenbericht [State report], [online] <https://www.bmfsfj.de/blob/160138/6ba3694cae22e5c9af6645f7d743d585/grevio-staatenbericht-2020-data.pdf> (accessed on 10.9.2020) p. 52f.

A positive campaign example: „Männlichkeit entscheidest Du“ [“You decide on masculinity”]

A positive example of a campaign financed by a state government is the “Männlichkeit entscheidest Du”⁴⁵ campaign, which deals with the root causes of violence against women. It was developed by the Landesverband Frauenberatung Schleswig-Holstein (LFSH) e.V. and funded by the state of Schleswig-Holstein as part of the Schleswig-Holstein Initiative for Women (SCHIFF), formed with the intention of addressing structural violence against women. Numerous organisations in other Länder are now requesting that they can run the campaign. Posters are on display in Mecklenburg-Western Pomerania, Lower Saxony, North Rhine-Westphalia, Saxony, Hamburg and Munich⁴⁶. In Rhineland-Palatinate, the campaign was disseminated throughout ten regions by the LAG (Landesarbeitsgemeinschaft – state working group) of rape crisis centres and with the assistance of the state government⁴⁷. At the time of reporting, posters were also being produced for the German-speaking part of Belgium.

At federal level, the Federal Government finances communications work related to the national helpline; under this umbrella, online “participation campaigns” (posting selfies, etc.) are organised on specific occasions. Generally, these focus on motivating survivors to “break the silence” and use the helpline. Various types of printed and digital information material is produced throughout the year and distributed, highlighting the helpline’s number and services.

It is clear that most of the campaigns are not primarily aimed at changing the values and attitudes that underpin gender-based violence, but instead focus on referrals of victims to support services. They focus on victims’ individual responsibility for addressing the violence (“breaking the silence” and seeking help) rather than a collective responsibility, including that of the state and its services, to put an end to it. These are not, therefore, primary prevention campaigns, but at best they are secondary or tertiary prevention campaigns.

Moreover, the campaigns are mostly not developed in a participatory manner, they do not involve the (potential) target groups, and neither is the impact of the campaign evaluated.

The State report notes that NGOs are funded to implement campaigns. However, the proportion of NGO funding (at federal, Länder and local levels) that is made available for awareness-raising and information campaigns is often limited to such an extent that it does not give scope for communication experts to be involved, for the planning of long-term campaigns, nor for them to be evaluated.

45 Landesverband Frauenberatung Schleswig-Holstein 2020: Männlichkeit entscheidest Du, [online] <https://ab-jetzt.org/blog.html#bewusstsein&mannlichkeit-entscheidest-du-2> (accessed on 14.1.2021).

46 SAT 1 Regional 2020: „Männlichkeit entscheidest Du“: Kampagne gegen Sexismus und Gewalt an Frauen, 26.8.2020, [online] <https://www.sat1regional.de/maennlichkeit-entscheidest-du-kampagne-gegen-sexismus-und-gewalt-an-frauen/> (accessed on 14.1.2021).

47 Nibelungen Kurier 2020: „Männlichkeit entscheidest Du“, Rheinland-Pfalz: Frauennotrufe und Frauenministerium starten Kampagne, 14.8.2020, [online] <https://nibelungen-kurier.de/maennlichkeit-entscheidest-du/> (accessed on 14.1.2021).

Recommendations

We recommend the following to the Federal Government, Länder and municipalities:

- » In respect of the planning and implementation of all awareness-raising initiatives, make use of the Council of Europe handbook “Raising awareness of violence against women: Article 13 of the Istanbul Convention”⁴⁸.
- » Develop and embed awareness-raising strategies as part of a long-term, inter-agency umbrella strategy with the aim of ending violence against women and domestic violence; as part of this, ensure that all forms of violence are included and that all target groups, including marginalised groups, are addressed over the overall period.
- » Involve the target groups themselves, as well as professional practitioners and researchers, in all of the campaigns to be developed.
- » Ensure that evaluations form an integral part of every campaign.
- » Increase the human and financial resources of NGOs to enable them to actively participate and provide advice in the planning and implementation of campaigns.

⁴⁸ Heisecke, Karin 2014: Raising awareness of violence against women: Article 13 of the Istanbul Convention, Council of Europe, September 2014, [online] <https://edoc.coe.int/en/violence-against-women/7142-raising-awareness-of-violence-against-women-article-13-of-the-istanbul-convention.html> (accessed on 14.1.2021).

Article 14 Education

Requirements

Article 14 requires the inclusion of the following subjects in curricula at all levels of the education system and in informal education: Equality between women and men, non-stereotypical gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women, the right to the integrity of the person.

Challenges

Topics such as equality, gender-specific discrimination, violence against women and girls (regardless of social affiliation or origin, religions, languages, etc.) and the right to personal integrity are not reflected in the official curricula at all levels of the German educational system. In the Federal Republic of Germany, educational content is determined by the Länder, therefore the definite inclusion of the above-mentioned topics varies greatly.

The Standing Conference of the Ministers of Education and Cultural Affairs of the Länder has already suggested in its recommendations for action in 2010: “Questions of sexual self-determination, sexual abuse and also (sexualised) domestic violence should be components of the general or school-internal curricula [in the context of family and sex education]⁴⁹.” However, in most Länder, e.g. Bavaria, Brandenburg, NRW and Saxony, only sexualised violence is included in the curriculum.

Inclusion in curricula at the discretion of teachers

In the following, the examples of two Länder, for which in-depth information is available, Lower Saxony and Berlin, are elaborated on.

In the state of Lower Saxony, whenever the aforementioned topics are part of the respective core curricula, it is at the discretion of the teachers whether they deal with them in class or not⁵⁰. Equality between women and men is only explicitly mentioned in the core curricula in higher grades and often appears as a basic principle of instruction only. However, a human rights-based, feminist, anti-racist attitude would require discussion at an early stage and regular periods of reflection. Non-stereotyped gender roles and the right to physical integrity are addressed in the religious-philosophical field. The topic of non-stereotyped gender roles is more likely to be found when discussing values and norms and Islamic religion than in Christian denominational subjects. Gender-based violence against women only appears in the core curricula of Islamic religious education. This restriction represents an Islamophobic and racist approach based on assumed attributions among members of certain religions.

49 Kultusministerkonferenz 2010: Handlungsempfehlungen der Kultusministerkonferenz zur Vorbeugung und Aufarbeitung von sexuellen Missbrauchsfällen und Gewalthandlungen in Schulen und schulnahen Einrichtungen, [online] http://www.kmk.org/fileadmin/veroeffentlichungen_beschluesse/2010/2010_04_20-Handlungsempfehlungen-Vorbeugung-sexueller-Missbrauch_2013.pdf (accessed on 03.09.2020), p. 3.

50 Lang, Lana/Juliette Wedl & Judith Weinecke 2020: Istanbul-Konvention: Art. 14 – wie ist er in den Vorgaben der Schulen verankert? Recherche am Beispiel Niedersachsen, [online] http://gender.rz.tu-bs.de/istanbulkonvention-art14_nds-recherche_2020-07_fin/ (accessed on 19.09.2020).

The Berlin (and Brandenburg) framework curriculum⁵¹ also includes non-violent conflict resolution (prevention of violence), gender equality and non-stereotyped gender roles (equal rights and gender equality / gender mainstreaming) as “overarching themes”⁵². These can be – but do not have to be – taken up in class in the individual subjects. How they are covered therefore also depends on the interests of the respective teacher. As in Lower Saxony, the above-mentioned topics are only explicitly mentioned as subjects of discussions in political education and ethics.

For Berlin schools there are also general guidelines on sex education, in which the topics of non-stereotyped gender roles and of equal rights for women and men are mentioned⁵³. Gender-based violence against women is not addressed in the framework curricula. The references to sexual education in this context focus on sexualised violence against children.

External prevention work

Berlin is the only state to fund a project for free prevention work on domestic violence at Berlin primary schools. Training courses on the subject of “Children and domestic violence” as well as parents’ evenings, children’s workshops with 4th and 5th grade pupils are offered. Classes, children’s consultations and case discussions with teachers are provided. Multiplier training courses are held for interested educators and teachers⁵⁴. The service is on a voluntary basis for schools and the use of the service is therefore largely dependent on the corresponding commitment of the school management and the teachers. In addition, the prevention project is not sufficiently funded to offer its services to all Berlin primary schools.

On the subject of sexualised violence in childhood and adolescence, the UBSKM has launched the “Schule gegen sexuelle Gewalt” [“Schools against sexual violence”] campaign, aimed specifically at in-service training of teachers⁵⁵. Helpful materials have been produced, but the implementation of the campaign does not meet the needs at local level in almost all Länder. The necessary (prevention) activities in schools to implement the campaign are not financed and, with a few exceptions, the specialised counselling centres have not been included in the implementation. This campaign is therefore partly in vain. In some cases, very appropriate requests for in-service training have been formulated by the schools. However, the massively increased demand for developing protection and prevention guidelines for individual schools, and with that demand for support in making use of the campaign materials, cannot be met. The reason for this is that the campaign is not backed by an increase in resources for the specialised counselling centres or similar specialised institutions offering these services. In Hesse, for example, each regional school authority will receive EUR 3,000 per year to implement the campaign. This is enough for the training of about 20 teachers over several days. However, each regional school authority is responsible for 70 or more schools.

51 Rahmenlehrplan Berlin-Brandenburg Jahrgangsstufe 1-10, [online] <https://bildungsserver.berlin-brandenburg.de/unterricht/rahmenlehrplaene/jahrgangsstufen-1-10/>; <https://www.berlin.de/sen/bildung/unterricht/faecher-rahmenlehrplaene/rahmenlehrplaene/> (accessed on 08.09.2020).

52 Rahmenlehrplan Berlin-Brandenburg, Teil B, Fachübergreifende Kompetenzentwicklung, [online] https://bildungsserver.berlin-brandenburg.de/fileadmin/bbb/unterricht/rahmenlehrplaene/Rahmenlehrplanprojekt/amtliche_Fassung/Teil_B_2015_11_10_WEB.pdf (accessed on 08.09.2020).

53 Allgemeine Hinweise zu den Rahmenplänen für Unterricht und Erziehung in der Berliner Schule A V 27: Sexualerziehungen, [online] <https://www.berlin.de/sen/bildung/unterricht/faecher-rahmenlehrplaene/rahmenlehrplaene/> (accessed on 03.09.2020).

54 Die Berliner Initiative gegen Gewalt an Frauen – BIG e.V., [online] https://www.big-berlin.info/sites/default/files/medien/336_BIG_eV.pdf (accessed on 08.09.2020).

55 Arbeitsstab des Unabhängigen Beauftragten für Fragen des sexuellen Kindesmissbrauchs: Schutzkonzepte, [online] <https://www.schule-gegen-sexuelle-gewalt.de/home/> (accessed on 03.09.2020).

Informal education

With regard to informal education, e. g., in sport, the topic of gender-based violence against women and girls is only dealt with under the partial aspects of sexual abuse, which in itself comes under the heading of child protection and “sexual assaults in sport”; this is the case in training programmes for (volunteer) sports educators in Berlin, Northrhine-Westphalia and Bavaria, for example⁵⁶.

It is very much welcomed that these topics have been introduced in the training on responsible conduct, in particular for volunteers, and represent an attempt to make the educational field of sports a safe place for children. However, this training and the development of appropriate protection concepts is still on a voluntary basis and they do not generally receive sufficient financial support.

What is more, the training programme is missing differentiating and gender-based aspects of sexualised violence and the issue of domestic violence in general, both in terms of its consequences for the women and for the children affected.

Yet it is precisely the type of social interaction in sport that would make it a place where the physical consequences of domestic violence could be detected and where the confidence regarding appropriate response that could be provided by in-service training could be used to intervene.

With regard to the campaign against sexualised violence and transgressions in sport, the Federal Government’s focus is only on top-level sports, while responsibility for popular sports is left to the Länder and municipalities. At the state and local levels, it then greatly depends on individual initiatives and not least on the financial resources of local authorities and grass-roots associations if and to what extent they implement this topic in their training and structures.

The “No Room for Abuse” [Kein Raum für Missbrauch] campaign initiated by the UBSKM successfully raised awareness with the general public of the issue of sexualised violence in a wide variety of institutions. At the same time, there were hardly any financial resources for specialised personnel to effectively counter the special dynamics of this form of violence.

Recommendations

We recommend the following to the Federal Government and the Länder:

- » Inclusion of the topic of domestic and sexualised violence, including teaching of gender-based aspects, as mandatory teaching content within the framework curricula.
- » Funding of prevention work carried out by specialist counselling and support centres at schools, colleges and training centres, also in order to ensure that appropriate interventions can be provided promptly upon detection. With this, the processual nature of prevention work must be incorporated into the concept.
- » Creating and introducing to all types of schools teaching materials that do not promote gender stereotypes.
- » Include domestic violence in prevention, including violence in teenage relationships, in order to make teachers feel confident in intervening through initial training and in-service training.
- » Make it mandatory for educational institutions to designate and announce go-to structures / contact persons for pupils/trainees/students affected by domestic violence. The contact people can be liaison teachers or other people working within a staff unit, or firmly embedded and easy to access contact structures could be established.

⁵⁶ Landessportbunds Berlin und der Sportjugend Berlin 2020, Aus- und Fortbildungen [online] <https://www.lsb.nrw/unsere-themen/gegen-sexualisierte-gewalt-im-sport> und https://www.blsv.de/fileadmin/user_upload/pdf/bildung/QualifizierungimSport_Broschuere_2020_web.pdf (accessed on 03.09.2020).

- » Integrate domestic violence and gender-based violence into academic curricula and training courses, so that teachers can acquire a solid basis of confidence for their response and that prevention work is part of their initial training.
- » Enable teachers to take sexualised and domestic violence seriously as a child protection issue, to recognise it and allow them to develop options for action through mandatory in-service training in diversity awareness and gender awareness.
- » In informal education, e.g., in sport and other social organisations, introduce binding guidelines for volunteers so that they can take in-service training courses on (sexualised) violence against girls and women, thus enabling them to intervene or initiate an intervention in this area.
- » Make it compulsory for local authorities to provide adequate funding provisions for training on these topics.

Article 15

Training of professionals

Requirements

Article 15 emphasises the importance of training and education of professionals to effectively combat and prevent gender-based violence.

Challenges

Initial and further training on gender-based violence has not yet been incorporated in the Länder education and training regulations for professionals in occupational groups dealing with victims or perpetrators of sexualised and domestic violence against women and girls.

This is particularly relevant for the following occupational groups: Justice (criminal law, family law), police, social work, health care, psychotherapy, education, asylum and migration workers, language mediation, media workers and the military.

Justice

In Germany, the study and examination regulations of law faculties in the individual Länder do not contain any specifications regarding modules on gender-based violence, or domestic and sexualised violence (in childhood and adolescence). At the level of the Länder, there are only isolated efforts to change this, such as in Baden-Württemberg where family law comes under the Commission for Child Protection⁵⁷. Judges lack any incentive to participate in the training courses on gender-based violence offered by professional judiciary bodies. Work must still continue during periods of further training and whether the costs of further training for judges working for the state service are covered, remains a matter of the Länder. Particularly in the case of changes in the law, such as the StORM Act or the Protection against Violence Act, experience shows that without mandatory further training the jurisdiction and the way survivors of GBV are treated by judges sometimes fall far short of the legal provisions⁵⁸.

Criminal law

Criminal proceedings are still a great burden for victims of gender-based violence who appear as witnesses; rape myths and victimising ideas about sexual interactions often lead to secondary victimisation⁵⁹. In Germany, the prevailing opinion is that training courses, especially with NGOs, could

57 Ministerium für Soziales und Integration Baden-Württemberg 2019: Abschlussbericht der Kommission Kinderschutz, Band 1: Bericht und Empfehlungen, [online] https://www.baden-wuerttemberg.de/fileadmin/redaktion/m-sm/intern/downloads/Publikationen/Abchlussbericht_Kommission-Kinderschutz_Band-1.pdf (accessed on 10.09.2020).

58 Statement Kanzlei Christina Clemm, Inken Stern, Barbara Wessel, Barbara Petersen 20.06.2020.

59 Deutscher Juristinnenbund 2019: Themenpapier 19-28: Effektive Strafverfolgung von sexualisierter Gewalt, 29.11.2019, [online] <https://www.djb.de/themen/thema/ik/st19-28/> (accessed on 10.09.2020).

influence judicial independence⁶⁰. It is therefore up to the individual judge and prosecutor to decide on their own approach to further training in this area. A point for criticism is that judicial academies in the Länder usually deal with this topic under “Dealing with traumatised victims”, or “Stalking and protection against violence”, which alludes to a gender-neutral approach.

Family law

Protection from violence and child protection largely fall within the scope of family law. On the basis of federal law, these cases are heard in the family case departments of the civil courts. Nevertheless, education and training in this area is purely voluntary and barely relevant to any exams. The Federal Government does not plan to change the entry requirements for family judges, even though a survey of training providers from various NGOs⁶¹ showed that there was little knowledge among family judges regarding child protection and child welfare risks, the procedure for Section 8a of the Social Code (SGB) VIII, domestic violence and sexualised violence. It is precisely with regard to family court decisions on access and contact that negative consequences of this lack of knowledge become apparent in practice (see Article 31).

Police

In almost all Länder, police (further training) schools now offer a learning unit on dealing with domestic violence. However, these do not go beyond absolute basic knowledge. In addition, they are usually based on cooperation agreements with NGOs without the financial backing for this. The background behind what is usually great ambivalence on the part of the female victim/survivor to accept support, or to classify what happened as domestic violence in the first place, cannot be adequately conveyed in this short time. Nor can an intersectional perspective be covered, explaining how different the situations of victims/survivors are. One of the consequences of this is that when women with learning difficulties or cognitive impairments, or hearing-impaired women in particular file a complaint, they are often not believed or proceedings are discontinued due to lack of credibility.

In most Länder, initial and further education and training in dealing with victims of sexualised violence is only available to civil servants of the LKÄ. This means that initial questioning at police stations or by on duty officers called to hospitals is undertaken by personnel who have not been trained. This regularly has a negative impact on the criminal proceedings⁶².

Social work

At universities of applied sciences for social work, gender-based violence, domestic violence and sexualised violence in childhood and adolescence are almost always not addressed⁶³. If the topic is offered, it is usually through individual lecturers, but not as an established component.

This is particularly serious since there is currently a generational change in the child and youth welfare offices, with the consequence that the practical and network knowledge acquired through cooperation with the specialised counselling centres and other NGOs is disappearing. It is difficult for social workers new to this key area to acquire this knowledge through undertaking voluntary further training since child and youth welfare offices are structurally understaffed. Although in some

60 Deutscher Bundestag, Drucksache 15/5823, [online] <http://dip21.bundestag.de/dip21/btd/15/058/1505823.pdf> (accessed on 10.09.2020).

61 Newsletter to and from BAG Forsa Mitgliedsorganisationen 06/2020.

62 Article 49, paragraph 1 stresses the need to qualify all stages of the investigation and criminal proceedings

63 For example in the Evangelische Hochschule Berlin training plan, [online] https://www.eh-berlin.de/fileadmin/Redaktion/2_PDF/STUDIUM_ab_2020/BA_Soziale_Arbeit/Vorlesungsverzeichnis_Soziale_Arbeit.pdf (accessed on 10.09.2020).

Länder (Berlin, Hamburg, Hesse, Baden Württemberg, Lower Saxony) social pedagogical institutes for further education offer training units on this topic, they are rarely used⁶⁴.

There are also no quality standards established for educators or child care workers, nor for personnel in the field of “Frühe Hilfen” (support services for young parents), in relation to sexual and domestic violence⁶⁵.

The task of protecting women with disabilities against (sexualised) violence has not yet been taken on by the vast majority of supervisory authorities. There are usually no references to this subject in the monitoring guidelines. Very few authorities think of women with disabilities living in their own homes, they basically focus on residents in residential facilities. The authorities rely on the institutions to report incidents of violence, as required by the Heimgesetze (Länder-level laws on residential facilities). The supervisory authorities for residential institutions differ among the Länder with regards to their personnel resources and their expertise in recognising and intervening in cases of gender-based violence in residential institutions for people with disabilities. Only a few supervisory authorities of residential institutions are comprehensively trained on this issue, e.g. in Brandenburg.

Health care

The topic of “intervention in cases of violence” is not sufficiently engrained in the initial, further and continuing training of health care professions. A systematic and explicit introduction into curricula and nationwide framework plans is largely missing (exceptions: nationwide further training for Babylots*innen, i.e. hospital-based social workers providing screening and referral services for new families, and midwifery training in NRW), but is advocated by the medical profession, among others⁶⁶. Existing opportunities for improvement are not used: e.g. the recently amended nursing training⁶⁷ with its framework curriculum and examination regulations⁶⁸ make a general reference to the competence of “Recognition of signs of the use of violence”. However, violence against women, intervention standards and the needs of victims are not mentioned. The “compulsory participation in training measures” mentioned in the Federal Action Plan II was not implemented.

There are no federal minimum standards nor training content for health care workers on responding to domestic or sexualised violence. Translation, qualified consideration and dissemination of the WHO (2019)⁶⁹ curriculum have not yet taken place. There is no obligation to attend refresher courses.

Voluntary training courses offered by Medical Associations are not taken up on a sufficient scale by doctors and vary in quality – they often do not involve women’s networks or make reference to their expertise and services. There are positive examples of regular modules on domestic and sexualised violence in nursing training for non-physician medical professionals, but there is a lack of comprehensive and systematic implementation. Tried and tested curricula for initial training in

64 Senatsverwaltung für Bildung, Jugend und Familie des Landes Berlin & Ministerium für Bildung, Jugend und Sport des Landes Brandenburg 2020: Sozialpädagogische Fortbildungsinstitut Berlin-Brandenburg (SFBB) Jahresbericht 2019, [online] https://sfbb.berlin-brandenburg.de/sixcms/media.php/6454/Jahresbericht_2019.pdf (accessed on 23.09.2020).

65 Lang, Birgit et al. 2013: Traumapädagogische Standards in der stationären Kinder- und Jugendhilfe: Eine Praxis- und Orientierungshilfe der BAG Traumapädagogik, Weinheim: Beltz Verlag.

66 Deutsche Ärztetage: Anträge zum Thema „Häusliche/Sexuelle Gewalt“ ab 2002 sowie Ergebnisse der Beratungen, [online] https://www.signal-intervention.de/sites/default/files/2020-04/2019_11_04_Antraege_Deutsche_Aerztetage_hG_sG.pdf (accessed on 10.09.2020).

67 Rahmenpläne der Fachkommission nach § 53 Pfl BG, [online] https://www.bibb.de/dokumente/pdf/geschst_pflgb_rahmenplaene-der-fachkommission.pdf (accessed on 10.09.2020).

68 Ausbildungs- und Prüfungsverordnung für die Pflegeberufe 2018, [online] https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl118s1572.pdf#__bgbl__%2F%2F%5B%40attr_id%3D%27bgbl118s1572.pdf%27%5D__1599223411633 (accessed on 03.09.2020).

69 WHO 2019: Training healthcare providers to help women survivors of violence, [online] <https://www.who.int/reproductivehealth/training-health-care-providers-help-women-survivors-of-violence/en/> (accessed on 10.09.2020).

nursing, midwifery, and for medical and dental assistants are available. However, it is most likely that these are only implemented sporadically and depending on regional commitments. A complete overview is not possible due to missing data. The last survey took place in 2003⁷⁰. The BMFSFJ declined to fund a new systematic survey.

A good approach to a more reliable establishment of voluntary further education has been implemented by the Medical Association in Berlin. S.I.G.N.A.L. Coordination Centre, funded by the Berlin Senate Administration for Health, succeeded in introducing regular project days in many Berlin training centres for nursing staff, midwives/obstetricians, medical and dental assistants⁷¹. Neither in Berlin nor nationwide is there any obligation or requirement for nursing schools to offer project days (one day seminars). From an NGO perspective, there is no sign from the BMG that the ministry will commit to systematically improving this situation.

Psychotherapy

The Psychotherapist Act now stipulates further training on the subjects of domestic and sexualised violence for the purpose of obtaining a licence. Very few psychotherapists feel able to support women with different disabilities.

Education

As part of initial training and further education plans for teaching staff at the Länder Ministries of Education, little attention is paid to gender-based and domestic violence⁷². This is also due to the fact that GBV is not a firm fixture on the school curricula (see Article 14).

There are only partial further training opportunities offered by NGOs, and these are perceived rather cautiously by structurally overstretched teachers⁷³.

Asylum and migration services

This sector encompasses various professional groups with very different perspectives and assignments who in their work encounter women and girls affected by gender-based violence. NGOs find that information on protection from violence is often not tied to information about migration and asylum law. As a result, women and girls are not given adequate comprehensive counselling and their safety is additionally threatened by these structural conditions. This prevents in particular the recognition of the special vulnerability of traumatised women and/or those affected by violence, as well as the recognition of gender-related persecution (cf. Article 60). NGOs confirm a lack of transcultural and culturally sensitive work in the above-mentioned areas, as well as a lack of awareness about the effects of multidimensional discrimination. One example of this are cases where the linguistic and cultural dominance of German partners in bi-national or bi-cultural relationships has a direct impact in terms of sexualised and domestic violence, but goes unnoticed by the authorities.

70 see Hellbernd, Hildegard 2003: Synopse, [online] http://www.signal-intervention.de/sites/default/files/2020-04/Lit_2004_Synopse_Hellbernd (accessed on 11.09.2020).

71 Qualifizierungsangebote zur Intervention bei häuslicher und sexualisierter Gewalt in der Aus- und Fortbildung in Berlin, [online] https://www.signal-intervention.de/sites/default/files/2020-04/2019_%C3%9Cbersicht_Qualifizierungsangebote_Berlin_0.pdf (accessed on 10.09.2020).

72 Rabe, Heike & Britta Leisering 2018: Die Istanbul-Konvention: Neue Impulse für die Bekämpfung von geschlechtsspezifischer Gewalt, [online] <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-56238-3> (accessed on 23.06.2020),

73 DGfPI internal evaluation Sylvia Fein, 02/2020.

Language mediation

Women and girls affected by violence who do not speak enough German have few opportunities to directly contact the police and seek help. In a violent situation they also have to make sure that they can find a person who can correctly interpret for them. This scenario alone leads to secondary victimisation. In addition, especially with some officially appointed interpreters, care must be taken to ensure that the person is not only a woman, but that they also interpret in a non-judgemental way, and do not attempt to influence the survivor of GBV. It is therefore extremely important that gender- and diversity-aware translation is available.

Journalists and members of other media professions

The subject of violence against women and domestic violence is not included in university and training courses for the media profession. Occasionally, on the lecturers' own initiative, certain aspects are taught (e.g. a seminar on the representation of rape in films in the context of an editing course at the Babelsberg Film University KONRAD WOLF). Anecdotally, it became clear in discussions with representatives from schools of journalism that the subject of gender justice is covered by units on ethics (whereby it is questionable in what depth it is covered and to what extent different forms of violence against women play a role) and that GBV cannot be included in the curriculum because of the limited training time that is available.

While the German government does not advocate ensuring that gender justice and content on gender stereotypes and violence against women are definitely included in initial training and further education courses for media professionals in Germany, it does so in the context of development co-operation. One example of this is the BMZ-funded project "Step it Up for Gender Equality in South African Media", in the context of which a study on gender roles and the portrayal of gender-based violence on South African TV is being implemented⁷⁴.

Recommendations

We recommend the following to the Federal Government and the Länder:

- » All education, training and further education measures (Aus-, Fort- und Weiterbildungsmaßnahmen – AFWM) for professionals working with relevant occupational groups should address gender stereotypes and myths surrounding rape (as well as ensuring they are anti-racism) and that they do justice to the needs and rights of victims (ensuring all vulnerable groups are included) in criminal proceedings. In accordance with Article 15, paragraph 2, they should be (co-)designed or implemented by specialist counselling and support centres or NGOs.
- » Implement nation-wide mandatory diversity- and gender-aware AFWM for police, public prosecutors, the judiciary, health and psychosocial support services. This also applies to associated fields of work such as job centres, immigration authorities and child and youth authorities.
- » Once the law has been changed, introduce mandatory diversity- and gender-aware training for judges, guardians ad litem and experts appointed to family courts.
- » Firmly embed the topic in (model) specialty training regulations and in basic, further and continuing training regulations, making them exam-relevant.

⁷⁴ GIZ 2020: South Africa: Step It Up for Gender Equality in South African Media, [online] <https://gender-works.giz.de/competitions2020/south-africa-step-it-up-for-gender-equality-in-south-african-media/>; <https://partnershipsforprevention.org/step-it-up> (accessed on 10.09.2020).

- » Establish minimum training standards, e.g., for health workers, that are based on existing good practice and the WHO curriculum.
- » Provision of adequate resources including regular refresher and in-depth training complete with monitoring & evaluation processes.

See also (specific) recommendations on education, training and retraining of certain professional groups in Article 14, Article 26, Article 31, Article 36, Article 37, Article 43, Article 46, Article 50, Article 51, Articles 52/53 and Article 55.

Article 16

Preventive intervention and treatment programmes

Requirements

Article 16 requires the establishment and support of programmes for perpetrators in order to prevent the future use of violence. These programmes must focus on human rights and the protection of women and girls affected by violence.

Challenges

In most of the Länder in Germany, only half-hearted efforts can be seen to establish programmes for working with perpetrators in such a way that they could effectively prevent future domestic violence. The fact that working with perpetrators is an elementary part of victim protection does not yet seem to have been accepted in some Länder. Most Länder lack a concept to develop a structure of perpetrator work institutions and a plan to expand services to be able to meet the demand. Since 1 March 2013, the Act on Responsibility of Offenders has been the basis for the judicial assignment of perpetrators of domestic violence to perpetrator work institutions.

Lack of integration into intervention structures

Perpetrator work can only succeed if it is embedded in reliable intervention structures aimed at tackling domestic violence, which are themselves co-designed by perpetrator work institutions. Whether further violence can be prevented depends largely on how well perpetrator work institutions cooperate with the police, the justice system and its ancillary services, women's support organisations and other local or regional support institutions (e.g. child and youth welfare offices)⁷⁵. A close connection to regional court districts is therefore recommended.

Lack of financial and human resources and multilingualism

In none of the Länder, the funding available for perpetrator work facilities suffices to ensure that work with offenders in the area of domestic violence plays a fundamental role in victim protection – even where programmes are conceptually very well structured.

Many institutions in Germany do have qualified staff, but they are unable to meet the high demands of qualified work due to financial arrangements, even if they want to.

In practice, an understanding and conceptual development of culturally sensitive work with perpetrators and affected women from migrant families is completely lacking. The regulatory structures and state authorities do not allow for the necessary sensitivity in relation to specific situations and in turn, the special protection needs of vulnerable groups.

⁷⁵ see Gondolf, Edward W. 2002: *Batterer Intervention Systems. Issues, Outcomes and Recommendations*, Thousand Oaks: Sage Publications; Gondolf, Edward W. 2012: *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, Boston: Northeastern University Press.

Work with perpetrators who have a disability and may live in residential facilities is almost impossible to carry out within the limitations of available resources and concepts. Approaches must be found to include this group of people more closely in the analysis. Special programmes for people with disabilities in various forms who use violence must be developed, tested and implemented, for example, using “Leichte Sprache”, easy-to-understand language. This is especially important given that girls and women with disabilities are affected to a greater extent by violence than women without disabilities⁷⁶. The Federal Working Group on Work with Perpetrators of Domestic Violence (Bundesarbeitsgemeinschaft Täterarbeit häusliche Gewalt e. V. – BAG TäHG) has applied to Aktion Mensch (foundation) for project funding for this purpose.

Standard for work with perpetrators of domestic violence

In close cooperation with women’s associations, BAG TäHG drawn up a standard for working with male perpetrators of domestic violence. According to the standard, the safety of the (ex-) partner is a central criterion in working with perpetrators and thus a central aspect of protecting those who are affected. The BMFSFJ has published it several times as a basis for working with male perpetrators of domestic violence in Germany⁷⁷. However, not all facilities for perpetrators of domestic violence work according to this standard.

Vast differences in availability and structure of work with perpetrators between Länder

Current efforts in the individual Länder to implement Article 16 of the IC vary widely, although there are examples of best practice at state level.

As early as 2000, Rhineland-Palatinate set up several working groups under the umbrella of the Rhineland-Palatinate Intervention Project against Violence against Women and Children (RIGG); the idea behind them was to work out the conceptual orientation of both the work with victims and with perpetrators. These findings have been put into practice since 2005. Nine state-funded facilities for perpetrators of domestic violence have now been established at the level of regional court districts.

In Saxony, there are four state-financed facilities for perpetrators of domestic violence and a state action plan based on the quality standards of the BAG TäHG. In Schleswig-Holstein there are at least nine facilities financed by the state. The state itself speaks of a nationwide implementation⁷⁸. In Thuringia, there are now a total of four institutions funded by the Ministry of Justice. Here, too, the institutions try to orientate their work towards the standard of the BAG TäHG⁷⁹.

In Brandenburg, there has been a state-financed model facility in place since 2019, with plans for further expansion. In 2018, the State of Hamburg drew up a completely revised concept for working with perpetrators of domestic violence. The work was then awarded to a provider. Hesse has also greatly expanded its support for perpetrator programmes over recent years, with a total of 15 institutions now being funded. In Lower Saxony there are eleven institutions for working with perpetrators that are financed with state funds. These were originally adapted to match district court areas.

In Bavaria, eight facilities for perpetrators of domestic violence funded by the state are to be added to the facilities already existing at municipal level in each of the individual administrative districts. In North Rhine-Westphalia, work with perpetrators was reassigned from under the jurisdiction of the Ministry of Justice to that of the Ministry of Equality. The first processes drafting and

76 Schröttle, Monika et al. 2012, 2013, 2014, 2015.

77 BAG Täterarbeit 2018: Arbeit mit Tätern in Fällen häuslicher Gewalt: Standard der Bundesarbeitsgemeinschaft Täterarbeit Häusliche Gewalt e. V., [online] https://www.bag-taeterarbeit.de/images/Standard_BAG_T%C3%A4HG_2018.pdf (accessed on 28.07.2020).

78 BMFSFJ 2020: GREVIO 1. Staatenbericht der Bundesrepublik Deutschland, [online] <https://www.bmfsfj.de/blob/160138/6ba3694cae22e5c9af6645f7d743d585/grevio-staatenbericht-2020-data.pdf> (accessed on 10.09.2020) p. 51 f.

79 Ibid., p. 52 f.

establishing programmes for working with perpetrators in cooperation with practitioners are now underway.

Although the number of inhabitants in Berlin is identical to that of Rhineland-Palatinate, there is only one specialised facility for work with perpetrators. There is also an enormous need for action to be taken in this respect in Baden-Württemberg, Mecklenburg-Western Pomerania and Saxony-Anhalt. In Baden-Württemberg, the state government is not making any effort to supplement the five institutions, which are currently financed at a municipal level with state funding. Mecklenburg-Western Pomerania, despite its large territorial area, currently only has one institution dedicated to working with perpetrators of domestic violence. However, other state-funded institutions are to be added. Saxony-Anhalt finances facilities at three locations. In Saarland, which has a population of about 1 million, there is one state-financed facility for work with perpetrators. In Bremen, too, there is only one specialised facility for working with perpetrators, and this is financed by the State of Bremen.

All in all, therefore, opportunities for working with perpetrators are lacking at all levels.

Perpetrator work with sex offenders

There must be a greater focus on perpetrator work programmes for sex offenders in the next period. Approaches to working with these clients must be found.

With regard to preventive work with sex offenders against children, the “Kein Täter werden” (Do not become a perpetrator) study, conceived by Prof Bayer at the Charité Hospital in Berlin, is now supported as a nationwide programme. This approach is highly controversial for three reasons: First of all, research by Peer Briken and Safiye Tozdan⁸⁰ showed very clearly that the approach that so-called paedophilic offenders show unchanging desire does not correspond to the current state of research and the approach pursued in the programme – that potential offenders only learn to suppress and control their desire. This is more likely to produce “ticking time bombs” since no work is being done on changeability. Secondly, there is a very clear contradiction between the requirements of child protection and the promise of anonymity during work. Thirdly, the study by Andrej König at Dortmund University of Applied Sciences “Kein Täter werden – Keine Effekte?” (Do not become a perpetrator – no impact?) demonstrated the ineffectiveness of this work with potential offenders⁸¹.

Programmes for female perpetrators

For those affected by sexualised or domestic violence at the hands of female perpetrators, it is important that their experience of violence is recognised. Accordingly, the perpetrator work institutions organised in the BAG TäHG now refer to male and female perpetrators of violence⁸². At the same time, there are only a few meaningful studies worldwide on female violence in relationships. In Germany, the statistics of the Federal Criminal Police Office show a percentage of approximately 20% for alleged female perpetrators of domestic violence. A closer look at these statistics, however, reveals that they are not very meaningful with regard to the real extent of female violence in relationships, partly because it is unclear how often heterosexual men who use violence have themselves filed charges in response to a report. The misleading statistics could lead to a quantitative overestimation of the phenomenon of female perpetrators of domestic violence. For this reason, the BAG TäHG will tackle a research project on “Female Perpetrators of Violence” over the next three years, in close cooperation with federal women’s associations.

80 Todan, Safiye et al. 2015: Spezifische Selbstwirksamkeit zur Beeinflussung des sexuellen Interesses an Kindern (SSIK): Konstruktion und Validierung eines Messinstruments, in: *Psychother Psychosom Med Psychol* 2015; 65(09/10), p. 345-352.

81 König, Andrej 2015: Kein Täter werden, –Keine Effekte? [online] <https://link.springer.com/article/10.1007/s11757-015-0316-5> (accessed on 09.09.2020).

82 Satzung der BAG Täterarbeit, [online] <https://www.bag-taeterarbeit.de/images/pdf/Satzung-BAG-THG-Stand-15.11.19.pdf> (accessed on 28.07.2020).

Recommendations

We recommend the following to the Federal Government:

- » Establish and expand perpetrator work nationwide in the areas of domestic violence on the basis of the BAG TäHG standard for working with perpetrators in instances of domestic violence so that a comprehensive service can be guaranteed.
- » Involve perpetrator work associations and work with women survivors and their professional and expert knowledge in the establishment and expansion, as well as further development, of perpetrator work.

We recommend the following to the Federal Government and the Länder:

- » Provide resources that enable standard-compliant, high-quality perpetrator work to be undertaken across the board without removing support from the women's support system.

Article 17

Involvement of the private sector and the media

Requirements

Article 17, paragraph 1 obliges parties to the Istanbul Convention to encourage the private sector, the ICT sector and the media to participate in the development and, specifically, in the implementation of local, regional or national approaches to preventing violence against women, as well as to encourage them to adopt self-regulatory standards such as codes of conduct for the media and ICT sector, especially in respect of social media. In terms of providing protection from sexual harassment in the workplace, a greater number of private companies should be encouraged to develop protocols and guidelines for dealing with sexual harassment in the workplace.

In terms of protection against digital gender-based violence, policy-makers should take into account a greater number of private companies such as social networks, website operators, providers of online services, and software and product developers when developing and implementing their products so that a greater level of protection against violence and abuse can be provided.

With regard to the media, policy-makers, with due respect to basic principles such as freedom of expression, freedom of the press and artistic freedom, should provide the media with framework conditions that promote responsible action. Human rights should be the basis when addressing violence against women in the media, differences between genders can be taken into account, and any sensational reporting is avoided. In addition, policy makers are encouraged to set positive impulses regarding, for example, the development of ethical codes of conduct, or the embedding of the topic in training for media professions.

Challenges with sexual harassment in the workplace

The numerous and widely-spread incidents and consequences of sexual harassment in the workplace have been strongly brought to the attention of the public by the #metoo movement and empirical studies. Protection from sexual harassment in the workplace has since been talked about to a greater extent. However, there is still a lack of numerically relevant actual changes in private companies when it comes to actually establishing structures for the protection and support of survivors. This is all the more alarming since the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz – AGG) has already imposed a legal obligation on employers since 2006 to establish complaint structures for employees to make complaints and to inform employees about measures against sexual harassment in the workplace. However, there is no prospect of sanctions being imposed for non-compliance.

Experience has shown that: Even after #metoo, there are often still no opportunities or willingness to take the necessary action. It remains the rule that companies only really deal with the issue when an internal incident occurs and leaves them with no other choice. For those specialist organisations that offer advice and support for establishing structures, powerful employers in particular often remain out of contact. The reluctance of employers to take action is also reflected in a lack of knowledge among employees regarding measures in place to protect them from harassment in the workplace. A 2019 study found the following: “The first thing that stands out is that the majority of respondents (62%) were not aware of any measures in place at work. 30% said there was a relevant

contact person and only a few (5-7% respectively) could identify other measures, such as company agreements or training and provision of information on sexual harassment in the workplace.”⁸³

In this regard, there is a need for politics to take a much more active role, encouraging and referring to the law, showing that there is a duty to protect against sexual harassment in the workplace so that it no longer remains the sole responsibility of survivors to deal with incidents, and ensuring that it is not a matter of chance as to whether a company puts structures in place for providing protection and support. Sexual harassment in the workplace is about power and powerful action must be taken against it.

Situations that are particularly challenging are those where sexual harassment in the workplace occurs intersectionally alongside other forms of discrimination, such as racism, ableism, etc. For example, trans people, women with disabilities, people who do not identify with a gender and, in particular, those women who experience racial discrimination are disproportionately affected by sexual harassment in the workplace and often find it particularly difficult to obtain support.

Challenges of digital violence

Threats, stalking, physical and sexualised violence occur frequently. Psychosocial counselling centres for survivors have been noting an increase in counselling requests on this topic for years. Stalking, the use of spy apps, image-based sexual violence, hacking, control of Cloud services, spreading rumours online, deep fakes, secret filming, identity theft, and much more all constitute a reality of life for many victims.

Digital gender-based violence in social circles is shaped by fast-moving technological developments and by the speed and reach of information and visual materials – it is also subject to the same dynamics as analogue forms of gender-based violence. This includes the fact that the violence is usually inflicted by (once) familiar persons found in the immediate social environment and that survivors are often partly blamed for what they have experienced. In addition, victims are often not taken seriously when asserting their rights and/or reporting digital gender-based violence to social networks, site operators, providers of online services (such as pornographic websites), and software and product developers (such as spyware, dual-use software or smarthomes). Looking at the experiences of survivors, it is known that methods of reporting this online are, in most cases, not very successful in getting content deleted. It may even be the case that the perpetrator of violence directs the reporting channels against victims themselves in order to get their profiles and accounts blocked.

In addition to the digitalisation of violence in social relationships by current or former relationship partners, we are increasingly observing that attacks are taking place in the public digital sphere in the form of hate speech, where perpetrators sometimes act anonymously and in an organised manner. This so-called “hate on the net” is a human rights violation that takes place digitally and has real effects on survivors.

Online hate speech is organised, but not only in the sense of networks such as manospheres, the phenomenon of anti-feminist movements on the net, with anti-feminist forums, wikis and radical right-wing Facebook groups, but also by alleged individuals whose sexist and racist ideas have been nurtured and radicalised in online and offline fora.

All forms of digital violence are carried out with the help of, or by using platforms and technologies of, private companies that earn a lot of money, but hitherto have been held insufficiently accountable for preventing the misuse of their technologies. Improvements are planned to protect minor users as part of the draft Youth Media Protection Act, which was available at the time of the report.

83 Schröttle, Monika et al. 2019: Umgang mit sexueller Belästigung am Arbeitsplatz – Lösungsstrategien und Maßnahmen zur Intervention, Studie der Antidiskriminierungsstelle des Bundes, Oktober 2019, p. 86.

Challenges regarding the involvement of the media

There are no known proactive approaches being undertaken by the government to encourage the German media to participate in the elaboration and implementation of local, regional or national policies, nor to encourage them to prevent violence against women and seek to prevent it.

The framework applicable to public service broadcasters in Germany (State Broadcasting Treaty and Broadcasting Regulations / General Programming Principles for Broadcasting and Telemedia) and the systems relating to industry-specific self-regulation (the German Press Council, the Voluntary Self-Regulation of the Film Industry and the Voluntary Self-Regulation of Multimedia Service Providers, Press Code) do not specifically address violence against women and gender equality. It therefore comes down to how individual decision-makers act and understand the problem of violence against women and/or gender equality (e.g. refrain from harmful gender stereotyping and spreading degrading images of women or imagery which associates violence and sex) and how they are addressed within their framework. Specific ethical codes of conduct on these topics have not been drawn up.

One example of a publicly funded initiative is an awareness raising campaign targeted at media professionals in Schleswig-Holstein as part of the state-funded SCHIFF project. Another publicly funded project for gender-aware journalism (the online platform [genderleicht.de](https://www.genderleicht.de)) will end in summer 2021 without any prospect of follow-up funding. A welcome initiative in this area are the current BMFSFJ and EAF dialogue forums on sexism, including in the culture and media sector. It remains to be seen whether the measures that will come out of this initiative will contribute to an implementation of Article 17 with regard to the media.

There are further positive measures in the German media sector, however, these are not a result of government impulses.

Following strong impetus from civil society, the German Press Agency committed itself to stop using particular distorting and trivialising terms when reporting on violence against women in November 2019⁸⁴. Another example is the self-commitment “Together for Gender Equality” undertaken by six German film schools⁸⁵, which includes a policy of zero tolerance regarding sexualised violence and any form of discrimination at the universities, as well as measures for gender justice in the content of research and teaching. Also independent of government support, various awareness-raising and training programmes (e.g. workshops) on gender-aware storytelling have been organised for media professionals for a number of years now. Similarly, the first representative study on the topic of the portrayal of violence against women on German TV has been brought underway without governmental involvement. It was initiated by civil society actors and industry partners in autumn 2020 (results are expected to be published in late summer 2021).

While the Federal Government in Germany does not proactively encourage the media to put in place guidelines and norms as part of a self-regulatory process aimed at strengthening respect for the dignity of women and thereby contributing to the prevention of violence directed against them, it does support this work in other countries, in the context of development cooperation – most recently with the BMZ-funded project “Step it Up for Gender Equality in South African Media” implemented by GIZ and partners⁸⁶, and prior to that in the project “Violence against women in the media’s field of vision” in Bolivia (as part of the GIZ regional project “Combating violence against

84 Borgers, Michael 2019: Mord ist Mord ist Mord, in: Deutschlandfunk, 25.11.2019, [online] https://www.deutschlandfunk.de/berichterstattung-ueber-gewalt-an-frauen-mord-ist-mord-ist.2907.de.html?dram:article_id=464247 (accessed on 15.1.2021).

85 Deutsche Film- und Fernsehakademie Berlin et al. 2018: Together for Gender Equality, February 2018, [online] <https://rm.coe.int/together-for-gender-equality/168091d93e> (accessed on 7.3.2021).

86 GIZ 2020: South Africa: Step It Up for Gender Equality in South African Media, [online] <https://gender-works.giz.de/competitions2020/south-africa-step-it-up-for-gender-equality-in-south-african-media/> (accessed on 15.1.2021).

women in Latin America (Com-VoMujer)⁸⁷ – as well as the 2018 bilateral project “Prevention of violence against women” (PreViMujer) in Ecuador.⁸⁸

Recommendations

We recommend the following to the Federal Government and the Länder:

- » Apply the recommendations contained in the Council of Europe Handbook “Encouraging the Participation of the Private Sector and the Media in the Prevention of Violence Against Women and Domestic Violence: Article 17 of the Istanbul Convention. A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence” (see in particular “Checklist” p.41 et seq)⁸⁹.

We recommend the following to the Federal Government in order to combat sexual harassment in the workplace:

- » Proactively and directly address high-ranking representatives from the private sector in a targeted manner. This also includes, in particular, umbrella organisations and interest groups representing sectors and employers. They must act as role models and provide guiding principles for private sector companies.
- » Use fulfilling obligations set out in the General Equal Treatment Act, i. e., ensuring structures and responsibilities are in place for dealing with harassment in the workplace, as a selection criterion and, for example, as a prerequisite for the award of public tenders.
- » Examine what actors could apply sanctions and in which form against companies that do not fulfil their obligations under the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz – AGG) to protect against sexual harassment in the workplace. Particular attention should be paid to preventive measures, such as establishing procedures and a place for employees to make complaints as well as providing information to employees⁹⁰. Should preventive measures not be taken, e. g., no procedure or office is established for making complaints and employees are not provided with information, sanctions should be applied.

We recommend the following to Federal Ministers and other public agencies in order to combat sexual harassment in the workplace:

- » Draw attention to the provision of necessary resources, both human and financial resources, required to prevent sexual harassment in the workplace. They should also set a good example

87 GIZ 2016: Gewalt gegen Frauen im Blickfeld der Medien, [online] [https://info.comvomujer.org.pe/catalogocomvo/productoscatalogos2016/17_ComVoMujer_Hoja%20informativa_Periodismo%20libre%20de%20violencia%20contra%20las%20mujeres_ALEMAN_REG_2016%20\(1\).pdf](https://info.comvomujer.org.pe/catalogocomvo/productoscatalogos2016/17_ComVoMujer_Hoja%20informativa_Periodismo%20libre%20de%20violencia%20contra%20las%20mujeres_ALEMAN_REG_2016%20(1).pdf) (accessed on 15.1.2021).

88 GIZ 2018: Gewalt gegen Frauen verhindern, [online] <https://www.giz.de/de/weltweit/73665.html> (accessed on 15.1.2021).

89 Council of Europe 2016: Encouraging the participation of the private sector and the media in the prevention of violence against women and domestic violence: Article 17 of the Istanbul Convention, January 2016, [online] <https://edoc.coe.int/en/violence-against-women/6804-encouraging-the-participation-of-the-private-sector-and-the-media-in-the-prevention-of-violence-against-women-and-domestic-violence-article-17-of-the-istanbul-convention.html> (accessed on 15.1.2021).

90 In this regard, the above-mentioned representative study from 2019 recommends „examining the possibilities of sanctions against employers who do not sufficiently fulfil their duties of protection and care and who do not take enough of an active role in preventing sexual harassment at the workplace. In this regard, examining the possibility of class action law suits is particularly appropriate in order to ensure adequate law enforcement“ Schröttle et al. 2019, p. 207 (see footnote 83).

themselves in order that structures can be established and those responsible for this area can receive in-service training by means of qualified measures.

- » Ensure the establishment and ongoing support of sector-specific contact points for victims of sexual violence in the workplace and provide regular company training given by professionals in the support system.

We recommend the following to the Federal Government and the federal legislator to combat digital violence:

- » Ensure that there are functioning reporting channels as part of social networks, site operators, providers of online services and software and product developers should the case arise that digital gender-specific violence has been committed through or with their product.
- » Hold companies and IT services accountable for the wide-spread violent use of their products through a digital tax, the proceeds of which would benefit digital violence prevention and intervention services.
- » Ensure that all products that can be used for undetected spying and other forms of digital violence are labelled as such and that users are automatically notified about this.

We recommend the following to the Federal Government in relation to the media:

- » The implementation of Recommendation No. R (84) 17 of the Committee of Ministers to Member States on Equality between Women and Men in the Media; Recommendation 1555 (2002) of the Parliamentary Assembly of the Council of Europe on the Image of Women in the Media; Recommendation 1799 (2007) of the Parliamentary Assembly of the Council of Europe on the Image of Women in Advertising; Resolution 1751 (2010) and Recommendation 1931 (2010) of the Parliamentary Assembly of the Council of Europe on combating sexist stereotypes in the media; and the Recommendation on Gender Equality in the Audiovisual Sector (CM/Rec(2017)9).

We recommend the following to the Federal Government and the Länder in relation to the media:

- » Promote measures that support media establishments and professionals to adequately address their responsibilities with regard to violence against women and gender equality (e.g. through the development of self-regulatory standards, ethical codes of conduct and accompanying specific measures for their introduction and for monitoring their implementation), particularly by incorporating relevant expertise from practice and research, as well as drawing on experiences with corresponding work undertaken within the framework of German development cooperation.

CHAPTER IV

Protection and support

Article 18

General obligations

Requirements

Article 18 requires there to be protection and support for victims and witnesses (especially children) of all forms of violence falling within the scope of the Convention.

Challenges

No gender-aware approach to violence, and no uniform approach

In Germany, violence against women is still not understood as a human rights violation, which is countered with consistent, uniform measures that go across all authorities and institutions. The fact that the Istanbul Convention and its regulations are applicable law in Germany is not known to many public bodies and authorities. The lack of a common view on the issue of violence against women and existing prejudices create major hurdles both for the women concerned, and for women's support institutions. Patriarchal structures and unequal power relations (economic dependence of women, residence regulations, reservations on Article 59 (2) and (3), etc.), legal obstacles (substantive law, criminal prosecution, etc.), lack of appropriate mechanisms for effective cooperation (cf. Articles 7, 9 and 10) all still result in the secondary victimisation of women who have been subjected to violence. This goes hand in hand with a growing trend towards the "de-sexualisation" of violence, i.e., the equation of women's and men's experiences of violence how they are affected⁹¹. A gender-conscious understanding of violence, as required by the Istanbul Convention, is generally not required of public donors, and in some Länder or regions it is even explicitly not supported.

Not all women and girls have access to protection and support

Not all women who are or have been victims of violence, are or have been protected from violence in the same way or have access to the support system. In Germany, women with disabilities, women with a history of migration, refugee women, women from other EU countries, trans women, sex workers, senior citizens, homeless women, women with mental impairments or addictions, and women affected by trafficking in human beings all still belong to a group of people who have no, or insufficient access to the aid system and who also do not receive protection under the system. There are various reasons for this, including insufficient infrastructure and equipment, the funding concepts behind the assistance system, unequal treatment in legal terms (see Articles 59 and 60) and different action plans that are in place as a result of the federal system in Germany.

⁹¹ The current campaign of the BMFSFJ is a good reference point, as it clearly does not emphasise on its homepage that the campaign focusses on violence against women: <https://staerker-als-gewalt.de/#> (accessed on 02.07.2020).

Lack of access to protection and support results in femicide in the worst case. In Germany, 122 women were killed by their partner or ex-partner in 2018⁹². The German government continues to avoid the question of whether femicides take place in Germany⁹³.

Despite high rates of violence, there are too few specialised support services for girls and young women. Their needs are structurally overlooked in child and youth services, and the support structures for adult women mostly cannot cater to their needs. For girls and women under the age of 18, the child and youth welfare office is responsible, and thus they are primarily the responsibility of the local authority. This is often the reason why the provision of services structurally fails at both state and national levels.

Although girls and young women with disabilities are affected by violence even more often⁹⁴, provision of support for them is even worse: there is only one inclusive girls' shelter in Germany (in North Rhine-Westphalia). Telephone details of a family centre in North Rhine-Westphalia. When funding shelters for girls with a disability, the problematic question of jurisdiction between integration assistance and youth welfare services is regularly encountered.

No nationwide provision

There is no nationwide provision of specialised counselling centres (support for adult women affected by violence, intervention after a police intervention, support during or after sexualised violence in childhood and youth) to obtain help and support in a timely manner. In addition, there is no barrier-free (multilingual), high-quality network of support services, even beyond the specialist counselling centres (health services for women, forensic evidence collection, trauma care, sufficient therapy places, etc.)^{95 96}.

There are too few women's shelters throughout the country. The recommendations of the Istanbul Convention are not fulfilled⁹⁷. In addition, the accessibility and quality of protection for survivors of violence and their children varies greatly. It depends, among other things, on the state in which the women and children live. In Germany, women and their children's quick and unbureaucratic access to protection and support is made considerably more difficult or even completely impossible by the fact that there is individual financing of women's shelters by means of so-called daily rates, a system that prevails in many Länder⁹⁸. Under this form of financing, women affected by violence must make a corresponding contribution to the costs, which must be met either from social security entitlements or their own funds. The usual fluctuations in occupancy rates in women's shelters regularly result in financial deficits for the shelter's operators through the daily-rates-funding system.

In addition, residency requirements (according to Section 12a of the German Residence Act – Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundes-

92 BKA 2019: Partnerschaftsgewalt Kriminalstatistische Auswertung – Berichtsjahr 2018, [online] https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/Lagebilder/Partnerschaftsgewalt/partnerschaftsgewalt_node.html (accessed on 02.07.2020).

93 Deutscher Bundestag 2018: Drucksache19/4059, [online] <http://dipbt.bundestag.de/doc/btd/19/040/1904059.pdf> (accessed on 02.07.2020).

94 Schröttle, Monika & Ursula Müller 2004.

95 Bundesverband Frauenberatungsstellen und Frauennotrufe (bff) 2018: Die Fachberatungsstellen: Aktiv gegen Gewalt gegen Frauen und Mädchen. Stark für die Gesellschaft – gegen Gewalt, [online] <https://www.frauen-gegen-gewalt.de/de/broschueren-und-buecher/die-fachberatungsstellen-aktiv-gegen-gewalt-gegen-frauen-und-maedchen-stark-fuer-die-gesellschaft-gegen-gewalt.html> (accessed on 04.07.2020), p. 34 ff.

96 Deutscher Bundestag 2012: Bericht der Bundesregierung zur Situation der Frauenhäuser, der Fachberatungsstellen und anderer Unterstützungsangebote für gewaltbetroffene Frauen und deren Kinder, Drucksache 17/10500, [online] <https://www.bmfsfj.de/blob/93350/e8f90d2446d01af18a3c88a110200457/bericht-der-bundesregierung-zur-situation-der-frauenhaeuser-data.pdf> (accessed on 02.07.2020).

97 see source: Figures from the Länder survey from the Round Table workshop of the BMFSFJ held on 30.11.2018.

98 Deutscher Bundestag 2012: Bericht der Bundesregierung zur Situation der Frauenhäuser, der Fachberatungsstellen und anderer Unterstützungsangebote für gewaltbetroffene Frauen und deren Kinder, Drucksache 17/10500, [online] <https://www.bmfsfj.de/blob/93350/e8f90d2446d01af18a3c88a110200457/bericht-der-bundesregierung-zur-situation-der-frauenhaeuser-data.pdf> (accessed on 02.07.2020).

gebiet – AufenthG) make it difficult for women seeking asylum to break out of violent situations. If they leave their registered residence to seek protection, they are threatened with sanctions. Women's shelters are often not nearby, or they do not have any places available.

In addition, economisations and the increasing bureaucratisation of the social sector is time-consuming and exacerbates the under-staffing.

Lack of support in the health sector

In terms of health care, WHO evidence-based guidelines on responding to intimate partner violence and sexual violence against women have been available since 2013⁹⁹. However, only one state (Berlin) has thus far supported the implementation of the guidelines by setting up a round table¹⁰⁰. Whether or not female survivors of violence are recognised in the health care system, and what services they and their children can receive, is a matter for each individual institution to decide. Despite good practice in some institutions/regions, there is no evidence of nationwide, high-quality support from the health system for women who are affected by violence and their children¹⁰¹. For example, existing opportunities in health care, such as referrals to specialised support services, are not used.

Access of young people who are able to provide informed consent to confidential, i. e. independent from their parents, documentation and forensic evidence collection remains uncertain, despite the new legal regulation in Section 27, paragraph 1, German Social Code (Sozialgesetzbuch – SGB V). Existing demands for legal clarification and further measures have not yet been implemented¹⁰². Access to care for people with cognitive impairments and/or legal guardianship is uncertain¹⁰³, partly because existing legal regulations have rarely been implemented. It is unclear how access for survivors who lack insurance can be guaranteed.

Recommendations

We recommend the following to the Federal Government and the Länder:

- » Ensure qualified support is available to all women impacted by violence and to their children.
- » Finance a needs-based and barrier-free expansion of support structures and their long-term institutionalisation.
- » Guarantee low-threshold and cross-Länder access to help and support, irrespective of structural and regional differences. The access to protection and support must also be granted irrespective of the residence status of the victim.

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- 99 WHO 2013: Responding to intimate partner violence and sexual violence against women, [online] <https://www.who.int/reproductivehealth/publications/violence/9789241548595/en/> (accessed on 09.09.2020).
- 100 S.I.G.N.A.L. 2018: Geschäftsstelle des Runden Tisches Berlins, <https://www.signal-intervention.de/geschaeftsstelle-des-runden-tisches-berlin> (accessed on 09.09.2020).
- 101 Wieners, Karin & Marion Winterholler 2015: Häusliche und sexuelle Gewalt gegen Frauen, [online] <https://link.springer.com/article/10.1007/s00103-015-2260-0> (accessed on 09.09.2020).
- 102 Lohse, Katharina et al. 2018: Ärztliche Versorgung Minderjähriger nach sexueller Gewalt ohne Einbezug der Eltern. Expertise des Deutschen Instituts für Jugendhilfe und Familienrecht e. V. (DIJuF), Herausgeber: S.I.G.N.A.L. e. V. [online] https://www.signal-intervention.de/sites/default/files/2020-04/Infothek_Expertise_Aerztliche_Versorgung_Minderjaehriger_nach_sexueller_Gewalt_5_2018_0.pdf (accessed on 09.09.2020).
- 103 Blättner, Beate & Henny Annette Grewe 2019: Verfahrensweise bei der ärztlichen Versorgung Minderjähriger nach sexueller Gewalt ohne Einbezug der Eltern. Expertise der Hochschule Fulda. Herausgeber: Arbeitsstab des Unabhängigen Beauftragten für Fragen des sexuellen Kindesmissbrauchs, [online] https://beauftragter-missbrauch.de/fileadmin/Content/pdf/Presse_Service/Hintergrundmaterialien/Verfahrensweise_bei_der_aerztlichen_Versorgung_Minderjaehriger_nach_sexueller_Gewalt_ohne_Einbezug_der_Eltern.pdf (accessed on 09.09.2020).

- » Establish and implement mandatory standards for health care following domestic/sexual violence, based on WHO recommendations.

We recommend the following to the legislative authority:

- » Create a statutory regulation regarding protection and assistance in cases of gender-based violence and racial discrimination.
- » Provide legal clarification pertaining to access to documentation and forensic evidence collection after instances of rape involving minors, independent of their parents and guardians.

Article 19 Information

Requirements

Article 19 sets out an obligation to provide victims of violence with information on where they can get help. This information must also be available in the languages most frequently spoken in Germany and in an easily accessible form.

Challenges

Increasing numbers of women are turning to advocacy, support and counselling services via free telephone numbers and/or online chats to seek help¹⁰⁴. Information is a key factor in protecting oneself from violence (see Article 12, paragraph 5 of the IC). However, information on protection against violence does not actually reach many women, especially women impacted by multiple discrimination. This applies both to women who cannot receive the information in their first language or easy to read (for women with learning difficulties), and to people who encounter obstacles due to other differential categories, such as social affiliation and disabilities.

Information from police officers

In Germany, the Act to Improve Civil Law Protection in the Event of Violent Crimes and Stalking and to Facilitate the Provision of Marital Housing in the Event of Separation (Gesetz zur Verbesserung des zivilrechtlichen Schutzes bei Gewalttaten und Nachstellungen sowie zur Erleichterung der Überlassung der Ehewohnung bei Trennung (in short: Gewaltschutzgesetz – GewSchG, Act on Protection against Violence) entered into force in January 2002. It assigns an important role to police officers as the first point of contact for survivors by providing them with access to information and advice¹⁰⁵. For this purpose, a variety of leaflets has been developed by NGOs and ministries, which can be handed out during police operations. They are sometimes also available in several languages or in easy language. However, the actual production of these materials often depends on the financial means of the editors. Distributing them from patrol cars does not work either as a matter of course; it requires good coordination and reminders. Detailed information provided by local police officers is especially dependent on their training and how aware they are of violence against women and the dynamics of intimate partner violence (see Article 15).

However, when police officers take on signposting roles in support systems, it is not taken into account that it is difficult for different groups of women to build trust with representatives of the authorities. This applies, for example, to women who have an insecure residence status, victims of trafficking in human beings, as well as sex workers. For this reason, they often ask NGOs or migrant

104 Bundesverband Frauenberatungsstellen und Frauennotrufe (bff) 2018: Die Fachberatungsstellen: Aktiv gegen Gewalt gegen Frauen und Mädchen. Stark für die Gesellschaft- gegen Gewalt, [online] <https://www.frauen-gegen-gewalt.de/de/broschueren-und-buecher/die-fachberatungsstellen-aktiv-gegen-gewalt-gegen-frauen-und-maedchen-stark-fuer-die-gesellschaft-gegen-gewalt.html> (accessed on 04.07.2020).

105 Smolka, Adelheid & Marina Rupp 2006: Wege aus der häuslichen Gewalt: Beratung zur Flankierung des Gewaltschutzgesetzes; Abschlussbericht der wissenschaftlichen Begleitung des Modellprojekts, [online] https://www.ssoar.info/ssoar/bitstream/handle/document/12534/ssoar-2006-smolka_et_al-wege_aus_der_hauslichen_gewalt.pdf?sequence=1 (accessed on 04.07.2020), p. 17.

women's organisations for help and advice instead of reporting instances to the authorities. These organisations are better placed to provide women survivors with important information and assistance, both linguistically and on a socio-psychological level. This important work done by the NGOs is not often recognised and as such they lack both financial and human resources.

Key role of health professionals remains untapped

Both health care professionals and staff within specialised support services and authorities are often unfamiliar with the existing services that are offered by other sectors. To assist with the cooperation of all actors and therefore improved information for affected women, it is necessary to work on the interaction points, including the creation of referral paths and cooperation agreements. The availability of information on healthcare services, including first-line support according to the WHO, the documentation of injuries and securing forensic evidence, is insufficient.

Information materials on advocacy, support and counselling services

In addition, information materials on existing support services is not accessible to everyone, especially those women with a history of migration and flight, and women with disabilities. Information provided by the local advice centres and women's shelters, such as flyers and websites, is usually neither multilingual (this also includes easy to read language and German sign language) nor is it accessible to people with disabilities or people on lower incomes. Women's shelters and women's counselling and support services do not generally have the financial means in their budgets to translate information materials and websites. This could be achieved by raising donations, but that subsequently ties up corresponding resources.

Nationwide information campaigns on protection and support

In Germany, there have hardly been any information campaigns about instruments on women's rights conducted to date (cf. Article 13). Publications of the BMFSFJ are not generally available in plain language or any of the other languages frequently spoken in Germany. Women who are looking for protection are thereby denied access to information because of their educational level, origin, disability or social class.

The lack of information and associated knowledge for assessing particular circumstances (in respect of the Istanbul Convention, issues such as protection and support measures, criminal prosecution, housing, Protection against Violence Act, residency rights, etc.) poses a major challenge for women seeking protection, and who have to make serious decisions for themselves.

The "Stronger than violence" (Stärker als Gewalt)¹⁰⁶ initiative, the current campaign from the BMFSFJ, is actually a good example of an information campaign for the general public. During the Coronavirus pandemic, the Federal Ministry for Women's Affairs cooperated with 26,000 supermarkets nationwide to provide information about support services to survivors¹⁰⁷. In this context, clearly visible information leaflets with detachable telephone numbers for the telephone helpline were placed at supermarket checkouts and on bulletin boards in the customer area. However, this initiative explicitly addresses violence against both women and men and it avoids a differentiated classification of the gender-based nature of violence. In addition, due to the lack of multilingualism, which has long been a reality in Germany, the information was not understandable for those wom-

¹⁰⁶ BMFSFJ: Gemeinsam stärker als Gewalt, [online] <https://staerker-als-gewalt.de/> (accessed on 08.09.2020).

¹⁰⁷ BMFSFJ 2020: Supermarkt-Aktion gegen häusliche Gewalt gestartet, 29.04.2020, [online] <https://www.bmfsfj.de/bmfsfj/aktuelles/alle-meldungen/supermarkt-aktion-gegen-haeusliche-gewalt-gestartet/155054> (accessed on 08.09.2020).

en who have recently migrated and/or for refugee women, as well as for women with disabilities. Unfortunately, smaller grocery stores, which are often run by migrants, were not included in the campaign, which meant that the women who mainly shop there did not have access to information.

Recommendations

We recommend the following to the Federal Government, Länder and municipalities:

- » Ensure availability of multilingual and low-barrier information services in easy language relating to prevention, support and care services for survivors, as well as legal information. NGOs should be provided with financial and human resources to ensure that information materials and campaigns are produced and made available to the appropriate target groups.

- » Work closely with civil society (especially minority representatives and particularly vulnerable groups) and academia. This should include ensuring transparent referral pathways as well as close collaborative work and cooperation agreements between health care professionals, aid workers, authorities and NGOs.

- » Provide financial and HR support for extra-authority support systems for people for whom accessing state assistance can be problematic (e. g. people with an insecure residence status, trafficked persons, sex workers, etc.).

We recommend the following to the Länder:

- » Provide diversity- and gender-sensitive training and raise awareness of police officers in their role as contact persons for survivors.

Article 20

General support services

Requirements

Article 20 sets out the obligation to ensure survivors of violence can access qualified and adequately equipped health and social support services.

Challenges

The important role played by general support services in assisting survivors is not adequately addressed across the country. The areas mentioned in the article, such as financial support, housing, education, training as well as support in finding a job, are the responsibility of support services for which knowledge of gender-based violence is not (yet) a fundamental basic requirement. Consequently, requesting support can become a lottery for survivors in terms of whether they will be in contact with appropriate professionals in this regard. Especially regarding the question of protection, this may well result in dangerous consequences since it is here that gaps in enforcing and ensuring the anonymisation of the at-risk women often become apparent. They cannot, therefore, meet the requirement of Article 20 in supporting recovery from violence.

In individual cities, networks have been formed with housing associations that facilitate access to the regular housing market for women who have experienced violence, such as the Hestia e. V. housing agency [Hestia e. V.-Wohnungsvermittlung] in Berlin. In light of the fact that affordable housing is a key factor in women survivors of violence being able to once more lead a self-determined life that is free from violence, the issue of obtaining housing is too seldom broached. This problem is becoming even more acute in view of the massive increase in rents, especially in conurbations.

Health services

By including the topic “prevention of and support in cases of abuse and violence” in the Quality Management Guidelines¹⁰⁸ (QM-RL) of the Joint Federal Committee on Health (G-BA), clinics, doctors in private practice and therapists, among others, have been required since November 2020 to offer a safe environment and take on the role of being a contact person¹⁰⁹. It remains to be seen to what extent these guidelines are implemented in practice, whether they also apply to adult patients, and what impact they may have in terms of improving the care situation for adults.

Some health services have already implemented protocols and guidelines for staff on how to deal with patients who have experienced domestic and/or sexual violence¹¹⁰.

108 Gemeinsamer Bundesausschuss: Qualitätsmanagement-Richtlinie/QM-RL, Fassung vom 17.9.2020, [online] https://www.g-ba.de/downloads/62-492-2309/QM-RL_2020-09-17_iK-2020-12-09.pdf (accessed on 15.1.2021).

109 Gemeinsamer Bundesausschuss 2020: Tragende Gründe zum Beschluss des Gemeinsamen Bundesausschusses über eine Änderung der Qualitätsmanagement-Richtlinie (QM-RL), 16.7.2020, [online] https://www.g-ba.de/downloads/40-268-6813/2020-07-16_QM-RL_Vorgaben-aktueller-Stand_TrG.pdf (accessed on 15.1.2021).

110 Wieners et al. 2014: Häusliche und sexuelle Gewalt – Versorgungsangebote in Berliner Rettungstellen – Ergebnisse einer Bestandsaufnahme, [online] https://www.signal-intervention.de/sites/default/files/2020-04/Lit_33RST_Poster_1_9_2014.pdf (accessed on 15.1.2021).

Practise-based reports demonstrate that the type and scope of support offered by health care services depend heavily on the commitment of individual persons or clinics. Intersectoral cooperation between health care, specialised support services and other services involved in intervention and prevention is largely undeveloped or only rudimentary at best. There is a lack of reliable care and referral pathways and collaborations.

Insufficient funding of relevant medical services, such as in-depth interviews on medical case history or interdisciplinary case discussions, presents a considerable obstacle in establishing appropriate support in health care services¹¹¹. The same applies to any language or cultural mediation that may be required. The protection and security of women who have experienced violence must be ensured when it comes to financing and accounting (see comments under Article 25).

Awareness raising, additional time and financial resources are also needed so that general support services can provide adequate care for women and girls with specific needs, such as those with disabilities, those experiencing housing emergencies, those with a migration or refugee background, and LGBTI* persons.

Recommendations

We recommend the following to the Federal Government:

- » Ensure comprehensive financing of all elements of health care for survivors of violences.

See also: health recommendations on Articles 15, 16, 18 and 25.

We recommend the following to the Länder:

- » Clarify to what extent the QM-RL guidelines (Part A Section 4, paragraph 2 and Part B, Section I, paragraph 1) on abuse and violence also apply to adults and to what extent they are implemented.
- » Ensure sufficient and comprehensive training on violence and health in all health and social services.

We recommend the following to municipalities:

- » Promote cooperation between health and social services and specialist and other support services.
- » Provide housing quotas for women (with children) who find themselves in a housing emergency and link to community care structures.

¹¹¹ See Fischer, Lisa 2020: Akutversorgung nach sexualisierter Gewalt, Zur Umsetzung von Artikel 25 der Istanbul-Konvention in Deutschland, Vorabfassung, Deutsches Institut für Menschenrechte, [online] https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/Aktuelles/Analyse_Artikel_25_Istanbul-Konvention_Vorabfassung.pdf (accessed on 15.1.2021).

Article 21

Assistance with individual and collective complaints

Requirements

Article 21 requires that victims of violence be provided with information on, and have access to, existing regional and international mechanisms for individual or collective complaints. Victims of violence should be provided with sensitive and expert support from the state, legal representatives, NGOs, etc.

Challenges

The German Women Lawyers' Association (Deutscher Juristinnenbund e.V., djb) already noted the problems in practical terms of implementing Article 21 in an early statement issued in 2018¹¹². According to this, there are no discernible targeted measures by the Federal Republic of Germany to provide information to survivors. State-sponsored institutions such as the German Institute for Human Rights (DIMR) do provide information on how to make complaints, but by no means does this constitute comprehensive information for survivors. Qualified support for victims of violence in filing appropriate legal remedies is also not guaranteed in Germany. Access to legal aid and free legal advice is also inadequate. This must be remedied without delay.

Particularly for women with disabilities, older women, homeless women, migrant women with insecure residence statuses and female refugees, obtaining access to the legal process is problematic since information, counselling and support services are often neither available in different languages nor in an accessible manner as a result of a lack of human and financial resources¹¹³.

Appropriate measures must be taken without delay to guarantee the rights of all women to access legal assistance, free legal advice and information. Effective access to justice, especially for women facing specific obstacles, includes amendments to the Protection against Violence Act and the establishment of effective monitoring and complaints mechanisms¹¹⁴. Experts from the DIMR also come to the conclusion that specialist support for survivors of violence must be guaranteed when filing complaints. This includes providing financial support for, and qualification of the specialist support system, including lawyers collaborating with counselling centres¹¹⁵.

Access granted to survivors of violence in Germany to information on individual and class actions, as provided for in Article 21 of the Istanbul Convention, is insufficient, the threshold to access is not low enough, and it is not accessible to people with disabilities.

112 Deutscher Juristinnenbund e.V. 2018: Stellungnahme zur effektiven Umsetzung des Übereinkommens des Europarats zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt (Istanbul-Konvention) in Deutschland, 29.1.2018, [online] <https://www.djb.de/presse/stellungnahmen/detail/st18-02/> (accessed on 18.1.2021).

113 Ibid.

114 Ibid.

115 Rabe, Heike & Britta Leisering 2018: Die Istanbul-Konvention: Neue Impulse für die Bekämpfung von geschlechtsspezifischer Gewalt, Deutsches Institut für Menschenrechte, [online] <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-56238-3> (accessed on 15.1.2021), p. 15.

Federal level

Neither the brochure published by the Federal Ministry of Justice and Consumer Protection (BMJV) “Opferfibel. Rechte von Verletzten und Geschädigten in Strafverfahren”¹¹⁶, nor the “Entschädigung für Opfer von Gewalttaten” brochure published by the Federal Ministry of Labour and Social Affairs,¹¹⁷ contain information pertaining to Article 21. The website “Hilfe-Info für Betroffene von Straftaten” (Help and Information for Victims of Crimes)¹¹⁸, which was set up by the BMJV in 2020, also does not contain any information relating to Article 21 of the Istanbul Convention. Although the Federal Ministry of Justice makes reference on its website when discussing the “European Court of Human Rights” to a “Guideline on admissibility requirements” published by the Council of Europe / European Court of Human Rights in 2014¹¹⁹ regarding corresponding complaints, this is only available in German and not in an accessible version for people with disabilities. It makes this very difficult to access for women with disabilities who are affected by violence or migrants who are affected by violence and who are dependent on an English or otherwise multilingual translation. Other relevant brochures, including those of the DIMR, are also only available in German and not in an accessible version¹²⁰.

Those affected by violence could, in addition to independently researching the options available for making a complaint on the Internet in the sense of Article 21, also obtain information about this from specialist lawyers if necessary, but this requires material resources that are not likely to be available to every victim of violence in Germany and, from a practical point of view, the process is also very fraught with obstacles. The provision of empathetic and expert assistance to victims of violence in filing individual or class actions, and ensuring low-threshold access, is therefore not provided.

With regard to the filing of class actions, it must be noted that the Additional Protocol to the European Social Charter, as mentioned in the explanatory report of the Istanbul Convention, allows for class actions under the Charter, something that has not been ratified by Germany. This means that this pathway is not, in principle, open to survivors of violence in Germany.

Länder level¹²¹

In Berlin, the state does not provide comprehensive information on the possibilities for lodging complaints in accordance with Article 21 of the Istanbul Convention. The specialist advice and intervention centres for domestic violence each offer legal advice provided by a lawyer on one day of each week, but the provided information concentrates more on the legal options available on-site. It therefore always depends very much on the attending lawyer whether they are aware of international options, if they consider them, and then if they point them out. There is no easily accessible and comprehensible information on this in Berlin.

116 BMJV 2020: Opferfibel, Informationen für Betroffene von Straftaten rund um das Strafverfahren, [online] https://www.bmjv.de/SharedDocs/Publikationen/DE/Opferfibel.pdf?__blob=publicationFile&v=16 (accessed on 15.1.2021).

117 BMAS 2019: Entschädigung für Opfer von Gewalttaten, [online] https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen/a719-hilfe-fuer-opfer-von-gewalttaten-256.pdf;jsessionid=459757743856F6A568FC-2CB13EA9F364.delivery1-replication?__blob=publicationFile&v=1 (accessed on 15.1.2021).

118 BMJV: Hilfe-Info für Betroffene von Straftaten, [online] <https://www.hilfe-info.de> (accessed on 15.1.2021).

119 Europarat/Europäischer Gerichtshof für Menschenrechte 2014: Leitfaden zu den Zulässigkeitsvoraussetzungen, [online] https://www.bmjv.de/SharedDocs/Downloads/DE/Fachinformationen/EGMR_Leitfaden_zu_den_Zulaessigkeitsvoraussetzungen.pdf (accessed on 15.1.2021).

120 Hübner, Klaus et al. 2012, Menschenrechtsverletzungen: Was kann ich dagegen tun? Menschenrechtsverfahren in der Praxis, 3. Aufl., [online] https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/menschenrechtsverletzungen_was_kann_ich_dagegen_tun.pdf (accessed on 15.1.2021).

121 Unless otherwise stated, the above information is taken from the data provided in October 2020 by the Länder Coordination Offices for Domestic/Sexualised Violence in the Länder. No further information is known about the implementation of Article 21 of the Istanbul Convention in the Länder.

In Saxony, it is unclear to whom survivors can turn if they want to file such lawsuits. In terms of the complaint mechanisms described, there are none known that relate to the issue of domestic violence and sexualised violence.

In Mecklenburg-Western Pomerania there is no information regarding who can provide victims of violence with information on complaints mechanisms under Article 21. Neither the counselling centres that are part of the support network, nor the general victim support service and Victim's Commissioner can provide information on this and refer to lawyers.

In Brandenburg, contact with lawyers is arranged by the survivor support counselling centres and also by the women's protection institutions and counselling centres; in particular, contacts and sources of information on regional and national individual lawsuits are provided. On the other hand, there is less, or even no provision to make contact with people in respect of legal options on an international basis or in terms of class actions. Direct legal advice provided by professional staff, e. g., lawyers, is not available at the counselling centres.

Coordination Offices for Domestic/Sexualised Violence in Rhineland-Palatinate and Lower Saxony have no knowledge of this. In Lower Saxony, the Coordination Offices are not allowed to provide legal advice, which would be the case if they were to refer people for legal action.

In Baden-Württemberg, there are no known activities that directly take Article 21 of the Istanbul Convention into account. Through the Victims' Commissioner, the state has provided a contact person for victim protection institutions; this person ensures coordination and takes on a "guidance role" in the state. Whether this provides sufficient information and support for survivors seeking individual or collective redress remains unclear.

It is evident that the implementation of Article 21 of the Istanbul Convention is insufficient and in urgent need of improvement, including at Länder level. The provision of empathetic and expert assistance to victims of violence in filing individual or class actions in accordance with Article 21 of the IC, and ensuring low-threshold access, is not provided.

Recommendations

We recommend the following to the Federal Government and the Länder:

- » Improve and develop access for victims of violence to information on existing regional and, in particular, international mechanisms for individual or collective complaints and access to them in accordance with Article 21 of the IC.
- » Fully promote sensitive and expert assistance to survivors in bringing about such claims and ensuring low-threshold access.
- » Offer easily accessible, updated, multilingual, disability-friendly versions of information materials regarding ways in which to make a complaint (e. g. from federal ministries) in order to meet the needs of victims of violence. Resources for this within relevant NGOs should also be increased.

We recommend the following to the Länder:

- » Counter the existing lack of knowledge about national and international possibilities for legal action for victims of violence on the part of counselling centres and victim support officers in Länder by training specialist lawyers.

Article 22

Specialist support services

Requirements

Article 22 provides for access to immediate, short-term and long-term specialised support services for all survivors of violence (and their children).

Challenges

In Germany, there is a differentiated and qualified range of specialist outpatient services for gender-based violence (specialist counselling and support centres)¹²². Nevertheless, there is no easily accessible, barrier-free blanket coverage of specialist support services available for survivors of all forms of gender-based violence. In federal Germany, the Länder and municipalities are responsible for funding these services. This is one of the reasons why there are huge differences in the structure of what is being offered, the type and scope of the facilities, the regional distribution of the facilities and the equipment inside of them. These differences can be seen both between the Länder and between different regions within the Länder. It therefore depends very much on where the victim/survivor lives and to what extent they can find an offer for their specific needs in their region. Information on women's shelters, (forensic) medical assistance and the Violence against Women helpline (Hilfetelefon) is provided elsewhere in the report (Articles 23 and 25).

Funding and securing of support services

Funding of the counselling centres is voluntary and unsecured. In most regions, there is no long-term security for counselling centres for victims/survivors of gender-based violence.

Only in one of 16 Länder (Schleswig-Holstein) is there a basis in law for funding counselling centres for women affected by violence. In all other Länder, funding is provided by subsidies from the Länder and/or the municipalities; these amounts have to be renegotiated over and over and can be reduced at any time.

Most counselling centres are financed proportionally by several public funding bodies (e.g. state and municipality). It is not uncommon for one provider of funds to reduce their funding amount if another funder decides to increase the level of their funding. Other problems include retroactive approval in the current year and temporary project funds. The structure of the funding often makes it difficult to work holistically within the sense of the Istanbul Convention. The funds have to be settled separately with each donor and, in some cases, also for each funding programme. The activities that have been financed from them have to be recorded in terms of statistics and the grant has to

¹²² For the GREVIO State report, the individual Länder have provided information on the number of counselling centres within their state (Table Annex 2). In total, the table for Germany shows that there are 288 specialist counselling centres, 208 counselling centres for domestic violence, 172 counselling centres for sexualised violence, 39 counselling centres for women and girls with disabilities, 51 counselling centres for violence in the name of honour and 261 intervention centres. However, it is unclear how the individual Länder have defined the type of counselling centres they offer; for example, what is actually meant by "general specialist counselling centre". A review of the figures provided by experts in the field has shown that in many Länder, individual counselling centres that provide support in different areas were in fact counted several times. The 261 designated intervention agencies are all part of other specialised bodies, some of them with very limited staff capacity. The table does not therefore provide any information on the actual number of counselling centres in Germany.

be renegotiated time and again. This is why an enormous amount of human resources at counselling centres have to be continuously spent on time securing their own work.

In some regions, the financial contribution to counselling centres depends on how many people have received direct support services in recent years¹²³. It is not the case, however, that steadily rising case numbers also lead to steadily rising funding; falling case numbers, however, can lead to a reduction. The problem with such models is that they only take into account direct work with victims, e. g., support given to a mother whose daughter has experienced violence is not relevant in terms of subsidies and grants. Nor does it take account of the fact that using an advice centre crucially depends on the capacity of the centre to carry out publicity and awareness raising activities.

Full financing is not available for most counselling centres. Contributions of up to 40% must be raised, e. g., through donations or fees for lectures, etc. At the same time, these frequent financing shortfalls mean that revenues have to be repaid proportionally to the funding providers. At the same time, these frequent financing shortfalls mean that revenues have to be repaid proportionally to the funding providers. Various movement and contact restrictions during the coronavirus pandemic have meant that many counselling centres have not been able to generate the level of contributions they require in 2020. So far there is no solution to the financing gaps that have subsequently arisen.

To illustrate the precarious financing, here is an excerpt from a notice of approval issued to a specialised advice centre: "I would like to point out that it cannot be concluded from this approval that funding at the previous level can be expected in future financial years. It is to be feared that cuts in grants will be unavoidable or that grants will be cancelled altogether. I would ask you to take this financing risk into account in particular when concluding, amending or extending contracts (e. g. for rental properties or personnel)."

Regional distribution and specialisation

In all provinces there are specialist counselling centres, including specialist counselling centres for women affected by violence in general, for domestic violence, for sexualised violence (Rape Crises Centres), for sexualised violence in childhood and youth, and specialised counselling centres for victims of trafficking in human beings. Nevertheless, not all forms of violence and those affected by them can be reached in their vicinity. There are regions where there is a counselling centre for domestic violence, but a woman who has been raped by her boss cannot find an offer (or vice versa).

The specialist counselling centres in rural areas in all Länder usually have very few staff with whom they have to cover a very large catchment area and a broad range of topics. For those affected, the distances to the nearest specialised counselling centre are long and public transport is inadequate. There are only isolated offers of outreach advice.

Take the example of the Hochsauerlandkreis in North Rhine-Westphalia: for the district, which covers an area of 2,000 km² with 260,000 inhabitants, there are two counselling centres to which women affected by violence can turn. The larger of the two has three staff positions, of which 1.5 are for general counselling for women (including domestic violence) and 1.5 for sexualised violence (including prevention). Public transport is so scarce that from some places the journey to the counselling centre takes several hours, including changing trains; even with a car, the journey usually takes more than an hour.

In urban areas there are various counselling centres specialising in certain forms of violence and target groups, e. g., counselling centres for domestic violence and/or stalking (against women), intervention centres after police deployment, counselling centres for raped and sexually harassed women, counselling centres for sexualised violence in childhood and youth, counselling centres for migrant women, etc. The capacity problems of these centres are enormous. For example, for the capital city of Berlin with over 3.5 million inhabitants, there is one single counselling centre for raped

123 Ministerium für Soziales, Gesundheit und Gleichstellung Niedersachsen 2017: Richtlinie über die Gewährung von Zuwendungen zur Förderung von Maßnahmen für Frauen und Mädchen, die von Gewalt betroffen sind. Erlass vom 30.6.2017 - 202-38313, [online] <http://www.nds-voris.de/jportal/?quelle=jlink&query=V-VND-241000-MS-20170630-SF&psml=bsvorisprod.psml&max=true> (accessed on 19.09.2020).

and sexually harassed women, which employs 8.7 full-time positions (including administration). The waiting time for an initial interview was two months in 2018; in 2019 the offer of 10 possible sessions per client had to be reduced to 5.

Even 30 years after German reunification, there are still major differences between care in the eastern and western Länder. In the eastern Länder, there are few or no outpatient services specifically for women. In general, there are fewer offers in the eastern Länder and they are less well equipped.

In Mecklenburg-Western Pomerania, for example, there are counselling centres for sexualised violence as well as for domestic violence, each of which has a mandate to care for all genders (and in the case of sexualised violence, to also care for age groups). The state is divided into six districts, which are among the largest in Germany. Only five districts, however, have an outreach centre for sexualised violence, two of which have only one staff office. The sparsely staffed counselling centres are difficult to reach by telephone for those affected, and the distances are often too long for personal counselling. The counselling centres can only provide support in acute cases with the available staffing, but their capacities are not sufficient for longer-term counselling processes or activities such as networking, prevention or awareness-raising activities. Furthermore, there are entire districts where not one single service offers barrier-free accessibility for people with disabilities.

In Brandenburg there is no network of specialised outpatient counselling centres and only two places have them. Women's shelters in Brandenburg are otherwise responsible for providing outpatient counselling in addition to protective shelter. The women's shelters in Brandenburg are financed proportionately by the state and the municipalities and are equipped with a maximum of five staff positions, most of them with considerably fewer. Most of them do not have fixed external consultation rooms. There is no funding for additional personnel, who could ensure a reliably accessible outpatient service and remaining in the women's shelter is not financed. Women who need outpatient counselling in a protected setting must either call a women's shelter for counselling or make an appointment with the staff of a women's shelter.

In all Länder there are intervention centres for proactive approach to domestic violence after police intervention. The intervention agencies are financed by the respective Länder. Their resources vary greatly in some cases. There are intervention agencies, e.g., in rural areas in Lower Saxony, which have to get by with only four hours of staff per week and therefore have no resources for networking or cover for sickness and holidays. An analysis by intervention agencies in Lower Saxony has shown that a total of 400 hours a week is not enough financing for the work to be carried out in line with requirements. Many intervention centres are affiliated to counselling centres or run by a women's shelter.

There are specialised counselling centres for sexualised violence in childhood and adolescence in all Länder. They are also financed very differently, so that in some cases there are very similar problems to those mentioned in relation to counselling centres for domestic violence and sexualised violence against adult women. If a counselling centre offers support for sexualised violence against children and young people as well as against women, most Länder then find themselves with a problem of funding coming from different "pots", i.e., interdepartmental financing has to be fought for again and again. A major problem comes from the fact that these counselling centres usually receive the most indirect mandate for primary prevention, and particularly for secondary prevention as well, but without there being any special funding available for this purpose. In addition, the extensive effort that can be involved in case counselling (counselling of the affected persons, the supporting relatives, the environment, such as schools and employees of the leisure facilities, support in court proceedings and contact arrangements, clarification of questions of residence status, language mediation, etc.) is not taken into account, so case numbers where the needs assessment is repeatedly based in no way corresponds to the actual need.

Counselling, support and information for women and girls affected by trafficking in human beings is provided nationwide by about 50 specialist counselling centres that are members of the German NGO Network against Trafficking in Human Beings. However, it must be emphasised that there is no nationwide offer of specialised counselling centres for trafficked persons. In Thuringia, for example, there is still no specialist counselling centre, while in other Länder such as Schleswig-Holstein and Mecklenburg-Western Pomerania there is only one, or they are inadequately staffed (e.g. with only one personnel office).

Special offers aimed at children of women affected by violence are only available to outpatients in isolated cases, e.g., where it is connected to a counselling centre or intervention centre. The state of Lower Saxony, for example, has funded a total of five model projects for children who have experienced violence against their mother between 2015 and 2017¹²⁴. Although after the models expired it was determined that these were necessary offers, the state stopped providing funding and referred the work to the child and youth welfare offices.

[Children as witnesses of domestic violence – The experiences of the model projects in Lower Saxony.] In many cases, there is also a lack of smooth cooperation between refugee shelters and women's counselling centres. In most shelters, there is very little permitted access, if at all, while representatives from women's counselling centres have only very limited or no access at all, and the refugees often lack the financial ability to use transport facilities to go to the nearest counselling centre.

Facilities

All counselling centres are reporting a steady increase in the use of the service, both by those affected and by caregivers, professionals and cooperation partners. The proportion of consultations in the specialist counselling centres affiliated to Federal Association of Women's Counselling and Rape Crisis Centres (bff) has increased by 20 % within four years¹²⁵.

Over the same period, the average number of events, group and training courses per counselling centre per year has risen from 27 to 37. In addition to a constantly increasing demand (number of contacts), the intensity of advice and the complexity of the topics and problem areas are increasing¹²⁶.

The increase in take-up contrasts with the stagnation of human resources at a low level. On average, counselling centres for gender-based violence (against women) have publicly funded staff positions of 2.1 full-time equivalents, distributed among an average of 3 or 4 people¹²⁷. The shortage of personnel means that many counselling centres have to reduce their services (less accessibility, fewer counselling appointments, etc.). Even in Schleswig-Holstein, the only state in which counselling centres are financed on a legally secured basis, there is a total staffing shortfall of more than 200 compared to the professional requirement standards of the bff.

In most institutions, the remuneration of skilled workers cannot be commensurate with the demanding work. Against this context, the public funding agency often sets a low salary category that is not appropriate to the severity of the work.

124 Landespräventionsrat Niedersachsen und Niedersächsisches Ministerium für Soziales, Gesundheit und Gleichstellung 2018: Kinder als Zeugen häuslicher Gewalt – Die Erfahrungen der Modellprojekte in Niedersachsen.

125 Jährliche Abfragen des Bundesverbandes Frauenberatungsstellen und Frauennotrufe (bff) bei Fachberatungsstellen; Vergleich Zeitraum 2014-2018.

126 Bundesverband Frauenberatungsstellen und Frauennotrufe (bff) 2018: Die Fachberatungsstellen: Aktiv gegen Gewalt gegen Frauen und Mädchen. Stark für die Gesellschaft- gegen Gewalt, [online] <https://www.frauen-gegen-gewalt.de/de/broschueren-und-buecher/die-fachberatungsstellen-aktiv-gegen-gewalt-gegen-frauen-und-maedchen-stark-fuer-die-gesellschaft-gegen-gewalt.html> (accessed on 04.07.2020).

The inventory and needs survey of counselling centres in Baden-Württemberg also revealed an increase in the number of enquiries and a higher intensity of counselling, for example in the case of domestic and sexualised violence (inventory and needs survey of the counselling centres in Baden-Württemberg for prostitution, trafficking in human beings for the purpose of sexual exploitation, domestic violence, sexual violence, intervention centres, women's emergency hotlines and counselling centres for sexual abuse of children, young people and adolescents, report on the results of the state-wide survey in February/March 2019, p. 50).

127 Jährliche Abfragen des Bundesverbandes Frauenberatungsstellen und Frauennotrufe (bff) bei Fachberatungsstellen: Between the years 2015 to 2018, they had an average of between 2.09 and 2.18 full-time equivalents in publicly funded positions. The situation differs greatly between the Länder. A scientific survey in Bavaria, for example, came to the conclusion that the counselling centres there have an average of 1.3 full-time equivalents distributed over 2 specialists (Schrötle, Monika; 2016, Studie zur Bedarfsermittlung zum Hilfesystem für gewaltbetroffene Frauen und ihre Kinder in Bayern, p. 85).

Important activities such as administration, networking, committee work, public relations or prevention are often not part of the regular funding and have to be carried out with specially acquired own funds or “on the side”, even though they are vital for holistic work at the counselling centres.

Despite rising costs (e.g. for rent), subsidies are stagnating, which means that the counselling centres regularly have to make tangible cuts to their budgets.

A survey of the needs of the counselling centres organised by the Federal Association of Women’s Counselling and Rape Crisis Centres in 2020 showed the desperate state of many of these centres. Many advice centres lack a digital infrastructure (good telephone systems, modern computers, work mobile phones), soundproofed advice rooms, barrier-free entrance areas and toilets, office furniture, equipment and supplies, good lighting in rooms and much more.

Quality and range of services

Insufficient human and financial resources have had an impact on the quality and scope of the work carried out at these specialised counselling centres. Although the counselling centres have a holistic approach to their activities, only parts of them can actually be undertaken, especially at small institutions. Specialist counselling centres can often only take on the role of an “emergency responder”, thereby having to focus on providing direct support to those affected¹²⁸. In most counselling centres there is a lack of funds to provide up-to-date, and above all data-secure, online counselling services; this is of particular importance for young women or for those affected people who cannot manage the long way to the counselling centre.

This is regularly at the expense of work with resource persons, specialists from other occupational groups, prevention services, special offers for target groups with special needs, networking and awareness-raising, public relations and further training work. As a result, many counselling centres have to limit their prevention work. By way of example, an advice centre has run prevention courses on the topic of the use of knock-out drops in schools. As a result, the number of requests for advice from schoolgirls rose so sharply that the prevention offer had to be stopped in order to meet the increasing demand.

As a rule, there is not enough capacity to support those affected during the longer processes of coping with trauma or to support complexly traumatised women. A current example taken from a specialist counselling centre for sexualised violence: a woman who has already experienced sexualised violence as a child is raped by her lecturer. Firstly, she urgently needs crisis intervention because she presents with self-harming behaviour and is overwhelmed by memories of sexualised violence in childhood. The counselling centre has to cancel other important appointments in order to be able to give her a prompt appointment. She really needs weekly appointments over a longer period of time, but the counselling centre can only make this happen four times at the start, after which point the woman must wait four weeks for the next appointment. The counselling centre does not have the capacity to support people when going to the police station and seeing a lawyer. It is also not possible to call on the university where the lecturer works to intervene in the interests of those concerned.

Most of the counselling centres are run by independent (women’s) associations¹²⁹, where orientation towards a feminist and gender-based understanding of violence as defined by the Istanbul Convention is largely standard practice. However, a gender-sensitive approach must always be defended in respect of funding donors. Counselling centres run by large church or welfare organisations work in line with the concepts of their supporting organisations.

In some states, there has been a development on the part of the donors towards a strengthening of gender-neutral services, especially in terms of domestic violence, but unfortunately also

128 Landesverband Frauenberatung Schleswig-Holstein (LFSH e.V.) 2019: Gemeinsam Große Schritte gehen – Kick off zur Istanbul Konvention in Schleswig-Holstein, p. 13.

129 Deutscher Bundestag 2012: Bericht der Bundesregierung zur Situation der Frauenhäuser, der Fachberatungstellen und anderer Unterstützungsangebote für gewaltbetroffene Frauen und deren Kinder 2012, Drucksache 17/10500, p. 77.

with reference to the Istanbul Convention. Under this same impetus, specific offers for men affected by violence are currently being developed in some Länder, for example, in Bavaria and North Rhine-Westphalia.

Affected persons who need counselling in their non-German mother tongue cannot be adequately supported in many counselling centres because the financial means for language mediation are lacking. A counselling session with language mediation also requires greater preparation and follow-up work because language mediators and interpreters themselves often need support due to the topics and content of the counselling, which are often very difficult for interpreters to hear. Many specialist counselling centres also lack the time and personnel to expand mobile counselling services in refugee accommodation, for example.

As part of the financing of crisis and counselling centres for women and girls affected by violence, funds are only seldom provided, and only provided in small amounts, to enable them to realise feminist self-assertion and self-defence¹³⁰ offers, even though these prevent gender-based violence against women and girls in the long term and are demonstrable protective policies¹³¹.

In principle, many counselling centres do not have (sufficient) resources to enable their staff to undertake further training.

Staffing levels of the support and counselling services are not sufficient to meet the health needs of women and girls affected by violence. Networking and a comprehensive systematic co-operative approach between health care and specialised services and the relevant authorities and ministries is not taking place at a federal level and hardly ever at all at the level of the Länder or local authorities. Examples of good practice for systematic cooperation at state level can be found in the State of Berlin and at a regional level in the Ennepe-Ruhr district.

Accessibility of services

Since counselling centres have insufficient resources, this has a massive impact on the accessibility of their services. Most counselling centres can only guarantee very limited availability by telephone or e-mail. Those affected by violence must expect a period of delay before they can get an appointment for an initial interview¹³². Such waiting times and lack of accessibility are highly problematic, especially in acute situations of violence and threat. A quarter of all counselling centres have a waiting period of two to five weeks for clients, depending on the current situation¹³³.

Many counselling centres are not accessible, or only partially accessible to persons with disabilities¹³⁴, and public awareness work is not barrier-free either throughout the country, so many women with disabilities are not aware of the services that are on offer, even though they are particularly frequently affected by violence. There is a lack of funds dedicated to counselling in institutions in the field of services for persons with disabilities.

Affected people in different life situations (e.g. people with addictions, senior citizens in need of care, refugee women with an insecure residence status and who are part of the asylum process, those affected by classism, homeless women, women with disabilities) all need specific concepts and a high degree of inter-institutional cooperation for them to even be able to access support in

130 cf. service agreements with local authorities.

131 Kelly, Liz & Nicola Sharp-Jeffs 2016: Knowledge and Know-how: the Role of Self-defence in the Prevention of Violence against Women, [online] [https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2016\)571385](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2016)571385) (accessed on 23.09.2020).

132 Deutscher Bundestag 2012: Bericht der Bundesregierung zur Situation der Frauenhäuser, der Fachberatungsstellen und anderer Unterstützungsangebote für gewaltbetroffene Frauen und deren Kinder, Drucksache 17/10500, p. 78.

133 Deutscher Bundestag 2012: Bericht der Bundesregierung zur Situation der Frauenhäuser, der Fachberatungsstellen und anderer Unterstützungsangebote für gewaltbetroffene Frauen und deren Kinder, Drucksache 17/10500, p. 15.

134 Bundesverband Frauenberatungsstellen und Frauennotrufe (bff) 2018: Die Fachberatungsstellen: Aktiv gegen Gewalt gegen Frauen und Mädchen. Stark für die Gesellschaft- gegen Gewalt, [online] <https://www.frauen-gegen-gewalt.de/de/broschueren-und-buecher/die-fachberatungsstellen-aktiv-gegen-gewalt-gegen-frauen-und-maedchen-stark-fuer-die-gesellschaft-gegen-gewalt.html> (accessed on 04.07.2020).

cases of violence. Such concepts are financed, if at all, only within the framework of model projects in individual regions. Well-tested models are regularly terminated after their trial duration and expanding further into the area is usually not successful, even within one state¹³⁵, and certainly not throughout Germany.

Transgender and inter-gender persons and people with queer gender identity can only occasionally find specialist services for gender-based violence, even though they too are very often affected by gender-based violence¹³⁶.

Recommendations

We recommend the following to the federal authorities, Länder and municipalities:

- » Establish a reliable collaboration with the goal of closing the gaps in care provisions and realising on an equal basis the opportunity for specialised professional support for all survivors of violence and for all forms of gender-based violence throughout every region in Germany.
- » Create a needs-based, well-equipped, barrier-free, high-quality and financially secure support system in Germany. Compared to the current situation, this will require wide-scale expansion, i. e., an increase in funds allocated to this area¹³⁷.
- » Ensure that pilot projects in individual regions that have successfully tested specific concepts for specific target groups are ensure on a permanent basis and provided with regular funding, and that they are also introduced across the board in other regions.

We recommend the following to the federal authorities, Länder and regional governments:

- » Put in place effective nationwide, regional and municipal interdisciplinary networks of health and social care professionals and institutions in order to ensure short routes to health care for women affected by violence and their children, and to avoid any breaks in care continuity between outpatient and inpatient care.

We recommend the following to the Länder:

- » Increase funding for the work carried out by intervention agencies in respect of proactive counselling.

135 Beispielhaft das Modellprojekt GeSA (Gewalt – Sucht – Ausweg) in Rostock in Mecklenburg-Vorpommern (<https://www.stark-machen.de/frau-gewalt-sucht>): The GeSA (Violence – Search – Removal) model project in Rostock in Mecklenburg-Western Pomerania. A three-year model phase funded by the Federal Ministry of Health has been completed with very positive results. Reduced further financing was acquired for this region through a pension insurance institution. Despite the great reaction the project has received from the professional and political public, the model has not yet been adopted in any other region of Germany; women with addiction problems who are affected by violence still face in-adequate provision everywhere, with the exception of Rostock.

136 „...nicht so greifbar und doch real“ Eine quantitative und qualitative Studie zu Gewalt- und (Mehrfach-) Diskriminierungserfahrungen von lesbischen, bisexuellen Frauen und Trans* in Deutschland, [online] https://lesmigras.de/tl_files/lesmigras/kampagne/Studie_Zusammenfassung_LesMigraS.pdf (accessed on 10.09.2020).

137 The bff has analysed that at least 6.5 full-time positions per 100,000 inhabitants are needed to meet the demand for outpatient counselling as well as for prevention and further training. In addition, each counselling centre will need sufficient staff to cover management, networking and administration roles. So far, no region in Germany has achieved this level of equipment, and greater personnel resources in particular are urgently required.

We recommend the following to financial donors:

- » Ensure the nationwide provision of specialist counselling and support centres. No victim should have to travel more than one hour to access the nearest specialist counselling centre without a car.
- » Ensure, by means of guidelines or similar, that state-funded institutions operate according to a gender-sensitive approach and that gender-specific services are (also) accessible in each catchment area. Services that include a feminist approach to work, and which also promote gender equality, are to be specifically promoted.
- » Ensure that the counselling centres are not financed on a case-by-case basis and that they have adequate resources for society-related activities such as networking, prevention and awareness-raising.

Article 23

Shelters

Requirements

Article 23 sets out the obligation to provide suitable and easily accessible shelters in sufficient numbers for female victims/survivors of violence and their children.

Challenges

Infrastructure

The current infrastructure of women's shelters and safe housing^{138 139} does not meet the Istanbul Convention's requirements for "easily accessible and adequate protection facilities in sufficient numbers"¹⁴⁰. Finding protection in women's shelters is not guaranteed nationwide in Germany for those women who are seeking protection and for their children. When compared to the recommendations of the Council of Europe¹⁴¹ there is a shortage of around 15,000 places for women and children in women's shelters^{142 143}. In many cities and districts there are no women's shelters or simply too few spaces¹⁴⁴.

There is a lack of a nationwide infrastructure of specialised protection facilities for girls and young women under the age of 18 who are affected by violence. There are very few places where girls' shelters can be found.

This particularly impacts on young women who have been affected by long-term domestic violence and have just become an adult in terms of their age. According to the German Social Code (Sozialgesetzbuch – SGB) VIII, they would still be able to make a claim for youth welfare assistance. In practice, however, this is made very difficult for them or they are denied help from a protection centre with reference to women's shelters because they are legally adults. Insufficient spaces in

138 In the following, women's shelters and women's safe housing all come under women's shelters.

139 There is no uniform definition of a shelter or safe housing, so the self-image of the institutions must be taken as a basis for this. See German Bundestag 2012: Bericht der Bundesregierung zur Situation der Frauenhäuser, der Fachberatungsstellen und anderer Unterstützungsangebote für gewaltbetroffene Frauen und deren Kinder, [online] www.bmfsfj.de/blob/84048/a569e13f4b5782dc9ab63f5ad88239bb/bericht-der-bundesregierung-frauenhaeuser-data.pdf (accessed on 20.05.2017), p. 11.

140 For a detailed description of the different forms of financing: Ibid.

141 Kelly, Liz et al. 2008: Directorate General of Human Rights and Legal Affairs Council of Europe Strasbourg. Combating violence against women: minimum standards for support services, [online] <https://eige.europa.eu/gender-based-violence/resources/european-union/combating-violence-against-women-minimum-standards-support-services> (accessed on 23.09.2020), p. 28.

142 Kelly, Liz et al. 2008: Directorate General of Human Rights and Legal Affairs Council of Europe Strasbourg. Combating violence against women: minimum standards for support services, [online] <https://eige.europa.eu/gender-based-violence/resources/european-union/combating-violence-against-women-minimum-standards-support-services> (accessed on 23.09.2020), p. 28.

143 Zentrale Informationsstelle Autonomer Frauenhäuser (ZIF) 2020: Gewalt gegen Frauen wirksam bekämpfen – Umsetzung der Istanbul-Konvention aus Sicht der Autonomen Frauenhäuser, [online] https://www.autonome-frauenhaeuser-zif.de/sites/default/files/report_attachment/zif_broschuere_ik_0.pdf (accessed on 21.07.2020), p. 4.

144 Zentrale Informationsstelle Autonomer Frauenhäuser (ZIF) 2017: Stellungnahme zum Referentenentwurf des BMFSFJ -Entwurf eines Gesetzes zu dem Übereinkommen des Europarats vom 11. Mai 2011 zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt (Istanbul-Konvention) [online] https://www.autonome-frauenhaeuser-zif.de/sites/default/files/report_attachment/zif-stellungnahme_zum_ref.entwurf_ratifizierung_cets_210.pdf (accessed on 07.06.2019), p. 4.

women's shelters are occupied by women and their children. Moreover, the traditional women's shelters cannot meet the need for support for the personal development of young women. Here, the target group of young women falls into a gap between the two systems. This means that their gender-specific need for help is not perceived and is not structurally answered.

Even for adolescents and young women who are already affected by intimate partner violence, there are no offers of protection with adequate professional care. This also applies to assisted living forms that are explicitly intended for this target group.

There are no nationally binding quality standards in Germany regarding equipment (personnel and premises) and operation of women's shelters, women's safe housing, and girls' shelters¹⁴⁵.

Staff

The staffing of women's shelters with (specialist) personnel is completely inadequate to ensure that the shelters can be operated and that the protection facilities are available 24 hours a day, 365 days a year. There is a lack of human resources to respond to the individual support needs of women and children. Due to staffing bottlenecks, the residents cannot be supported according to their needs and women seeking protection cannot be admitted, despite there being space for them¹⁴⁶.

Facilities

In most women's shelters there is a lack of private retreats for women and children. In many women's shelters, several women still have to share a room. In most women's shelters, mothers live in one room with their children. Very few residents have their own bathroom or toilet. Among other things, these conditions severely restrict the admission of women who may have additional needs, such as psychological impairments, despite the fact that they need protection. In addition, there are insufficient numbers of barrier-free shelters¹⁴⁷. In many places, there is no guarantee of funding to meet the costs of interpreters in women's shelters¹⁴⁸. The technical equipment with PCs, notebooks, telephone systems, smartphones, high-performance Internet access does not meet the requirements for online consultations and advice by telephone and overall data protection. Most women's shelters do not meet the requirements for data-secure communication and protection against digital violence¹⁴⁹.

145 BMFSFJ 2020: Wissenschaftliche Begleitung des Bundesmodellprojektes „Bedarfsanalyse und -planung zur Weiterentwicklung des Hilfesystems zum Schutz vor Gewalt gegen Frauen und häuslicher Gewalt“, (not published), p. 37.

146 Deutscher Bundestag 2012: Bericht der Bundesregierung zur Situation der Frauenhäuser, der Fachberatungsstellen und anderer Unterstützungsangebote für gewaltbetroffene Frauen und deren Kinder, [online] <https://www.bmfsfj.de/bmfsfj/service/publikationen/bericht-der-bundesregierung-zur-situation-der-frauenhaeuser--fachberatungsstellen-und-anderer-unterstuetzungsangebote-fuer-gewaltbetroffene-frauen-und-deren-kind-er/80630> (accessed on 04.06.2019), p. 75.

147 Frauenhauskoordinierung. Frauensuche, [online] <https://www.frauenhauskoordinierung.de/hilfe-bei-gewalt/frauensuche/> (accessed on 02.07.2020): nationwide 12 barrier-free women's shelters (wheelchairs, visually and hearing impaired), 52 women's shelters wheelchair accessible, N: 371 women's shelters and safe housing for women.

148 Deutscher Bundestag 2012: Bericht der Bundesregierung zur Situation der Frauenhäuser, der Fachberatungsstellen und anderer Unterstützungsangebote für gewaltbetroffene Frauen und deren Kinder, [online] <https://www.bmfsfj.de/bmfsfj/service/publikationen/bericht-der-bundesregierung-zur-situation-der-frauenhaeuser--fachberatungsstellen-und-anderer-unterstuetzungsangebote-fuer-gewaltbetroffene-frauen-und-deren-kind-er/80630> (accessed on 04.06.2019), p. 62.

149 Hecht, Dorothea 2020: Digitales Gewaltschutzgesetz? Ein Beitrag aus der Perspektive der Frauenhauskoordinierung, in: *Blätter der Wohlfahrtspflege*, Vol. 167, No. 4, p. 127-129.

Access to a women's shelter

Access to protection and support in women's shelters is not guaranteed throughout Germany for women who have suffered violence and their children and who are seeking help. Migrants with insecure residence status or those without papers who have been affected by violence, asylum seekers¹⁵⁰, women without entitlement to benefits according to the SGB, refugee women and certain EU citizens cannot be admitted to many women's shelters due to a lack of funding and restrictive legislation ("residence obligation" according to Section 47 of the German Asylum Act [Asylgesetz – AsylG])¹⁵¹ and they might even be prosecuted for the administrative offence of leaving their accommodation without permission¹⁵². This problem is aggravated by the increasing individualisation (case-by-case financing) of services for the provider of the women's shelter. In addition to barriers for women with disabilities, the cramped spatial conditions and lack of options for retreating are further barriers to access, especially for women with disabilities, with addiction problems or with psychological impairments. Women with adolescent children and trans women often cannot find suitable spaces in a shelter¹⁵³. Supra-local protection in the women's shelter, i. e., across district and state borders, is not guaranteed everywhere, as more and more municipalities prohibit the local women's shelter from offering protection to women originating from other municipalities because of cost reimbursement issues¹⁵⁴.

Women seeking protection and their children are regularly not admitted to women's shelters due to a lack of space¹⁵⁵.

Support for children and adolescents

Due to a lack of personnel resources, women's shelters only partially meet the support needs of children and adolescents who flee with their mothers to a women's shelter, despite there being a very high demand for counselling, care and prevention¹⁵⁶.

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- 150 Frauenhauskoordinierung 2019: Stellungnahme zum Entwurf eines Gesetzes zur Entfristung des Integrationsgesetzes der Bundesregierung, [online] https://www.frauenhauskoordinierung.de/fileadmin/redakteure/Publikationen/Stellungnahmen/2019-03-20_FHK_Stellungnahme_Entfristung_Wohnsitzauflage_final.pdf (accessed on 04.06.2019) und Zentrale Informationsstelle Autonomer Frauenhäuser 2017: Zur Situation gewaltbetroffener Frauen mit prekärem Aufenthaltsstatus, [online] https://www.autonome-frauenhaeuser-zif.de/sites/default/files/report_attachment/zif-positionspapier_zu_migrantinnen_mit_prekaerem_aufenthaltsstatus_april_2017.pdf (accessed on 05.06.2019).
- 151 Frauenhauskoordinierung 2017: Stellungnahme zur Denkschrift zum Übereinkommen des Europarats zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt, [online] https://www.frauenhauskoordinierung.de/fileadmin/redakteure/Publikationen/Stellungnahmen/2017-02-09_FHK_Stellungnahme_Denkschrift_Istanbul-Konvention_2017_final.pdf (accessed on 04.06.2019), p. 4.
- 152 Bektaş, Lorin et al. 2019: Die Situation geflüchteter Frauen im Asylverfahren. Aktuelle Herausforderungen bei der Asylanhörung, Aufnahme und beim Schutz vor Gewalt, in: *Asylmagazin* 12/2019, pp. 392-400, p. 398 f.
- 153 Deutscher Bundestag 2012: Bericht der Bundesregierung zur Situation der Frauenhäuser, der Fachberatungsstellen und anderer Unterstützungsangebote für gewaltbetroffene Frauen und deren Kinder, [online] <https://www.bmfsfj.de/bmfsfj/service/publikationen/bericht-der-bundesregierung-zur-situation-der-frauenhaeuser--fachberatungsstellen-und-anderer-unterstuetzungsangebote-fuer-gewaltbetroffene-frauen-und-deren-kind-er/80630> (accessed on 04.06.2019), p. 63-69.
- 154 CEDAW-Allianz 2016: Alternativbericht der CEDAW-Allianz, [online] https://www.frauenrat.de/wp-content/uploads/2017/06/CEDAW-Alternativebericht_2016_lang_dt.pdf (accessed on 02.07.2020).
- 155 Frauenhauskoordinierung 2018: Pressemeldung zum Runden Tisch, [online] <https://www.frauenhauskoordinierung.de/publikationen/detail/sehr-hohe-zahl-schutzsuchender-frauen-aus-platzmangel-von-frauenhaeusern-abgewiesen-zeitnahe-ergebnis/> (accessed on 2.07.2020) und Zentrale Informationsstelle Autonomer Frauenhäuser: Zugang zu Schutz und Hilfe. Die größte Hürde: Mangel an Frauenhausplätzen <https://www.autonome-frauenhaeuser-zif.de/de/content/zugang-zu-schutz-und-hilfe> (accessed on 02.07.2020).
- 156 Deutscher Bundestag 2012: Bericht der Bundesregierung zur Situation der Frauenhäuser, der Fachberatungsstellen und anderer Unterstützungsangebote für gewaltbetroffene Frauen und deren Kinder, Drucksache 17/10500, pp. 69-70; Frauenhauskoordinierung 2017: Statistik Frauenhäuser und ihre Bewohner_innen, p. 21.

Support for female victims of trafficking in human beings

Accommodation for female trafficked persons is not uniformly regulated in Germany and poses a great challenge in practice. There are sometimes serious differences in the configuration of the accommodation facilities. Particular difficulties arise due to the accommodation of affected families. The accommodation of minors is also problematic. Existing accommodation facilities, such as shelters for homeless women or child and youth welfare facilities for minors, are not geared to these target groups.

Health-related support needs in women's shelters

Valid data on the health situation of service users and their children of women's shelters in Germany is not available. International studies suggest an above-average prevalence of depression, PTSD (posttraumatic stress disorder) and substance dependence in women's shelters. Extensive qualification of employees can only be assumed when dealing with PTSD. There is a lack of a systematic training programme for women shelter workers to promote the health of women affected by violence and their children.

During the Covid-19 pandemic, it became apparent there was inadequate space in facilities to ensure infection-proof admission to a women's shelter. There is a lack of standard infection control equipment for the operation of women's shelters and counselling/intervention centres.

Financing

There is no uniform national legal regulation for the financing of women's shelters and counselling centres. Current funding excludes groups of women and is uncertain¹⁵⁷.

Nationwide, the funding landscape resembles a patchwork quilt: sources of financing are, to varying degrees, state funds, municipal funds, cost-sharing by women affected by violence and the support agency's own funds. Since the beginning of the 1980s, about two thirds of the women's shelters in Germany have been financed by so-called daily rates. Personnel, equipment and housing costs incurred by the women's shelter are allocated to the individual residents of the women's shelter. For residents entitled to social benefits and their children, either the job centre or the social welfare office pays the daily rates to the women's shelter, depending on the legal basis. These daily rates can vary from one women's shelter to another. However, trainees, students, adult pupils, women without secure residence status, EU citizens (in part), women with their own income or joint assets are not entitled to benefits according to the Social Codes II and XII and, therefore, the financing of their stay in a women's shelter depends on the location of the respective women's shelter and the finance regulations in place there. For women affected by violence and their children, these are often insurmountable hurdles in a situation in which quick, unbureaucratic and needs-based protection and support are needed to free themselves from the violent relationship. Women's shelter organisations are also confronted with numerous problems: the admission of non-local women is regulated, the duration of a stay in a women's shelter is limited, and funding donors demand proof of the necessity of a stay in a women's shelter.

157 Frauenhauskoordinierung 2012: Stellungnahme zum Bericht der Bundesregierung zur Situation der Frauenhäuser, Frauenberatungsstellen und anderer Unterstützungsangebote für gewaltbetroffene Frauen und deren Kinder, [online] https://www.frauenhauskoordinierung.de/fileadmin/redakteure/Publikationen/Stellungnahmen/Stellungnahme_FHK_Bericht_BReg_7.11.2012.pdf (accessed on 02.07.2020) p. 6; Zentrale Informationsstelle Autonomer Frauenhäuser: Zugang zu Schutz und Hilfe. Hürde Sozialgesetzgebung und Tagessatzfinanzierung, [online] <https://www.autonome-frauenhaeuser-zif.de/de/content/zugang-zu-schutz-und-hilfe> (accessed on 02.07.2020); Forderungen des bff zur Mindestausstattung von Fachberatungsstellen, in bff 2018: Die Fachberatungsstellen: Aktiv gegen Gewalt gegen Frauen und Mädchen. Stark für die Gesellschaft – Gegen Gewalt, [online] <https://www.frauen-gegen-gewalt.de/de/finanzierung-von-hilfe.html> (accessed on 02.07.2020).

A similar picture emerges for victims of trafficking in human beings. There are no uniform federal structures or regulations for a specialised assistance system. The Federal Government merely provides the legal framework within which trafficked persons can receive individual benefits under the social benefit laws, namely the Asylum Seeker Benefits Act (AsylbLG), Social Codes (SGBs) II and XII for securing their livelihood. However, the creation, financing and design of accommodation facilities then falls under the responsibility of the individual Länder and municipalities, which look very different in practice. In most of the Länder, specialised counselling centres for trafficked persons receive subsidies for accommodation from the state and/or the municipality, which can be used to enable them to stay in a women's shelter or in safe housing. Some Länder, e.g., North Rhine-Westphalia, Rhineland-Palatinate and Baden-Württemberg, provide a state fund for the accommodation of trafficked persons, which, for example, also allows for short-term accommodation in a hotel or boarding house. As a rule, however, the funds are not sufficient, so that in all Länder there is a need for a combination of funding, which additionally consists of own individual funds, donations and/or funds from foundations; these have to be newly secured and negotiated for each case.

Recommendations

We recommend the following to the federal law authorities:

- » In order to create equal living conditions, draw up a federal and thereby uniform regulation for financing all women's shelters and protected accommodation. At least two models need to be looked at: firstly, funding that is independent of individual cases on an institution basis; secondly, funding for protection in women's shelters via benefit laws. The regulation should also specify that and how federal government will play a role in providing funding. These must guarantee fast, unbureaucratic, needs-based access, free-of-charge for all women affected by violence and their children, to protection and needs-based support in a women's shelter of their choice. Such a regulation must be developed in close consultation with umbrella organisations of women's shelters and counselling centres as well as civil society; it must not exclude any groups, e.g., due to a lack of entitlement to benefits or issues surrounding residency law. The financing of women's shelters on this basis must cover costs. In addition, it must ensure qualified support for women, children and girls affected by violence that is in line with their needs and it must include funding for public relations, networking, cooperation and political work against violence against women.
- » Immediately remove any obstacles that stand in the way of accessing shelters and women's refuges under residence and asylum law. For refugee women, this would mean that they could access all shelters nationwide, irrespective of any residence requirements (Section 12a of the Residence Act (AufenthG)).

We recommend the following to the federal authorities:

- » Get involved in the timely expansion and securing of funding for women's shelters nationwide.

We recommend the following to the Federal Government, Länder and municipalities:

- » Intensively promote accessible equipment in all women's shelters.

We recommend the following to the Länder and municipalities:

- » Close any gaps in the support structure offering shelters and women's refuges, and ensure provision of women's refuges in all districts and cities. A further 15,000 places in women's

shelters¹⁵⁸ must be created in the near future so that the ratio of 1 family place (= 2.59 women's shelter beds) per 10,000 inhabitants (total population) as recommended in CETS 210 is met. Specialist shelters for girls and young women under the age of 18 who are victims of violence, as well as for young adult women, should be set up in all Länder ensuring the number of required places is met. Suitable shelters should also be provided for trafficked persons in all Länder, including for trafficked families and minors. The systematic demand planning required for this to happen needs to be put in place.

- » Immediately expand staff resources in women's shelters and protected accommodation in line with needs. This is particularly true of specific work involving children and young people. In order to support women and/or children with mental illness, addiction problems, limited mobility or other health-related care needs, those who find themselves in a housing emergency, and to ensure comprehensive language needs are met, we recommend that sufficient financial and human resources are provided.

158 Increase the number of places in women's shelters until the ratio of 1 family place (= 2.59 women's shelter beds) per 10,000 inhabitants (total population) as recommended in CETS 210 can be implemented.

Article 24

Telephone helplines

Requirements

Article 24 provides for the establishment of a 24-hour confidential telephone helpline for victims of violence.

Challenges

With the nationwide telephone helpline “Violence against women”, the Federal Government has established an important and low-threshold initial contact point for counselling, information and referral to the regional support system. The telephone helpline links many women who are seeking advice with women’s shelters and advice centres¹⁵⁹.

However, the pilotfunction for women seeking protection in women’s shelters does not work directly in some cases, and in some areas not at all. Only a small proportion of the residents in women’s shelters were referred by the telephone helpline¹⁶⁰. The same applies to referrals to counselling centres.

The reasons for unsuccessful placements in women’s shelters lie in the lack of space available in the shelters, but also in the lack of personnel resources in those shelters first contacted for referral to other women’s shelters if the places are occupied or the place is not suitable for the woman’s support needs.

There is no nationwide public overview of available women’s shelter places that is updated on a daily basis. The hurdles here lie in the differing interests of the Federal Government and the governments in the individual Länder.

In addition, not all women use the telephone helpline equally. Experience from working with refugee women shows, for example, that written information material, which is displayed in refugee shelters to inform women about the existence of the telephone helpline or other offers of help, is rarely received. This applies even if it is available in several languages¹⁶¹. With regard to the figures provided by the Federal Government on counselling in a refugee context with the help of interpreters, it is not apparent how many counselling sessions were actually conducted directly for women refugees. The figures provided only refer to the most frequently requested languages for female interpreters, but do not indicate whether the woman is a refugee or has a migration history¹⁶².

Women with disabilities also make very little use of the telephone help line. Deaf women in particular complain about being able to access it. The technical solution to this is that a sign language interpreter can be used. However, very many deaf women reject this solution because it is

159 BMFSFJ 2020: Jahresbericht des Hilfetelefon Gewalt gegen Frauen 2019. Vermittlungen: 4.969 an Frauenhäuser, 13.556 an Fachberatungsstellen, [online] https://www.hilfetelefon.de/fileadmin/content/Materialien/Jahresberichte/2019/Hilfetelefon_Gewalt_gegen_Frauen_Jahresbericht_2019_barrierefrei.pdf (accessed on: 02.07.2020), p. 27.

160 Frauenhauskoordinierung 2018: Statistik Frauenhäuser und ihre Bewohner_innen 2018. 0,4% der Bewohner*innen (N: 7.172 Frauen in 180 Frauenhäusern) [Statistics of women’s shelters and their residents] 2018 0.4% of the inhabitants* (Numbers: 7,172 women in 180 women’s shelters)].

161 medica mondiale 2019: Geschlechtsspezifische Gewalt gegen Frauen im In- und Ausland kohärent bekämpfen. Stellungnahme zum 13. Bericht der Bundesregierung über ihre Menschenrechtspolitik, p. 6.

162 BMFSFJ 2020: Jahresbericht des Hilfetelefon Gewalt gegen Frauen 2019, [online] https://www.hilfetelefon.de/fileadmin/content/Materialien/Jahresberichte/2019/Hilfetelefon_Gewalt_gegen_Frauen_Jahresbericht_2019_barrierefrei.pdf (accessed on 02.07.2020), p. 25.

technically too complex for them (they would prefer to connect, for example, via Skype, which is not a data-secure connection) or they want to see a counsellor who has sign language competence herself and with whom they can have the counselling conversation directly¹⁶³.

Recommendations

We recommend the following to the Federal Government:

- » Ensure financial support to enable the operation of a nationwide website for a daily updated public overview of available places in women's shelters, which would further assist the support helpline in referring women seeking protection.
- » Adjust the remuneration of counsellors working on the helpline so that the high workloads are reflected in the pay scale. Likewise, data collection from the helpline should be supplemented by holding a survey on women with a refugee background.
- » With regard to public relations work and the "Violence against Women" helpline, do not only rely on social media campaigns, but also make use of printed PR materials in various languages.

We recommend the following to the Länder and municipalities:

- » In order to ensure the pilot function provided by the helpline, the provision of free spaces in women's shelters to allow the placement of women and their children who are seeking protection, must be expanded in a timely manner. Women's shelters must also be provided with staff resources in order to carry out the necessary referrals to other women's shelters (as a result of there being no free spaces or insufficient services to meet demand).

¹⁶³ BMFSFJ 2017: Jahresbericht des Hilfetelefon 2016. p. 38. Consultations as a whole: 34,400, counselling for women with disabilities/impairments: 2,095, of which 1.29% are deaf women.

Article 25

Support for victims of sexual violence

Requirements

Article 25 sets out the obligation to establish a sufficient number of easily accessible crisis centres for victims of rape and sexual violence in order that survivors can access medical and forensic examinations, trauma support and counselling.

Challenges

In Germany, there are both medical and forensic emergency support services, as well as specialist counselling and support centres for survivors of sexualised violence; neither of these, however, exist in sufficient number. Emergency medical and forensic support services are inconsistent and often lacking in quality. Decisions regarding the scope and nature of provision are taken in the individual Länder or regions by providers and ministries/senate administrations. Needs assessments are not available. The following statements refer exclusively to emergency medical and forensic support services after rape (for information on specialist counselling and support centres, see Article 22).

Services are neither nationwide nor of an assured quality

According to a recent study by the German Institute for Human Rights (DIMR) on acute care after sexualised violence (2020), there is no guarantee in Germany of being able to receive a comprehensive range of emergency medical and forensic support services after instances of rape; the structure, scope, concepts and quality of the services all vary¹⁶⁴. There are no nationwide reliable, professional standards for drawing up the structure of emergency medical and forensic support after rape and neither for continuous quality assurance nor conceptual development¹⁶⁵. A countrywide discussion and deliberations in the Länder on the results of the study, including recommendations for action, are still pending.

According to the study, individual good practice models for the confidential collection of evidence and immediate medical assistance after rape have been developed (e. g. in North Rhine-Westphalia, Hesse, Rhineland-Palatinate, Lower Saxony, Saarland), but are either not at all, or insufficiently, established throughout the country. Specialist counselling and support centres for women impacted by violence and specialised coordinating bodies are important partners when establishing such models, but there is usually insufficient capacity and funding.

164 Fischer, Lisa 2020: Akutversorgung nach sexualisierter Gewalt, Zur Umsetzung von Artikel 25 der Istanbul-Konvention in Deutschland, Vorabfassung, Deutsches Institut für Menschenrechte, [online] https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/Aktuelles/Analyse_Artikel_25_Istanbul-Konvention_Vorabfassung.pdf (accessed on 15.1.2021).

165 Ibid.

Implementation of the new legal regulation on funding

With Section 27, paragraph 1 of Social Security Code (SGB) V, the legislator has stipulated that statutory health insurances must finance the confidential/anonymous securing of evidence and documentation “regarding damage to health that may be the consequence of maltreatment, sexual abuse, sexual assault, sexual coercion or rape”. The law came into force on 1.3.2020 and further details are regulated by Section 132k of SGB V¹⁶⁶. The new legal situation introduces a legal entitlement for people with statutory health insurance to documentation and forensic evidence that can be used in court. Providers have the prospect that any costs incurred will be covered. The Länder are responsible for implementing the law. Since there is no nationwide professional exchange on the implementation of the law, it is to be feared that there will be a great deal of variation in standards of care that are to be contractually defined and possibly also the amount of costs reimbursed to the service providers.

The new legal regulation excludes reimbursement of costs for the qualification of those professionals involved in the process and for the evidence recovery kits. It is unclear whether and to what extent justice ministries/administrations, as envisaged in the explanatory memorandum, will bear these costs. The kits for securing evidence are currently financed in part by specialist counselling and support centres and clinics. It also remains unclear how health insurances will guarantee anonymous/confidential processing of bills. So far, there is no solution for insured persons that hold private health insurance.

Problem: recourse claims from health insurance companies

In the event of a treatment requirement for which a third party is responsible, e. g., the treatment of injuries, statutory health insurers are in principle legally obliged to assert claims for damages against the party deemed responsible. The linked obligation of doctors to report cases of abuse and sexualised violence to statutory health insurers was restricted in 2017. This means that doctors will only have to inform the statutory health insurance companies in respect of health problems resulting from sexualised violence; for example, when billing for treatment, should the victim agree to this information being shared (Section 294a, paragraph 1(3) of SGB V)¹⁶⁷.

In practice, however, it remains the case that statutory health insurers become aware of acts of violence and then contact patients in order to acquire information on the perpetrator of the violence (e. g. by sending out accident questionnaires)¹⁶⁸. This potentially endangers survivors, as well as putting them under renewed psychological strain. They are not usually aware that they can refuse to provide this information.

Include medical care

The new legislation relates to funding for the provision of confidential documentation and recovery of evidence following sexual violence and abuse, but not for primary medical care. The legislator assumes that medical care after abuse and sexualised violence is already adequately regulated and sufficiently financed. However, experiences of health care services, specialist counselling and support centres and reports from survivors repeatedly prove the opposite is true. It is all too often

166 SGB V § 132k Vertrauliche Spurensicherung, [online] https://www.gesetze-im-internet.de/sgb_5/_132k.html (accessed on 15.1.2021).

167 S.I.G.N.A.L. e.V./BIG Koordinierung 2017: Bundestag stärkt informationelles Selbstbestimmungsrecht von Patient*innen, Ärztliche Mitteilungspflicht nach Gewalt aufgehoben, Pressemitteilung 10.04.2017, [online] https://www.signal-intervention.de/sites/default/files/2020-04/Aktuelles_Presseerklaerung_294a_10_4_17.pdf (accessed on 15.1.2021).

168 Fischer, Lisa 2020: Akutversorgung nach sexualisierter Gewalt, Zur Umsetzung von Artikel 25 der Istanbul-Konvention in Deutschland, Vorabfassung, Deutsches Institut für Menschenrechte, [online] https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/Aktuelles/Analyse_Artikel_25_Istanbul-Konvention_Vorabfassung.pdf (accessed on 15.1.2021).

the fact that too few clinics and practices offer comprehensive first-line support, including conversation, risk and safety assessment, and referrals for further support. In addition, it may not also be possible to pay for all primary health care services, with people having to pay for HIV tests and emergency contraception themselves.

Medical care must be considered to be an equal pillar alongside forensic medical care when it comes to (subsequent) criminal prosecution. This is also emphasised in the DIMR report¹⁶⁹.

No current guideline from the German Society of Gynaecology and Obstetrics (DGGG) exist with regard to gynaecological care following sexualised violence (Level 1 DGGG guideline expired in 2013)¹⁷⁰. In July 2020, the DGGG and the German Society for Psychosomatic Gynaecology and Obstetrics (DGPGF) published a statement on “Violence against Women” [Gewalt gegen Frauen]¹⁷¹. It is intended to serve as a recommendation for how to proceed in gynaecology and general medical practice, yet it does not cover first-line support and the forensic evidence collection after rape.

Young people, people with disabilities and non-insured survivors

The ability of young people to access confidential evidence collection and documentation, independent of parental consent, is uncertain. Existing demands for legal clarification and further measures have not yet been implemented^{172,173}. Access to care for people with cognitive impairments and/or statutory care is uncertain, partly because existing legal regulations have rarely been implemented¹⁷⁴. It is unclear whether and in what way access is guaranteed for non-insured persons, such as illegalised people or people who are in the process of claiming asylum and whose medical care is regulated by the Asylum Seekers' Benefits Act (see also Article 18).

Networking

There has been no establishment of a systematic interface management between health care, rehabilitation and forensic medicine, as well as with specialist counselling and support services and other psychosocial support, whether that is at a ministerial level of federal government and Länder, or in cities and districts. This makes guaranteeing of care and comprehensive support for women who have survived sexualised violence difficult. Existing services showcasing good practice that can be found in individual regions are implemented through a high level of personal commitment on the part of those involved.

169 Ibid., p. 93.

170 Deutsche Gesellschaft für Gynäkologie und Geburtshilfe e. V. 2010: Ärztliche Gesprächsführung, Untersuchung und Nachbetreuung von Frauen nach mutmaßlicher sexueller Gewaltausübung, [online] https://www.dggg.de/fileadmin/documents/leitlinien/archiviert/federfuehrend/015068_Aerztliche_Gespraechsfuehrung/015068_2010.pdf (accessed on 15.1.2021).

171 DGGG e. V./DGPGF e. V. 2020: Stellungnahme zu Gewalt gegen Frauen, 31.07.2020, [online] https://www.dggg.de/fileadmin/documents/stellungnahmen/aktuell/2020/DGGG-DGPGF-Stellungnahme_Gewalt_gegen_Frauen_2020.pdf (accessed on 15.1.2021).

172 Lohse et al. 2018: Ärztliche Versorgung Minderjähriger nach sexueller Gewalt ohne Einbezug der Eltern, Expertise des Deutschen Instituts für Jugendhilfe und Familienrecht e. V. (DIJuF), (Hrsg.) S.I.G.N.A.L. e. V., [online] https://www.signal-intervention.de/sites/default/files/2020-04/Infothek_Expertise_Aerztliche_Versorgung_Minderjaehriger_nach_sexueller_Gewalt_5_2018_0.pdf (accessed on 15.1.2021).

173 Blättner, Beate & Henny A. Grewe 2019: Verfahrensweise bei der ärztlichen Versorgung Minderjähriger nach sexueller Gewalt ohne Einbezug der Eltern, Expertise der Hochschule Fulda, (Hrsg.) Arbeitsstab des Unabhängigen Beauftragten für Fragen des sexuellen Kindesmissbrauchs, [online] https://beauftragter-missbrauch.de/fileadmin/Content/pdf/Presse_Service/Hintergrundmaterialien/Verfahrensweise_bei_der_aerztlichen_Versorgung_Minderjaehriger_nach_sexueller_Gewalt_ohne_Einbezug_der_Eltern.pdf (accessed on 15.1.2021).

174 Ibid.

Trauma support and counselling

Victims of violence have a legal right to 15 hours of immediate therapy in a trauma outpatient clinic under the Social Compensation Law [Sozialen Entschädigungsrechts – SER]¹⁷⁵. This right aims at acutely traumatised people, including those who have been raped or assaulted. However, appropriate language and cultural mediation is often lacking in these instances. In addition, many survivors are not aware of the services provided by trauma outpatient clinics and no adequate network of trauma therapists exists to provide further support after acute treatment. It is not uncommon for traumatised victims to have to wait many months for a place to become free in a trauma therapy clinic or suitable specialist clinic; as a result of this, the consequences of violence become chronic. Many places are also lacking in services suitable for women and girls with disabilities. For women and girls in rural areas, trauma outpatient clinics are difficult to reach.

Recommendations

We recommend the following to the Federal Government:

- » Promote a regional and nationwide exchange between experts, inter alia for the further processing of the DIMR's recommendations for action at federal and Länder level¹⁷⁶.
- » Develop reliable nationwide quality standards and comprehensive care networks, including clear framework conditions, for the provision of emergency medical and forensic support after sexualised violence, taking into account the perspective of survivors and the expertise provided by specialist counselling and support centres and coordination centres, and drawing on WHO guidelines and existing good practice.
- » Ensure needs-based funding for emergency medical and forensic care following sexual violence, including evidence collection kits, training, emergency contraception and HIV prophylaxis.
- » Lay the foundations to ensure the continuous collection of data on health care provision in accordance with data protection legislation.

We recommend the following to the Länder:

- » Offer emergency medical care and forensic services on a round-the-clock and non-discriminatory basis as part of a complete package and from a single source.
- » Expand trauma therapy services which are gender-aware and survivor-needs oriented.

We recommend the following to the legislative authority:

- » Ensure there is legal clarification regarding restrictions on the obligation of doctors to make reports also preventing recourse claims by statutory health insurance companies in cases of gender-based violence.

(See Articles 18 and 22 for further recommendations)

175 Gesetz zur Regelung des Sozialen Entschädigungsrechts vom 12. Dezember 2019, BGBl. Teil I Nr. 50, p. 2652 ff. [online]

176 Fischer, Lisa 2020: Akutversorgung nach sexualisierter Gewalt, Zur Umsetzung von Artikel 25 der Istanbul-Konvention in Deutschland, Vorabfassung, Deutsches Institut für Menschenrechte, [online] https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/Aktuelles/Analyse_Artikel_25_Istanbul-Konvention_Vorabfassung.pdf (accessed on 15.1.2021).

Article 26

Protection and support for child witnesses

Requirements

The Federal Government and the Länder are obliged to ensure that the rights and needs of girls and boys are taken into account at all stages from the moment they witness gender-based violence against women and/or domestic violence; they must also ensure that support services are available to them.

Challenges

In practice, girls' and boys' witnessing of violence is not treated per se as a "threat to the well-being of the child" (Kindeswohlgefährdung). They are not provided with independent, specialised support services that focus on their fears and insecurities. Girls' and boys' right to support is thus severely curtailed.

In 2018, the Federal Criminal Police Office recorded 140,755¹⁷⁷ instances of violence against an intimate partner that constituted a criminal offence (excluding data on unreported instances). Children who are physically hurt are counted as victims here. But it is not known in which of these cases, girls and boys were also witnesses of violence. This figure is still not recorded in the police crime statistics (PKS). Even in cases of femicide, it is not officially recorded whether and how many children are affected by the death of their mother.

Threat to the child's well-being [Kindeswohlgefährdung]

It is known that in cases of domestic violence, girls and boys often become victims of abuse themselves or become victims through witnessing violence. Although the witnessing has massive consequences for the development opportunities of girls and boys¹⁷⁸, it is not considered by child and youth welfare offices and courts to be a threat to the well-being of children per se. For example, according to Section 1666 of the German Civil Code (BGB), the family court is obliged to intervene if the "physical, mental or spiritual well-being of the children is at risk and the parents are not in a position to protect the child"¹⁷⁹. However, this intervention does not automatically mean that a "threat to the child's well-being" will be stated in the legal sense. A decision made by the Federal Court of Justice in 2019¹⁸⁰ states that a child's well-being is endangered within the meaning of Section 1666 of BGB if the risk of substantial damage "to the mental or physical well-being is to be expected with

177 Bundeskriminalamt 2019: Partnerschaftsgewalt, Kriminalstatistische Auswertung 2018, [online] https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/Lagebilder/Partnerschaftsgewalt/partnerschaftsgewalt_node.html, (accessed on 15.01.2021), p. 4.

178 Kindler, Heinz 2013: Partnergewalt und Beeinträchtigungen kindlicher Entwicklung: Ein Forschungsüberblick, in: Kavemann, Barbara & Ulrike Kreyssig, Handbuch Kinder und Häusliche Gewalt, Springer VS, p. 36ff.

179 BMFSFJ & BMJV 2019: Mehr Schutz bei häuslicher Gewalt – Informationen zum Gewaltschutzgesetz, Artikelnummer: 4BR51, Stand: April 2019, 5. Auflage, p. 21.

180 Bundesgerichtshof Beschluss v. 06.02.2019 – XII ZB 408/18, [online] <https://www.famrz.de/entscheidungen/kindeswohlgef%c3%a4hrdung-verh%c3%a4ltnism%c3%a4c3%9figkeit-gerichtlicher-ma%c3%9fnahmen.html> (accessed on 15.01.2021).

a high probability". Withdrawing the right to parental custody is, e.g., only possible in the case of an "increased probability of the occurrence of damage".

Despite the existence of domestic violence, if no "threat to the child's well-being" is identified, this has serious consequences for the legal status of girls and boys and therefore also for their entitlement to assistance.

Significance of child and youth welfare offices and police in protecting witnesses

Child and youth welfare offices often do not sufficiently take on the role as guardian of the best interests of the child when dealing with children affected by domestic violence before the family court. Without appropriate intervention and recourse to the family court, child protection cannot be sustainably pursued. In violence protection proceedings, the responsible child and youth welfare offices should be heard if children are involved. If child protection proceedings are initiated, the child and youth welfare offices are party to the proceedings.

The local child and youth welfare offices can also act independently of violence protection proceedings or child protection proceedings if they are aware of domestic violence. According to German Social Security Code (Sozialgesetzbuch – SGB) VIII, Child and Youth Services, the child and youth welfare offices are instructed to offer help and support to families in cases of conflict. However, the legal guardians are not obliged to accept them. Only when proceedings concerning a threat to the child's well-being are initiated can the family court order measures to be taken. However, there are considerable hurdles to overcome.

Professional practitioners criticise that in many cases the right of the parent is given more weight than the right of the child (cf. Article 31).

Girls and boys have the right according to Section 8, paragraph 2 of SGB VIII to turn to the child and youth welfare office regarding all matters of education and development, and according to Section 8, paragraph 3 they have the right to counselling without the knowledge of their guardians "if the counselling is necessary due to an emergency and conflict situation and as long as the purpose of the counselling would be thwarted by informing the guardian". However, children's fear that "everything will get worse" often exceeds. Children who witness domestic violence are ashamed of what happens in their family. They fear that they and their behaviour are to blame for the "disputes" their parents have.

In addition to child and youth welfare offices and the family court, the police as a state authority has an important role to play, especially in measures under the Protection against Violence Act. In the event of police intervention in cases of domestic violence, they are also required to keep an eye on the children present and, in cases of eviction, to inform the child and youth welfare office.

The fact that the affected children often do not receive help after a police intervention and that the focus is initially on women as victims of violence, is also related to the fact that there are too few proactive services that are offered to affected girls and boys with the consent of the supporting parent. This would significantly lower the threshold for assistance.

It is clear from what has been said thus far that there is an array of different legal provisions to support girls and boys as co-experiencers of intimate partner violence. However, in practice, parental responsibility and the rights of guardians are often given higher priority. Most of the legal provisions depend on the actions of adults and on the assessment of whether there is a "threat to the well-being of the child" in the respective situation.

Lack of support structures for affected girls and boys

Girls and boys affected by domestic violence need independent and specific support services (both in individual and group settings) with a focus on their fears, insecurities and needs and where they receive support from a person who sides with them. Particularly in proceedings concerning custody and access rights, there are many different parties and interests involved (mother, father, women's support organisations, men's counselling centres, lawyers, court, experts, legal advisers, etc.), often

leading to the perspective and needs of the children being overlooked. The psychosocial support services should be gender-specific for girls and boys, since the experience of violence between parents (usually by the man against the woman) also influences identity and role models. The services should offer a mixture of strengthening resources, relaxation and addressing the experience of violence and the emotions and fears associated with it. This must be accompanied by networking with the support services for women. In general, there is a lack of services for these girls and boys in the NGO support structure, especially of services that are well established in terms of professional expertise and networks, and are adequately financed. Overall, the NGO support structure for affected children is inadequate and lacks funding.

Recommendations

We recommend the following to the legislative authority:

- » Record the witnessing of domestic violence as a risk to the welfare of the child.

We recommend the following to the Länder:

- » Establish independent and specific support services for girls and boys affected by domestic violence throughout the country and provide adequate financial funding. These psychosocial services should be gender-specific for girls and boys.
- » Make it compulsory for police, education and health professionals to be made aware of and trained in how to deal with situations in which children witness violence. (See also recommendations on Article 15.)

Article 27

Reporting

Requirements

Article 27 obliges measures to be taken to encourage witnesses of violent acts and persons who have a reasonable suspicion of imminent violence to report such instances to competent organisations or authorities.

Challenges

In order to implement this norm in relation to sexualised and domestic violence, criminal procedural processes and terms must, first and foremost, be changed. Only if the person making the report is given an assurance that the victim of the crime will be adequately protected in the proceedings, both psychologically and physically, can they file a report in good conscience. It is therefore important that this norm is not understood as a duty to report in the criminal law sense, but that it is taken into account beyond the duty to prosecute under criminal law in respect of the child and youth welfare office and other supporting agencies.

One current problem in terms of sexualised violence in childhood and adolescence is the narrowing of the reporting obligation under criminal law in individual Länder, e. g., decrees that contain a reporting obligation for schools. At the same time, there is too little knowledge among professionals in schools about the appropriate approach to sexual assault and sexualised violence. Moreover, all experts advise against¹⁸¹ initiating proceedings without the consent of survivors if they are in a position to foresee the consequences of reporting. Should criminal proceedings be conducted too early, there is a risk that survivors will decide not to testify in proceedings for a number of reasons. On the one hand, this may be because their feelings of powerlessness resulting from the trauma were reactivated when the charges were filed over their heads, and on the other, because they are not yet psychologically capable of enduring the stresses of such a procedure. The stability of survivors is an important prerequisite for a statement that can be used in criminal proceedings. This can result in shorter sentences or acquittals because the courts, in the absence of a statement by the victim, believe that they cannot ascertain the victim's will to the contrary. Years later they are not able to hold a new trial against the perpetrator due to the principle of "ne bis in idem" in German criminal procedure law¹⁸².

Since counsellors in specialist counselling and victim support centres do not have the right to refuse to testify in criminal proceedings, it is difficult to build up a relationship of trust during counselling. Victims are concerned that counsellors will have to give intimate details of the counselling process in court if they are called as witnesses. This makes it difficult for survivors to turn for support to a counselling centre.

181 nds coordinating body. Frauen- und Mädchenberatungsstellen gegen Gewalt 2020: Zur Anzeigepflicht eines geplanten sexuellen Missbrauchs an Kindern und Jugendlichen in Niedersachsen, Stellungnahme, 8.9.2020, [online] https://lks-niedersachsen.de/wp-content/uploads/2020/10/Stellungnahme-zur-Anzeigepflicht-bei-sexuellem-Missbrauch_Koordinierungsstelle.pdf (accessed on 15.1.2021).

182 BKSF 2018: No obligation for schools to report sexual violence. Stellungnahme, 21.8.2018, [online] <https://www.bundeskoordination.de/de/article/128.keine-anzeigepflicht-für-schulen-bei-sexualisierter-gewalt.html> (accessed on 15.1.2021).

Lack of training of professionals and gaps in the support system

At this point, the consequences of Article 15 of the IC, the training of professionals, being not very well implemented, are particularly evident. Within the support chain for potential survivor-witnesses, there is always a lack of adequate competence pertaining to dynamics of violence and trauma, both in respect of the police and the court, but also in youth welfare offices, and this is something that forms the basis for implementing a safety concept. As a result, necessary, effective safeguarding measures are repeatedly absent, meaning that feelings of trust on the part of survivor-witnesses cannot develop as part of the actual protection and support process that occur before, during and after court proceedings.

In practice, it has been shown that survivor-witnesses do not feel that they are sufficiently protected and that their protection cannot be sufficiently guaranteed by the actors in the support system. This is predominantly because the implementation of various institutional administrative procedures conceal potential dangers and anonymisation is not consistently possible. For example, dangerous situations are repeatedly reported as a result of information being passed on by health insurance funds or reporting authorities.

A further structural problem arises with regard to the provision of support for testimonies of girls and women without a secure residence. Since (sexualised) violence is often linked to people from their country of origin, or people there experience it, a forced return to that country entails massive danger, both in terms of crimes in the name of so-called honour and "betrayal".

Recommendations

We recommend the following to the Federal Government and the Länder:

- » Embedding of secure measures at registration authorities in order to be able to apply more easily for access to personal data to be blocked as well as an extension of the time period within which it is necessary to reapply for it again¹⁸³.
- » Clear nationwide agreements with health insurance companies and other similarly structured bodies to strictly prioritise anonymity over the desire to disclose personal data.
- » Further training and education of staff working in these institutions with regard to responsibility for the protection of persons at risk.
- » Granting of residence status (not only in the context of human trafficking) for survivor-witnesses who are making a report.

We recommend the following to the Länder:

- » No obligation to report in educational institutions and ensure that in the event of an intervention, close collaborations with specialist counselling and support centres and specialist staff are embedded in the process.
- » Maintain confidentiality for staff of the specialist counselling and support centres in order to better prepare a possible report.

¹⁸³ A circular issued by the ministries of the interior of the Länder stipulates that if a person stays in a women's shelter / protective accommodation, a block on information is to be issued without further proof; this is limited to two years with the possibility of extension. This rule must also apply to the other areas mentioned.

We recommend the following to the legislative authority:

- » Introduce the right to refuse to testify for employees of professional counselling and victim support institutions regarding information that has been entrusted to them in this capacity.

We recommend the following to the courts:

- » Consistent application of Section 68 of the Code of Criminal Procedure (StPO) (questioning of the person; limitation of statements, protection of witnesses).

Article 28

Reporting by professionals

Requirements

Article 28 calls for the partial lifting of the obligation of professional secrecy for certain professions where this would protect serious acts of violence that have been committed or believed to have been committed in the past.

Challenges

With regard to witnesses of domestic violence who are minors and survivors of sexualised violence who are minors, the principle of child protection breaks confidentiality; ensure data protection has been clearly established throughout Germany, and the professional groups concerned, such as employees of specialist counselling and support centres, educational institutions and state psychosocial services, feel that they are protected¹⁸⁴.

If adult women are impacted by gender-based violence, it remains the case for affected professional groups that they may only break the duty of confidentiality if a “justifiable emergency” has arisen, and only if there is a serious and above all “present” danger, for example, to the life or health of other people¹⁸⁵.

There is no satisfactory legal standard on the question of whether, for example, during therapy sessions for a perpetrator of domestic violence, the partner must be warned if the level of violence exhibited continues to be considered high, i.e., as a rule the psychotherapist’s duty of confidentiality is considered to be of a greater priority than the duty to protect the woman. Perpetrator work centres in accordance with the BAGTäHG standard¹⁸⁶ are therefore requesting a release from confidentiality to be signed in order to be able to contact the (ex-)partner.

Recommendations

We recommend the following to the federal law authorities:

- » Establish a legal norm for the protection of women in cases of domestic violence, in which there is a secure option for therapists who work with perpetrators of violence to be able to break their duty of confidentiality, such as cases of threatening violence in the domestic environment.

184 Act to Strengthen Active Protection of Children and Adolescents of 22 December 2011 (Federal Child Protection Act, BKiSchG), BGBl. 2011, Part I No. 70, p. 2975 et seq.

185 StGB Section 34 (Justifiable necessity).

186 BAG Täterarbeit 2018: Arbeit mit Tätern in Fällen häuslicher Gewalt: Standard der Bundesarbeitsgemeinschaft Täterarbeit Häusliche Gewalt e. V., [online]
https://www.bag-taerarbeit.de/images/Standard_BAG_T%C3%A4HG_2018.pdf (accessed on 28.7.2020).

CHAPTER V

Substantive law

Article 29

Civil lawsuits and remedies

Requirements

Article 29, paragraph 1 of the IC provides that parties shall adopt such legislative or other measures as may be necessary to provide victims with adequate civil remedies. Paragraph 2 also requires that the necessary legislative or other measures be taken to provide victims with adequate civil remedies against public authorities. Article 29, paragraph 2 of the IC must be read in conjunction with Article 5 of the IC, which requires state authorities to act with due diligence to prevent, investigate and punish acts of violence that fall within its scope. Civil law must provide remedies in the event of non-compliance with this obligation.

Challenges

Challenges to Article 29, paragraph 1 of the IC

Germany has partially implemented the effective civil legal protection objectives under paragraph 1 with regard to women and children affected by violence through the facilitation of access to justice and, in particular, by allowing persons in need, usually women, to enforce their claims effectively in summary proceedings. Survivors of violence have the option to choose between several courts in cases of claiming protection against violence in order to protect themselves and the children living with them.

Although this improves the enforcement of judgements, in practice it entails the risk that the whereabouts of the survivor will become known because of the link with child proceedings, which do not offer a choice regarding place and venue of jurisdiction. This can either prevent survivors from asserting their rights or put them in a vulnerable position when their whereabouts become known. This may undermine the requirements of Article 29, paragraph 1 of the IC.

Challenges to Article 29, paragraph 2 of the IC

Moreover, civil law protection against public authorities that have not fulfilled their duty to take the necessary (preventive) measures within the scope of their competence has not been sufficiently implemented.

It is true that national legislation provides for compensation in the event of proceedings that are excessively long (Section 198 of the Courts Act). Implementation and enforcement thereof is already considerably more difficult since the standard is not drafted in simple language.

It is certainly not an appeal procedure. The European Court of Human Rights (ECHR) therefore already noted in its judgement of 15 January 2015¹⁸⁷ that the remedy for a complaint regarding a delay and associated action for compensation is not sufficient in all cases. Nevertheless, the national legislator has only implemented the accompanying request for a change in the law to a limited extent in relation to individual child cases, but not in respect of women and mothers who are affected by violence.

¹⁸⁷ K. ./.. Deutschland, Individualbeschwerde Nr. 62198/11, Rn. 141, NJW, 2015, 1433.

Recommendations

We recommend the following to the legislative authority / Federal Government:

- » Draft rules on jurisdiction in civil and, in particular, family law proceedings in such a way that jurisdiction need not be implemented in cases where the disclosure of the child's and/or mother's whereabouts may endanger them, in order to prevent the current whereabouts from becoming known unintentionally as a result of the proceedings.

Article 30 Compensation

Requirements

Article 30 obliges the Federal Government and the Länder to take appropriate measures to ensure that victims have the right to claim compensation from perpetrators. Victims of serious bodily injury or damage to health should be granted state compensation within a reasonable period of time.

Challenges

The German Civil Code (Bürgerliches Gesetzbuch – BGB) provides a civil law basis for claims in Section 823 of the BGB, according to which compensation for material and immaterial damage can be claimed. The assertion of, e.g., health costs, loss of earnings or costs regarding destruction of property will follow rules of civil procedure. Due to the resulting burden of proof and cost risk, such claims are often not enforced. Claims for damages for pain and suffering are also rarely pursued in cases of domestic and sexual violence¹⁸⁸. Reasons for this include the personal stress induced by court proceedings and the lack of awareness of those involved in the process (judges, lawyers). Civil proceedings are also suspended pending the outcome of any criminal proceedings, which can result in particularly lengthy proceedings. If the perpetrator is ordered to pay, this often becomes a burden on the family household; persons who have suffered damage or loss also refrain from legal proceedings for this reason.

The Crime Victims Compensation Act (Opferentschädigungsgesetz – OEG) currently still applies to the granting of state compensation. However, in cases of domestic and sexual violence, this presents the victims with considerable difficulties in making applications and meeting the requirements.

A key point leading to a reason for exclusion according to Section 2 of the OEG is if an adult person does not evade the circumstances causing the damage and this is reproachable. Claims in cases where women who experience domestic violence / intimate partner violence and/or are active in prostitution are refused because they would have contributed to the injury by “grossly negligent self-endangerment” or “persevering in a dangerous situation” (according to Section 2 (1) of the OEG)¹⁸⁹. This includes instances when women do not extricate themselves from the violent relationship or then return to the relationship after reconciliation or promises that the relationship will improve. Psychological forms of violence are not depicted. It is often not possible to prove as causal link between the offence and the (psychological) consequences of injury, especially in the case of long-term violent relationships.

The assertion of claims under the OEG is linked to the filing of a criminal complaint. However, victims of domestic violence often do not want to prosecute the perpetrator, since they may be the husband or the father of their children.

Remaining in a violent relationship is repeatedly cited as a reason for refusal under previous OEG administrative practices (assumed complicity of the victim). Of the already low number of applications regarding this (2008: 10.57% of cases recorded in the Police Crime Statistics; decrease in 2017

¹⁸⁸ This information is based on our own legal practice.

¹⁸⁹ Igney, Claudia & Jacqueline Ehmke 2016: Das Opferentschädigungsgesetz – eine gute Idee mit Reformbedarf, in: Trauma – Zeitschrift für Psychotraumatologie und ihre Anwendungen, 14. Jg., Heft 4.

to 8.81% of cases) the proportion of recognitions also fell from 37.46% (2008) to 27.39% (2017)¹⁹⁰. It is only through court proceedings that authorities are then obliged to provide compensation and benefits. With a standard duration of proceedings taking no less than five years¹⁹¹ in the social courts, survivors lose courage and remain without any benefits during this time.

In the meantime, a number of these obstacles have been removed through the reform of the Social Compensation Law as part of a new Social Code on Order No. XIV (Law on the Regulation of the Social Compensation Law). Psychological violence is also recognised as an act giving rise to injury and damage. In Section 17 (2) of Social Security Code (SGB) XIV, the obligation to report under criminal law has been dropped.

Section 17 (1) of SGB XIV, is modelled on the previous Section 2 (1)(1) of the OEG. The exceptions to be assumed in the case of domestic violence (i. e. that remaining in the violent relationship is not a reason for refusal) are, however, only mentioned in the explanatory memorandum to the act. Since the wording of the law does not differ from the OEG, there is a tangible worry that the administration will continue to follow the previous practice.

The law is not scheduled to take effect until 2024. This means that any acts that occur today and up to this point in time will not be compensated, or will be compensated according to the OEG currently in force, complete with the difficulties as outlined above. If the state intends to improve the right to compensation and recognise that victims of crime are inadequately provided for, it cannot blindly leave them empty-handed for long periods of time. Article 30 of the Istanbul Convention already requires adequate state compensation to be granted within a reasonable period of time.

Recommendations

We recommend the following to the Federal Government:

- » Issue an administrative order to ensure that remaining in or resuming a violent relationship no longer constitutes a ground for refusal under Section 2 (1)(1) of the OEG and Section 17 (1) of SGB XIV. This was already taken into account in the new regulation in Section 17 (1) of SGB XIV, but was only expressly stated in the explanatory memorandum.

We recommend the following to the federal law authorities:

- » Include transitional and retroactive provisions in SGB XIV that close the protection-gaps for acts that occur before SGB XIV comes into force in 2024.

¹⁹⁰ Weisser Ring: Statistiken zur staatlichen Opferentschädigung, [online] <https://weisser-ring.de/media-news/publikationen/statistiken-zur-staatlichen-opferentschaedigung>

¹⁹¹ See comment on judgement LSG Berlin-Brandenburg of 10.1.2019, L 13 VG 3/18, Rechtsanwältin Gienke, Berlin, in STREIT 2/2019, p. 83.

Article 31

Custody, visitation rights and safety

Requirements

Article 31 requires that gender and domestic violence be taken into account in all decisions concerning children's custody and visitation rights. Neither the safety of the mother nor that of the children must be endangered by the custody or contact.

Challenges

Aligning protection against violence with family law and parental custody rights (Kindschaftsrecht) has not been successful, either in law or in practice. Acts of violence against women and children and cases of abuse against children are not given priority over the rights of the violent person when decisions in parent-child proceedings (Kindschaftsrechtsverfahren) are made. Research, literature and professional practice have clearly and soundly described the dilemma of the lack of alignment of violence protection measures and the statutory provisions¹⁹². However, it is not possible to implement these findings across the board in family court practice and the work of child and youth welfare offices.

Access rights take precedence over protection against violence

Domestic violence is always a "threat to the child's well-being" (Kindeswohlgefährdung)¹⁹³. Children witness violence against their mothers to a considerable extent. More than 50 % see and hear the violence; 25 % of the children have tried to actively defend the mother¹⁹⁴.

Nevertheless, the father's right of access is still often preferred over granting protection to the mother and child against violence¹⁹⁵. No account shall be taken of previous or continuing violence. Family court practice tends to idealise the right to contact in relation to other children's rights (safety, integrity) and to trivialise the burdens that may occur after a violent relationship, even if the contact is supervised¹⁹⁶. In orders for protection against violence, contact bans are modified in favour of contact. Conversely, judicial contact arrangements, sometimes with forced contact, are made without violence protection orders being known or being observed. An overall positive assessment of contact with the violent parent leads to secondary traumatising of children.¹⁹⁷ The presump-

192 see e.g.: Nothhafft, Susanne 2009: Kinder sind keine Inseln, Zur Synchronisierung des Gewaltschutzes im Familiensystem, 7. Kinderschutzforum Köln, in: Die Kinderschutzzentren (Hrsg.): Die Jugend(hilfe) von heute, Helfen mit Risiko, Köln, pp. 283-306.

193 Kindler, Heinz 2005: Auswirkungen von häuslicher Gewalt auf die psychosoziale Entwicklung von Kindern, in: Familie, Partnerschaft und Recht, 11. Jg, Heft 1+2, p. 16-19; Kindler, Heinz et al. 2004: Familiäre Gewalt und Umgang, in: FamRZ, 51. Jg, Heft 16, p. 1241-51.

194 Schröttle, Monika & Ursula Müller 2004: Lebenssituation, Sicherheit und Gesundheit von Frauen in Deutschland, Eine repräsentative Untersuchung zu Gewalt gegen Frauen in Deutschland, p. 288.

195 Frauenhauskoordinierung e.V. (Hrsg.) 2015: FHK-Bewohner_innenstatistik, [online] https://www.frauenhauskoordinierung.de/arbeitsfelder/fhk-bewohner_innenstatistik/ (accessed on 18.1.2021).

196 Fegert, Jörg Michael et al. (Hrsg.) 2012: Psychiatrie und Psychotherapie des Kindes- und Jugendalters, 2. Aufl., Heidelberg: Springer, pp. 569-596.

197 Ibid.

tion of the best interests of the child should not apply in cases of domestic violence¹⁹⁸. Family law provisions open up too much room for interpretation through corresponding undefined legal terms.

In Germany there are extensive regulations on the protection of violence and children and on stalking. These include: police expulsion (state laws), allocation of housing under civil law, the Protection against Violence Act, penal laws, Article 3 of the UN Convention on the Rights of the Child (priority of the child's welfare over other legal positions worthy of protection), the Act on the Prohibition of Violence in Childrearing (as a guideline for family and youth welfare law), the Federal Child Protection Act (protection of children against sexualised violence, domestic violence, neglect, etc.).

However, these are not sufficiently used for the benefit of the women and children affected by violence. Acts of violence are trivialised ("that happens once in a while") or death threats are not believed ("that was not meant seriously"). When police evictions or court orders to protect against violence are issued, those affected by violence continue to be at risk if the perpetrators do not stop or because compliance is not monitored. Underestimating the danger leads to the fact that the instruments to protect against violence do not reach into the area of child protection and are not considered to serve the well-being of the child.

The changes in family and family procedure law introduced since 2009, such as acceleration and unification requirements, do not take into account that these are contraindicated in cases of domestic violence. The concept of the best interests of the child, which is shaped by joint custody and emphasised rights of access, obscures the exclusion factor of violence.

The Federal Constitutional Court ruled in only one decision that the priority of joint parental custody is limited in the case of violence¹⁹⁹. The background was the multiple rape of the mother by the father of the child. So far there is only one (known) decision of the Federal Constitutional Court on the right of access, in which the welfare of the child is placed in a close connection with violence²⁰⁰. The court states: "The welfare of children growing up in the care of the mother is dependent on the physical integrity of their mother, behind protection of whom the father's right of access must take a back seat". The lower courts do not position themselves with this clarity. The decision was also not based on domestic violence, but on a threat from the right-wing extremist scene. This proves that the right of access to children is only waived in acute specific cases.

Otherwise the family courts are still afraid to subordinate the right of access to protection against violence. Rather, the mothers affected by violence are exposed to an accusation of influencing the child if they apply to exclude contact. They are required to have what is known as attachment tolerance, i. e., the ability to allow the other parent to be close to the child. This ignores the fact that the mother has a duty to protect her children and should therefore apply to exclude contact. In the case of a suspicion of sexualised violence, even a strongly substantiated one, without a corresponding criminal conviction, case law is often based on a decision of the Karlsruhe Higher Regional Court: "If the necessary judicial investigations do not reveal definite signs of abuse, a restriction of the right of access is ruled out on the basis of a remaining mere suspicion"²⁰¹. Since only a very small percentage of sexualised violence is reported, i. e., there are usually no reports and above all no convictions of perpetrators, reversal of the burden of proof in family law proceedings means that the children concerned are de facto unprotected. If supervised visitations are recommended in suspected cases, the implementing agencies are always instructed to have the visitation changed to an unaccompanied visit²⁰².

198 Salgo, Ludwig 2013: Häusliche Gewalt und Kindeswohl – Möglichkeiten und Grenzen familiengerichtlicher und jugendhilferechtlicher Intervention, [online] https://www.dgtd.de/fileadmin/user_upload/issd/tagung_2013/nachlese/pdf/dgtd_bad-endorf_2013_vortrag_salgo.pdf (accessed on 10.9.2020).

199 BVerfG 2003: Beschluss der 3. Kammer des Ersten Senats vom 18. Dezember 2003 – 1 BvR 1140/03 – Rn. (1-19).

200 Rabe, Heike & Britta Leisering 2018: Die Istanbul-Konvention: Neue Impulse für die Bekämpfung von geschlechtsspezifischer Gewalt, p. 47; BVerfG v. 13.12.2012 – 1 BvR 1766/12.

201 Rechtslupe 2013: Umgangsrecht bei Verdacht auf sexuellen Missbrauch des Kindes, 8.4.2013, [online] <https://www.rechtslupe.de/familienrecht/umgangsrecht-bei-verdacht-auf-sexuellen-missbrauch-des-kindes-36008> (accessed on 10.9.2020).

202 Staatsinstitut für Frühpädagogik 2001: Vorläufige deutsche Standards zum begleiteten Umgang, [online] http://www.fthenakis.de/c2/data/55/Projekt_BU_Standards.pdf (accessed on 10.9.2020).

Reform of family law

In 2013, the rights of fathers with illegitimate children were strengthened in favour of joint custody of parents who are not married to each other, i. e., joint custody can also be ordered (by court order) even against the will of the mother.

There is an increasing tendency for out-of-court counselling sessions to take place, especially those organised by youth welfare offices, whereby the notion of joint responsibility for upbringing and care is promoted, and even demanded from the mother. The retention of joint parental custody is also urged in court proceedings. This works on the presumption that fathers who have joint custody would be more willing to pay child support. At the same time, however, this is offset by the fact that should maintenance payments not be made, the debtor's rights to custody and access are not restricted. This is then justified on the grounds that these areas must be kept distinct from each other and that the rights of the child would otherwise be restricted. In court proceedings, the mother feels that her position is not accepted ("If you do not cooperate, we will have to think about your suitability for parenting and therefore withdrawal of custody"). However, the parenting skills of the abusive (ex-)partner must be assessed much more critically.

In autumn 2019, a working group based at the Federal Ministry of Justice and Consumer Protection presented a paper on reform considerations regarding custody, contact and maintenance law²⁰³, which, among other things, further strengthened the transfer model and joint custody of unmarried parents as a rule and called for agreement mechanisms. Despite the provisions of the Istanbul Convention, the special vulnerability of women and children affected by violence is still not included in the thesis paper.

Against the background that the publication of the scientific study (Centre for Clinical Psychology and Rehabilitation of the University of Bremen and PETRA research group: nationwide survey on the topic of "child welfare and rights of access")²⁰⁴ on the interrelation of protection against violence and rights of access in relation to the welfare of children is still pending, the reform plans appear to be somewhat hasty and incomplete despite the urgent need for them. What one must already suspect is that the results of the study will suggest that there are currently gaps in protection under the law pertaining to custody and access that need to be filled.

Take victim and child protection after separation seriously

Feedback from practice shows that the women affected by violence are not taken seriously in court. Homicides,²⁰⁵ in connection with contact situations, are shocking evidence of this.

The point of separation is statistically the most dangerous time for a woman and her children. Threats, stalking, physical and sexualised violence occur frequently: 41% of women and 15% of children were physically assaulted during contact and visiting hours. In 27% of the cases the threat was made to abduct the children, in 9% of the cases the children were actually abducted. In 11% of the cases an attempt was made to kill the woman²⁰⁶. Empirical studies show that in the separation phase the risk of violence and death for women and children is five times higher²⁰⁷.

203 BKA 2019: Arbeitsgruppe zur Reform des Sorge- und Umgangsrechts, [online] [bmju.de/SharedDocs/Artikel/DE/2019/102919_AG_SorgeUndUmgangsrecht.html](https://www.bmju.de/SharedDocs/Artikel/DE/2019/102919_AG_SorgeUndUmgangsrecht.html) (accessed on 2.7.2020).

204 CDU, CSU und SPD Koalitionsvertrag, 18. Legislaturperiode: „Wir wollen das Ineinandergreifen von Gewaltschutz und Umgangsrecht in Bezug auf das Kindeswohl wissenschaftlich untersuchen.“ [online] <https://www.bundesregierung.de/breg-de/themen/koalitionsvertrag-zwischen-cdu-csu-und-spd-195906> (accessed on 23.9.2020), p. 70.

205 BKA 2019: Partnerschaftsgewalt Kriminalstatistische Auswertung – Berichtsjahr 2018, [online], https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/Lagebilder/Partnerschaftsgewalt/partnerschaftsgewalt_node.html (accessed on 2.7.2020), p. 27: 122 women killed in 2018.

206 Schweikert, Birgit & Gesa Schirrmacher 2001: Sorge und Umgangsrecht bei häuslicher Gewalt – Aktuelle rechtliche Entwicklungen, Bund-Länder-Arbeitsgruppe „Häusliche Gewalt“, [online] <https://www.bmfsfj.de/blob/94636/2b01702ede6fae116bd2d04fe5edd4aa/prm-21075-materialie-gleichstellungspoli-data.pdf> (accessed on 9.9.2020).

207 Ibid.

Instead of taking into account the risk, case law often applies a “look ahead” approach, which ignores violence and is based on the principle of trial and error. In cases of suspected violence in custody and contact proceedings, there is a lack of a dutiful multi-professional risk assessment in the sense of Article 51 of the IC prior to the adoption of a resolution, as is suggested, for example, in the special guidelines of the Munich District Court²⁰⁸ with a standardised questionnaire.

The Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (Gesetz über das Verfahren in Familiensachen und in Angelegenheiten der freiwilligen Gerichtsbarkeit – FamFG) favours decisions that are quickly made since certain child-related matters, such as regulation of contact, are to be conducted in an expedited manner and scheduled within one month (Section 155 of the FamFG). In addition, the court must make special efforts to reach an agreement (Section 156 of the FamFG) and must also refer to out-of-court advice (Sections 135, 156 of the FamFG). The enforcement of decisions pertaining to access are also subject to the principle of acceleration (Section 88 III of the FamFG). More stringent sanctioning options such as administrative fines / imprisonment instead of coercive measures (Section 89 of the FamFG) also prove problematic. All of this illustrates the fact that contact can be forced in the immediate timeframe after the separation without there being a possibility of judicial review. This is because, as a rule, a provisional decision regarding contact arrangement is taken within the framework of temporary injunction proceedings, with the result that there is no right of appeal (Section 57 of the FamFG). This poses a massive and sometimes fatal threat to women and their children²⁰⁹.

The above-described principle of acceleration does not apply to proceedings for the protection against violence according to Section 210 of the FamFG. In some questions of custody and access rights are decided before the violence protection procedure has even been carried out. This asynchronicity in procedural law leads to a prolongation of the threat to women and children. There are no explicit regulations on how to deal with domestic violence in child-related matters, procedural law and substantive law.

The BMFSFJ has published a work aid on the procedure in family matters and in matters of voluntary jurisdiction (FamFG) in the presence of domestic violence²¹⁰. This, however, receives little or no attention in the courts. This is due to the lack of an overall interdepartmental strategy by the individual ministries responsible.

Recommendations

We recommend the following to the Federal Government and federal legislator:

- » Oppose efforts to promote joint custody in cases of domestic and sexual violence, since joint custody is not a viable option due to the balance of power and control in violent relationships.
- » As a rule, exclude the right of access to children in cases of domestic and sexualised violence; alternatively ensure that access is supervised, in some cases on a permanent basis, or restrict access by imposing conditions upon it (e.g. participation in a course for perpetrators). This

208 Sonderleitfaden zum Münchner Modell, [online]

https://www.justiz.bayern.de/media/images/behoerden-und-gerichte/amtsgerichte/muenchen/familien-sachen/sonderleitfaden_muenchner_modell_190701.pdf (accessed on 2.7.2020).

209 Salgo, Ludwig 2013: Häusliche Gewalt und Kindeswohl – Möglichkeiten und Grenzen familiengerichtlicher und jugendhilferechtlicher Intervention [Domestic violence and child welfare – possibilities and limits of intervention in family law and youth welfare law], [online] https://www.dgtd.de/fileadmin/user_upload/issd/tagung_2013/nachlese/pdf/dgtd_bad-endorf_2013_vortrag_salgo.pdf (accessed on 10.9.2020).

210 BMFSFJ 2011: FamFG – Arbeitshilfe zum neu gestalteten Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (FamFG) bei Vorliegen häuslicher Gewalt [FamFG – Working aid for the newly designed procedure in family matters and in matters of voluntary jurisdiction (FamFG) in the presence of domestic violence], [online] <https://www.bmfsfj.de/bmfsfj/service/publikationen/arbeits-hilfe-zum-verfahren-in-familien-sachen-und-in-den-angelegenheiten-der-freiwilligen-gerichtsbarkeit--famfg--bei-vorliegen-haeuslicher-gewalt/80730> (accessed on 13.8.2020).

should be explicitly stated in the text of the law. Regarding reform projects on custody and access rights, making contact with the perpetrator of violence must not, therefore, be prioritised above the protection and safety of the child.

- » In the case of orders issued under the Protection against Violence Act, exclude access rights for the duration of the order and continue to limit access after the end of the provided protection to counteract the violence until the female survivor of violence has processed the trauma and is stable. A corresponding formulation in this regard is to be included in the paragraphs of the Protection against Violence Act and in Section 1684 of the German Civil Code.
- » Tighten up the statutory provision of Section 1671 of the Civil Code to the effect that assessing the suitability of the applicant parent and the other parent (as a rule the caring parent) is not predominantly in favour of the applicant parent. This would address the current practice whereby it is difficult to reverse a sole custody order that has been issued.
- » In Sections 1671 and 1684 of the German Civil Code, embed a definition of custody transfers and access restrictions by way of providing a standard example, as is also regulated, for example, in the Family Law Act 2011 (Australia).
- » Reform the system of expert witnesses in family courts, so that it is no longer possible to form interest groups in the courts. Due to the financial dependency of guardians ad litem and experts on the commissioning of judges, it may be the case that a judge, among other things for reasons of capacity, repeatedly appoints the same expert who also is active in an interest group that acts against the IC (cf. Agenda Europe).
- » Establish rules under which it is possible to remove a guardian ad litem from their role. It should be possible to dismiss counsellors and training institutes who lobby against the rights of women to be protected against violence.
- » All professionals involved in family proceedings, including judges, should be verifiably obliged to undergo further training on the topics of domestic violence, associated psychotraumatology, long-term consequences and dangers of re-traumatisation, psychological violence in the sense of coercive control, sexualised violence and the threat to a child's well-being. (See also recommendations on Article 15.)

Article 32

Civil consequences of forced marriages

Requirements

Article 32 provides that an assurance must be given that a marriage contracted under duress can be contested, dissolved or annulled without there being any financial, administrative or legal burden involved for the survivor.

Challenges

Since 2011, it has been possible to have an existing marriage rescinded if it was entered into on the basis of threats (Section 1314 (2)(4) of the Civil Code). However, such an application can only be made within three years, beginning with “the cessation of the predicament” (Section 1317 (1) of the BGB).

Since 2017 and the Act to Combat Child Marriages, a spouse being underage at the time of marriage is grounds for annulment; if one spouse was under the age of 16 at the time of marriage, the marriage is void as a result of the statutory provision of Section 1303 (2) of the BGB.²¹¹

The nullity provision

The latter provision is currently not only being examined by the Federal Constitutional Court, albeit in relation to a marriage between minors that took place abroad, for being possibly unconstitutional, but since the consequences of its application give rise to a conflict with the primacy of the best interests of the child. For survivors, the immediate invalidity of their marriage creates legal and financial uncertainty, as claims for support or maintenance payments (if the couple have children together) cannot be enforced²¹². At the same time, a “non-marriage” such as this often means that survivors will no longer have the support of their family²¹³. At this point, it would be appropriate to apply the repeal procedure, as for over-16s. The repeal procedure would not only preserve certain legal rights of spouses that would be voided by the ruling on the marriage being ineffective, but would also have less of an impact on the self-determination rights of the minor²¹⁴. A case-by-case assessment also allows for a better consideration of the best interests of the child. This is because the desires of the spouse needing protection is not taken into account in any way when the nullity rule is applied, even if they have since reached the age of majority²¹⁵.

211 BMFSFJ 2018: Zwangsverheiratung bekämpfen – Betroffene wirksam schützen, Eine Handreichung für die Kinder- und Jugendhilfe, p. 6.

212 Gössl, Susanne 2019: Ist das Gesetz zur Bekämpfung von Kinderehen verfassungswidrig?, in: Bonner Rechtsjournal, 2019, Nr.1, pp. 6-11.

213 BMJV 2020: Gesamtauswertung zur Evaluierung des Gesetzes zur Bekämpfung von Kinderehen, p. 37.

214 Gössl, Susanne 2019: Ist das Gesetz zur Bekämpfung von Kinderehen verfassungswidrig?, in: Bonner Rechtsjournal, 2019, Nr.1, pp. 6-11.

215 Ibid.

Religious marriages

Religious or traditional marriages (also referred to as “social marriages”) that have been entered into under duress, or marriages with minors, are deemed coercive acts (Section 240 of the German Criminal Code (StGB)) or to be an administrative offence and therefore punishable by a fine (Section 70 (1, 3) in conjunction with Section 11 (2) of the Law on Marital Status [Personenstandsgesetz])²¹⁶. However, it is not clear who is entitled to apply or who is responsible for any penalties in these cases.

Right of residence

In principle, a person's residence title expires if they leave Germany for longer than six months (Section 51 (1)(7) of the Residence Act (AufenthG)). The Act to Combat Forced Marriage and to Improve the Protection of Victims of Forced Marriage and to Amend Other Residence and Asylum Law Provisions is intended to allow persons affected by forced marriage an extended period of up to ten years in which to return²¹⁷. This option only applies, however, if the survivor has resided in Germany for eight years and has attended school here for six years, or if they are certified as having a positive outlook for integration and the application for re-entry is submitted three months after the coercion scenario has ceased to exist (Section 37 (2a) of the AufenthG). The regulation, which is supposed to offer victims of forced marriage and abduction an easier chance of return, is therefore full of prerequisites.

Recommendations

We recommend the following to the Federal Government:

- » Use the repeal procedure in the case of marriages for a person who has not reached the age of 16. This will not only result in greater justice in individual cases, but also takes better account of the best interests of the child.
- » Specify responsibilities in the sanctioning of social marriages.
- » Make re-entry after a forced marriage and the renewal of a residence permit as unhampered by bureaucratic procedures as possible for survivors.

²¹⁶ BMFSFJ 2018: Zwangsverheiratung bekämpfen – Betroffene wirksam schützen, Eine Handreichung für die Kinder- und Jugendhilfe, p. 12.

²¹⁷ Ibid.

Article 33

Psychological violence

Requirements

Intentional conduct which seriously impairs the psychological integrity of a person by coercion or threat is punishable under Article 33 of the IC. This includes, for example, digital hate speech against women, non-physical forms of domestic violence or threats to trafficked persons or their families.

Challenges

There is no specific offence of psychological violence in German criminal law. Such conduct may be covered by various criminal offences in German criminal law. In addition to the elements of coercion (Section 240 of the German Criminal Code (StGB)) and threat (Section 241 of the StGB) itself, registration through the elements of a crime of bodily injury (Section 223 of the StGB) as well as through Section 4, paragraph 1 of the Act on Civil Law Protection Against Violence (GewSchG²¹⁸) can also be considered. In German criminal law, however, the fact of the threat is not designed to cause (psychological) effects on the victim; the focus is on the offender's internal behaviour. Corresponding mental impairments are therefore not a constituent element of the offence, which is why they are not a prerequisite for applicability; however, they do not necessarily result in criminal liability even if they are present. After all, the subject of protection from coercion includes the freedom of will and the freedom to act on will guaranteed by Article 2, paragraph 1 of the Basic Law (Grundgesetz – GG) and thus a part of mental integrity²¹⁹. However, other serious mental health impairments that are not related to an impairment of this freedom of will are not taken into account; in their current form, they are at most concomitant with other offences.

German criminal law has thus far been very much focused on inducing physical effects and conditions. This concerns both the interpretation of the concept of violence in Section 240 of the StGB, as well as that of health impairment in Section 223 of the StGB and health violation in Section 1 of the GewSchG. Due to the case law of the Federal Constitutional Court (BVerfG), which in part contradicts a different interpretation (see below), a departure from this is not to be expected. Full consideration of serious mental health problems can only be achieved through criminal law measures.

Coercion (Section 240 of the (StGB))

According to a fundamental decision of the BVerfG²²⁰, the concept of violence always requires physical coercion. Although this may remain on a minor scale, as the BVerfG set out in later decisions²²¹, physical effects remain the prerequisite for the acceptance of violence. To enforce a more far-reaching interpretation would probably be futile, since the BVerfG justified its view with a violation of the

²¹⁸ However, in the case of violations of the GewSchG, the victim must first apply for a (civil) order for protection against violence; if this is then violated (or an obligation from a court-approved settlement), only the criminal liability according to Section 4 of the GewSchG applies.

²¹⁹ BVerfG of 10.1.1995 Case: 1 BvR 718/89, BGH of 24 April 1986 – 2 StR 565/85, see also Sinn, Arndt/Sander, Günther, Münchener Kommentar zum Strafgesetzbuch, Volume 4, 3rd edition, Munich 2017, Section 240 recital 2.

²²⁰ BVerfG, decision of 10.1.1995 – Case: 1 BvR 718/89 and others, in: BVerfGE 92, 1, 18.

²²¹ BVerfG, decision of 29.3.2007 – Ref: 2 BvR 932/06, in: NJW 2007, 1669; see also already BVerfG, decision of 24.10.2001 – Ref: 1 BvR 1190/90 and others, in: BVerfGE 104, 92, 102 f.

requirement of certainty (Article 103, paragraph 2 of the GG); this sets out constitutional limits to the case law in the interpretation of the elements of a crime. This would mean the only route left is through the legislative authority. There is no indication that the Federal Constitutional Court's opinion will change in the near future.

Threat (Section 241 of the StGB)

The offence of threat currently only includes the threat of a crime, i.e., unlawful acts that are punishable by a minimum sentence of imprisonment of one year or more (Section 12 paragraph 1 of the StGB). On the one hand, the threat must be sufficiently substantiated, which (consciously) omits vague statements. On the other hand, neither dangerous bodily injury (Section 224 of the StGB) nor sexual assault according to Section 177, paragraphs 1 and 2 of the StGB are classified as crimes. Therefore, the criterion of the crime threatened is not generally suitable for making statements about the extent to which a threat affects mental integrity.

However, a new law will soon come into force which provides for an extension: it is intended to cover threats of an unlawful act against sexual self-determination, physical integrity, personal freedom or against something of significant value²²². This version would come closer to the requirements of Article 33 of the IC. However, the focus here is on the threatening act as well, not on the resulting harm to the victim. It is conceivable that serious damage to mental health may also be caused by intentional threats of non-punishable but highly undesirable behaviour, or by threats of offences other than those mentioned above. Regarding this, Section 241 of the StGB does not provide guidance.

Personal injury (Section 223 of the StGB)

The intentional causing of serious mental impairment can be "compensated" to a limited extent by the offence of bodily injury. According to the wording, causing a health impairment is not limited to physical conditions; nevertheless, such a limitation is provided for by the established case law, according to which a health impairment means "any causing or increasing of a condition adversely affecting the normal state of the bodily functions of a human being"²²³. Even if critical voices can be heard in the literature²²⁴, it cannot be assumed that the established case law will change without further agitation. It seems conceivable, however, to demand a different interpretation (in line with international law) with regard to the binding IC requirements. This could be a starting point for further training of legal practitioners.

222 Deutscher Bundestag 19. Wahlperiode Drucksache 19/17741: Gesetzentwurf der Fraktionen der CDU/CSU und SPD – Entwurf eines Gesetzes zur Bekämpfung des Rechtsextremismus und der Hasskriminalität, [online] <https://dip21.bundestag.de/dip21/btd/19/177/1917741.pdf> (accessed on 10.09.2020).

223 See BGH, Order of 18 July 2013 – Ref: 4 StR 168/13, in: NStZ-RR 2013, 375 including further evidence. In this, the BGH inter alia states: "The 'psychological burden of somatisation' used alone in the legal assessment does not constitute a viable justification for the occurrence of bodily harm" (loc.cit., p. 376). The prerequisites for bodily injury in the case of a "short reactive depressive illness due to external stress" were also negated. This view is based on systematic and wording arguments (heading), see BGH, judgment of 9.10.2002 – Ref: 5 StR 42/02, in: BGHSt 48, 34. Regarding the lack of success in physical injury in the case of "flashbacks" see also BGH, decision of 12.3.2019 – Ref: 4 StR 63/19, in: BeckRS 2019, 4737.

224 Bublitz, Jan-Christoph 2011: Der (straf-)rechtliche Schutz der Psyche, RW 2011, Heft 1, 28; Hardtung, JuS 2008, 864, 867, who – contrary to the prevailing opinion. – references the system of §§ 223 ff. StGB as an argument for including psychological harm.

Recommendations

We recommend the following to the Federal Government / legislative authority:

- » Criminalise the act of causing serious mental harm in accordance with the requirements of Article 33 of the IC²²⁵.

²²⁵ In this context, it must be ensured that facts defined as psychological impairments must be scientifically evidenced in order that pseudo-concepts that endanger women and children, such as parental alienation / parent-child alienation can be excluded from being an offence under the Criminal Code, cf. the Collective Memo of 352 international scientists and experts on PAS as pseudoscience, [online] <http://www.learningtoendabuse.ca/docs/WHO-September-24-2019.pdf> (accessed on 18.1.2021).

Article 34

Stalking

Requirements

Article 34 provides that the Federal Republic shall criminalise any conduct that intentionally and repeatedly threatens a person who, by reason thereof, is fearful for their safety. The threatening behaviour may be, for example, following someone, making unwanted contact, or telling someone that they are being watched. Any stalking or tracking can both be physical, as well as digital, such as on social media. According to the Istanbul Convention, the decisive factor is that the conduct is intentional and specifically aimed at inducing feelings of fear in the victim. The punishability of the behaviour patterns arise from repeatedly doing them, since the individual acts in isolation do not reach the bar set in respect of punishability. Contracting parties are free to extend criminal liability to cases where relatives of the person being stalked, rather than the victim as such, are targeted by the offender²²⁶.

Challenges

Protection under criminal law

In 2019, there were over 18,000 cases involving stalking recorded by the police²²⁷.

In 2007, the legislative authority made stalking a criminal offence for the first time under Section 238 of the German Criminal Code (StGB). According to Section 238 of the StGB (old version), anyone who stalks a person without authorisation and thereby adversely affects their way of life, is liable to prosecution. The constituent element of the offence of adversely affecting a way of life, however, gave rise to considerable problems since legally constructing it as a result crime did not make punishability dependent on the offender's actions or intensity thereof, but solely on how the victim reacted to the action²²⁸. The previous version could not offer protection to those victims who were strong enough to defy the perpetrator (outwardly) by not changing their way of life despite being persecuted, or to those people who could not simply afford to move or change jobs. This is because according to legislative intent as well as supreme court case law, a prerequisite for criminal liability was a change engendered in the external circumstances of life²²⁹. In doing so, this ruling did not take into account the punishable wrongful act of stalking and it also failed to recognise that stalking always imposes a heavy burden on victims, irrespective of whether the victim visibly changes their behaviour as a result of being stalked. Making the victim's conduct a prerequisite for criminal liability therefore imposed a dual burden on victims and presented a significant issue, not least because of the lack of attempted criminal liability for stalking²³⁰. Moreover, the previous version did not take into account the fact that people living in precarious financial circumstances were often unable to move due to a lack of financial means, a scenario that includes some single

226 Europarat 2011: Übereinkommen des Europarats zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt und erläuternder Bericht, Council of Europe Treaty Series, No. 210, Art. 34, pp. 182-186.

227 BKA 2019: Polizeiliche Kriminalstatistik (PKS) 2019, Band 1, p. 11.

228 Deutscher Bundestag 2016: Gesetzentwurf der Bundesregierung, Drucksache vom 12.10.2016 18/9946, p. 1.

229 BGH, decision of 19.11.2009 – 3 StR 244/09, NStZ 2010, 277 et seq.; cf. also BT-Drucksache 18/9946, p. 10.

230 For example, from experience of legal prosecution, it is known that 20,000 charges of stalking should be seen against the figure of 200-560 convictions, see Mosbacher, Andreas 2017: Neuregelung der Stalking-Strafbarkeit, in: Neue Juristische Wochenschrift (NJW), 2017, p. 983.

parents. Moving or changing jobs would be contrary to the best interests of the child for this group of victims²³¹. Furthermore, the previous legal situation allowed the public prosecutor's office to refer survivors to pursue private prosecution.

The current version of Section 238 of the StGB is an improvement. The legislative authority has recognised and attempted to address the inherent problems in the law by changing the nature of the criminal provision from a dangerous offence to an abstract suitability crime in the 2017 Act Amending the Act on Stalking²³². According to the new version, a person can be punished with a prison sentence of up to three years if they stalk another person without permission in such a way that could be deemed to adversely affect that person's way of life. According to the new legal situation, the victim is therefore no longer required to change the way they live. The fact that the manner in which the stalking takes place is conducive to a change in lifestyle. This takes into account the concept of victim protection.

Similarly, the offence of stalking has been removed from the catalogue of private prosecution offences. The provisions of criminal law, as well as the amendments to the Code of Criminal Procedure (StPO) basically satisfy the minimum principles as established by the Istanbul Convention.

Civil law protection with criminal law reinforcement

In addition, the Protection against Violence Act (GewSchG) offers protection under civil law in matters of stalking, insofar as the court can, for example, order a ban on contact being made at the request of the victim. A violation of such an order is punishable under Section 4 of the GewSchG with imprisonment of up to one year or a fine. Likewise, a violation of court-confirmed settlements is subject to this penalty (see also Section 214a (1) of the FamFG). This appeared indispensable, particularly because of the constant practices of the court, contrary to the wording of Section 36 (1) (2) of the FamFG, of working towards achieving a settlement in order to terminate proceedings. This is because, despite the implementation of violence protection proceedings, survivors are often not yet on an equal footing with the perpetrator, they are susceptible to psychological pressures, and they generally remain in a situation in which they cannot adequately report their experiences or fully assert their rights. The punitive nature of such orders as recorded in the composition proceedings at least partially closed this existing gap in levels of protection²³³.

Remaining challenges

Despite positive developments regarding the legal framework, there is still a need for action to be taken with regard to providing effective protection to victims of stalking.

Stalking is not covered in the basic offence under Section 238 (1) of the StGB, by the provision of free legal support under Section 406g (3), in conjunction with Section 397 (1) of the StPO. Free legal assistance is only possible if the elements of the crime according to Section 238 (2-3) are fulfilled²³⁴.

The penalty provided for in Section 4.1 of the GewSchG against violations of court-approved settlements, as well as court orders, is to be criticised for the level of punitive approach. A custodial sentence of up to one year or a fine is not adequate to meet the wrongfulness of the offences

231 Deutscher Bundestag 2016: Gesetzentwurf der Bundesregierung, Drucksache vom 12.10.2016 18/9946, p. 13.

232 Ibid. German Bundestag 2016: Recommendation for a decision and report of the Committee on Legal Affairs and Consumer Protection (6th Committee), printed matter of 14.12.2016 18/10654; Mosbacher, Andreas 2017: Neuregelung der Stalking-Strafbarkeit, in: Neue Juristische Wochenschrift (NJW), 2017, p. 983 f.

233 See Deutscher Juristinnenbund 2016: Stellungnahme: 16-12 zum Entwurf eines Gesetzes zur Verbesserung des Schutzes gegen Nachstellungen, 6.5.2016, [online] <https://www.djb.de/presse/stellungnahmen/detail/st16-12-1> (accessed on 31.10.2020).

234 Deutscher Juristinnenbund 2018: Stellungnahme: 18 - 18 Opferrechte in Strafverfahren wegen geschlechtsbezogener Gewalt, 22.11.2018, p. 21 f., [online] <https://www.djb.de/presse/stellungnahmen/detail/st18-18/> (accessed on 31.10.2020).

and they therefore probably fail to have any specific preventive effect²³⁵. As part of the legislative process, the committees²³⁶ had also recommended to the Bundesrat, among other things, that the upper limit of the range of possible penalties in Article 4 of the GewSchG should be raised to include custodial sentences of up to two years.

From a practical point of view, it should be noted that the norm of courts working towards settlements as described by practitioners, despite the contrary provision of Section 36 (1)(2) of the Fam-FG, should be questioned critically. At the time of the violence protection proceedings, the unequal balance of power between the perpetrator and the survivor have not yet been remedied and are in danger of being made more permanent by comparative regulations.

In general, protection against stalking cannot be limited to the creation of corresponding criminal offences, but requires comprehensive awareness in dealing with the issue.

Recommendations

We recommend the following to the legislative authority / Federal Government:

- » Increase the penalty in Section 4.1 of the GewSchG to three years imprisonment or a fine.
- » Extend the option for free psychosocial legal support to cases of stalking as a basic offence.
- » Include not only courts, public prosecutors' offices and associations when undertaking the evaluation of Section 238 of the StGB, which is currently being undertaken by the Federal Ministry of Justice, but also include professional practice, i. e., counselling centres and lawyers.
- » Improve specific situations regarding child custody law. So far, it has been very easy for perpetrators to stalk people as a result of complicated contact arrangements, e. g., one child alternates between parental households every three days and the sibling every week. Using these grounds of "shared parenting", abusers have almost unlimited access to the mother. Judges and youth welfare officers should be made aware that mothers have a right to privacy and a right to be separated from the perpetrator.

We recommend the following to the Federal Government and the Länder:

- » Ensure comprehensive and free counselling and support services for victims of stalking, in particular drawing on the measures provided for in the GewSchG.
- » Ensure awareness is raised among the police, prosecutors and the judiciary at state and federal level and that they undertake training.

We recommend the following to the judiciary and lawyers:

- » Critically examine the wide-ranging court practice of working toward achieving a settlement.

235 See Deutscher Juristinnenbund 2016: Stellungnahme: 16–12 zum Entwurf eines Gesetzes zur Verbesserung des Schutzes gegen Nachstellungen, 6.5.2016, [online] <https://www.djb.de/presse/stellungnahmen/detail/st16-12-1> (accessed on 31.10.2020).

236 Deutscher Bundesrat 2016: Committee on Legal Affairs, Committee on Women and Youth and Committee on Internal Affairs, responsible for the report, 420/1/16.

Article 35

Physical violence

Requirements

Article 35 obliges the federal government to criminalise the intentional use of physical violence against another person.

Challenges

Both the use of physical violence and attempts to use it are punishable in Germany as bodily injury (Section 223 of the Criminal Code (StGB)), dangerous bodily injury (Section 224 of the StGB), abuse of a ward (Section 225 of the StGB), grievous bodily injury (Section 226 of the StGB) or as bodily injury resulting in death (Section 227 of the StGB).

In 2019, the Federal Criminal Police Office released figures on intimate partner violence in Germany: A woman was dangerously physically injured in a partnership more than once per hour in 2018²³⁷. 73% of cases of violence in partnerships are classified as minor, dangerous, grievous bodily harm and bodily harm resulting in death²³⁸. The continuous increase in the number of victims of intimate partner violence over the last few years is predominantly because of increased instances of acts of violence in terms of minor and grievous bodily harm²³⁹ 22% of women and girls (aged 16 and over) in Germany fear that they will become a victim of physical violence²⁴⁰, while 37% report that they have experienced physical violence at least once²⁴¹.

Such statistics can only provide an overview of the consequences and cases of physical violence that are recorded by the police. Since only very few women and girls seek help after experiencing violence or indeed report it to the police, it can be assumed that the number of unreported cases is much higher, namely that approximately one woman in three in Germany experiences violence at least once in her life²⁴².

The “Stronger than Violence” initiative launched by the Federal Government is welcome and an important step in the right direction. It is now important to focus just as consistently on providing protection against violence for particularly vulnerable groups and to ensure it is firmly embedded within the structural framework: women and girls with disabilities and/or with a refugee background are exposed to even greater levels of violence than women and girls in the average population²⁴³.

237 BMFSFJ 2019. Gewalt gegen Frauen – Zahlen weiterhin hoch Ministerin Giffey startet Initiative „Stärker als Gewalt“ – Pressemitteilung, [online] <https://www.bmfsfj.de/bmfsfj/aktuelles/presse/pressemitteilungen/gewalt-gegen-frauen---zahlen-weiterhin-hoch-ministerin-giffey-startet-initiative--staerker-als-gewalt-/141688> (accessed on 2.11.2020).

238 Bundeskriminalamt (BKA) 2019. Partnerschaftsgewalt – Kriminalstatistische Auswertung 2018, Wiesbaden: Bundeskriminalamt, p. 5.

239 Ibid. p. 21.

240 Bundeskriminalamt (BKA) 2020. Der Deutsche Viktimisierungssurvey 2017 I V 1.2. Wiesbaden: Bundeskriminalamt, p. 49.

241 BMFSFJ 2005: Lebenssituation, Sicherheit und Gesundheit von Frauen in Deutschland – lange Fassung, p. 28.

242 BMFSFJ 2019: Gewalt gegen Frauen – Zahlen weiterhin hoch Ministerin Giffey startet Initiative „Stärker als Gewalt“ – Pressemitteilung, [online] <https://www.bmfsfj.de/bmfsfj/aktuelles/presse/pressemitteilungen/gewalt-gegen-frauen---zahlen-weiterhin-hoch-ministerin-giffey-startet-initiative--staerker-als-gewalt-/141688> (accessed on 2.11.2020).

243 Schröttle, Monika 2017: Zentrale Studien und Befunde der geschlechterkritischen Gewaltforschung, in: Kortendiek et al. (Hrsg.) Handbuch Interdisziplinäre Geschlechterforschung, Geschlecht und Gesellschaft, Wiesbaden: Springer, p. 7 f.

For them, the fact that several forms of discrimination overlap and happen at the same time (intersectionality) means there is an increased risk of becoming a victim of violence. Trans-gender and homosexual persons are also thought to be at increased risk, but there is no representative data on possible experiences of violence²⁴⁴.

The fact that the number of female victims of violence continues to rise despite education on the topic, preventative methods and support campaigns, highlights that patriarchal structures continue to operate in society, which in turn are perpetuated by violence directed against women and girls²⁴⁵.

Recommendations

We recommend the following to the Federal Government:

- » Collation of representative data on physical violence experienced by girls under the age of 16, refugee women and girls, women and girls with disabilities and LGBTI* young people and adults.

244 Ibid., p. 8.

245 Walby, Sylvia 1989: Theorizing Patriarchy, in: *Sociology*, Vol. 23 No. 2, p. 224.

Article 36

Sexual violence, including rape

Requirements

Article 36 provides that non-consensual sexual acts are punishable and this also applies to acts within (ex-)partnerships.

Challenges

The substantive law was adapted to meet the requirements set out in the Istanbul Convention (no-means-no rule) by enacting, after an intensive social debate, a reform of the sexual criminal law in 2016. It is not yet foreseeable whether case law will interpret the new legal situation consistently in accordance with the requirements of the IC. Sexual offences in (ex-)partnerships are also punishable, but regularly attract a lower level of punishment (see Articles 43 and 49).

Experience of the “No means No” reform

The new regulation of offences against sexual self-determination, which came into force in November 2016, for the first time in Germany criminalised sexualised violence against the recognisable will of another person without a need for further preconditions, such as violence or threats of danger to life or limb, or taking advantage of someone in a defenceless situation. Previously, sexual acts against adults who were not unable to defend themselves were only punishable in certain relationships of dependency or when violence was used, significant violence was threatened or a defenceless situation was exploited. Punishability as a basic offence under Section 177 of the StGB now requires a sexual act, which the perpetrator carries out against the recognisable opposing will of the survivor.

The legal situation is still too recent to be able to speak of consolidated case law with regard to the regulations of Section 177 of the StGB. However, police crime statistics show an increase in the number of reports. For example, in 2015, before the reform, 7,022 reports of sexual assault / rape were registered; in 2019, under the expanded scope of the offence, there were 15,355 cases.

Specialist counselling and support centres confirm that a willingness to report crimes has increased among survivors. This can primarily be attributed to the significant awareness-raising campaigns and social debates that preceded the reform of the Sexual Offences Act.

Some legal scholars, legal commentators and judges, as well as defence lawyers' associations, initially voiced massive criticism of the new regulation and continue to regard it as a considerable restriction of “free sexuality”. In one of the most widely used legal commentaries on criminal law, the new regulation is heavily criticised²⁴⁶.

However, four years after the law coming into force, the assessments and experiences of lawyers, judges and public prosecutors are quite positive. There are trials and convictions of crimes due to the new regulations that would have previously been dropped. This mainly concerns cases

²⁴⁶ For example, the commentator asserts that the law assumes that survivors must repel sexuality in general, rather than assume active female sexuality; Fischer, Thomas 2020: *Strafgesetzbuch*, 67. Auflage, § 177 RZ 4. In doing so, the commenter incorrectly equates sexuality and sexual assault.

in which sexual acts were carried out against an opposing will (without the use of force or similar) or by surprise.

It is also positive to be able to note that the first convictions for stealthing have taken place (including others, at the highest court in Berlin)²⁴⁷, and this has been equated to sexual assault according to Section 177 of the StGB. It remains to be seen how judicial practice will develop in this respect.

Difficulties in implementation/interpretation Application of Section 177 (1) of the StGB

Difficulties arise in the interpretation of contrary intention within the meaning of Section 177 (1) of the StGB. The experience of lawyers, specialist counselling and support centres and psychosocial court assistance to victims shows that numerous trials are halted because the intention of the sexual act against a person's will is often not assumed, even if the survivors state that they have cried or have clearly and repeatedly asked the accused to stop.

It has therefore been decided in respect to all instances that a clearly and verbally expressed "no" stated to an accused person cannot necessarily be regarded as an opposing will if, for example, the person concerned had previously participated in or initiated sexual acts. A verbal "no" therefore allows many possible interpretations and is open to "attempts at trying to change opinion". The argument is based on the supposed ambivalence of survivors, which to an objective third party, would not necessarily be judged as an opposing will. What is particularly problematic is a decision taken by the Federal Court of Justice (BGH) in which it was stated that although the person concerned had expressly stated her contrary/ opposing will, it was to be assumed that she had changed her mind. In that case, the survivor performed oral sex on the perpetrator (as required) without any further force or threat being enacted. According to the BGH, the perpetrator could have assumed from the victim's activity that she had changed her mind and will²⁴⁸. This case law ignores the fact that the reform in legislature expressly intended to criminalise the variant of performing a sexual act on the perpetrator.

Similar to this interpretation is the decision of the BGH in a case where the woman concerned initially consented to various sexual practices, but then clearly expressed her reluctance when the defendant became violent during the sexual acts. After the Regional Court had convicted the defendant of rape, the BGH overturned the conviction on the following grounds: "The fact that the verbal and physical attempts of the injured party to induce the accused to stop also related to sexual acts in the form of oral and anal intercourse is not clear from the findings. On the contrary, it cannot be ruled out that [...]s discernibly opposing will was only stated in reference to the infliction of pain induced by being bitten and hit. Nor can anything be inferred from the fact that the injured party cried out in pain and that the accused covered her mouth at times to show that the injured party did not consent to the sexual intercourse as such."²⁴⁹

Application of Section 177 (2)

Difficulties also arise in the application of Section 177 (2)(2) of the StGB in practice, especially if the survivor suffers from cognitive impairment/disability. The question then becomes how to elicit a consenting will and, in the converse, whether the accused person could misconstrue it.

247 KG Berlin, Beschl. v. 13.8.2020 Az.: 4 – 58/20.

248 See BGH, Judgement dated 21 November 2018 – 1 StR 290/18 –, juris.

249 BGH, Judgement dated 4 December 2018 – 1 StR 546/18 –, juris.

Application of Section 177 (6) (particularly serious case of sexual assault)

The application of Section 177 (6) of the StGB (rape), which is formulated as a standard example and describes the particularly serious case of a sexual assault, is found to be problematic. The law is formulated in such a way that a particularly serious case is present “as a rule”, if the sexual acts are “particularly degrading [for the survivor], in particular if they are connected with penetration of the body”.

Above all, the specific interpretation is problematic, since the minimum sentence of two years in these cases also applies if the offence was completed without the use of force. According to the experience of representatives of the co-plaintiff’s side, this appears to be unreasonably high in the opinion of some legal practitioners. Since there is no possibility of reducing the penalty on the basis of the existence of a less serious case, there are apparently some attempts to apply the law in a different way to that in which the legislator had imagined. It is therefore disputed in the secondary literature whether in cases in which the perpetrator penetrates the body of the survivor, the standard example of Section 177 (6)(2)(1) of the StGB is always fulfilled. Or whether this could only be assumed as a rule or simply “without anything further” or only after a comprehensive overall assessment²⁵⁰.

A regional court therefore decided in an appeal hearing that it was not regular within the meaning of Section 177 (6) of the StGB that a masseur, who had performed a full-body massage on a previously unknown female survivor penetrated her with several fingers after she had already refused a “massage” of her intimate area. The previous life of the accused, the considerable professional consequences of a conviction for him, the low danger of penetration with fingers in contrast to penetration using genitalia, and the absence of the use of force were used to reject the standard example of special humiliation. This decision was reversed on appeal²⁵¹.

Effectiveness of rape myths

Practical experience shows that offences committed within a previous or current intimate relationship or partnership are sentenced less frequently and/or receive a lower penalty. The closer the relationship between the survivor and the accused, the less likely it is that the survivor will be believed or that the accused will be presumed to have acted with intent. This is where existing myths about sexual violence and rape take hold. However, the Istanbul Convention emphasises that in the “assessment it must be taken to ensure that interpretations of the legislation on rape and the prosecution measures initiated in the relevant cases are not influenced by gender stereotypes and myths about male or female sexuality”. Excerpt from a discontinuation notice from the practice of a lawyer: Proceedings are therefore repeatedly discontinued on the grounds that they involve testimony-against-testimony instances and that the testimony of the victim alone is not sufficient to bring charges. The motive for this statement could be feeling disappointed about the outcome of a meeting, unsatisfactory sex, or a lack of empathy on the part of the accused.

In general, it is stated in practice that the sentences imposed for sexual offences do not correspond to those imposed for property offences and such like. The possibility of imposing preventive measures, such as anti-aggression training or bans on coming too close, is only very rarely used. It should also be noted that many legal practitioners are not aware of the political dimension of sexualised violence and its background. Acts of rape are therefore still far too often perceived as personal, possibly psychologically based individual aberrations, instead of analysing their controlling and particularly discriminatory effects in the context of society as a whole; this happens as a result of lack of further training.

²⁵⁰ see Fischer, StGB, 67. Aufl. 2020, § 177 Rn. 128, 133, 135; in contrast MüKoStGB/Renzikowski, 3. Aufl. 2017, § 177 Rn. 147.

²⁵¹ OLG Frankfurt, judgement of 6 July 2020 – 3 Ss 107/20 –, juris.

Danger of racist judgments

In some cases, lawyers and psychosocial court assistance to victims feel that non-German perpetrators unknown to the victim are disproportionately punished more severely than German perpetrators when looking at their origin. Time and again, racial stereotypes are observed to influence proceedings. However, this is not an explicit effect of the reform, but among other things, is linked to the fact that the public debate in Germany has been strongly racist, especially since the mass attacks on New Year's Eve 2015/16 in Cologne. In the media, a connection is repeatedly made between sexually assaulting "foreigners" and the need for the no-means-no rule. But even excepting this, it should be noted that the criminal justice system is not trained to be sensitive to racism, especially with regard to sexual offences.

In the course of the reform, regulations in the law on foreign nationals were also tightened, which mean that offenders without German citizenship can be more easily expelled or deported in addition to the actual punishment. For victims of sexualised violence by non-German perpetrators, this can reduce their willingness to report if they know / are related to the perpetrator and want to see him punished but not deported.

Recommendations

We recommend the following to the legislative authority:

- » Ensure that a prior intimate relationship with the victim cannot be considered as a mitigating factor in rape cases.
- » Make it possible to arrange for the plaintiff to be represented and for free psychosocial court assistance to be given during trials for all offences against sexual self-determination.
- » Require that as a minimum, sexual offence proceedings involving felonies or Section 177 (6) are always tried and conducted directly in the district court.
- » Section 177 (6) should not be designed as a standard example, but as a qualification, in order that the difficulties of interpretation as described above are minimised.

We recommend the following to the Federal Government and the Länder:

- » Introduce mandatory training for police, judges and prosecutors regarding myths about sexualised violence, the consequences of sexualised violence, traumatisation and the Istanbul Convention. It is also important to provide further training on how to deal with people with disabilities in a non-discriminatory manner. (See also recommendations on Article 15.)

We recommend the following to the federal and state ministries of the interior, justice and/or research:

- » Record or evaluate conviction rates for sexual offences and carry out a scientific study on the reasons for proceedings, convictions or acquittals being discontinued.

Article 37

Forced marriage

Requirements

Article 37 imposes an obligation to criminalise forced marriages of adults and children and intentional conduct leading to forced marriage.

Challenges

Forced marriage is still a big issue in Germany. Most girls who are forced into marriage are between 15 and 18 years old, according to NGOs working in this field. According to the “Annual Report of the Telephone Helpline 2019” (Hilfetelefon Jahresbericht 2019) there were 309 instances of contact made for counselling on forced marriage²⁵². Although this figure is by no means representative of the actual number of forced marriages in Germany, it does show that the problem still exists here.

The following is an example of many such cases and it was accompanied by a migrant women’s organisation: Ayse was one of various young girls who was taken out of school at 15 and married to a relative from Germany. She affirmed: “I was so afraid and didn’t know what to expect. When I came to Germany after the wedding, I was so lonely and helpless. I had no help at all, I couldn’t speak the language and was only at home the whole time. Only after ten years, as a mother of two children, did I dare to stand in front of my father and tell him that I wanted to get a divorce. But I’ve been through hell in that time.”

Legal hurdles

Many girls have to leave school early or without a school-leaving certificate and are married to young men in Germany or, in reverse, they are taken to their parents’ home countries in the summer holidays after the 10th grade where they are then married. Some can or should return to Germany with their husbands, but others are left behind in their parents’ home country. The fact that a longer stay abroad can lead to the expiration of the German residence title according to Section 51 of the Residence Act represents a major hurdle in supporting girls and young women who have been abducted abroad. For both, the residence permit and the settlement permit, the time limit for the option to return to Germany is six months. This is a period of time that those affected and their support team often need in order to be able to get back on track. It is therefore essential that this section be modified in this respect²⁵³.

In addition, there is a lack of concrete protective measures and sensitisation projects in schools to enable teachers and counsellors to intervene better and earlier. Migrant women’s self-organisations have access to the communities, but receive little financial support to expand their work.

On 1 July 2011, the Act to Combat Forced Marriage and to Better Protect Victims of Forced Marriage and to Amend Other Residence and Asylum Law Provisions (Gesetz zur Bekämpfung der Zwangsheirat und zum besseren Schutz der Opfer von Zwangsheirat sowie zur Änderung weiterer

²⁵² BMFSFJ: Hilfetelefon Zahlen und Fakten, [online] <https://www.hilfetelefon.de/das-hilfetelefon/zahlen-und-fakten/jahresbericht.html> (accessed on 08.09.2020), p. 28.

²⁵³ Papatya 2015: Informationsbroschüre Verschleppt! Kein Mädchen darf einfach verschwinden, [online] http://www.papatya.org/pdf/papatya_informationsbroschuere-verschleppung.pdf (accessed on 08.09.2020).

aufenthalts- und asylrechtlicher Vorschriften) and the Act to Combat Forced Marriage (Zwangsheiratsbekämpfungsgesetz) entered into force in Germany²⁵⁴. In the course of the adoption of this law, the duration of marriage to obtain residency permits was increased from two to three years, forcing women living in a forced marriage in Germany to remain in this situation longer. The only thing they can do, if they want to leave the forced marriage but stay in Germany, is to invoke the hardship clause, which is often a major hurdle for them (see Article 59).

Forced marriage even in the case of child marriages

The coercion to enter into marriage was mentioned as a regular example of a particularly serious case of coercion in Section 240 paragraph 4 No. 1 Alt. 2 of the Criminal Code (StGB) (old version) is punishable by law. With the Act to Combat Forced Marriage the criminal offence of forced marriage was created by Section 237 of the StGB²⁵⁵. Section 237, paragraph 1 of the StGB specifies the constituent elements of the offence of coercion to enter into marriage in deliberate reference to Section 240 of the StGB, so that the remarks on this can be referred to: Coercion by force or by threat of “considerable evil” (empfindliches Übel), this includes, e.g., from the threat of exclusion from the family through to the threat of “honour killing”²⁵⁶. The build-up of moral pressure, on the other hand, is not recognised as a means of coercion under Section 237 of the StGB²⁵⁷. Coercion success is the entering into a marriage at home or abroad. An attempt is already punishable according to Section 237, paragraph 3 of the StGB.

According to the prevailing opinion, the offence of forced marriage in Section 237 of the StGB only covers legally recognised marriages as marriages within the meaning of the norm; exclusively religious, cultural or other forms of marriage do not fall within the scope of the criminal provision on the grounds that the constitutional requirement of certainty applicable in Germany pursuant to Article 103, paragraph 2 of the Basic Law (GG) would not be met²⁵⁸. The coercion to such a marriage can, however, still be punished as a particularly serious case in the sense of Section 240, paragraph 4 of the StGB²⁵⁹.

Based on Section 234a I of the StGB, Section 237, paragraph 2 of the StGB puts three variants of deportation for forced marriage under penalty²⁶⁰. The means of coercion are violence, threat of “considerable evil” and deceit. The act is already completed when the victim has arrived abroad (Var 1, 2) or has remained abroad (Var 3). The marriage itself, on the other hand, is not important. This is associated with an advance shift of the completion to the point in time when potential victims are withdrawn from the protection of the German legal system²⁶¹.

Dealing with marriages of minors concluded under foreign law

The question of whether marriages of minors are effective or violate public policy, or what consequences the violation has, is controversial in the literature and has not yet been decided by the highest court²⁶². The trigger was the court decision on contact with a minor in the case of a 14-year-

254 Act of 23.6.2011, BGBl. I, p. 1266.

255 Yerlikaya, Hayriye & Esmâ Cakir-Ceylan 2011: Zeitschrift für Internationale Strafrechtsdogmatik 2011, p. 205; Lackner, Karl et al., 29. Aufl. 2018, StGB § 237 Rn. 1-9.

256 Deutscher Bundestag 2011: Gesetzentwurf der Bundesregierung, Drucksache 17/4401 vom 13.01.2011, [online] <http://dipbt.bundestag.de/dip21/btd/17/044/1704401.pdf> (accessed on 23.09.2020), p. 8.

257 Lackner, Karl et al., 29. Aufl. 2018: Strafgesetzbuch: § 237 Rn. 1-9.

258 Bülte, Jens & Raymond Becker 2012: Der Begriff der Ehe in § 237 StGB, [online] http://www.zis-online.com/dat/artikel/2012_3_650.pdf, (accessed on 28.06.2020).

259 Lackner, Karl et al., 29. Aufl. 2018: Strafgesetzbuch: § 237 Rn. 1-9; Schumann JuS 2011, 789, 290.

260 Deutscher Bundestag 2011: Gesetzentwurf der Bundesregierung, Drucksache 17/4401 vom 13.01.2011, [online] <http://dipbt.bundestag.de/dip21/btd/17/044/1704401.pdf> (accessed on 23.09.2020), p. 12.

261 Lackner, Karl et al., 29. Aufl. 2018: Strafgesetzbuch: § 237 Rn. 1-9.

262 see remarks Löhnig, Martin et al. 2019, in: Ist das Gesetz zur Bekämpfung von Kinderehen verfassungswidrig?, Susanne Gössl (Hrsg.), [online] https://www.jura.uni-bonn.de/fileadmin/Fachbereich_Rechtswissenschaft/Ein-

old woman who married her then 18-year-old husband in 2015 before the Sharia court in Syria. After the couple had fled to Germany in February of the same year, the wife was taken into care by the child and youth welfare office the following September, separated from her husband, and placed in a youth welfare institution for unaccompanied female minors. The Aschaffenburg family court ordered the suspension of parental care and guardianship by the youth welfare department²⁶³. However, the husband was allowed free unaccompanied contact with his wife on weekends. Following on from a complaint of the child and youth welfare office about this free contact, the OLG Bamberg annulled the entire first instance decision by way of *reformatio in peius*. According to the Higher Regional Court, the marriage was validly concluded, and the authority of the child and youth welfare office to decide on the residence and contact of its ward had ceased to exist due to the validity of the marriage as a whole. The girl is free to decide on her stay, and may therefore also move in with her husband²⁶⁴. The child and youth welfare office lodged an appeal on points of law with the Federal Court of Justice against this.

The 12th Civil Senate of the Federal Court of Justice (BGH) has suspended the proceedings and submitted them to the Federal Constitutional Court for a decision²⁶⁵. The Senate expresses doubts about the constitutionality of Article 13, paragraph 3 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch – EGBGB*). The Senate criticises, among other things, the qualification of a marriage by minors entered into under foreign law who have reached the age of consent as non-marriage without a case-specific examination, insofar as the minor had not reached the age of 16 at the time of the marriage. The Federal Court of Justice, on the other hand, is convinced that the marriage is valid under Syrian law, although the capacity for marriage required for a woman under Article 16 of the Syrian Protection of Human Rights and Fundamental Freedoms Act (completion of the 17th year of life) was undercut because a judge has permitted it under Article 18 of the Syrian Protection of Human Rights and Fundamental Freedoms Act after he had examined and confirmed the physical maturity of the persons concerned and their claim to be sexually mature in the specific individual case. It is argued that the protection of “the best interests of the child” require a specific examination of best interests of the child concerned in each individual case. According to this legal opinion, every minor is a person with their own human dignity and right to develop and enhance its personality. This would not be consistent with a general minimum age for marriage, which does not allow any exceptions in individual cases²⁶⁶.

Likewise, with regard to the legal consequences, Article 13, paragraph 3 of the Introductory Act to the Civil Code (EGBGB) is contested in the literature. If marriage to minors is annulled, the persons concerned would be left without protection. An application of Section 1318 of the German Civil Code (BGB) would not come into consideration, because it is not a matter of cancellation. At best, claims in favour of the minor could be constructed with the help of the property settlement and maintenance law of the *de facto* partnership²⁶⁷.

Official obstacles to registering forced marriages and “child marriages”

Many problems become apparent in the implementation of the law: Different procedures in the individual Länder lead to a lack of transparency. Furthermore, the authorities in charge vary from one

richtungen/Institute/Familienrecht/Dokumente/Goessl__Gesetz_zur_Bekaempfung_von_Kinderehen_verfassungswidrig__BRJ_2019__6_klein.pdf (accessed on 08.09.2020).

263 Amtsgericht und Familiengericht – Aschaffenburg Beschluss vom 7.3.2016 (7 F 1013/15), [online] <https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=AG%20Aschaffenburg&Datum=07.03.2016&AktENZEICHEN=7%20F%202013%2F15> (accessed on 23.09.2020).

264 OLG Bamberg, Beschl. v. 12.05.2016, 2 UF 58/16, FamRZ 2016, 1270; Entscheidungsbesprechung Ruhr Universität Bochum, [online] https://zrsweb.zrs.rub.de/rubrr2/?wpfb_dl=394 (accessed on 08.09.2020).

265 BGH Beschl. v. 14.11.2018, Az.: XII ZB 292/16; BVerfG, 1 BvL 7/18 (pending case).

266 BGH loc. cit.

267 Löhnig, Martin 2019: Ist Artikel 13 III Nr.1 EGBGB verfassungswidrig? BGH, Beschluss vom 14.11.2018 XII ZB 292/16 (OLG Bamberg) in: NZFam 2019, 65, 72; Löhnig, Martin 2016: Das Unterhaltsrecht der faktischen Partnerschaft, in: NJW 2016, p. 1487.

state to another; this makes the procedure of filing an application to annul a marriage for minors more difficult. In addition, many employees in public authorities and counselling centres have little information about the procedure and the application process. As a result, they are also unable to inform affected women about criminal prosecution of forced marriages, so that the signal sent out by the StGB also reaches those groups of people who should be deterred by it.

Due to the lack of uniformity in the procedure and in authorities in charge, it can be assumed that many “child marriages” are not reported or that underage spouses have reached the age of majority and the proceedings are thus discontinued. In addition, marriage between underage EU citizens is often not annulled by the hardship clause, as otherwise EU freedom of movement is violated²⁶⁸.

Forced marriage

Furthermore, it has to be raised that coercion to marriage is dealt with as a “result offence” (Erfolgsdelikt) in paragraph 1²⁶⁹. The problem here is that although the criminal provision covers the person being coerced into entering a marriage, it does not cover any coerced maintenance of a marriage. This means that only a part of the “forced marriage” procedure is punishable. “It would have been more dogmatically correct to regard the enforcement of a forced marriage as a permanent offence and to change the wording of the law to ‘whoever forces another person to enter into or maintain a marriage’”²⁷⁰.

The concept of a “result offence” also has consequences for the statute of limitations. According to Sections 78, paragraph 3 No. 4 and 78 a of the StGB, forced marriage becomes statute-barred five years after the civil marriage. However, since many of those affected are still under pressure to remain with their spouse after entering the marriage, the predicament continues to exist after entering the marriage. Similar to the case of annulment of marriage, the legislation could have provided for the beginning of the limitation period to be based on the end of the victim’s predicament²⁷¹.

One of the problems here is the recording of the means used for the enforcement of forced marriages by the facts of the case. Thus, the proclamation of a word of authority (“You will get married”) cannot be classified as violence, nor can it hardly be classified as a threat, even an implied one²⁷². Similarly, subtle means of pressure that are typically used to enforce a forced marriage are not always covered by the criminal offence²⁷³.

Recommendations

We recommend the following to the Federal Government:

- » Abolish the time limit regulation on removing a granted residence permit after a 6-month stay abroad in Section 51 of the Residence Act. In particular, we recommend suspending the time limits for victims of forced marriages, as these women have not voluntarily gone abroad.
- » Abolish the period of marriage in order to facilitate access to marriage annulment proceedings and to exempt them from residence considerations (cf. Article 59).

268 Knipp, Kerstin 2019: Child marriages in Germany present a challenge for authorities, in: Deutsche Welle, 23.09.2019, [online] <https://www.dw.com/en/child-marriages-in-germany-present-a-challenge-for-authorities/a-50540043> (accessed on 08.09.2020)

269 see Kerner, Ulrich 2006: Das Zwangsheirats-Bekämpfungsgesetz, Der Bundesrat legt Gesetzentwurf gegen Zwangsheirat vor, in: das freischüßler. Zeitung des Arbeitskreises kritischer Juristinnen und Juristen an der Humboldt-Universität Berlin, Ausgabe 14, p. 63

270 Yerlikaya, Hayriye 2012: Zwangsehen. Eine kriminologisch-strafrechtliche Untersuchung, Baden-Baden: Nomos, p. 200.

271 Ibid.

272 Ibid., p. 206.

273 Ibid., p. 201.

We recommend the following to the legislative authority:

- » Look at widening the offence in order to criminalise cases of marriage that have not been thus far covered and which occur as a result of psychological violence and emotional pressure below the threshold of coercion. (See recommendation on Article 33.)

We recommend the following to the Federal Government, Länder and municipalities:

- » Support migrant women's and community self-organisations (as well as) financially, in order to make it easier for them to access women affected by violence or, under certain circumstances, to ensure this is possible in the first place. It would also make sense to offer protection measures and enact awareness-raising projects in educational institutions and for the benefit of educational staff in the spirit of prevention work (cf. Articles 8, 9, 10, 11, 15, 19, 23).

We recommend the following to the Federal Government and the Länder:

- » Standardise procedures for annulling marriages involving minors in order to ensure uniform responsibilities and transparency. To this end, the provision of information on applications and procedures for employees of authorities and counselling centres should be improved.

We recommend the following to the Länder:

- » Further education programmes and awareness training for educational staff to support potentially affected girls. At the same time, programmes and projects are needed to empower girls so that they can defend themselves against forced marriage. (See also recommendations on Article 15.)

Article 38

Female genital mutilation

Requirements

Article 38 requires that female genital mutilation (FGM) is a punishable offence, as is inducing, coercing or inciting female genital mutilation.

Challenges

FGM is a form of violence against women within the patriarchal system. This must be considered holistically and as a worldwide phenomenon. According to the BMFSFJ, the number of women and girls affected by FGM rose from 47,459 in 2017 to 67,975 in 2020²⁷⁴. The estimated number of girls threatened by FGM has also risen sharply from 2017 to 2020. According to the BMFSFJ, in 2017 there were 1,558-5,684 girls; in 2020 2,810-14,880. The lower number of girls at risk is only due to immigrants. The higher figure is based on the assumption that FGM is also committed against girls of the second generation. However, the data available on this grave human rights violation in Germany is inadequate.

Lack of expert advice and educational work

Although there are women's advice centres in Germany and several specialist counselling centres that provide specific advice on FGM and offer peer-to-peer counselling, education and further training, among other things, there are also many other services. One example is the INTEGRA network. However, the provision of these services to the population and the number of trained counsellors are not sufficiently measured by the extent of FGM, especially since the estimated number of people threatened by FGM has risen so sharply.

To prevent FGM, it is advisable to enter into dialogue with the members of the groups concerned and to provide information. However, enlightenment on the issue in the narrower institutional and social environment is still too rare and not complete. As per reports by migrant women's associations, the information, in the form of protection and assistance measures, does not reach the girls and women affected along with their families (cf. Article 19 of the Istanbul Convention). Therefore, it is particularly important to educate and train institutions such as authorities, associations and chambers, as well as doctors and counselling centres.

Multilingual, protected offers are also needed to ensure barrier-free, secure communication. Germany's first GREVIO state report²⁷⁵ only marginally addresses the known gaps in the protection for FGM survivors and their rights when experiencing aftercare, although the Federal Government

274 BMFSFJ 2017: Eine empirische Studie zu weiblicher Genitalverstümmelung in Deutschland. Daten-Zusammenhänge-Perspektiven, [online] <https://www.bmfsfj.de/bmfsfj/aktuelles/alle-meldungen/erste-studie-mit-zahlen-zur-weiblichen-genitalverstuemmung-fuer-deutschland-/113908> (accessed on 28.06.2020); 2020 study, figures are quoted after the press release of the BMFSFJ of 25.6.2020 <https://www.bmfsfj.de/bmfsfj/aktuelles/alle-meldungen/rund-68-000-frauen-und-maedchen-in-deutschland-betroffen/156806> (accessed on 28.6.2020) and Günther, Ulrike 2020: BMFSFJ study: Zehntausende Opfer weiblicher Genitalverstümmelung in der Bundesrepublik, In: *Zweiwochendienst Politikmagazin*, 26.06.2020, [online] <http://www.zwd.info/zehntausende-opfer-weiblicher-genitalverstuemmung-in-der-bundesrepublik-1.html> (accessed on 28.06.2020).

275 BMFSFJ 2020: GREVIO. Erster Staatenbericht der Bundesrepublik Deutschland, Berlin, p. 49/ 64 (hier zu intersexuellen Personen); pp. 17, 18, 29, 30, 90, 166, 211.

has been informed of them, not least by the Bund-Länder-AG and the fact of overcoming female genital mutilation as noted by the NGOs.

Gaps in the prosecution of FGM

Since September 2013, FGM has been punishable as a bodily injury offence under Section 226a of the German Criminal Code (StGB). In addition, Section 7 of the StGB enables the prosecution of crimes committed abroad and foreign crimes with a special domestic connection according to Section 5 of the StGB, but only if the perpetrators* and victims are German or have a habitual residence in Germany. The legal norm engenders conflict and still contradicts the Istanbul Convention²⁷⁶.

The introduction of Section 226a of the StGB can be considered a purely communicative-symbolic act. The paragraph promises more than it can deliver. It must be assumed that the true intended recipient of this political signalling is the majority society, contrary to the asserted intention of reaching out to those affected and members of the groups that continue with this practice. The assumption that immigrants from affected regions will become aware of the introduction of Section 226a of the StGB is unrealistic.

The introduction of the offence can, however, have very real negative effects on precisely those members of the groups concerned by stigmatising them across the board as violent, oppressive, backward and misogynist. At the same time, it can be seen as an attempt to deflect gender-based discrimination and power dynamics within the majority society. From this perspective, it would be more logical to implement the already existing laws and to include female genital mutilation as an additional feature under these provisions. Equal treatment of attacks of the same extent, irrespective of the motivation, is already required by the prohibition of discrimination in Article 3, paragraph 3 of the Basic Law (GG).

Great Britain was the first country to pass a separate law prohibiting female genital mutilation ("Prohibition of Female Circumcision Act"). However, no convictions have taken place under the law. In Germany, too, criminal prosecution statistics thus far only mention four cases: two have been closed and fines imposed in two cases.

FGM and gender-specific asylum

Although gender-specific asylum is possible on the basis of FGM (cf. Article 60), there are clear shortcomings in the asylum procedure, so that FGM is often not even mentioned and validated here. Many women have no access to legal advice and representation as part of the asylum process. In some cases lawyers do not sufficiently prepare for human rights violations being classed as gender-specific grounds for asylum such as FGM: They lack the training and linguistic skills to raise the issue with the petitioner before the first hearing. There are often no preliminary instances in which all known gender-specific grounds for asylum, such as FGM, can be ticked. Moreover, the German asylum procedure does not provide for regular health checks, including gynaecological examinations, on the basis that the woman's right to consent is respected.

Initial hearings of women who are applying for asylum before female interviewers and interpreters with the assistance of a special representative, do not often take place, even though it is recommended. (see Article 60). Due to cultural expressions that trivialise the issue such as "cleansing", "becoming a woman" and the often unrecognised suffering as a violation of human rights, BAMF employees also do not recognise the violation of human rights, even when women mention their genital mutilation. Moreover, the subject matter is often not understandable to translators and interpreters. It can also be the case that translators who are from the same country as the woman

276 Göttsche, Anna Lena 2018: Die andere Frage stellen: weibliche Genitalverstümmelung/-beschneidung und das Recht in Deutschland, in: Kritische Justiz, 2018, Vol. 51 (3), pp. 295-303; Göttsche showed on 7.4.2020 within the framework of the Bund-Länder-AG on overcoming female genital mutilation, how little the law is currently effective for this purpose

interviewed for asylum do not want to verbalise the subject in a translation in connection with their country of origin. It is a taboo and making it into a tangible topic is seen as disloyalty to their country. In practice, it is often observed that interpreters are politically or socially influenced and for this reason are not always able to present facts neutrally. Even in cases in which refugee women explicitly claim a human rights violation and for this reason wish to receive special medical care, they are not necessarily helped.

For example, there are too few trained female doctors who are able to recognise female genital mutilation and deal sensitively with this human rights violation, which is why affected women are often not believed. Another important issue is protection against deportation for girls threatened by FGM. Even if their own family rejects this human rights violation, girls can be threatened by FGM after deportation.

For example, when families, who belong to communities where there is high pressure to circumcise all girls, are deported, FGM is carried out without the parents' knowledge. Even if their own family rejects this human rights violation, girls can be threatened by FGM after deportation. If families who belong to communities where there is a high level of pressure to circumcise all girls are deported, it may be the case, for example, that FGM is carried out without the knowledge of the parents. There is also the danger of "post-circumcision", e. g., at the wedding.

It is therefore not correct for the BAMF to justify deportations of families or mothers with daughters to countries where FGM is only common in some regions on the grounds that the persons concerned would have the possibility of moving to a region where FGM is not practised. With reference to the UN Convention on the Rights of the Child (especially Article 3, best interests of the child), on the other hand, there is a legal possibility to invalidate the reasons for deportation and to suspend a deportation in the interest of the best interests of the child.

Dependence through residence regulations

The reservation against Article 59, paragraphs 2 and 3 is fatal for FGM survivors and women threatened by FGM and girls in Germany. It prevents their access to (protective) rights in Germany, which are guaranteed to them under the Istanbul Convention and CEDAW. FGM survivors have, in a not insignificant number of cases, become victims of another human rights violation, which was also committed by the close family circle, often through early marriage as a minor. The husband who is married to her in this way is often a supporter, even a profiteer of the crime. If the latter has German citizenship and the woman lives with him in Germany, but wants to separate but does not receive an independent right of residence under IC Article 59, she is not able to exercise her rights and, with the intervention of the state, remains dangerously dependent on this marriage while maintaining the reservation against Article 59 of the IC²⁷⁷.

Recommendations

We recommend the following to the Federal Government, Länder and municipalities:

- » Create a comprehensive package of actions to meet the extensive requirements of Article 38 and Articles 44-65 of the Istanbul Convention.

²⁷⁷ see djb Themenpapier 20-12: Umsetzung der Istanbul-Konvention in Deutschland. Rücknahme des Vorbehalts zu Artikel 59 der Istanbul-Konvention. Stellungnahme Deutscher Juristinnenbund vom 13.02.2020, [online] <https://www.djb.de/themen/thema/ik/st20-12/> (accessed on 28.06.2020).

We recommend the following to the Federal Government:

- » Commission a feasibility study in order to accurately formulate this package of actions and thereby develop the basis for a coherent and comprehensive provision of needs throughout Germany that can be equally accessed in all Länder.

We recommend the following to the Federal Government and the Länder:

- » Provide sufficient funding to implement a holistic strategy as a National Action Plan on FGM across the country. Under no circumstances can this be achieved solely by volunteers; significant support from appropriately remunerated professionals is needed (cf. Article 22 of the IC).

Article 39

Forced abortion and forced sterilisation

Requirements

With Article 39, Germany has committed itself not to allow sterilisation or abortion to be performed without the prior informed consent of the woman.

Challenges

Sterilisations against the declared will of persons concerned are forbidden in Germany. In the event of a person being incapable of giving consent, sterilisation can only be carried out under strict conditions after the consent of the guardian and after receiving approval by the guardianship court. These include, among other things, the fact that “pregnancy would occur without sterilisation, and as a result danger for the life of the pregnant woman or the danger of a serious adverse effect on her physical or mental health were to be expected which could not be prevented in a reasonable way, and the pregnancy cannot be prevented by other reasonable means.”²⁷⁸

In 2016, according to the most recent statistics from the Federal Office of Justice, 23 applications were approved²⁷⁹. That is a low number of permits in terms of numbers. In addition, however, there is evidence derived from studies and practice that fundamentally questions the voluntary nature of consent for sterilisation.

In their representation of given consent under Section 1905 of the Civil Codes the Federal Office of Justice does not differentiate between consent and not expressing a “no”. It is therefore unclear regarding on which decision-making basis the sterilisations took place – forced sterilisations are, additionally within the sense of the UN Convention on the Rights of Persons with Disabilities Articles 17 and 23, “not excluded”²⁸⁰.

Secondly, women with disabilities are twice as likely to be sterilised as women in the average population. A study commissioned by the BMFSFJ showed that 10 to 18 % of women with disabilities are sterilised²⁸¹. Women with learning difficulties (with so-called mental disabilities) living in institutions in the field of services for persons with disabilities are particularly likely to be sterilised, although only about a third of the residents have sexual experience and 14 % even have no sexual experience at all²⁸². About half of the women interviewed had opted for sterilisation themselves. The other women in this survey were “convinced” by doctors, professionals or parents, with 42 % of the women who were interviewed stating that a doctor had told them to be sterilised²⁸³. This approach

278 § 1905 Bürgerliches Gesetzbuch (BGB).

279 Bundesamt für Justiz 2018: Betreuungsverfahren, Zusammenstellung der Bundesergebnisse für die Jahre 1992 bis 2001, Stand 30.11.2018, [online] <https://www.bundesjustizamt.de/DE/SharedDocs/Publikationen/Justizstatistik/Betreuungsverfahren.pdf> (accessed on 13.10.2020).

280 Staatliche Koordinierungsstelle nach Artikel 33 UN-Behindertenrechtskonvention 2017: Zwangssterilisation, Positionspapier der Staatlichen Koordinierungsstelle nach Art. 33 UN-BRK, p. 4.

281 Schröttle, Monika et al. 2012: Lebenssituation und Belastungen von Frauen mit Beeinträchtigungen und Behinderungen in Deutschland, Hrsg. BMFSFJ.

282 Zinsmeister, Julia 2012: Zur Einflussnahme rechtlicher Betreuerinnen und Betreuer auf die Verhütung und Familienplanung der Betreuten, in: Bt Prax, 06/2012, p. 231.

283 Ibid.

contradicts the requirement for informed and voluntary consent prior to medical interventions as stipulated in Sections 630 c f. of the BGB.

In practice, it is quite frequently observed that even ‘voluntary’ decisions for sterilisation have to be questioned in case of women with learning difficulties, because ‘family, social and structural constraints have played a crucial role’²⁸⁴. These ‘constraints’ include inter alia a lack of area-wide housing options for parents with learning difficulties and adequate support services. There is also a lack of suitable childcare provision when parents with learning difficulties work in a sheltered workshops.

There is also a risk that parents with learning difficulties will be deprived of their child on the basis that it is in the best interests of the child²⁸⁵. The threat of a child being removed based solely on the fact that the mother (parents) has/have learning difficulties is something that is reported time and again through disabled women networks²⁸⁶.

Against the background of these observations, it is questionable to what extent a “voluntary decision” for sterilisation can be assumed among the group of women with learning difficulties.

In addition, 43% of women with learning difficulties living in residential facilities for people with disabilities receive a 3-month injection, even though only a third of them have any sexual contact at all (see above). This means that many women are receiving a contraceptive prophylactically that is associated with high health risks.²⁸⁷

Recommendations

We recommend the following to the Federal Government:

- » Commission an overview with accompanying research to take stock of the nature and extent of forced abortions and forced sterilisations, taking into account all procedures that necessitate contraception and restrict reproductive self-determination.

We recommend the following to the Länder:

- » Create situations where there is sufficient housing and care facilities providing support and assistance available throughout the country, especially for parents with learning difficulties.
- » Work towards ensuring, when weighing up the best interests of the child against the human right to procreation, that no child can be taken away solely because of the mother’s/parents’ disability.
- » Take measures to ensure that women with disabilities can enjoy self-determined sexuality regardless of their living arrangements.

284 Staatliche Koordinierungsstelle nach Artikel 33 UN-Behindertenrechtskonvention 2017: Zwangssterilisation, Positionspapier der Staatlichen Koordinierungsstelle nach Art. 33 UN-BRK, p. 7.

285 Ibid., p. 7 f.

286 last requested by Weibernetz e. V. July 2020.

287 Schröttle, Monika et al. 2012: Lebenssituation und Belastungen von Frauen mit Beeinträchtigungen und Behinderungen in Deutschland, Hrsg. BMFSFJ.

Article 40

Sexual harassment

Requirements

Article 40 requires parties to adopt such legislative or other measures as may be necessary to ensure that any form of unwanted sexually explicit verbal, non-verbal or physical conduct with the purpose or effect of violating the dignity of a person, in particular where it creates an environment of intimidation, hostility, humiliation, degradation or insult, is subject to criminal or other legal sanctions.

Challenges

Verbal and non-verbal sexual harassment without touching is only legally sanctioned in Germany in the context of the workplace. Physical harassment is legally sanctionable both under the General Equal Treatment Act (AGG) in respect of the workplace and under criminal law. Research and practice illustrate, however: existing possibilities for legal sanctions in respect of protection against sexual harassment in the workplace are inadequate. Survivors do not use the legal process to enforce their rights.

Prohibition and sanctioning of sexual harassment in the workplace: the AGG

The General Equal Treatment Act prohibits sexual harassment in the workplace. It is not a criminal law, however, but regulates protection from discrimination, especially regarding employees. It presents a comprehensive definition of sexual harassment in the workplace, including verbal, non-verbal and physical harassment. It also defines protective obligations to be put in place by employers and employee rights.

Derived from the AGG, victims of sexual harassment in the workplace can file civil claims for compensation or damages against their employers if they have not adequately provided protection for them against sexual harassment in the workplace. Employers can issue employment law measures such as warnings or dismissals against offenders. However, practice shows that sanctions are only imposed in exceptional cases. An analysis of legal cases in Germany illustrates the fact that “Two-thirds of identified legal cases in the context of sexual harassment in the workplace represent wrongful termination claims brought by defendants. (...) It is striking that the survivors were parties to the proceedings in only four cases, which means that they themselves would appear to only very rarely take legal action in cases of sexual harassment at the workplace. This corresponds to the results of previous research (...).”²⁸⁸ The study further states: “Since the introduction of the AGG [2006], only one victim, in accordance with Section 15 II of the AGG, successfully sued for damages and compensation against her employer and managers that allowed this to happen.”²⁸⁹

Many victims do not know what rights they have under the AGG. The current study (2019) commissioned by the Federal Anti-Discrimination Agency, for example, sums it up thus “(...) the possi-

288 Schröttle, Monika et al. 2019: Umgang mit sexueller Belästigung am Arbeitsplatz – Lösungsstrategien und Maßnahmen zur Intervention, Studie der Antidiskriminierungsstelle des Bundes, Oktober 2019, p. 46.

289 Ibid., p. 49.

bilities opened up by the AGG for survivors are apparently unsuitable in practical terms or are not applicable.”²⁹⁰

In addition, there are inherent weaknesses in the AGG: not all relevant groups are afforded protection under the law and barriers to its usability are rooted in the legal provisions themselves.

For example, regulations looking at the effective protection of self-employed and freelance workers are missing. Students are also not protected under the AGG from sexual harassment at the university²⁹¹ People in illegal employment relationships are equally not protected by the AGG.

People who work in vocational training centres or sheltered workshops as a result of their own disability or impairment are not legally employees, but deemed to be people undergoing rehabilitation. The regulations of the AGG apply to them “accordingly”, but the necessary adjustments for the regulations have thus far been neglected, meaning that the AGG has not been applied sufficiently for these employees. For example, unlike in regular employment relationships, it is disproportionately difficult for an institution to terminate an employee who is offensive because the employee also has a right to rehabilitation in the institution in question. Other obligations for institutions to deal with assaults (e.g. the provision for protection against violence concepts) do not yet exist across the board.

The time limits for asserting claims (§Section15 (4) of the AGG) are too short: claims for compensation or damages must be made in writing within a period of two months. Furthermore, according to Section 61b of the Labour Court Act, an action for compensation must be brought within three months of the claim being made. Experience has shown that these short deadlines are not appropriate compared with the realities of life and the stressful situation faced by survivors.

Criminal sanctioning of sexual harassment

Under criminal law, protection against sexual harassment requires mention of Section 184i of the StGB, which made physical sexual harassment in the form of touching “in a sexually determined manner” a criminal offence since 1 November 2016. Previously, sexual harassment was not a criminal offence in Germany. The statistics show that there is a high number of charges, for example, in 2019, 13,645 charges were noted under Section 184i of the StGB ²⁹²

According to media reports and experiences noted by specialist counselling and support centres, these cases mainly concern sexual harassment in public spaces.

However, introducing it as a criminal offence has thus far not brought about any legal improvements for victims of sexual harassment in the workplace. Initial practical experience shows that the number of cases of harassment in the workplace in which complaints are filed is negligible. There is an urgent need for research and evaluation to find out why survivors in the context of the workplace do not feel able to follow this path and how this can be changed.

Verbal and non-verbal sexual harassment without touching (e.g. by unwanted looks) is not punishable.

²⁹⁰ Ibid, p. 50.

²⁹¹ Gesis: Geschlechtsbezogene und sexualisierte Gewalt in der Wissenschaft, [online] <https://www.gesis.org/cews/themen/geschlechtsbezogene-und-sexualisierte-gewalt/rechtliche-situation-in-deutschland> (accessed on 18.1.2021). Students who do not have an employment relationship with an academic institution do not fall under the scope of protection of the AGG, as confirmed by a legal expert at the Federal Anti-Discrimination Agency: Kocher, Eva & Stefanie Porsche 2015: Expertise: Sexuelle Belästigung im Hochschulkontext – Schutzlücken und Empfehlungen, [online] https://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Expertisen/expertise_sexuelle_belaestigung_im_hochschulkontext.html (accessed on 18.1.2021). Some Länder have integrated regulations regarding application of the AGG in relation to students into their higher education laws, e.g., Section 42, paragraph 6 of the Lower Saxony Higher Education Act.

²⁹² Bundeskriminalamt: Polizeiliche Kriminalstatistik (PKS) 2017 and 2019.

Recommendations

We recommend the following to the federal law authorities:

- » Extend the deadlines for survivors to assert claims under the AGG. Survivors need time to become aware of assaults and their consequences and, due to existing dependencies, it is often only possible to make a complaint once they have left the company, for example.
- » Implement reliable and comprehensive regulations for the protection of employees in rehabilitation facilities against sexual harassment.

We recommend the following to the Federal Government, the state governments as well as employers and trade unions:

- » Inform employees to a greater extent about the possibilities of the AGG in the context of sexual harassment at the workplace and support them in using it.

We recommend the following to the federal and state ministries of work and research:

- » Commission research projects to evaluate why so few survivors take legal action in the workplace and where there are problems for survivors in using the law. In this way, it could be possible to determine how the situation for survivors could be improved.

Article 42

Unacceptable justifications for crimes, including crimes committed in the name of so-called “honour”

Requirements

Article 42 states that there is no justification for violence against women. In particular, perpetrators cannot claim to punish women and girls for alleged violations of cultural, religious, social or traditional customs or norms.

Challenges

Even in the 21st century, “honour” is still used as an instrument of threat and/or as a justification of the motive for violence against women and girls, especially in societies and families with a strong patriarchal structure. So-called “honour violence” is independent of a particular social affiliation, religion, culture, language or education. It serves to stabilise, among other things, the patriarchal structure, power and domination relations, while threatening the freedom and lives of girls and women in all areas of life, from their choice of clothing to choice of career and partner.

“Family honour”, as a socially constructed term, also threatens the lives of underage boys, as they are given the “responsibility for their sisters to have honourable lives”. It can mean that they are forced to kill their sisters, as they receive a lesser punishment because they are a minor. In such cases, Article 42 paragraph 2 provides that not only the (often) minor offender is punished, but also the person who incited the offender to commit the offence. Despite these guidelines, cases have been observed in recent years in which the “instigators” were acquitted due to lack of evidence²⁹³.

According to the 2019 Telephone Helpline Report, 309 calls out of 34,340 contact instances for counselling with extended documentation, were about violence in the name of “honour”²⁹⁴. This does not reflect the scale but the topicality of the problem. NGOs also note that there are large amounts of data on unreported cases. (On forced and child marriages as well as FGM see Articles 37 and 38.)

“Honour” as a motive for murder

The motif of “honour” is used to legitimise femicide/woman-killing or to present “honour” as a motive for killing. According to the latest “Partnership Violence Crime Statistics Evaluation”, there were 324 attempted murders and manslaughter of women in Germany in 2018²⁹⁵.

293 Hasselbach, Christoph 2017: Mordfall Sürücü: Bis heute keine Reue, in: Deutsche Welle, 30.05.2017, [online] <https://www.dw.com/de/mordfall-s%C3%BCr%C3%BCc%C3%BC-bis-heute-keine-reue/a-39047911> (accessed on 03.08.2020).

294 BMFSFJ 2019: Hilfetelefon Zahlen und Fakten, Jahresbericht 2019, [online] <https://www.hilfetelefon.de/das-hilfetelefon/zahlen-und-fakten/jahresbericht.html> (accessed on 28.06.2020).

295 BKA 2019: Partnerschaftsgewalt Kriminalstatistische Auswertung – Berichtsjahr 2018, [online] https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/Partnerschaftsgewalt/Partnerschaftsgewalt_2018.html?nn=63476 (accessed on 28.06.2020).

Behind these figures there are women, like an Afghan refugee who was murdered in Leipzig in 2017 because she wanted to lead an independent life. Her early calls for help were not taken seriously. This meant her husband managed to break into her room within the refugee accommodation without any problems, whereupon he stabbed her and her unborn child. The domestic violence on the part of the perpetrator was known to the social workers, but due to a lack of space in women's shelters in Leipzig, and Section 12a of the Residence Act (AufenthG), she could only move within the accommodation. The residency obligation as well as the residence requirement is a major obstacle for many women affected by violence who seek refuge from the perpetrator in a women's shelter (cf. Article 60).

The systemic and structural discrimination of migrant and refugee women, along the lines of laws such as the residence requirement (Section 12a of the AufenthG), the reservation against Article 59, paragraphs 2 and 3 of the Istanbul Convention or through the alleged ignorance of violence against women and girls within the care systems, municipal institutions (such as the Integration Council), and the fact that NGOs look after the refugees within the shelters, means that these women are particularly badly protected against violence²⁹⁶.

Culturalisation of violence against women [Kulturalisierung von Gewalt gegen Frauen]

The role of the media is significant in the context of femicide (cf. Article 17). As long as media professionals use uncritical and/or racist reporting to frame femicide as "relationship drama" and "culturalise" and "ethnicise" the act, they conceal the overall social dimension of such an act²⁹⁷. In addition, a lack of protection and assistance from the police regarding calls from women who have migrated and fled because of violence is observed.

Legal interpretation of "honour killings"

A legal definition of what "honour killing" means is barely found in German jurisdiction. While regional courts do not use the term "honour killing" in relevant cases²⁹⁸, the Federal Court of Justice uses the term in its press releases on those decisions²⁹⁹. The decisions in question deal with killings that are related to injured family honour. It is noticeable that the perpetrators in these cases are always seen and convicted as "strangers"³⁰⁰.

By way of contrast, "honour killings" and other offences committed in the name of honour are not punishable with separate criminal elements in the German criminal law system. Homicide offences under the German Criminal Code (StGB) include manslaughter, Section 212 of the StGB, and murder, Section 211 of the StGB. Manslaughter, i. e., the deliberate killing of a person, is punishable by imprisonment for not less than five years or, in particularly serious cases, by life imprisonment. A murderer punished with a life sentence is someone who kills a person out of the desire to kill, for the satisfaction of sexual instinct, out of greed or other base motives, insidiously or cruelly or by means that are dangerous to the public, or to enable or cover up another crime. Base motivation refers to

296 Kопietz, Andreas & Klaus Oberst 2019: Mann erstach seine Frau, weil sie ihn verlassen hatte, in: Berliner Zeitung, 17.12.2019, [online] <https://www.berliner-zeitung.de/mensch-metropole/mann-erstach-seine-frau-weil-sie-ihn-verlassen-hatte-li.3434> (accessed on 28.06.2020).

297 Schwarz, Carolina 2019: Femizide sind kein „Drama“, in: taz, 07.10.2019, [online] <https://taz.de/Mord-an-Frauen/!5628432/> (accessed on 30.06.2020).

298 Foljanty, Lena & Ulrike Lembke 2014: Die Konstruktion des Anderen in der „Ehrenmord“-Rechtsprechung, in: Kritische Justiz 2014, pp. 298-315.

299 Cf. press releases of the Federal Court of Justice (BGH) of 20 September 2010, No. 178/2010; of 30 June 2010, No. 136/2010; of 26 November 2009, No. 242/2009; of 2 November 2007, No. 163/2007 on the decisions LG Schweinfurt of 10 March 2010, 1 KLs 11 Js 6760/09; LG Kleve of 29 December 2009 [footnote 6]; LG Hamburg of 13 February 2009, 621 Ks 17/08; LG Limburg of 23 April 2007, 3 Js 14048/06 – 2 Ks.

300 Foljanty, Lena & Ulrike Lembke 2014: Die Konstruktion des Anderen in der „Ehrenmord“-Rechtsprechung, in: Kritische Justiz 2014, pp. 298-315.

those motives that are morally at the lowest level and are, according to general opinion, particularly despicable³⁰¹.

Looking at it from a German legal perspective, the problem is not the fact that the criminal offence of “femicide” or “femicide” does not exist, but rather the interpretation and application of the existing law³⁰². The question is therefore whether femicide, where a woman is murdered because of the fact she is a woman, should be deemed as manslaughter or as murder resulting from base motives. Femicide is almost always motivated by the intention of the woman to separate from their partner, or a separation that has already taken place and which the ex-partner does not want to accept: murder resulting from a separation is the typical homicidal incident committed by men in relationships³⁰³. In instances of honour killings, base motives are assumed, while the same within German-Christian couples is often deemed manslaughter.

According to current case law, the values underlying German law should form the basis of the assessment with the consequence that “honour killings” now fulfil the requirements for base motivation on an objective level³⁰⁴. On a subjective level, it is generally assumed that the perpetrators of an “honour killing” were aware of its reprehensibility. Only if the perpetrators were exceptionally unable to recognise the impact of their actions due to their “arrest” in their “native culture”, should the subjective element of the offence be missing³⁰⁵. It must therefore be individually proven that such an “arrest” exists and that it was subjectively guiding the offender’s actions. A punishment should also be imposed if, according to the court’s assessment, the perpetrator could have been able to discount his idea due to the length of time spent in Germany³⁰⁶.

“honour killings by perpetrators of Turkish or Arabic origin are now consistently punished as murder for base motives. There is no cultural bonus, but rather a worrying shortening of the examination of the features of a murder³⁰⁷. The perpetrator’s wish that the victim should live according to his ideas is interpreted as a freedom-limiting patriarchal claim to power and, in the case of separation killings, predominantly as a vulnerable emotional state”³⁰⁸.

Recommendation

We recommend the following to the Federal Government:

- » Regular data collection and well-founded, broad-based scientific studies on femicide that are independent of cultural, religious or other affiliations. Adapted protective measures and offers of help can thus be developed.

301 BGH, judgment. V. 25 July 1952, 1 StR 272/52.

302 Leonie Steinl in Holstein, Natascha 2019: Trennungstötungen werden oft nicht als Mord eingestuft, in : SZ, 17.10.2019, [online] <https://www.sueddeutsche.de/panorama/femizid-gewalt-gegen-frauen-1.4635132> (accessed on 18.01.2021).

303 djb 2019: Themenpapier 19- 24: Femizide in Deutschland: Strafverfolgung und angemessene Bestrafung von sogenannten Trennungstötungen, 25.11.2019, [online] <https://www.djb.de/presse/stellungnahmen/detail/st19-24> (accessed on 18.01.2021).

304 Foljanty, Lena & Ulrike Lembke 2014: Die Konstruktion des Anderen in der „Ehrenmord“-Rechtsprechung, in: Kritische Justiz 2014, pp. 298–315; BGH of 20 August 2004 – 2 StR 281/04; BGH of 20 February 2002 – 5 StR 538/01; BGH of 24 April 2001 – 1 StR 122/01; LG Detmold of 16 May 2012 (footnote 5); LG Kleve v. 29 December 2009 (Fn. 6); LG Hamburg of 13 February 2009.

305 Foljanty, Lena & Ulrike Lembke 2014: Die Konstruktion des Anderen in der „Ehrenmord“-Rechtsprechung, in: Kritische Justiz 2014, pp. 298–315; BGH v. 07.10.1994 (Fn. 17); BGH v. 20.02.2002 (Fn. 20).

306 Foljanty, Lena & Ulrike Lembke 2014: Die Konstruktion des Anderen in der „Ehrenmord“-Rechtsprechung, in: Kritische Justiz 2014, pp. 298–315; BGH v. 07.10.1994 (Fn. 17); BGH v. 20.02.2002 (Fn. 20); BGH v. 28.01.2004 (Fn. 9).

307 djb 2019: Themenpapier 19- 24: Femizide in Deutschland: Strafverfolgung und angemessene Bestrafung von sogenannten Trennungstötungen, 25.11.2019, [online] <https://www.djb.de/presse/stellungnahmen/detail/st19-24> (accessed on 18.01.2021).

308 Ibid.

We recommend the following to the Federal Government, Länder and municipalities:

- » Launch diversity-aware teaching materials, awareness-raising campaigns and training projects in all areas to combat gender role models.

We recommend the following to the Commissioner for Culture and Media:

- » Clearly and unambiguously identify femicides for what they are without culturalisation. Gender-based violence must always be named and made visible. Trivialising terms such as “honour killing”, “bloody deed”, “relationship drama” or “family drama” move the crime into the private sphere and at the same time trivialise violence against women. They should therefore no longer be used in public spheres.

Article 43

Application of criminal offences

Requirements

Article 43 of the Istanbul Convention requires the application of criminal law in relation to the offences described in the Convention, irrespective of the offender-victim relationship. In conjunction with Article 46a, certain offender-victim relationships are treated as aggravating circumstances, for example, if (ex-)spouse or (ex-)partner commits the offence.

Challenges

The past or present relationship between offender and victim does not play any role concerning the applicability of the relevant penal provisions in Germany. However, practice shows considerable tendencies to deviate from that basic idea of the Convention –according to Article 46a, as more severe penalty in these cases are given.

When it comes to sexual assault or sexualised violence after previous intimate relations, the effectiveness of the prosecution’s argument is threatened by stereotypical victim accusations as well as by the prospect of a light sentence. In case of sexual assaults within or after a previous intimate relationship, courts regularly assume a less serious case, which results in a lesser penalty³⁰⁹. The dogmatic derivation of this reduction of sentence was already questionable under earlier criminal law on sexual offences, the argumentation behind is based on the inability to distinguish between intimacy and sexualised violence³¹⁰. This contradicts the finding that the vast majority of sexual offences take place in the victim’s immediate social environment³¹¹. The assumption of a less severe case therefore is systematically mistaken; according to German dogmatics, after all, less severe cases should only cover exceptional circumstances.

Separation killings are often punished more leniently as long as there are no base motives in the instance of murder. This means that the criminal offence of manslaughter applies, which carries a lower threat of punishment³¹². The Federal Court of Justice (BGH) has already formulated that killing is not to be assessed as base if “the separation starts from the victim of the crime and the accused is deprived by the act of something that he does not actually want to lose”³¹³. The underlying consideration of whether the crime is still comprehensible because the separation from the victim was based on the perpetrator solely blaming the victim. And the consideration that perpetrator loses the object of his desire for control on a permanent basis through killing them makes reference to patriarchal property constructions, according to which the woman is better dead than alone and free.³¹⁴ Paradoxically, this is not considered to be legally relevant³¹⁵ in the case of so-called honour

309 Critique of Renzikowski in MüKo StGB, § 177 nF, Rn. 195.

310 On this subject Lembke, Ulrike 2014: Vergebliche Gesetzgebung, Die Reform des Sexualstrafrechts 1997/98 als Jahrhundertprojekt und ihr Scheitern in und an der sog. Rechtswirklichkeit, in: ZfRSoz, pp. 253-283.

311 Renzikowski in MüKo StGB, § 177 nF, Rn. 195.

312 BGH of 6 July 2019, case StB 14/19; BGH of 29 February 2008, case 2 StR 349/08; BGH of 15 May 2003, case 3 StR 149/03.

313 BGH of 29 February 2008, case 2 StR 349/08.

314 Fundamental to this is Foljanty, Lena & Ulrike Lembke, Die Konstruktion des Anderen in der „Ehrenmord“-Rechtsprechung, in: Kritische Justiz 2014, pp. 298-315.

315 See also LG Schweinfurt from 10 March 2010, case 1 KLS 11 Js 6760/09: “...but such fears do not in any way explain that the accused could have believed that he was protecting his daughter by en-acting the worst of the feared developments, namely her death, through his own actions. “

killings, although there is a de facto comparability. In this context, the claim to power is quite rightly predominantly classified as base, whereas in the case of separation killings, on the other hand, it is assumed that the perpetrator would be in a vulnerable emotional state.

Recommendations

We recommend the following to the Federal Government and the Länder:

- » Through mandatory training for all law enforcement agencies, ensure that (sexualised) violence and murder with a prior perpetrator-victim relationship, and in particular murders resulting from the act of separation, are appropriately punished.
- » Through mandatory training for all law enforcement agencies and other appropriate measures, clarify that the current trend in jurisprudence, namely a more lenient punishment by affirming manslaughter instead of murder, as well as a more lenient punishment of sexual offences in intimate relationships, does not comply with the Convention.

We recommend the following to the Federal Government, Länder governments and legislative authorities:

- » Make further training for judges in the relevant judiciary laws obligatory and expand the services both quantitatively and qualitatively (e.g. by providing services run by independent institutions).

Article 46

Aggravating circumstances

Requirements

The circumstances listed in Article 46 must be taken into account as aggravating circumstances if convicted.

Challenges

Despite the possibility of aggravating the penalty by applying the general rules on the assessment of penalties as per Section 46, paragraph 2 of the German Criminal Code (StGB), there are cases in which the existing regulations in Germany are not sufficient for compliance with the Convention.

For the implementation of Article 46a, please refer to the comments on Article 43.

Offences against or in the presence of a child

The requirement in Article 46d is already largely met by corresponding offences. If a criminal offence is committed in the presence of a child and has a correspondingly negative effect, this can also be taken into account via Section 46, paragraph 2 of the StGB. However, there is a gap that must be critically reviewed in respect of gender-assigned operations on inter children. Sex-assigned genital operations are still common in Germany³¹⁶. Serious bodily injury, which is regularly associated with them, is explicitly criminalised in Section 226a of the StGB. However, effective prosecution is rarely seen³¹⁷. Gender-assigned operations also involve gender-specific violence³¹⁸. To protect intergender children, gender-specific motives should therefore be included in Section 46, paragraph 2 of the StGB.

Joint inspection by two or more persons

In cases of sexual coercion, the requirement of Article 46e is ensured by the example of Section 177, paragraph 6 No. 2 of the StGB, which also applies to two persons³¹⁹. In practice, however, it is always not taken into account that a refutation of the indicative effect of examples of rules in paragraph 6 No. 2, which is possible in principle, is regularly ruled out in light of the IC (restriction of the judicial margin of discretion under international law).

³¹⁶ Klöppel, Ulrike 2016: Zur Aktualität kosmetischer Operationen „uneindeutiger“ Genitalien im Kindesalter, [online] https://www.gender.hu-berlin.de/de/publikationen/gender-bulletins/texte-42/kloepfel-2016_zur-aktualitaet-kosmetischer-genitaloperationen (accessed on 17.06.2020).

³¹⁷ djb 2020: Themenpapier 20 – 08: Unterbindung geschlechtszuweisender Operationen an Kindern (Artikel 38, 39, 46 IK), 05.02.2020, [online] <https://www.djb.de/presse/stellungnahmen/detail/st20-08> (accessed on 17.06.2020).

³¹⁸ Ibid.

³¹⁹ Eschelbach, Ralf 2013: § 177 Rn., in Matt, Holger & Joachim Renzikowski: StGB, p. 120.

Serious physical or psychological harm to the victim

Serious physical consequences, as described in Article 46h, in some cases are already part of the components of the offence; serious mental impairments as consequences of the offence can be taken into account via Section 46, paragraph 2 of the StGB³²⁰. However, it is feared that serious psychological damage, especially in cases of domestic and sexualised violence, are not always taken into account as aggravating factors to the necessary extent. It is known that any form of sexualised violence can cause severe psychological damage to the victim³²¹. This risk is even higher, if the crime was committed in a relationship or in a domestic environment³²². It is also well known that domestic violence in particular causes serious physical and psychological damage to the victim's health³²³. In practice, however, it has been observed that serious psychological damage, which can also be taken into account in principle through Section 46 paragraph 2 of the StGB³²⁴, is not taken into account as part of the trivialising of domestic violence or violence in partnerships, especially since it is often not visible. Social trivialisation also contributes to this³²⁵.

Recommendations

We recommend the following to the Federal Government and the legislative authority and/or the Federal Ministry of Justice and Länder departments:

- » Use appropriate measures to ensure that the circumstances referred to in Article 46 of the Istanbul Convention can be taken into account for aggravated circumstances. In particular, Section 46 (2) of the StGB should be supplemented to include gender-specific motives.

We recommend the following to the Federal Government and the Länder:

- » Employ mandatory training for all law enforcement agencies to ensure that the courts take into account and can consider the above circumstances as possible aggravating circumstances in each individual case of violence against women and children.

We recommend the following to the Federal Government, state governments and legislative authorities:

- » Make further training for judges in the relevant judiciary laws obligatory and expand the services both quantitatively and qualitatively (e.g. by providing services run by independent institutions).

320 Eisele, Jörg 2018: § 177 Rn., in Schönke, Adolf & Horst Schröder: StGB, p.143.

321 Bußmann, Heike 2013: § 46 Rn., in Matt, Holger & Joachim Renzikowski: StGB, p. 19.

322 Sick, Brigitte 1995: MschrKrim 78 1995, 281 (292); Sczesny/Krauel MschrKrim 79 (1996), 338 (342).

323 Forschungsnetz Gewalt im Geschlechterverhältnis 2008: Gewalt im Geschlechterverhältnis, p. 49; Röck, Silvia 2020: Frauen als Opfer häuslicher Gewalt, in: Steingen, Anja (Hrsg.) 2020: Häusliche Gewalt, p. 29.

324 Bußmann, Heike 2013: § 46 Rn., in Matt, Holger & Joachim Renzikowski: StGB, p. 19.

325 Röck, Silvia 2020: Frauen als Opfer häuslicher Gewalt, in: Steingen, Anja (Hrsg.) 2020: Häusliche Gewalt, p. 30.

Article 48

Prohibition of mandatory alternative dispute resolution processes or sentencing

Requirements

Article 48 obliges parties to take necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, such as mediation and conciliation. It also seeks to ensure that the offender's financial obligations to the victim are taken into account in the event that a fine is ordered.

Challenges

Civil and criminal procedural law (including family court proceedings) is characterised by the need to persuade the parties involved or the accused to reach amicable solutions regarding contentious disputes or to make amends for criminal conduct. The procedural requirements opened up for this purpose under criminal and civil procedural regulations regarding compensation (e.g. victim-offender mediation in criminal law) and for the amicable settlement of disputes (conciliation hearing in civil law) do not have to be followed without the consent of those affected by violence. However, in court practice, "gentle pressure" is often used to bring about settlements. Witnesses to survivors or parties in civil proceedings, who may not be represented by lawyers for reasons of cost are impressed upon by the court's authority and follow the guidelines. In the case of an explicit prohibition, this possibility would be out of the question from the outset.

Apart from criminal prosecution, domestic and sexual violence is mainly addressed in proceedings under the Protection against Violence Act (GewSchG) or in child custody cases. The effects of domestic violence on children or their own exposure to sexualised violence disseminate into proceedings on custody and access rights, or form the reason for applications to exclude custody or access rights. The family court is functionally responsible for this, and the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (FamFG) is to be applied.

Both Section 36 (1)(2) of the FamFG and Section 156 of the FamFG require working towards an agreement. According to Section 36a of the FamFG, the requirement to propose mediation applies. Cases involving protection against violence are expressly excluded from this (Sections 36 (1)(2), 36a (1)(2) of the FamFG). In practice, however, legal settlements are often made. After it had become apparent that the criminal sanction of Section 4 of the Protection Against Violence Act did not apply in the case of a violation of the settlement, Section 214a of the FamFG at least provided for the equation of a settlement with an order pursuant to Section 1 of the Protection Against Violence Act (GewSchG).

Settlements, referrals to court-based joint counselling and mediation all form the norm in children's proceedings. Appeals are made to the common sense of the parties involved and it is noted that an agreement can be easier to live with than a court-ordered measure. In cases of domestic violence, however, no consideration is given to special configurations or to power relations. On the contrary, settlements should even be reached that put the person affected by violence and their children in danger.

The increasing tendency to impose joint responsibility for upbringing and care ("If you do not cooperate, you should consider whether you are fit to raise the child and thus have custody withdrawn"), or the push to make the alternating model the rule, fail to recognise that this demand for "good parents" cannot be applied to parenthood that has been extremely disturbed by violence.

A lack of knowledge about the dynamics of domestic violence and the effects on children is the reason why it is not possible to assert such arguments in the proceedings. There is no explicit exemption corresponding to that for cases under the Protection Against Violence Act.

In the meantime, reform of custody, access and maintenance law stands at the draft stage and provides for agreements, joint or court-based counselling and mediation. Without appropriate preliminary proceedings, the court cannot even be called upon to bring about an adversarial decision after prescribed attempts to reach a settlement have taken place. According to the current reading, there are no explicit derogations. The signature of the reform emphasises joint custody, whereupon birth or social parents are to seek an understanding regarding issues linked to children. Domestic and sexual violence are not sufficiently taken into account or brought to the attention of those involved in the judicial process through special provisions.

On the question of indirectly burdening or punishing the victim by ordering the offender to pay a fine, the following can be criticised: there is not sufficient synchronisation of fines or periodic penalty payments with other obligations, such as maintenance payments, within the German legal system. If fines are moderate, it is usually not so that child support is not jeopardised. Rather, when calculating maintenance amounts, a fine to be paid can be deducted in advance from income as a maintenance-relevant liability, which can then lead to a reduction in the maintenance rate.

Recommendations

We recommend the following to the legislative authority:

- » Include exemptions from procedural rules in the Code of Criminal Procedure (StPO) and the Code of Civil Procedure (Zivilprozessordnung – ZPO) which require courts and public prosecutors to work towards a settlement or agreement between the parties involved (e.g. survivor-offender mediation in criminal law and conciliation hearings in civil law) for cases of domestic violence.
- » In the FamFG, in respect of amicable settlement and mediation attempts, insert an explicit exemption for cases relating to children with a history of violence corresponding to that for cases under the Protection Against Violence Act.

We recommend the following to the Länder:

- » Raise awareness among family judges, employees of youth welfare offices and counselling centres, private youth welfare organisations, guardians ad litem and experts about the special dynamics and special power relations in cases of domestic violence.

CHAPTER VI

Investigation, prosecution, procedural law and
protective measures

Article 49

General obligations

Requirements

Article 49 sets out the obligation to ensure that investigations and judicial proceedings are carried out as quickly as possible, taking into account the rights of those affected by violence. The same applies to the effective investigation and prosecution of gender-based violence.

Challenges

In Germany criminal prosecutions usually fail, not because of substantive criminal law, but because of the judicial processing and prosecution of the relevant offences. Although there are now some specific responsibilities detailed at the state and regional public prosecutors' offices, it is already problematic that typical forms of domestic violence / violence in the social environment, namely repeated humiliation, bodily harm, sexual assault, are often not treated as a whole but as individual acts, and thus the specific injustice of ongoing dynamics of violence cannot be grasped. Nor are countless reported crimes not condemned. For the year 2017, a comparison of the figures of the police crime statistics and the criminal justice statistics shows a conviction rate of 8.4% in cases of rape and aggravated sexual assault³²⁶.

It is still problematic that there is no legal definition of injured persons/victims in German criminal law. This often leads to degradation of injured in the proceedings by not granting them this status, even on a conceptual basis. For example, they are neutrally titled as witnesses, but also as "alleged victims", "alleged injured parties" or even "alleged injured parties".

Long duration of trials

In most German court districts, the time between notification and final conclusion of the proceedings is very long³²⁷: procedures of three to five years are common³²⁸. This is mainly due to a lack of investigating authorities' and courts' resources.

Regional courts exclusively deal with liability cases at short notice on the basis of the special acceleration principle applicable there. This is extremely rare in cases of violence in the social environment, usually only in attempted or completed homicides³²⁹. For this reason, the provision of Section 24, paragraph 1, No. 3 of the Judicial System Act (Gerichtsverfassungsgesetz – GVG), which provides for charges to be brought before the Regional Court in the case of injured parties in need

326 In Germany there are no statistics on the course of criminal prosecution from the time of reporting to the end of the proceedings. An approximation of conviction rates can therefore only be achieved by comparing police crime statistics and prosecution statistics on an annual basis. Due to the long duration of proceedings, this is not an exact conviction rate.

327 Statistisches Bundesamt 2018: Rechtspflege, Strafgerichte, Fachserie 10, Reihe 2.3, [online] https://www.destatis.de/DE/Themen/Staat/Justiz-Rechtspflege/Publikationen/Downloads-Gerichte/strafgerichte-2100230187004.pdf?__blob=publicationFile (accessed on 18.01.2021), p. 77.

328 for example in Frankfurt/Oder: Charge of rape in 2016, arraignment at the regional court in July 2017, opening of the proceedings in August 2017 – no court date as of now (July 2020).

329 To date, there is no specific study of the cases of gender-based violence in which pre-trial detention has been ordered, although the reason for detention is likely to be the risk of recurrence in many cases. Such a study would be urgently needed.

of special protection, is frequently circumvented and charges are brought before the lower district courts. In these instances, the scheduling is quicker, but in the end, local court rulings on convictions are often appealed against, which ultimately leads to the prolongation of proceedings³³⁰.

If the proceedings take a particularly long time, this necessarily leads to a reduction in the sentenced person's sentence due to the particular burden³³¹. However, the particular burden on the person concerned is not taken into account.

Particularly in case of offences that take place in the immediate social environment, it happens time and again during long proceedings that further offences are committed to the detriment of the same affected persons. Especially in cases of stalking, violations of the Protection against Violence Act, threats, etc., and especially when perpetrators and victims (must) continue to have contact because they have children together, the dangers for those affected people are great. Again and again, new crimes are committed despite existing orders to ensure protection against violence and ongoing criminal proceedings. In the experience of counselling centres and lawyers, however, affected people often refrain from making further reports, as they have already learned that the previous reports did not have result in any effective consequences.

For those affected, the long duration of the proceedings is untenable; they cannot draw a line under the act and they are increasingly exposed to pressure from the perpetrators. Also, many of those affected do not dare to begin therapy to come to terms with the violence during the criminal proceedings, as this can be seen in court as falsification of the statement³³². The perpetrators feel strengthened in their actions by the fact that they don't submit to any consequences. In addition, German law provides for the possibility under Section 154 of the German Code of Criminal Procedure (StPO) that affected people often perceive a "quantity discount".

Preservation of evidence

Only in extremely rare cases house searches of the accused are ordered and carried out in cases of gender-based violence, even if the person concerned reports offences such as revenge porn, digital stalking, etc. In case of violence in the immediate social surroundings, the social environment, such as neighbours or mutual friends, are often not questioned if the statement of the affected person seems to be informative at first. This often leads to difficulties in acquiring proof for the purpose of denying the accused persons later on. Children, including adolescent or adult children of affected persons, are usually not interviewed as witnesses, as it is generally considered inappropriate to involve them in a "conflict between parents". However, there is no scientific evidence that children are more burdened by statements than by their silence. In case of sexual offences in particular, those affected are often briefly "interrogated" by non-specialised police officers immediately after a crime, then "briefly questioned" again by the LKA (Länder Criminal Investigation Authority, Landeskriminalamt) a few hours later to clarify the facts of the case; only then are they interrogated by the respective special unit. The first "interrogations" are not recorded on tape or video, and the later interrogations at a LKA are also rarely recorded. In addition, the technical possibilities are partly unavailable or not available in sufficient quantities.

Particularly in proceedings involving sexualised violence, expert opinions are very often sought on the question of the credibility of the statement. Due to the constancy analysis that is used, the first statements are very significant and contradictions often lead to acquittals, because the courts usually accept the expert opinions without looking at it critically³³³. The assessment is extremely

330 It should be noted that the persons concerned rarely appeal against acquittals themselves, as they have to bear the costs and necessary expenses of the defendant in the event of renewed acquittal on appeal.

331 BGH 1 StR 395/17.

332 In this respect, they often receive advice from police officers or therapists that they should not start therapy until the procedure is completed. Therapists often do not consider it expedient to start a therapy at all, as there is a risk of further traumatising by the procedure.

333 In 2009, Cornelia König and Jörg Fegert noted that in 89% of cases, the public prosecutor's offices adopted the results of the expert opinions for their final decision. (In: König, Cornelia & Jörg Michael Fegert 2009: Zur Praxis

stressful for many of those affected because a zero hypothesis³³⁴ is used as a starting point, many experts do not have any knowledge of traumatology, and the methodology used does not seem suitable for traumatised people³³⁵. At the same time, there seems to be a lack of knowledge about trauma, which is necessary to classify possible contradictions and inconsistencies. Traumatic experiences are not stored chronologically in the memory. This often leads to the fact that survivors of violence are not able to reconstruct the experience in a chronologically strict and detailed manner.

Criminal proceedings are particularly difficult for women with disabilities, especially those with communication and learning disabilities and women with psychiatric diagnoses. Often their ability to testify and the quality of their testimony is fundamentally questioned. The possibility of translating it into “plain language”³³⁶ is completely missing. The judiciary often fails to take into account the needs, realities and opportunities of women with disabilities, so that they are effectively excluded from access to justice if there is no other evidence than their testimony.

Support for victims in criminal proceedings and avoidance of revictimisation

In Germany, victim witnesses of numerous crimes (e.g. sexual assault, bodily injury, trafficking in human beings) have the right to join the proceedings as joint plaintiffs and can therefore exercise numerous rights, including being represented by a lawyer. For some years now, asserting a side action has been undermined in practice by the fact that in some jurisdictions the side action representative is refused access to the files on the assumption that the statements of the persons concerned could be influenced by this³³⁷. This means that numerous rights of the joint plaintiffs, such as the right to complain, the right to ask questions, the right to request evidence etc., can no longer be exercised.

It is also problematic that the plaintiffs do not have to be involved in procedural agreements³³⁸. Only injured parties have the right to be heard. In this respect, the extent to which the interests of victims are taken into account often depends on the specific person in the prosecution.

For most offences that are dealt with in the context of domestic violence (e.g. bodily injury), victim witnesses are not necessarily entitled to free legal representation in accordance with Section 397a of the StPO, but only if they are financially unable to pay for legal representation and cannot reasonably be expected to represent themselves. This means that even if, for example, an affected person has been strangled by her ex-partner, beaten with a belt or suffered a fractured nose as a result of a violent punch in the face, in practice many courts assume that affected persons can master the proceedings without legal representation, especially if the accused is their own (ex)partner.

Practical experience has shown that dealing with the parties in question at all stages of the procedure is far from a satisfactory outcome. For example, many of those affected, experience the investigating authorities’ treatment of them as discriminatory and derogatory, as well as receiving a lack of information about the progress of proceedings, the long duration of proceedings, little appreciation during court hearings, and much more. It happens that shameful recordings, e.g., the location of the victims or recordings of sexual offences are shown in public, sometimes in the

der Glaubhaftigkeitsbegutachtung unter Einfluss des BGH Urteils, *Interdisziplinäre Fachzeitschrift für Prävention und Intervention DGFPI*, Vol. 12, No. 2, pp. 16, 41.

334 The German Federal Supreme Court defined the null hypothesis in 1999. The credibility of a statement is methodically tested using the null hypothesis, i.e., the facts to be examined (i.e. the credibility of the statement) are negated until this negation is no longer compatible with the facts collected. This means that at the beginning of a review it is first assumed that the statement is not credible and this assumption must then be refuted.

335 Fegert, Jörg Michael et al. 2018: Enormes professionelles Unverständnis gegenüber Traumatisierten, in: *Nervenheilkunde* 37, pp. 525-534.

336 bff 2019: Suse – sicher und selbstbestimmt. Im Recht. Dokumentation des Fachforums „Hürden und Rampen- Gemeinsam Impulse setzen für einen barrierearmen Rechtsweg!“, p. 15.

337 so believes LG Frankfurt, decision of 29 June 2017 – 5/14 KLS 12/17, Hanseatic Higher Regional Court, decision of 21 March 2016 – 1 Ws 40/16.

338 According to Section 257c of the German Code of Criminal Procedure (StPO), an agreement in criminal proceedings is possible in the form that an accused person is promised a certain punishment in the event of a confession. This requires the consent of the public prosecutor and the accused person, not that of the injured party.

presence of press. In case of sexual offences, detailed questions about sexual history of the victim witnesses are usually allowed.

Research has also shown that the acceptance of rape myths among members of legal professions can influence the assessment of facts and circumstances³³⁹. For example, those affected people have the experience that judges are convinced that women who report their ex-partners will benefit from doing this or that it is more pleasant to be raped by one's own ex-partner than by a stranger, which regularly leads to reduced sentences³⁴⁰.

There are no specialised courts or jurisdictions for gender-based violence in Germany, nor any obligations for judges to undergo further trainings, for example to learn interview techniques conducive to victims.

This leads to victims being retraumatised in court. Psychosocial court assistance to victims, which has been legally regulated since 2017, has helped to provide stability to victim witnesses. However, it is problematic that it can only be used free of charge for adults at the time of the crime – it is also upon request and only for a very limited range of offences. For most common offences that occur in cases of domestic violence or hate crimes (bodily harm, dangerous bodily injury, threats, coercion, etc.), there is no possibility of free psychosocial court assistance to victims.

Recommendations

We recommend the following to the federal legislature, the presiding district courts and the Länder:

- » Establish specialised and specific prosecution centres and specialised courts to deal with cases of gender-based violence.

We recommend the following to the federal law authorities:

- » Ensure that judges are qualified to deal with cases of gender-based violence (extent, causes and consequences of violence as well as perpetrator strategies and survivor circumstances, in particular secondary victimisation and traumatology) by introducing an obligation to undergo further training.
- » Introduce regulations in the StPO to speed up proceedings in cases of gender-based violence (e. g. in accordance with the regulation in Section 155f of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction – FamFG).
- » Enable victims of intimate partner violence and victims of sexualised violence to receive free legal representation in accordance with Section 397a of the StPO as a result of the particular psychological stress they are under.
- » Enable provisions of psychosocial court assistance for survivor-witnesses in all proceedings covered by the Istanbul Convention.
- » Include the entitlement to have text translated into easy language in the RiStBV in order to ensure a comprehensive entitlement to communication support.

339 see Stelzner, Lena & Anne-Sophie Minuth 2018: Genderstereotype in Sexualstrafverfahren. Eine Untersuchung durch Prozessbeobachtungen, in: Forum Recht 03/18, pp. 89-93 sowie Krahe, Barbara 2012: Soziale Reaktionen auf primäre Viktimisierung: zum Einfluss stereotyper Urteilsmuster, in: Barton, Stephan & Ralf Kölbel (Hrsg.), Ambivalenzen der Opferzuwendung des Strafrechts, Baden-Baden: Nomos, pp. 159-175.

340 Quote from a judgment: "It had a mitigating effect in the defendant's favour that the injured joint plaintiff had previously had sexual intercourse with the defendants by mutual consent on several occasions in the relationship and that the act was not carried out with a stranger, which is regularly much more traumatic for the victims" (2019, Act of 2017).

- » In the future, formulate laws using gender-sensitive language.

We recommend the following to the federal and state ministries of justice:

- » Look at the practice of giving testimonial psychological assessments and subject them to scientific evaluation and revision. In particular, the requirements concerning the credibility of testimonies in cases of gender-based violence should be modified to include findings from traumatology and international practice. The methodology and limits of the evaluation, its role in assessing evidence and the qualifications of the assessors should be clarified by guidelines.

Article 50

Immediate response, prevention and protection

Requirements

Article 50 requires that law enforcement authorities act swiftly and appropriately and provide prompt and adequate protection to victims. At the same time, these authorities are called upon to take appropriate preventive and protective measures with regard to gender-based violence.

Challenges

Currently, the Istanbul Convention is neither being implemented comprehensively nor across the board. Although the police authorities in the Länder all have departments that are responsible for crime prevention and victim protection, only a few Länder have officers specialising in gender-based violence (e. g. in Bavaria, Berlin).

The police laws of the Länder all provide that in cases of domestic violence, the police may, in order to avert danger, expel the offender, issue a restraining order and a housing order. The perpetrator must then immediately leave the place or residential premises and may not enter them for a certain period of time; neither can they approach the survivor or make contact with them. These powers of intervention vary between Länder, particularly as regards the duration of the measure (10-14 days). The duration of the measure is also at the discretion of the police officers who issue it, so that survivors often have a very short period of time in which to seek advice and, if necessary, to take further legal action.

Proactive approaches are inconsistently regulated and implemented

Very few police laws stipulate at this point that the police should provide survivors with advice and refer them for further counselling services. Only the police laws of the Länder of Brandenburg, Lower Saxony, Mecklenburg-Western Pomerania and North Rhine-Westphalia contain legal provisions in this respect³⁴¹. While in Brandenburg it is only regulated that the police provides information about counselling services, the regulations of the other three Länder provide that the police pass on the contact data of the person concerned to the Domestic Violence Intervention Centre and that the latter seeks contact with the survivor in order to offer counselling services (proactive approach). In the other Länder, the proactive approach is also used in police operations in cases of domestic violence. This is then based on cooperation agreements between the police and the advice and intervention centre.

The specific implementation of this approach, however, fails in some Länder because there is no uniform financing of this work and the resulting additional work of the counselling and intervention centres cannot be carried out everywhere. This approach in general is not awarded the necessary relevance by the subordinate levels of police (department management) and by the officers on duty. Accordingly, implementation is not instructed or required.

³⁴¹ §Section16a of the PolG Brdbg; Section 17a (1) p. 5 Nds.POG; Section 52 (3) of the SOG M-V; Section 34a (4) of the PolG NRW.

In addition, many of the officers do not have sufficient specialist knowledge of the specific scenarios facing survivors of domestic violence and therefore lack confidence in implementing the proactive approach. Data protection regulations require that the survivors provide a written declaration of consent for the transfer of their data to the intervention centre; many people shy away from doing this in such an acute situation as a result of uncertainty.

Instances where the police do not take any of the above-mentioned measures are problematic. They occur, for example, because the offender flees the scene when the police arrive, the police do not assess the danger situation in such a way that measures are taken or, from the point of view of the investigating authorities, low-level offences such as insults and threats are reported. It can then be assumed that survivors are not provided with advice at all, so no report is made to the intervention centre and therefore no support is provided.

Lack of facilities for (minors) victims of gender-based violence

Police stations are not equipped throughout the country with interrogation rooms that are responsive to the needs of survivors. For example, in the case of minors, there is often a lack of child-friendly equipment in the rooms. There is also no guarantee that female employees who are specially trained in the area will carry out the interviews throughout the country.

Endangering witnesses in criminal proceedings

So-called witness protection offices are located within criminal investigation departments of Länder. These have, among other things, the task of assessing the severity of the danger situation linked to witnesses in criminal proceedings and the ordering and implementation of measures to protect these witnesses. For victims of domestic and gender-related violence, the ordering of such measures is not often considered. These services mainly deal with witnesses in the field of organised crime. The witness protection measures to be taken, such as personal protection, concealment of identity, etc., are instructed by way of discretion; this is based on the severity of the offence, established endangerment scenarios, etc., cf. Section 2, paragraph 2 of the ZSHG³⁴². The instruction for personal protection for victims of domestic violence, e.g., to accompany them to court hearings or authorities, remains an exception because the acts of violence committed against them are not deemed to be serious enough. For survivors, this means that they are exposed to renewed danger from the perpetrator and that the perpetrator can, for example, find out the confidential address of the women's shelter, the sheltered accommodation, etc., by following them. This also means that a risk assessment for survivors does not usually take place and therefore the risk of becoming a victim of femicide is not recognised.

Crime scene principles prevent recognition of gender-based violence

In Germany, the local jurisdiction of the criminal prosecution authorities is generally governed by the so-called crime scene principle. This means that offences and their prosecution are dealt with by the authorities in whose local jurisdiction they were committed. In the case of gender-based violence in (ex-)partnerships or in the case of stalking, it happens that acts are committed at different crime scenes and thus different local responsibilities are established. This means that prosecution often fails to make the connection between the various acts and thereby assess them as a relationship act or classify them as domestic violence. Nor, in terms of risk to the survivor, are repeat offenders recognised.

342 Act on the Harmonisation of the Protection of Witnesses at Risk (Witness Protection Harmonisation Act – ZSHG of 11 December 2001, BGBl. I p. 3510, last amended by Article 7 of the Act of 10.12.2019, BGBl. I p. 2121.

Recommendations

We recommend the following to the Federal Government:

- » Extend the mandate of Witness Protection Offices to include victims of gender-based violence throughout the country.
- » Provide mandatory education and training for law enforcement personnel on gender-based violence, intimate partner violence, and high-risk case management.

We recommend the following to the Länder:

- » Take the proactive approach described above and make it mandatory in all police laws of Länder, as well as the provision of information about counselling services. The requirements for data disclosure must be designed in such a way that they are low-threshold for the data subjects.

Article 51

Risk assessment and risk management

Requirements

An analysis of risk to life and limb and the seriousness of the situation, as well as the risk of repeated violence as carried out by all relevant authorities should ensure that a person affected by violence receives advice and support appropriate to their specific situation and that a custom safety plan can be drafted and implemented. “Escalation accelerators” such as gun ownership need special consideration.

Challenges

A patchwork quilt in Germany

In Germany, there is a lack of nationwide implementation of inter-institutional (governmental and non-governmental) systems for analysing the existence of threats and intimate partner violence so that effective protection measures can be taken to prevent further serious violence, up to and including danger to life and limb, as well as killings of women and their children. Existing official procedures and structures too often constitute barriers and create gaps in the protection that is offered. In practice to date, it is not only the diversity of the application or non-application of standardised risk assessment that is apparent. In many places there is a need to carefully design the content of standardised risk analyses so that they neither miss the point of view of the woman survivor, nor prioritise criteria according to points provided by them that undermine their protection and safety.

Lack of comprehensive, systematic protection

Instead of nationwide and systematic work involving high-risk cases of intimate partner violence, the approach is somewhat patchwork in character exhibiting little regional best practice.

Some Länder (e.g. Rhineland-Palatinate or Saarland) have designed and implemented a specialised risk analysis and/or inter-institutional case management for high-risk cases of intimate partner violence. In other Länder, there are individual cities and municipalities that implement their own concepts (e.g. Osnabrück or Düsseldorf). In some Länder, corresponding action guidelines or service instructions for the police already exist or are in progress. However, in many places there is a lack of consistent and comprehensive protection provided for women at a high risk of intimate partner violence. The protection of highly vulnerable women (and their children) is often directly linked to the commitment exhibited by individuals. There is no uniform or systematic procedure for identifying high-risk cases or regarding necessary measures for intervention. The risk assessment tools that are often used by different institutions differ or in fact, none are used at all.

Especially in rural areas, fewer concepts are adapted to the infrastructure. The situation is further aggravated by the fact that there are generally not enough available places of refuge in women’s shelters and that the available places are not available to all women (e.g. those with their children) (cf. Article 23).

In addition, institutions underestimate the risk of repeated violence and the immense vulnerability of women affected by violence; there is also a lack of measures to sanction violations, for example, of prohibitions regarding contact and proximity. In Germany, 60% of the perpetrators who killed their female (ex-)partner had previously come to the attention of the police. Even for cases of

repeated serious violence that are not clearly seen to be high-risk cases, there is a need for a clear interdisciplinary approach to protect survivors. Separations from the partner that are under way or have been completed need to be considered as a greater risk factor, since separations pose the greatest risk to women of serious bodily harm, up to and including femicide.

Regulations in the FamFG in respect of cases where the place of residence of survivors and any joint children must be kept confidential, also prove problematic. This is linked to a change in the local jurisdiction of the family court. This means that if a woman affected by intimate partner violence flees to another city with children that she has jointly with the perpetrator, she cannot keep her whereabouts secret, since from now on (e.g. in cases of divorce) only the family court in the region in which she lives with the children is responsible. This therefore makes it easier for the perpetrator to find out her whereabouts, even if the specific address is blocked. This is because the location is often enough so that social media or similar can be used to track down the wife and children. It is also possible, for example, to follow the woman after a court hearing or to have her followed.

Another problem is that youth welfare offices that grant advance maintenance payments are obliged to notify the father of the child in accordance with Section 7 of the UVG, since he is liable to pay maintenance. The perpetrator can similarly find out which (new) youth welfare office is responsible for the children and therefore where their (ex-)partner lives with the children.

Arrangements regarding contact arrangements and custody pose the greatest risk to women at high risk who jointly have children with the perpetrator (see Article 31).

Lack of financial and human resources

The police are the first port of call in cases of reported domestic violence; NGOs additionally provide low-threshold and victim-oriented access. Specialist counselling and support centres and women's shelters are indispensable for risk analyses and inter-institutional case management in instances of domestic violence. However, this potential is rarely fully taken into account in the development of concepts and implementation of such inter-institutional case management. Länder often focus on regulatory agencies and those that work with police reported cases. However, every person affected by violence has the right to be represented by an independent partisan specialist counselling service. Children also need support from an independent body to ensure that their voice and needs are heard.

In addition, the work undertaken by specialist counselling and support centres and women's shelters in terms of systematic risk assessment and high-risk management is not usually funded separately. There is a lack of funding for human resources who could work on risk assessment instruments, be in a position to systematically carry out a risk analysis in every case of intimate partner violence in partnerships, and also be able to participate in network meetings and interdisciplinary case conferences with other institutions where protective measures are discussed and decided upon.

The lack of financial and therefore human resources required to implement systematic risk analyses also impacts relevant authorities, such as youth welfare offices, the police and courts. Due to a lack of resources for networking and reliable cooperation, joint, workable structures between the professions of cannot be developed, meaning it is not possible to work together and prioritise the survivors. An essential component of effective and functioning collaborative efforts is an understanding of the working methods and mission of the various institutions – this can only be achieved through reliable and ongoing cooperation.

Lack of knowledge about high-risk cases and women at high-risk

In order to obtain a victim-oriented and risk-focused view of instances of intimate partner violence, further training is simultaneously needed for all pertinent professions. However, there is little provision for training on systematic risk assessment and intervening in high-risk cases. The topic is also seldom incorporated into studies and training courses, e.g., in social work courses or legal training.

Specialist counselling and support centres play an active role in training and further education, but often lack the personnel resources to carry out such training.

Time and again, specialist counselling centres and women's shelters have discovered that the threats posed by digital media and digital stalking are not adequately recognised by the police and other authorities with regard to how dangerous they potentially are. There is a need to raise awareness and carry out training in this area. The danger of meeting together at court hearings is also often misunderstood. Although judges may secure the courtrooms themselves, only in very exceptional circumstances is there support for getting to and from court dates.

Furthermore, there are not sufficient capacities and knowledge to adequately support women with special needs. For women at high-risk who live in rural areas, women with disabilities, women with a migrant background and homeless women, the necessary protection concepts must be adapted to their specific requirements and situation.

Recommendations

We recommend the following to the Federal Government and the Länder:

- » Establish nationwide, well-funded, systematic risk assessments and inter-institutional case management. Specialist counselling centres and women's shelters should be involved in the conception and implementation stages. Those women who have been affected by violence must be involved in the risk assessment procedure.
- » Establish special police responsibilities for intimate partner violence and high-risk cases in all Länder.
- » Expand training on how to identify high-risk cases and include high-risk management and risk assessment as topics in study and training sessions for relevant professional groups.
- » Fund research on the effectiveness of inter-institutional cooperation and the various risk assessment tools.

We recommend the following to the legislative authority:

- » Amend the FamFG in respect of cases where the place of residence of victims and any joint children must be kept confidential.
- » Solve the problem of the obligation to notify child and youth welfare offices in the case of advance maintenance payments, e.g., this could be by having the youth welfare office that is located in the district where the father of the child lives take on the role of providing administrative assistance.

Article 52 and Article 53

Emergency barring orders, restraining or protection orders

Requirements

In situations of imminent danger, protective orders must ensure that the danger is brought to a decisive end and that the possibility of the danger continuing is prevented. Because of the urgency of the matter, protective orders should be made possible here by means of an expedited procedure. Effective sanctioning in instances of violations of protection orders must be ensured on a regular basis.

Challenges

Synchronise protective measures against violence for refugees

So far, little is known in practice and by all stakeholders that the Protection against Violence Act also applies to facilities that welcome refugees and asylum seekers. Training initiatives should ensure that all those involved in the support and accommodation system, as well as survivors themselves, know that options available under the Protection against Violence Act (GewSchG) also apply to living in initial reception facilities, shared accommodation and centres assisting with integration.

The discretion of those authorities responsible under asylum law with regard to granting exceptions from the residence obligation should be reduced to zero in the case of gender-based violence, cf. Section 50, paragraph 4 of the Asylum Act; Section 57, paragraph 1 of the Asylum Act.

The presentation and implementation of a diversity-aware violence protection concept for shelters must be regulated in Article 44, paragraph 2a of the Asylum Act as an obligatory part of the contract between the Länder/district and the operator of the shelter.

Principle of priority and acceleration in relation to proceedings under the GewSchG

Until this point, there has been a danger that proceedings relating to parent and child laws (contact, custody), for which the principle of priority and acceleration applies in accordance with Section 155 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (FamFG), end up “overtaking” proceedings put in place to provide protection against violence. This therefore puts children and the parent looking after them in serious danger as the “domestic violence” experienced is not addressed and not processed synchronously in court. In order to ensure the timely, effective and wide-ranging protection of persons affected by violence, proceedings under the GewSchG are also to be qualified in the FamFG as “prioritised and accelerated” (analogous to Section 155 of the FamFG).

Closing the gap between the Police Tasks Act and the GewSchG

A comparison of statistics on violence protection measures under the police laws in Länder and subsequent violence protection proceedings in the family courts shows that there is a clear “drop out” rate. Not every action, e.g., expulsion from a shared apartment, leads to a (temporary) assignment on the basis of the GewSchG. Experiences in the city and district of Munich, for example,

show that this gap between police measures (which are very limited in time) such as, e. g., expulsion, and subsequent applications or measures under the GewSchG, can essentially be closed up if multi-professional structures are in place to provide proactive contact and counselling with survivors of violence during the first 24 hours after police have intervened³⁴³ This should be explicitly embedded as a funding objective for Länder and municipalities.

Problem area: Punishment of violations of orders under the GewSchG

Section 4 of the GewSchG has an inappropriately low range of punishment in relation to legal interests that are affected (life, freedom, health, sexual self-determination). By increasing the range of punishment in this area, a clear position must be taken that “domestic violence” is not a private matter, but a public matter that is dealt with and prosecuted vigorously by the courts.

The criminal prosecution of violations of the GewSchG is, however, not just a question of substantive law and the scope of punishment. Many public prosecutor’s offices do not follow up on reported violations of violence protection regulations unless there happens to be consequences. This sends out precisely the wrong signal to perpetrators, who thereby learn via positive reinforcement that violating their limits and enacting endangering behaviour is legally and socially accepted.

Reforming Section 3 of the GewSchG

According to Section 3 of the GewSchG, children do not fall under the GewSchG with regard to orders for their protection against “domestic violence” by a custodian. In this case, the child-law regulations according to Section 1666a of the BGB (German Civil Code) apply – this is by following the guiding principle of continued parental responsibility after separation and the presumption that contact with the abusive parent is in the best interests of the child. Despite intensified discussion in society as a whole about child protection in recent years and the broad level of knowledge about the consequences of domestic violence for affected children, Section 1666a of the German Civil Code (BGB), as a parallel provision to the GewSchG, is hardly used in practice.

However, the protection intended for children affected by “domestic violence” via Section 1666a of the BGB is not sufficient due to the different procedural logics (law of parent and child / law on the protection against violence): The child protection procedures according to Section 1666 et seq. of the BGB are cooperative, inclusive procedures with early parental involvement and a low-threshold community of responsibility between the youth welfare office and the family court.

They strictly adhere to the principle of proportionality with regard to what extent parental rights can be interfered with. These small-step and time-consuming procedures are intended to be appropriate for “classic” cases of risk posed to the well-being of the child, but they do have their limits and may be contraindicated in cases of “domestic violence”. In practice, an assessment of the potential risk posed to the welfare of the child is rarely made without the abusive parent, Section 8a, paragraphs 1, 2 of Social Security Code (SGB) VIII, although Section 33, paragraphs 1, 2 of the FamFG would in principle allow this.

Urgent proceedings such as those made possible by the GewSchG are difficult to enforce in the case of children affected by “domestic violence” within the framework of Section 1666a of the BGB. Moreover, Section 1666 et seq. of the BGB lacks a provision comparable to the reversal of the burden of proof anchored in the GewSchG. Nevertheless, this is essential for a protection and security plan to be able to immediately take effect. Nor do violations of protection orders under Sections 1666, 1666a of the BGB fall within the scope of criminal punishment as prescribed by Section 4 of the GewSchG.

Such a de facto discrimination of children affected by “domestic violence” in relation to women, stepbrothers and sisters affected by “domestic violence” not only violates the principle of an up-

343 Polizeipräsidium München 2019: Münchener Unterstützungs-Modell gegen Häusliche Gewalt, 22.11.2019, [online] <https://www.polizei.bayern.de/schuetzenvorbeugen/beratung/index.html/8867> (accessed on 18.1.2021).

bringing free from violence as per Section 1631, paragraph 2 of the Civil Code, but in addition and above all, the fundamental rights to equal treatment in Article 3 of the Basic Law (GG) and to physical integrity in Article 2 of the GG. Article 3 of the UN CRC, which is directly applicable in German law, also requires that the best interests of the child be given priority in all legal proceedings.

Adaptation of protection methods to combat violence in residential facilities for people with disabilities

In residential homes and outpatient residential facilities for people with disabilities, the right of expulsion of the GewSchG is not directly applicable if the perpetrator is also a resident of the facility. Since these offenders are rehabilitants, they cannot be expelled from the facility without going through procedures and they are often initially referred to other residential groups or facilities in order to ensure acute protection against violence. Nevertheless, this is not a long-term solution for protection against violence. Comprehensive violence protection concepts in institutions for the disabled, which include perpetrator programmes, are often missing.

Recommendations

We recommend the following to the legislative authority:

- » In order to ensure the timely, effective and wide-ranging protection of persons affected by violence, proceedings under the GewSchG are also to be qualified in the FamFG as “prioritised and accelerated” (analogous to Section 155 of the FamFG).
- » Make it clear by increasing the range of punishments under Section 4 of the GewSchG that “domestic violence” is not a private matter but a public matter.
- » Examine to what extent Section 3 of the GewSchG could be reformed in order to make it possible for the GewSchG to be directly applied and without discrimination to people who are in a relationship of wardship, guardianship or a care relationship.
- » Specify the GewSchG in terms of how it is to be implemented in residential facilities for the disabled.

We recommend the following to the Länder:

- » Training initiatives and informative material should ensure that all those involved in the support and accommodation system, as well as survivors themselves, know that options available under the Protection against Violence Act also apply to living in initial reception facilities, shared accommodation and centres assisting with integration.
- » Obligatory further training of public prosecutors and criminal courts should ensure that public prosecutors and courts vigorously pursue and prosecute violations of orders based on the GewSchG and that there is generally a public interest in so doing.
- » Ensure multi-professional structures to enact proactive contact and counselling for people affected by violence in the first 24 hours after a police intervention by means of specific structural support in municipalities.

Article 54

Investigations and evidence

Requirements

Article 54 of the IC requires parties to take the necessary measures to minimise the use of evidence relating to the victim's sexual history and conduct. Such evidence is to be judged by the standard of whether it is relevant and necessary to the proceedings. Article 54 of the IC covers both criminal and civil proceedings.

Challenges

Criminal proceedings

Section 68a of the Code of Criminal Procedure (StPO) regulates the restriction of the right to ask questions for reasons of protection of personal privacy. According to paragraph 1, questions that may prove detrimental to a witness or that concern the personal sphere of life may only be asked if this proves indispensable (for the clarification of the facts and the assessment of evidence). Pursuant to paragraph 2(1), any questions relating to circumstances that affect the credibility of the witnesses in the case, in particular concerning relationships, are to only be asked to the extent that this is necessary. According to No. 19a of the Guidelines for Criminal Proceedings and Proceedings for the Assessment of Criminal Fines (RiStBV), the public prosecutor's office must ensure that the injured party "is not subjected to greater burdens through questions and statements posed by the accused and his defence counsel than would be accepted in the interest of ascertaining the truth".

Section 68a of the StPO thus offers in principle, in conjunction with No. 19a of the StPO, a sufficient basis for protecting the personal rights of witnesses. However, the court can exercise immense discretion in this respect. This room to exercise discretion can lead to a reduction in levels of victim protection if understandings of gender stereotypical roles, myths about rape and misconceptions about conceivable victim behaviour form part of the decision on the admissibility of a question³⁴⁴. According to assessments by lawyers, survivor-witnesses of sexualised violence are still sometimes forced to comprehensively disclose their sexual history or preferences, even though the victim's history is usually of no significance for ascertaining how truthful the incriminating statement is³⁴⁵.

Care must therefore be taken that questions concerning the most personal sphere of life are limited in court to those that are the most necessary and that the decision to ask them is not guided by the above-mentioned erroneous assumptions. A more far-reaching regulation under Section 68a of the StPO or a clarifying addition in the RiStBV would be conceivable. Questions about the victim's sexual history should require affirmative justification under the terms of such a rule. An obligation to state such reasons would also contribute to transparency, and the defence would be required to verify for itself the significance of the question.

344 djb 2018: Stellungnahme zur effektiven Umsetzung des Übereinkommens des Europarats zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt (Istanbul-Konvention) in Deutschland, 29.1.2018, [online] <https://www.djb.de/verein/Kom-u-AS/K6/st18-02/> (accessed on 1.11.2020), p. 14, with reference to the study by Elsner, Eric & Wiebke Steffen 2005: Vergewaltigung und sexuelle Nötigung in Bayern, p. 160 et seq., according to which police officers assume false report rates of up to 80%, and with reference to Deutscher Richterbund, Stellungnahme 3/2016, January 2016, p. 5: "Even by ignoring all clichés, there are probably many cases in which one of the two sexual partners must first persuade the other to perform the desired sexual acts, using not only the force of their argument but also, in some circumstances, the hoped-for seductive effect of sexual acts."

345 Ibid.

Civil proceedings

The Code of Civil Procedure, Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction, the Labour Court Act and the regulations of social law do not contain any specific, expressly standardised rights for the protection of victims³⁴⁶. This leads to gaps in protection pertaining to personal victim protection, both for victims in the role of party and for victims in the role of witness³⁴⁷. The general duty of the court to take into account the special need for protection of survivor-witnesses (see Section 48, paragraph 3 of the StPO) as well as the consideration of certain content (see Section 68a, paragraph 1 of the StPO) has no equivalent in the procedural codes of civil law and labour law. This also applies to questioning about intimate details at hearings or interviews³⁴⁸. In particular, Sections 396, 397 of the Code of Civil Procedure (ZPO) do not contain a formulation that can be compared to Section 68a of the StPO. An evaluation would be recommended in this instance regarding the extent to which the requirements of the Istanbul Convention are complied with in the corresponding proceedings: in contrast to criminal proceedings for violations of sexual self-determination, questions about sexual history do not form part of the core content of civil law disputes and people impacted by criminal offences are usually parties in these proceedings, not witnesses. This applies both in proceedings for compensation for pain and suffering or injunctive relief, and in proceedings for the protection against violence, and is only different in employment proceedings where victims are indeed questioned as witnesses.

Recommendations

We recommend the following to the Federal Government / legislative authority:

- » Make an addition to the statutory provision of Section 68a of the StPO, ensuring that questions about a victim's sexual history or behaviour outside of the reported facts are generally considered inadmissible in criminal proceedings and that the admissibility of such questions is subjected to a special justification requirement.

We recommend the following to the Federal Government and the Länder:

- » Evaluate as to whether the requirements of the Istanbul Convention pertaining to protection against inadmissible questions regarding the victim's sexual background and behaviour are complied with in civil proceedings and labour law proceedings.

346 MPI Abteilung Kriminologie 2017: Übertragung opferschützender Normen aus dem Strafverfahren in andere Verfahrensordnungen, Wissenschaftliche Studie im Auftrag des Bundesministeriums der Justiz und für Verbraucherschutz, [online] https://www.bmju.de/SharedDocs/Downloads/DE/PDF/Berichte/MPI_Gutachten_Uebertragung_opferschuetzender_Normen.pdf?__blob=publicationFile&v=1 (accessed on 1.11.2020), p. 52.

347 Ibid., p. 67.

348 Ibid.

Article 55

Ex parte and ex officio proceedings

Requirements

Article 55 aims to reduce the burden in pre-trial and trial proceedings on victims of criminal offences, in particular offences against bodily integrity and sexual self-determination, and to protect and simultaneously empower victims. Paragraph 1 requires parties to ensure that investigations into, and prosecution of, the offences referred to in Articles 35 to 39 of the IC do not depend entirely on a report or accusation made by the victim and that proceedings that have been initiated can continue even if the victim withdraws their statement or accusation. Paragraph 2 guarantees that victims can access specialist psychological or psychosocial support services in addition to legal counselling so that they are provided with emotional and psychological support during the investigation and criminal proceedings.

Challenges

Challenges to ex parte and ex officio proceedings (Article 55, paragraph 1 of the IC)

German criminal law often records offences linked to physical gender and domestic violence as minor bodily harm (Section 223 of the German Criminal Code (StGB)). As a consequence, any prosecution regularly depends on a criminal complaint being made by the victims or that the public prosecutor's office is taking a special public interest in prosecution. If there is no criminal complaint and no grounds for special public interest, the proceedings are discharged.

In addition, minor bodily harm (Section 223 of the StGB), coercion (Section 240 of the StGB) and threats (Section 241 of the StGB) all fall under what are deemed private prosecution offences (Section 374, paragraph 1 of the StGB). The public prosecutor's office can terminate proceedings in the case of these offences and is not obliged to cooperate further if there is no public interest in the prosecution (Sections 376, 377, paragraph 1 of the StGB). In individual cases, there may therefore be a complete shift of prosecution weighting to the survivor.

These provisions do in principle satisfy the requirements of Article 55 paragraph 1 of the IC, which only prohibits a "complete" dependence of the prosecution on a criminal complaint being made by the survivor. Nevertheless, the current legal situation can lead to gaps in protection being formed in the event that survivors do not file a criminal complaint and the public prosecutor's office does not affirm a special public interest in prosecution and/or refers the proceedings to private prosecution in the event of lack of public interest. In such cases, the proceedings shall be discharged. Private prosecution as an instrument could provide victims with the option of further criminal prosecution, but in practice, this procedure is linked to the shouldering of considerable burdens for survivors and with little prospect of success. From a lawyer's point of view, survivors will regularly be advised against this course of action.

Guidelines for assuming a (special) public interest can be found in the Guidelines for Criminal Proceedings and Fines (RiStBV). These are to be taken into account by the prosecuting authorities in the case of a discretionary decision being made. The relevant sections on private prosecution and on special public interest in the absence of a criminal complaint (no. 86 and no. 234 of the RiStBV) do not expressly include domestic violence or gender-based violence, but only make reference to personal relationships with the perpetrator that thereby make prosecution by the survivor unrea-

sonable³⁴⁹. It should thus be a welcome fact that in some Länder there are already recommendations and guidelines stating that the public interest should be regularly affirmed in cases of domestic violence. It would be useful to have a clear formulation of the RiStBV for the purposes of standardisation and clarification.

Challenges to psychosocial support during judicial proceedings (Article 55 para. 2 IC)

Pursuant to Section 406g of the Code of Criminal Procedure (StPO), injured persons have the right to receive psychosocial support during criminal proceedings (Section 406, paragraph 1 of the StPO), although not all of them will have the legal right to have their costs covered (Section 406, paragraph 3 of the StPO). In particular, minor bodily harm (Section 223 of the StGB), minor instances of stalking (Section 238, paragraph 1 of the StGB) and threats (Section 241 of the StGB) are not covered by such a legal claim and thus the associated assumption of costs; in terms of sexualised violence (Section 177 of the StGB), only felony offences and particularly serious cases of an offence under Section 177, paragraph 6 of the StGB are covered. Nevertheless, it is precisely these criminal offences that are perpetrated in the event of gender-based and domestic violence, meaning that exclusion from funding particularly impacts survivors who are affected by the scope of application of the IC³⁵⁰. In these cases, survivors have to self-finance the support and do not therefore make use of it. The provision of psychosocial support in these cases therefore falls short of the level of protection provided for by Article 55, paragraph 2 of the IC³⁵¹.

Recommendations

We recommend the following to the Federal Government / legislative authority:

- » Extend the right to free psychosocial support in court to all victims of gender-based and domestic violence as defined in the Istanbul Convention. Section 406g of the StPO must be expanded to ensure that all survivors of violence against women, in particular sexualised violence and domestic violence, have the right to access psychosocial support free-of-charge.

We recommend the following to the Federal Ministry of Justice and Länder ministries:

- » Include an explicit reference to the existence of special public and public interest in prosecution in cases of gender-based and domestic violence in the RiStBV.

349 This request was made as early as November 1993 by the Conference of Ministers for Equality and Women's Issues to the Conference of Ministers of Justice, and the request was followed up on at the autumn conference in 1994. This has not yet been explicitly mentioned in the RiStBV, however, which at this juncture is an important working instrument for the public prosecutor's office. Nevertheless, as a part of study of case law for of Saxony-Anhalt over the years 2002-2004, Prof. Dagmar Oberlies came to the conclusion that 78.2% of reports of domestic violence and 75.1% of reported violations of sexual self-determination were discontinued in accordance with Section 170 (2) of the Code of Criminal Procedure because there was no „sufficient cause for public action“ or „no public interest in prosecution“, cf. Dagmar Oberlies 2005: Erledigungspraxis in Fällen häuslicher und sexueller Gewalt, Eine Aktenstudie bei den Staatsanwaltschaften des Landes Sachsen-Anhalt, [online] https://www.frankfurt-university.de/fileadmin/standard/Hochschule/Fachbereich_4/Kontakte/ProfessorInnen/Dagmar_Oberlies/sachsenanhalt_bericht.pdf (accessed on 29.10.2020), p. 23.

350 Wolf, Anne-Katrin 2018: Opferschutz im Strafverfahren – die Regelungen der Psychosozialen Prozessbegleitung im Lichte der Istanbul-Konvention, in: *djBz*, Jg. 21, Nr. 4, pp. 216-219, p. 216.

351 *djB* 2018: Stellungnahme zur effektiven Umsetzung des Übereinkommens des Europarats zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt (Istanbul-Konvention) in Deutschland, 29.1.2018, [online] <https://www.djb.de/presse/stellungnahmen/detail/st18-02/> (accessed on 18.1.2021), p. 12 f.

- » Provide recommendations or guidelines on how to handle (special) public interest in cases of gender-based and domestic violence.

We recommend the following to the Federal Government and the Länder:

- » Ensure that the particularly vulnerable situation of trafficked persons is regularly noted within the context of obligatory training measures for judges and public prosecutors.
- » Ensure that sufficient services are available for victims of rape and sexualised violence, including in childhood and adolescence, and that they meet the requirements for crisis centres as defined in Article 25 of the Convention.

Article 56

Measures of protection

Requirements

In this context, procedural rights should ensure that witnesses who are also survivors of violence can actively inform themselves about the process and status of all phases during the criminal proceedings. This allows them to actively reclaim their autonomy, but should at the same time enable safety to be managed parallel to the procedure.

Challenges

In recent years, some higher regional courts have developed the practice of restricting the right of the joint plaintiff to inspect files pursuant to Section 406e, paragraph 2(2-3) of the Code of Criminal Procedure (StPO), because the “purpose of the investigation, also in other criminal proceedings, appears to be endangered or the proceedings would be considerably delayed by the inspection of files”.

This argument based on a temporal delay is disproportionate with regard to the legal procedural gain to the massive generated loss of rights of the victim-witness, who is supposed to prepare for the proceedings with the help of psychosocial and legal counselling in order to avoid secondary victimisation as much as possible.

Recommendations

We recommend the following to the legislative authority:

- » Limit the possibility of restricting the right of the joint plaintiff to inspect files pursuant to Section 406e, paragraph 2(2-3) of the StPO, with regard to the overriding legal interest of the victim-witness regarding procedural transparency and security within the meaning of “Schranken-Schranke” [a restriction that is still subject to restriction].

Article 57

Legal aid

Requirements

According to Article 57 of the IC, national law must provide survivors of violence against women and domestic violence survivors with a right to legal representation and to free legal counselling³⁵². Article 57 does not automatically entitle the victim to free legal assistance. It is still up to the member states to determine the conditions for such free legal advice.

Article 57 does not limit the claim to criminal proceedings. Member states must ensure free legal aid, including in civil proceedings, where appropriate. This right, derived from the right of access to a court under Article 6, paragraph 1 of the European Court of Human Rights (ECHR), follows on from the summary of Article 57 of the IC, Article 6, paragraph 3c of the ECHR, Article 6, paragraph 1 of the ECHR and the case law of the ECtHR³⁵³.

The decisive factor is whether the victim is in a position to bring forward their claim satisfactorily even without being provided with legal assistance, and would therefore be successful in that sense. If they are unable to do so because of the complexity of the proceedings and/or the emotional strain, then free legal assistance must be made available to them in civil proceedings as well, even if the law does not provide for this. The focus is thereby on the practicability and effectiveness of the right of access to court.

Challenges

Challenges in criminal law

In Section 397, paragraph 2(1) of the Code of Criminal Procedure (StPO), the legislature has stipulated that the joint plaintiff in the proceedings may avail himself of legal counsel or be represented by such counsel. Section 397a, paragraph 1 of the StPO regulates the conditions under which a lawyer is to be appointed to assist the joint plaintiff at the expense of the state. In respect of serious crimes, victims are therefore provided with an elected victim advocate, free-of-charge and irrespective of their income³⁵⁴. However, this only applies to serious violent and sexual offences such as cases of crime under Section 177 of the StGB or the particularly serious case of an offence under Section 177, paragraph 6 of the StGB. Other acts of violence that fall below this threshold, such as minor bodily harm under Section 223 of the StGB or dangerous bodily harm under Section 224 of the StGB, are not covered. This is how a large number of cases of gender-based violence will not be covered under the financial fee coverage scheme³⁵⁵.

In cases where no legal counsel is appointed pursuant to Section 397a, paragraph 1 of the StPO, legal aid may be granted pursuant to Section 397a, paragraph 2 of the StPO upon application for the involvement of a lawyer in accordance with the requirements of the Code of Civil Procedure (ZPO),

352 Europarat 2011: Übereinkommen des Europarats zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt und erläuternder Bericht, Council of Europe Treaty Series, No. 210, Article 57, p. 102 f.

353 Ibid., p. 103, Rn. 295.

354 On the importance of collateral estoppel, see also: Kräuter-Stockton, Sabine 2008: Nebenklage: Im Sinne der Opfer und der Wahrheitsermittlung, Bewertung zweier aktueller Gesetzesentwürfe, in: Zeitschrift des Deutschen Juristinnenbundes (djzbz), Jg. 11, Nr. 2, p. 78 et seq.

355 See Deutscher Juristinnenbund 2018: Stellungnahme: 18 – 18 Opferrechte im Strafverfahren wegen geschlechtsbezogener Gewalt, 22.11.2018, [online] <https://www.djb.de/presse/stellungnahmen/detail/st18-18/> (accessed on 4.11.2020).

but only if the joint plaintiff cannot adequately exercise their own rights or if it is unreasonable to expect the person to do so. Unreasonableness is usually to be assumed in the case of victims of sexual offences³⁵⁶. The requirement that the factual and legal situation be difficult has now been waived by the legislative authority³⁵⁷. However, it must be said overall that both the fact that too narrowly defining the catalogue of offences in Section 397a, paragraph 1 of the StPO, and the possibility of recourse in Section 397a, paragraph 2 of the StPO, make access to justice considerably more difficult for women survivors. This means that not all victims will have the right to free legal representation provided by victim advocates.

Challenges in civil law

By law, the Advisory Assistance Act (BerHG) provides for the possibility of availing oneself of legal information and advice if the survivor does not have sufficient financial means at their disposal to obtain legal advice. The conditions for granting legal advice are set out in Section 1 of the BerHG. Furthermore, there is no general entitlement to free legal advice for women affected by violence, even in the context of civil law. Legal aid may be granted, nevertheless, for court proceedings under Section 114 of the (ZPO). In this instance too, however, the granting of legal aid depends exclusively on economic circumstances and the likelihood of success of the claim, factors which are determined in accordance with Sections 114, 115 of the ZPO. There is specifically no reference made to the complexity of the procedure or the emotional burden, as provided for in the case law of the ECHR.

Effective access to justice and free pre-trial legal advice

Despite legislative possibilities, the Federal Republic of Germany does not meet the requirements of the Istanbul Convention in orienting itself around ECtHR case law according to Article 6 of the ECHR and guaranteeing effective access to justice, especially in civil proceedings³⁵⁸.

The problem is that current legal provisions in family law proceedings can jeopardise access to justice for victims of intimate partner violence³⁵⁹. This is because in matrimonial, custody and access disputes, the place of residence of the child or mother is regularly provided for by law as the linking factor in determining the exclusive place of jurisdiction. This regulation forces victims of intimate partner violence in family law proceedings to disclose their whereabouts to the perpetrator and can pose a particular risk to survivors, making it more difficult for them to access justice³⁶⁰.

At present, qualified support for survivors in the form of filing national and international appeals is not evident. Particularly for women with disabilities, older women, homeless women, migrant women with insecure residence statuses and female refugees, access to justice is particularly problematic due to a lack of financial and human resources meaning that there is no disabled-friendly access and that accessing services in different languages is not always guaranteed³⁶¹.

356 Karlsruhe Kommentar zur Strafprozessordnung, 8. Aufl. 2019, Section 397a of the StPO Rn. 12.

357 Deutscher Bundestag 2009: Bill of the CDU/CSU and SPD parliamentary groups, printed matter of 3.3.2009 16/12098, p. 34.

358 Explanatory Report on the Istanbul Convention, Article 57 para. 294, 295.

359 Vgl. Deutscher Juristinnenbund 2020: Themenpapier: 20 – 11 „Effektiver Rechtszugang gewaltbetroffener Frauen“, 12.2.2020, [online] <https://www.djb.de/presse/stellungnahmen/detail/st20-11> (accessed on 1.11.2020).

360 Ibid.

361 Zinsmeier, Jutta 2018: Umsetzung der Istanbul-Konvention zum Schutz von Mädchen und Frauen mit Behinderung und bei Pflegebedürftigkeit, in: Zeitschrift des Deutschen Juristinnenbundes (djzb), Jg. 21, Nr. 4, pp. 210, 212.; Frings, Dorothee & Anne Pertsch 2018: Die Bedeutung der Istanbul-Konvention für Geflüchtete Frauen, in: Zeitschrift des Deutschen Juristinnenbundes (djzb), Jg. 21, Nr. 4, pp. 213, 214; see also Deutscher Juristinnenbund 2020: Themenpapier: 20 – 11 Effektiver Rechtszugang gewaltbetroffener Frauen, 12.2.2020, [online] <https://www.djb.de/presse/stellungnahmen/detail/st20-11> (accessed on 1.11.2020).

There is a lack of clear legislative requirements regarding the funding of women's shelters, which often provide access to legal counselling, and counselling services per se³⁶². In particular, there are very few fixed budgetary positions, clear responsibilities and legal bases. Despite structural expansion, reconstruction and renovation of women's shelters and specialist counselling and support centres, which could at least provide barrier-free access in structural terms, there is still a lack of investment in trained personnel who can support the women in question in filing complaints against gender-based violence. Lack of financial resources also prevents access to free legal advice³⁶³. An approach whereby structural investments are made is therefore to be welcomed. However, measures from a purely structural perspective do not address all the problems of providing access to protection, counselling and legal resources for survivors of gender-based violence.

Recommendations

We recommend the following to the legislative authority / Federal Government:

- » Extend the provision of Section 397a of the StPO to all cases of gender-based violence so that all survivors are granted the right to free legal counselling as an expression of their right to access justice.
- » Draft rules on jurisdiction in civil and, in particular, family law proceedings in such a way that jurisdiction need not be implemented in cases where the disclosure of the child's and/or mother's whereabouts may endanger them, in order to prevent the current whereabouts from becoming known unintentionally as a result of the proceedings.

We recommend the following to the Federal Government and the Länder:

- » Ensure effective access to justice through accessible, comprehensible, universally accessible, and compassionate and knowledgeable support when filing regional and international appeals. (See recommendations on Article 21.)³⁶⁴

³⁶² see Deutscher Juristinnenbund 2020: Themenpapier: 20 – 11 Effektiver Rechtszugang gewaltbetroffener Frauen, 12.2.2020, [online] <https://www.djb.de/presse/stellungnahmen/detail/st20-11> (accessed on 1.11.2020); Deutscher Juristinnenbund 2019: Themenpapier 19 – 26 Umsetzungsdefizite bei der Finanzierung von Schutzunterkünften und Fachberatungsstellen, 27.11.2019, [online] <https://www.djb.de/presse/stellungnahmen/detail/st19-26/> (accessed on 1.11.2020) with reference to Schuler-Harms, Margarete & Joachim Wieland 2012: Der Rechtsanspruch auf Schutz und Hilfe für von Gewalt betroffene Frauen und deren Kinder, p. 4 ff.; vergleichbare Pflichten der Bundesrepublik ergeben sich auch aus Richtlinie 2012/29/EU.

³⁶³ see Deutscher Juristinnenbund 2020: Themenpapier: 20 – 11 Effektiver Rechtszugang gewaltbetroffener Frauen, 12.2.2020, [online] <https://www.djb.de/presse/stellungnahmen/detail/st20-11> (accessed on 1.11.2020).

³⁶⁴ Ibid.

CHAPTER VII

Migration and asylum

Article 59

Residence status

Requirements

Article 59 provides that women affected by violence who decide to end an abusive marriage or partnership must not be exposed to the risk of losing their residence status as an obstacle to freeing oneself from the violent relationship.

Challenges

Article 59 covers autonomous residence permits of migrant women (right of residence independent of marriage) who are affected by domestic violence in order to prevent discrimination on the basis of residence status. The German Federal Government is of the opinion that the requirements of Article 59, paragraph 1 have already been implemented in Germany by Section 31 of the Residence Act (AufenthG) paragraph 2³⁶⁵ (Hardship regulation). At the same time, it has reservations about Article 59, paragraphs 2 and 3 and also bases these reservations on existing residence laws.

In the first GREVIO State Report, the Federal Government states that it does not collect data on the independent residence permits of women under the various articles of the Residence Act. This means that the Federal Government lacks the basis for a qualified statement on whether the existing regulations do justice to the Convention, as it claims in respect of this reservation.

In practice, the existing norms do not provide sufficient protection for women affected by violence. A counselling centre in Hamburg supported a woman who was threatened with deportation, even though the public prosecutor's office had initiated proceedings against her husband for bodily harm. The woman had entered the Federal Republic of Germany for the purpose of marriage in the beginning of 2018. About two months after the marriage the husband became violent towards her and her son from her first marriage. The woman and her son then fled to a women's shelter. The public authority responsible for non-citizens has rejected her application for a residence permit under Section 31, paragraph 2. At the time of the report, the legal action against the rejection is still pending before the Administrative Court. The application for interim relief, i. e., a postponement of the effect of the action, was rejected by the court. It was ruled that the woman and her son were to be deported before the opening of the court proceedings, and they were deported in November 2019. The trial did not take place because the two most important witnesses were no longer available and the perpetrator of the violence remained unpunished.

Neither the Committee on Petitions, to which the woman petitioned, nor the Commission for Cases of Hardship, referred to her history of violence and taking refuge in a women's shelter in their

³⁶⁵ Section 31 of the AufenthG paragraph: The requirement of three years of lawful existence within the marriage in the Federal territory in accordance with paragraph 1 sentence 1 No. 1 shall be waived insofar as it is necessary to enable the spouse to continue residency in order to avoid particular hardship, unless the extension of the residence permit is excluded for the foreign party. A specific hardship particularly exists if the marriage is invalid or has been annulled under German law due to the minority age of the spouse at the time of the marriage, if the spouse is threatened with a considerable impairment of their interests worthy of protection due to the obligation to return resulting from the dissolution of the marital cohabitation, or if the spouse cannot reasonably be expected to continue under the marital cohabitation due to an impairment of their interests worthy of protection; this is to be assumed in particular if the spouse is a victim of domestic violence. The welfare of a child living in a family relationship with the spouse is also a matter worthy of protection. In order to avoid abuse, an extension of the residence permit may be refused if the spouse is dependent on benefits under the Second or Twelfth Book of the Social Security Code for a reason for which they are responsible.

recommendations. Neither of the two institutions has stated it is in favour of a hardship case. The situation was psychologically difficult to bear for the woman and especially for the son – he is of an age to attend secondary school.

Lack of protection against deportation

The fact that the principal witness in an ongoing case is to be deported shows how problematic the reservations against Article 59, paragraphs 2 and 3 are. It is precisely the important protection and prosecution functions of the Istanbul Convention that are not implemented in Germany, as seen in the case study.

On the part of the Federal Government, the reasons for the reservations against Article 59, paragraph 2 are to be found in the separate regulations of the residence permit for humanitarian reasons (Section 22 of the *AufenthG*) and for family reasons (Section 27 of the *AufenthG*).

The Federal Government explicitly rejects the granting of residence permits for persons affected by violence within the meaning of Article 59, paragraph 3 on the grounds that personal reasons are too vague, and that in principle only toleration is granted in the case of investigations or criminal proceedings.

Section 59, paragraph 2 is not even implemented by the Federal Government. The requirement that expulsion proceedings against victims of gender-based violence be suspended in order to enable them to apply for an independent residence permit is not met by the general reference to the simple family residence permit pursuant to Section 31, paragraph 2 of the *AufenthG*, or to the residence permit for urgent humanitarian reasons pursuant to Sections 23, 23a, 25 of the *AufenthG*, or even to toleration pursuant to Section 60a of the *AufenthG*. Those residence permits are subject to considerable restrictions: from residence requirements to the taking up of training or employment. Rather, it would be necessary to include corresponding independent regulations concerning the target group to be protected³⁶⁶.

The same applies to the implementation of Article 59, paragraph 3. The Federal Government's reservation in this regard, namely that personal reasons are too vague and that in principle only toleration to remain is granted in the case of investigations or criminal proceedings, does not justify a waiver of the regulation. The relevant personal reasons may be specified in the relevant regulation. These include, for example, medical, therapeutic and counselling treatment, physical and/or psychological impairment as a result of the experience of violence, particularly in the case of sexualised violence, which can lead to discrimination in the event of return to the country of origin³⁶⁷.

Moreover, the reference to toleration to remain in no way corresponds to the purpose of Article 59, paragraph 3. The Istanbul Convention explicitly aims to guarantee the victims of violence against women a renewable residence permit. In contrast, exceptional leave to remain in accordance with Section 60a of the *AufenthG* does not constitute a residence title and is associated with considerable restrictions such as a short term of validity and difficult access to the labour and housing market. Toleration to remain does not therefore offer sufficient protection for women affected by domestic violence.

In its justification, the Federal Government considers it inappropriate if the principle of granting toleration to remain to people affected by criminal offences is broken by creating a residence permit for persons affected by specific criminal offences solely for the purpose of giving evidence. However, such a residence title already exists for victims of trafficking in human beings according to Section 25, paragraphs 4a and 4b of the *AufenthG*, a residence title for humanitarian reasons is granted to victims of Section 232-233a if the temporary presence of the non-citizen in the Federal territory is deemed appropriate for criminal proceedings and the non-citizen has declared their willingness to testify as a witness in the criminal proceedings for the crime.

³⁶⁶ see djb 2020: Themenpapier 20-12, Umsetzung der Istanbul Konvention in Deutschland, 13.02.2020, [online] <https://www.djb.de/themen/thema/ik/st20-12/> (accessed on 19.01.2021).

³⁶⁷ Ibid.

Impact of reservations on trafficked persons

Article 59, paragraph 2 provides for the possibility that trafficked persons who are faced with deportation due to a deportation procedure against their violent partner(s) may request the suspension of the deportation procedure concerning them and apply for an independent residence status, according to the Convention's rationale, on humanitarian grounds. The problem is that a woman may be deported along with her violent husband. To enter a reservation at this point to avoid the creation of a humanitarian residence permit is disproportionate.

Hardship cases as protection for women affected by violence?

The Federal Government considers residence permits for women affected by violence to be regulated in Section 31 of the *AufenthG*, but Article 59, paragraph 1 of the IC is not (fully) implemented by this. Section 31, paragraph 2 of the *AufenthG* regulates hardship cases; "domestic violence" is explicitly named as one such justification for an independent right of residence. However, Section 31 of the *AufenthG* concerns the extension of the spouses' residence title, i. e., an extension of the existing residence permit for family reasons. Residence permits cannot be issued independently via this regulation, nor can residence permits be extended for other reasons based on Section 31 of the *AufenthG*. Residence permits cannot be issued independently via this regulation, nor can residence permits be extended for other reasons based on Section 31 of the *AufenthG*.

In the practical enforcement of the right of residence via the hardship case, the persons concerned also face major hurdles. They have to bear the burden of proof for the unreasonableness relating to a longer period of adherence to the marital cohabitation. The immigration authority often make excessive demands for evidence. On the basis of the explicit "concept of violence", proof of physical violence is required, for example, in the form of medical certificates. Other forms of violence such as threats, psychological pressure, sexualised violence, economic coercion, etc., are not considered. Even statements from women's shelters and/or specialist counselling centres are rejected as insufficient³⁶⁸. The administrative courts also demand a causal connection between the violence and the termination of the cohabitation³⁶⁹.

In Hamburg, a counselling centre reports a case in which the authority makes demands for evidence that very clearly contradict Section 31 of the *AufenthG*: In order for the hardship application to be recognised, the immigration authority concerned not only proof of the violence suffered but also proof of employment.

These non-transparent burdens of proof and procedures make it more difficult to request assistance, safety and protection of victims of violence. This is contrary to Article 4 of the Istanbul Convention, which prohibits discrimination on the basis of the residence permit.

In this context, it should be noted that women affected by violence, even if they decide to separate from their spouse or to seek shelter, often have no option to do so (see also Article 23 on gaps in the assistance system).

If the persons concerned have been able to convince the immigration authority or the administrative courts of the violence they have suffered, their residence permit is only extended for one year in accordance with Section 31, paragraph 2 of the *AufenthG*. For a further extension, those affected must provide evidence of a secure livelihood for themselves and their children as well as language skills. As a result, women who, for example, cannot pursue gainful employment as single parents or suffer from trauma sequelae, are not granted a residence permit. The victims of gender-based violence are not protected within the meaning of Article 59, paragraph 1 of the *AufenthG* by the provisions of Article 31, paragraph 2, but are instead additionally and permanently exposed to their forced situation.

368 Petition107950.: Vollständige Umsetzung der Istanbul Konvention in Bezug auf Art. 59 (1) vom 06.03.2020, [online] https://epetitionen.bundestag.de/content/petitionen/_2020/_03/_06/Petition_107950.html (accessed on 19.01.2021).

369 djb 2020: Themenpapier 20-12, Umsetzung der Istanbul Konvention in Deutschland, 13.02.2020, [online] <https://www.djb.de/themen/thema/ik/st20-12/> (accessed on am 19.01.2021).

Hurdles and arbitrariness on the part of the authorities in recognising hardship cases

Even if a hardship commission examines the application of a migrant woman who has suffered violence, it cannot make a decision, but can only make a recommendation to the immigration authority. The hurdles for the recognition of a hardship case vary greatly depending on the respective competent immigration authority and the Länder, because each immigration authority requires different “evidence”. It may even happen that different “evidence” is required within an immigration authority, depending on the person in charge or the nationality of a person. In one case a conviction of a violent husband in the criminal proceedings was sufficient, in another case the victim was deported even though criminal proceedings had been initiated against the husband. Although the first GREVIO State Report of the Federal Government refers to the Hardship Commissions, there is no information on how they work.

The most important proof of the existence of a hardship case is the criminal complaint filed with the police. Police forces that have a low level of violence make it more difficult for migrant women to file charges, especially by placing domestic violence in a cultural context (cf. Article 42 of the Istanbul Convention): A police officer in Halle (Saale), in the presence of the staff of a migrant women’s self-organisation, told a person affected by violence that this was quite normal in her culture. She should go to a friend’s house and come back the next day. In this situation the woman was not given any information about her rights, and nor was she offered protection (cf. Article 19).

In addition to discrimination on the basis of the residence permit, migrant women are also subject to racial discrimination by the police. It is not easy for traumatised women living in a violent situation to go to see doctors, lawyers or a women’s shelter to collect the “necessary” evidence despite various dependencies, such as insecure residence status, economic or social situation, etc.

It must therefore be noted that the current regulations and measures in the Residence Act do not provide protection in the sense of respect for human rights and Article 59 of the Istanbul Convention. Many women remain in their violent relationships because the time frame until they can apply for their own residence permit is fixed at three years and the application to the immigration authority is tied up with a great deal of uncertainty. The perpetrators of violence therefore take advantage of the economic dependence of women during marriage. Women say that their husbands make statements like “You have to stay with me now for three years and I can do what I want with you. Or I’ll have you deported.”

Recommendation

We recommend the following to the Federal Government:

- » Urgently withdraw the reservations against Article 59, paragraph 2-3 of the IC. It should be ensured that women affected by violence can obtain residence permits independent of their marriage, as required by the IC on the basis of humanitarian grounds.
- » Grant migrant women who have been subjected to violence a renewable residence title for the duration of the preliminary proceedings against their ex-partner, thereby replacing the current toleration regulation that is insufficient.

We recommend the following to the Federal Government, Länder and immigration authorities:

- » Implementation of Article 59, paragraph 1 of the IC without restrictions. To this end, it is necessary that no excessive requirements are placed on providing proof of domestic violence by the woman survivors. In addition, it must be ensured that immigration authorities make a decision on a corresponding application in a timely manner.

Article 60

Gender-based asylum claims

Requirements

In Article 60, the Federal Republic of Germany undertakes to recognise gender-based violence against women as a reason for flight. There is a commitment to developing gender-sensitive reception procedures and support services for asylum seekers, as well as gender-sensitive guidelines and asylum procedures.

Challenges

I. Gender-sensitive admission procedures

Recognising the special need for protection of refugee women.

The acceptance of refugees in Germany is based on EU Directive 2013/33³⁷⁰. The obligation is to establish a procedure for the identification of persons in need of special protection (Article 21 of Directive 2013/33/EU) and to take into account the special needs of these persons in the asylum procedure. This group of people includes pregnant women, women travelling alone with children, people who have experienced rape and victims of trafficking in human beings. So far, however, there have only been isolated model projects for the identification of special protection needs³⁷¹.

Since there are no nationwide standardised screening procedures for systematic identification³⁷², it can be assumed that most women's experiences of violence are not recognised. However, no data on special protection needs are collected that allow for a more accurate analysis.

Gender-sensitive design of shelters

The Federal Government has drawn up minimum standards which are to serve as guidelines for the accommodation of refugees in the Länder and municipalities. However, these are not binding standards. A pilot project for the implementation of the minimum standards could – due to a lack of funding – not become permanent and therefore could not make a sustainable contribution to violence protection³⁷³.

370 Directive 2013/33 of the European Parliament and of the European Council of 26 June 2013 laid down standards for the acceptance of applicants for international protection, [online] <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0096:0116:DE:PDF> (accessed on 01.07.2020).

371 For example in North Rhine-Westphalia, see: Ministerium für Kinder, Familien, Flüchtlinge und Integration 2019: Bericht an den Integrationsausschuss, Sachstand staatliches Asylsystem, [online] <https://www.landtag.nrw.de/Dokumentenservice/portal/WWW/dokumentenarchiv/Dokument/MMV17-2364.pdf;jsessionid=5B-2946360B2AC27EF4211B4E921831AB> (accessed on 03.07.2020).

372 Federal Government 2016: Antwort auf die Kleine Anfrage der Abgeordneten Ulla Schauws, Luise Amtsberg, Dr. Franziska Brantner, weiterer Abgeordneter und der Fraktion BÜNDNIS 90/DIE GRÜNEN, Drucksache 18/8225.

373 100 violence protection coordinators employed in 100 refugee shelters were commissioned to develop and implement violence protection concepts for refugee accommodation. The pilot phase expired at the end of 2018 after three years. Some coordinators were able to work in their accommodation for just one year and did not remain to see the implementation of the concept they had developed, because the local authorities did not finance the project. Cf. current news on the website of the BMFSFJ: <https://www.bmfsfj.de/bmfsfj/gewaltschutz-in-fluechtlingsunterkuenften-verbessern/130580> (accessed on 27.05.2019).

Article 44 paragraph 2a of the Asylum Act (AsylG), which obliges the Länder to ensure the protection of women and persons in need of protection in terms of accommodation³⁷⁴, also leaves much room for manoeuvre in its implementation.

Since there is no obligation to develop state violence protection concepts (Landesgewaltschutzkonzepte – LGSK), ten of a total of 16 Länder had developed an LGSK for refugee accommodation at the time of the report³⁷⁵. These are very heterogeneous, address different target groups and vary considerably in their level of detail³⁷⁶.

Even where there are extensive LGSK, such as in NRW³⁷⁷, there is a lack of implementation: Women's wings are too far away from the main building to be able to reach the security service for help quickly in an emergency, or they are also right next to the corridors for men who are travelling alone. Women report that they do not feel safe and have sometimes experienced assaults and violations. At night they often do not dare to visit the sanitary facilities for fear of assault³⁷⁸.

The situation in Bavarian shelters is similar: many building and structural conditions are not suitable to effectively protect women from (further) violence. In addition, a large proportion of the shelters neither have a concept in place to protect against violence, nor a women's representative, complaints management system or standardised procedures for dealing with violent incidents³⁷⁹.

In addition, the Bavarian state government has decreed that refugees will not receive keys to their rooms. If there is a suspicion of a violation of the house rules, the security service may enter the rooms at any time³⁸⁰. For refugee women with experiences of violence, this regulation represents an enormous burden and can lead to them being retraumatised.

Although the LGSK NRW provides for this³⁸¹, there is a lack of standardised and regular further training on sexual and gender-based violence (SGBV) as well as on a stress- and trauma-sensitive approach to work. This makes the work of the staff, who are in part highly motivated, but overburdened, considerably more difficult.

The security personnel do not receive any further training, even though they are in a position of power over residents in the accommodation³⁸². In the last five years, numerous assaults and mistreatments by security personnel have come to light³⁸³. Refugees report sexual harassment and (sexual, but also racially motivated) violence. There are also reports of sexual exploitation by employees of the security services and care associations³⁸⁴.

374 AsylG Art. 44, 2a. [online] https://www.gesetze-im-internet.de/asylvfg_1992/_44.html (accessed on 01.07.2020).

375 Bundesinitiative Schutz von geflüchteten Menschen in Flüchtlingsunterkünften: Schutzkonzepte von Bundesländern [online] <https://www.gewaltschutz-gu.de/publikationen/schutzkonzepte> (accessed on 24.06.2020).

376 For example, the Lower Saxony violence protection concept, which does not include an update on child protection, is only 7 pages long, whereas the North Rhine-Westphalian LGSK is 40 pages long and makes a considerable number of differentiations. The federal structure makes it difficult to pre-sent assessments for each individual state. The following cases are therefore given as examples.

377 Ministerium für Kinder, Familien, Flüchtlinge und Integration des Landes Nordrhein-Westfalen 2017: Landesgewaltschutzkonzept für Flüchtlingseinrichtungen des Landes Nordrhein-Westfalen, [online] https://www.mkffi.nrw/sites/default/files/asset/document/landesgewaltschutzkonzept_des_landes_nrw.pdf (accessed on 01.07.2020). Hereinafter referred to as LGSK NRW.

378 see Baron, Jenny e al. 2020: Living in a box – Psychosoziale Folgen des Lebens in Sammelunterkünften für geflüchtete Kinder, [online] https://transver-berlin.de/wp-content/uploads/2020/05/BAFF_Living-in-a-box_Kinder-in-Ankerzentren.pdf (accessed on 01.07.2020).

379 This was the result of a (non-scientific and non-representative) questionnaire survey conducted by the Munich Action Alliance for Refugee Women in Upper Bavaria [Münchener Aktionsbündnisses für geflüchtete Frauen in Oberbayern], prepared in the period between January 2019 and approx. April 2019. This was sent to employees in Bavarian shelters as well as to association centres in order to obtain a qualified assessment of the living situations of refugee women carried out by employees in the shelters.

380 Ibid., p. 21.

381 see LGSK NRW, Part I, Support, 4th Edtn., p. 17.

382 Security guards are often the only ones on site around the clock, while social workers are only available during core working hours.

383 For example in Cologne 2016: <https://www.ksta.de/koeln/demo-in-koeln-fluechtlinge-erheben-schwere-vorwuerfe-gegen-sicherheitsdienst-23588018> or in Burbach: <https://www.ksta.de/nrw/missbrauchsvorwuerfe-frau-berichtet-von-entfuehrung-aus-burbacher-fluechtlingsheim-24786932>.

384 Zweites Deutsches Fernsehen 2017: Flüchtlinge zur Prostitution gezwungen, Sicherheitsleute als Zuhälter in Berliner Flüchtlingsheimen [online] www.zdf.de/politik/frontal-21/fluechtlinge-zur-prostitution-gezwungen-100.html (accessed on 03.07.2020).

Accommodation in AnKER centres and initial reception facilities

In several Länder, AnKER centres have been introduced in which asylum seekers have to remain until the end of their procedure (up to 18 months, in case of a negative decision, the stay may even be up to two years)³⁸⁵. Other primary care facilities follow a similar concept. In collective centres, in which up to 1,000 people are accommodated³⁸⁶, there is a high potential for conflict³⁸⁷. In psychological terms, the stay is extremely stressful for refugee women³⁸⁸. Disturbances during the night, raids by the police and the deportation of other refugees from the shelters are all perceived to be a threat or dangerous situation³⁸⁹. The large number of residents staying there, acute shortages of staff and a lack of multilingual support services make it impossible to identify traumatic experiences of violence among women and to protect them adequately from violence.

Standardised procedures in cases of violence and access to emergency services

Both the federal minimum standards and some LGSK contain recommendations for action in acute situations of violence³⁹⁰. These are not sufficiently implemented in practice. For example, children of affected women are used to assist with interpretation and translation, which can result in them being traumatised³⁹¹. Psychosocial counsellors or women's counselling centres with appropriate expertise are not automatically included. Women report that they have been pressured to file charges against violent (ex-)partners.

Access to medical/psychological care

According to Sections 4 and 6 of the Asylum Seeker Benefits Act (Asylbewerberleistungsgesetz – AsylbLG), refugees will receive limited medical and psychosocial care, which will be limited to emergency acute care³⁹². Since very few women are recognised as vulnerable as a result of their experience of violence, very few of them can claim additional psychosocial and medical care.

See Articles 22 and 24 for access to counselling centres and the use of the telephone helpline.

385 BGBl 2019: Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht, Teil I Nr. 31 vom 20.08.2019, p. 1294 ff. Familien mit Kindern sollen nur bis zu sechs Monate dort verbleiben.

386 See for example in respect of NRW: <https://www.fnrw.de/de/themen-a-z/unterbringung-von-fluechtlingen/unterbringung-auf-landesebene.html> (accessed on 02.07.2020).

387 see Kommentar der Gewerkschaft der Bundespolizei gegen AnKER-Zentren [online] <https://www.gdp.de/gdp/gdp.nsf/id/1081AAE0AC963C33C1258288002B9486> (accessed on 29.05.19). Zur Situation in AnKER-Zentren: Leischwitz, Christoph 2019: Fliegerhorst Fürstfeldbruck, Der Aufenthalt im ‚Ankerzentrum‘ dauert oft Monate, in: Süddeutsche Zeitung, 15.04.2019, [online] <https://www.sueddeutsche.de/muenchen/fuerstfeldbruck/abschiebung-fluechtlinge-ankerzentrum-fliegerhorst-fuerstfeldbruck-1.4411250> (accessed on 23.05.19). Sauerlandkurier 2016: Fast 20-fach vorbestraft. Vergewaltigungsprozess gegen Heimleiter sorgt für politischen Wirbel, 25.11.2016, [online] <https://www.sauerlandkurier.de/hochsauerlandkreis/meschede/vergewaltigungsprozess-heimleiter-landgericht-fluechtlinge-meschede-heggen-7014726.html> (accessed on 23.05.2019).

388 see BICC 2017: All Day Waiting, Konflikte in Unterkünften für Geflüchtete in NRW, [online] https://www.bicc.de/uploads/tx_bicctools/BICC_WP_3_2017_web_01.pdf (accessed on 01.07.2020).

389 Baron, Jenny et al. 2020: Living in a box – Psychosoziale Folgen des Lebens in Sammelunterkünften für geflüchtete Kinder, [online] https://transver-berlin.de/wp-content/uploads/2020/05/BAFF_Living-in-a-box_Kinder-in-Ankerzentren.pdf (accessed on 01.07.2020), p. 19.

390 BMFSFJ 2018: Mindeststandards zum Schutz von geflüchteten Menschen in Flüchtlingsunterkünften, [online] <https://www.bmfsfj.de/blob/117472/bc24218511eaa3327fda2f2e8890bb79/mindeststandards-zum-schutz-von-gefluechteten-menschen-in-fluechtlingsunterkuenften-data.pdf> (accessed on 01.07.2020), p. 21 f. und bspw. LGSK NRW, p. 27 f.

391 Baron, Jenny et al. 2020: Living in a box – Psychosoziale Folgen des Lebens in Sammelunterkünften für geflüchtete Kinder, [online] https://transver-berlin.de/wp-content/uploads/2020/05/BAFF_Living-in-a-box_Kinder-in-Ankerzentren.pdf (accessed on 01.07.2020) p. 33.

392 AsylbLG, §§ 4 und 6. [online] <https://www.gesetze-im-internet.de/asylblg/BJNR107410993.html> (accessed on 01.07.2020).

II. Gender-sensitive asylum procedures and recognition of gender-specific reasons for flight

Since 2005, gender-specific, non-governmental persecution has been recognised in Germany as grounds for asylum³⁹³. The proportion of women who have been granted asylum on the basis of their gender has increased from 0.41% of all women seeking asylum in 2015 to 3.36% in 2018³⁹⁴. Despite the increase, the level of protection seems inappropriate given the scale of SGBV worldwide, especially in armed conflicts³⁹⁵.

Asylum procedure

The staff at the Federal Office for Migration and Refugees (BAMF) is not fully trained on SGBV and gender-specific persecution. BAMF appoints specially trained Special Representatives for the procedures of women who have experienced SGBV, if the women ask for it or if it turns out in the first interview that there is a need for it³⁹⁶. This is problematic because women who have experienced SGBV rarely address it on their own initiative or have been sufficiently and adequately informed that their experiences may relate to the procedure. In this case it is at the discretion of the decision maker whether this is necessary³⁹⁷.

There is also no legal entitlement to a hearing with a Special Representative, probably since with 211 corresponding job positions there are de facto not enough available³⁹⁸. Moreover, the Special Representatives are not necessarily female.

Women have the right to a female interpreter or listener, which they must also demand on their own initiative. With regard to violence in partnerships, it is problematic that families are heard together.

From an NGO perspective, no gender-specific guidelines for the asylum procedure are known.

Asylum procedure advice

Since 2019, the BAMF has been offering state procedural counselling. No more funds are earmarked for the promotion of non-governmental advice centres in 2020³⁹⁹. This means the de facto end of non-governmental asylum procedure counselling in some Länder⁴⁰⁰. Specialised emergency services that advise refugee women will also be affected.

393 AsylG § 3 b, [online] http://www.gesetze-im-internet.de/asylvfg_1992/___3b.html (accessed on 17.06.2020).

394 Federal Government 2019: Answer to the minor interpellation for written answer of the Members Ulla Jelpke, Cornelia Möhring, Dr André Hahn, other Members and the parliamentary group DIE LINKE, printed matter 19/9216 (own calculations). Beyond this request, there is no publicly available data on this specific recognition rate. In general, the procedures at the BAMF are not transparent for civil society.

395 medica mondiale e. V. 2019: Geschlechtsspezifische Gewalt gegen Frauen im In- und Ausland kohärent bekämpfen. Stellungnahme zum 13. Bericht der Bundesregierung über ihre Menschenrechtspolitik, [online] https://www.bundestag.de/resource/blob/647006/5d8d4eac91aa9d9e8ce7b6a3cfa72d27/stellungnahme_hauser-data.pdf (accessed on 17.06.2020), p. 11.

396 BAMF 2019: Ablauf des deutschen Asylverfahrens, Ein Überblick über die einzelnen Verfahrensschritte und rechtlichen Grundlagen, [online] https://www.bamf.de/SharedDocs/Anlagen/DE/AsylFluechtlingsschutz/Asylverfahren/das-deutsche-asylverfahren.pdf?__blob=publicationFile&v=12 (accessed on 18.06.2020), p. 39.

397 Hanewinkel, Vera 2018: Als Sonderbeauftragte für geschlechtsspezifische Verfolgung sollte man sensibel und einfühlsam sein, [online] <https://m.bpb.de/gesellschaft/migration/kurzdosiers/280223/interview> (accessed on 18.06.2020).

398 see Bektaş, Lorin et al. 2019: Die Situation geflüchteter Frauen im Asylverfahren, Aktuelle Herausforderungen bei der Asylanhörung, Aufnahme und beim Schutz vor Gewalt, in: *Asylmagazin* 12/2019, pp. 392-400.

399 Bundesregierung 2020: Antwort auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. André Hahn, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE, Drucksache 19/18233, p. 3.

400 FR Niedersachsen 2020: Unabhängige Asylverfahrensberatung vor dem Aus? Netzwerk AMBA kritisiert BAMF-Konzept, [online] https://www.nds-fluerat.org/wp-content/uploads/2019/11/2019_11_12-AMBA_Asylverfahrensberatung-1.pdf (accessed on 18.06.2020).

Already, a lack of information and centralised accommodation, often far from urban infrastructure, leads to de facto limited access to independent, trauma and gender-sensitive procedural counselling⁴⁰¹.

Credibility

Since 2015, the overall protection rate has fallen from 49.8% to 38.2% (2019). In particular, the recognition of refugee status / asylum entitlement is decreasing⁴⁰². Women, too, often only receive a ban on deportation, although they claim gender-specific reasons for flight. Reports on individual countries of origin erroneously negate gender-specific persecution. Violent acts against women are often classified as private, and not religiously or politically motivated⁴⁰³.

Since in the case of gender-based violence there is rarely any evidence of what has been experienced, women are dependent on presenting their story as “credibly” as possible, which can be particularly difficult for traumatised people. Since the first interview is crucial for deciding upon protection status and access to counselling is limited, gender-specific reasons for flight are often not recognised. The situation is similar for trafficked persons, whose experiences are also often not considered credible. This problem is exacerbated by the fact that there are high barriers to the recognition of medical certificates and the costs of such “evidence” are not covered⁴⁰⁴.

Gender as a social group

In Germany, gender-specific persecution (contrary to Recommendation 312 of the Istanbul Convention) is primarily determined by membership of a social group.

This can lead to political or religious persecution not being recognised and the “western character” of women in Germany becoming an indicator of their protection status⁴⁰⁵. For example, the Administrative Court of Cologne rejected a complaint because it was not recognisable that the plaintiff “has in the meantime received coinage that would make it unreasonable for her to comply with Afghan conventions.” The daughters of the plaintiff, on the other hand, have been granted refugee status, because they speak good German and do not wear a headscarf⁴⁰⁶. This is where racist and misogynist stereotypes overlap, so that the facts of gender-based violence do not come into play.

In addition, there is a judicial practice of forming sub-groups for women (such as “women who have been forced into marriage”), who as a consequence have to be perceived by society as different and must have internal links with each other. Thus, additional conditions are constructed which prevent a protection status determined solely by gender. There are “still existing reservations about recognising women as a group who may be sensitive to discrimination and persecution”⁴⁰⁷.

401 Mediendienst Integration 2018: Welche Auswirkungen haben „Anker-Zentren“?, [online] https://www.gew-hb.de/fileadmin/media/publikationen/hb/Migration/Expertise_Anker-Zentren_August_2018.pdf (accessed on 18.06.20).

402 BAMF 2019: Das Bundesamt in Zahlen 2019, [online] <https://www.bamf.de/SharedDocs/Anlagen/DE/Statistik/BundesamtinZahlen/bundesamt-in-zahlen-2019-asyl.html?view=renderPdfViewer&nn=284738> (accessed on 18.06.20), p. 36 f.

403 Vgl. dazu Duyar, Zübeyde 2016: Frauenspezifische Fluchtgründe im Asylverfahren. Fehlende Sensibilität und Anerkennung, Forum Recht 01/16, [online] https://forum-recht-online.de/wp/wp-content/uploads/2016/10/4.-FoR-1_16-Duyar_Frauenspezifische_Fluchtgruende.pdf (accessed on 18.06.2020).

404 see Bektaş, Lorin et al. 2019: Die Situation geflüchteter Frauen im Asylverfahren, Aktuelle Herausforderungen bei der Asylanhörung, Aufnahme und beim Schutz vor Gewalt, in: Asylmagazin 12/2019, pp. 392-400.

405 For the legal classification, see Damson-Asadollah, Ursula 2020: „Westliche Prägung“ als Grund für die Zuerkennung der Flüchtlingseseigenschaft, in: Asylmagazin 05/2020, pp.150-158.

406 VG Cologne 2018: Judgment of 21.03.2018 – 14 K 11105/16.A – asyl.net: M26217, [online] <https://www.asyl.net/rsdb/m26217/> (accessed on 17.06.20).

407 Giesler, Susanne & Sonja Hoffmeister 2019: Anerkennung frauenspezifischer Verfolgung, Probleme und Hürden bei der Rechtsanwendung, in: Asylmagazin 12/2019, pp. 401-411.

Successes like the recognition of refugee status for a woman from Nigeria as a result of forced prostitution are rare: A woman who became a victim of organised trafficking in human beings for sexual exploitation in Nigeria was recognised in Germany as a Geneva Refugee Convention refugee. She was threatened with persecution because of her membership of a particular social group. If she returns to Nigeria, she is threatened with reprisals from her social environment and risks becoming a victim of trafficking in human beings again⁴⁰⁸.

Convention Grounds and persecution practice using the example of domestic violence

The UNHCR Gender Guidelines state that the “causal link” in cases of gender-specific, non-state persecution must be present either with respect to the persecutor themselves, or with the State that denies protection from persecution, but not both at the same time (Section 21)⁴⁰⁹. This has not been established in German case law. Recent court decisions on gender-specific persecution reveal a very problematic understanding of gender-based, family or intimate partnership violence as private misconduct⁴¹⁰.

For example, the use of domestic violence is often only recognised as a reason for persecution “if the husband or partner exercises violence because of the gender-specific role of the woman, i. e., it is not “simply” accompanied by frustration and anger, but is an expression of male dominant behaviour”⁴¹¹.

International protection needs arising sur place

According to Section 28 of the Asylum Act (AsylG), protection needs arising sur place are recognised in Germany if it can be shown that a firm political conviction already existed in the country of origin⁴¹². This is problematic, since gender-specific reasons for post-flight migration are often private situations that do not necessarily have to be supported by a “consolidated” political attitude⁴¹³.

If one considers the dramatic extent of gender-based violence to which women are exposed during flight, a gap in protection becomes apparent here too⁴¹⁴. Undergoing rape, for example, and having children born illegitimately as a result of it can thus also result in post-flight reasons. However, there is no awareness of this in legal practice.

Uncertainty in procedural practice

Overall, there is a lack of uniformity in procedural practice. This is partly indicated by considerable differences in the recognition rates of different BAMF locations⁴¹⁵. An analysis of court decisions relating to gender-specific persecution since the entry into force of the Istanbul Convention shows that in 26 out of 37 cases, women have been granted protection status retrospectively, 25 of which have been granted refugee status due to gender-specific persecution. These figures are particular-

408 Verwaltungsgericht Magdeburg, Urteil, Aktenzeichen 6 A 40/19 MD, [online] https://www.asyl.net/fileadmin/user_upload/dokumente/28077.pdf (accessed on 10.09.2020).

409 UNHCR 2002: Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, p. 5 f.

410 Eigene Untersuchung aller Gerichtsurteile seit Inkrafttreten der Istanbul-Konvention mit Bezug zu geschlechtsspezifischer Verfolgung, Urteile dokumentiert auf <https://www.asyl.net/recht/entscheidungsdatenbank/> (accessed on 19.01.2021).

411 Marx, Reinhard 2017: AsylG, Kommentar, § 3b Rdnr. 33.

412 AsylG § 28, [online] https://www.gesetze-im-internet.de/asylvfg_1992/_28.html (accessed on 02.07.2020).

413 For example, divorce or an illegitimate relationship that is subject to religious persecution in the country of origin.

414 Women’s Refugee Commission 2019: More Than One Million Pains: Sexual Violence Against Men and Boys on the Central Mediterranean Route to Italy, p. 33 f.

415 Tagesschau vom 19.10.2019: Schlechtere Asylchancen an 22 BAMF-Standorten.

ly devastating because of the difficulties in accessing legal advice. Lodging a case must not be a necessary means of obtaining protection from gender-based persecution. Neither should it depend on the location or the decision-makers whether a protection status is granted and which one it is.

Recommendations

We recommend the following to the Federal Government:

- » Develop standardised screening procedures for the identification of vulnerable persons.
- » Addition to Article 44, paragraph 2a of the Asylum Act regarding the obligation on the Länder to introduce violence protection concepts and ensure the implementation of violence protection concepts on a financial basis.
- » Ensure access to independent, non-governmental and gender-sensitive asylum procedure counselling.

We recommend the following to the Federal Government and the Länder:

- » Implement nationwide training for all staff involved in making asylum decisions or the accommodation and care of refugees regarding causes of (sexualised) violence, trauma (consequences), and a trauma-aware and anti-racism approach to work.

Article 61

Non-refoulement

Requirements

Article 61 of the Istanbul Convention obliges the Federal Republic to ensure that the prohibition of refoulement under international law is observed and, in particular, that no women and girls who have survived violence are deported to countries where they may be threatened with further violence.

Challenges

Refoulement from Germany

In Germany, according to Section 60, paragraph 7 of the Residence Act (AufenthG), a national ban on deportation can take effect if the person concerned faces “a considerable, specific danger to life, limb or freedom” in their country of destination, or if deportation would engender a contradiction in terms of the European Convention on Human Rights.

In addition, according to Section 60a of the AufenthG, exceptional leave to remain can be granted for “reasons of international law or humanitarian reasons”. However, this residence status is very precarious: The obligation to leave the country also exists with exceptional leave to remain, it is simply that the punishable stay is temporarily suspended. Women with an exceptional leave to remain can therefore be threatened with deportation at any time. The exceptional leave to remain must be extended every six months at the latest, and under certain conditions there is a ban on working (Section 60a, paragraph 6 of the AufenthG). In addition, a practice can be observed in which “chain exceptions to stay” are issued instead of a regular residence permit⁴¹⁶. The women concerned then live for years experiencing insecurity of residency and financial dependence, a condition that can encourage violence and sexual exploitation.

As already discussed within the remit of Article 60, women affected by gender-based violence are rarely identified as such during the asylum procedure and are unable to access appropriate asylum counselling or psychosocial counselling. The legally embedded options for acquiring protection under Article 60 of the AufenthG are supposed to prevent their deportation, but are therefore not often effective.

“Safe countries of origin”

In countries considered as “safe” under Section 16a, paragraph 3 of the Basic Law (GG), gender-based violence is prohibited. However, the Federal Government is aware that in many countries classified as safe, such as Kosovo⁴¹⁷, legal provisions for the protection of women are not enforced,

⁴¹⁶ Although a regulation regarding the right to stay was created in 2015 (Article 25a, b of the AufenthG), it was de facto not made available to all affected persons. Siehe Deutscher Bundestag Drucksache 18/11101 vom 7.2.2017, [online] <http://dip21.bundestag.de/dip21/btd/18/111/1811101.pdf> (accessed on 1.10.2020).

⁴¹⁷ As noted in the Kosovo Country Report on p. 34: „Gender-based violence against women and girls (harassment, rape, domestic violence, forced prostitution, trafficking, early marriage) is a widespread phenomenon and largely still culturally acceptable.“ There „are still many acts not reported for fear of reprisals or lack of social support.“ BAMF 2015: Kosovo Länderreport Band 3, [online] https://www.ecoi.net/en/file/local/1195248/4543_1432796577_kosovo-laenderreport-2015-05.pdf (accessed on 1.10.2020).

and women there have limited access to justice. Nevertheless, it handles asylum applications from women from these countries in accelerated procedures, which means that the women face little chance of staying from the outset⁴¹⁸.

It is doubtful whether the women concerned will be able to take advantage of the opportunity to cite gender-specific reasons for fleeing under accelerated procedures⁴¹⁹. Apart from this, the classification of a state that can only provide limited to no protection against gender-specific human rights violations as “safe” is not compatible with the protection concept as stated in Article 61. As explicitly stated in Note 320 of the Convention: protection against refoulement must be provided regardless of the country of origin. The legal construct of safe countries of origin is therefore highly problematic⁴²⁰. Although all those involved in the asylum procedure are aware of the precarious situation of women from these countries, as proven by the BAMF’s own country studies (see above), asylum applications from women are regularly rejected as “manifestly unfounded”. While courts often overturn negative decisions⁴²¹, it should not be necessary for refugee women to have to take legal action in order for gender-based violence to be legally recognised. This is not just because the appeal periods in the accelerated procedure are shortened and refugee women usually do not have the financial means to sue. In principle, it is also a violation of Article 61 of the IC if refugee women are placed under an aggravated burden of proof to prove that they have been subjected to violence on the basis of a legal construct that is intended to facilitate the deportation of refugees.

Dublin Regulation and safe third countries

The European Dublin III Regulation states that within the EU, the state in which the refugee was first registered is always responsible for the asylum procedure⁴²². In 2019, 2,119 women were deported from Germany to other EU countries under this regulation⁴²³. As illustrated by the number of transfer requests made by the Federal Republic of Germany, this number would be significantly higher if other EU states were more reliable in taking back refugees⁴²⁴. People who have already gone through the asylum procedure in another European country and have been granted protection status there can also be deported to that country under Section 26a of the Asylum Act.

Even though courts have for years declared repatriations to Italy or Greece, among other places, to be unlawful since refugees there are threatened with inhumane treatment, an increasing number of people are being deported to these countries⁴²⁵. The situation for people within the asylum

418 BMI 2017: Erster Bericht der Bundesregierung gemäß § 29a Absatz 2a Asylgesetz zu der Überprüfung der Voraussetzungen zur Einstufung der in Anlage II zum Asylgesetz bezeichneten sicheren Herkunftsstaaten, particularly pp. 15, 24, 30, [online] https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/sicherheit/bericht-herkunftstaaten.pdf?__blob=publicationFile&v=3 (accessed on 1.10.2020).

419 The proceedings are to be concluded within one week (Section 30a of the AsylG), the time limit for filing an appeal is also one week; moreover, the appeal does not have a suspensive effect, i. e., survivors can be deported while the proceedings are still ongoing. Regarding the legal implications, see Teigelack, Birga 2019: Grundlagen und rechtliche Folgen der Einstufung eines Staates als sog. Sicherer Herkunftsstaat, in: Bucerius Law Journal, Heft 1, [online] <https://law-journal.de/jahrgang-2019/heft-1-2019/sicherer-herkunftsstaat/> (accessed on 1.10.2020).

420 See e.g. German Institute for Human Rights 2016: Written statement of the German Institute for Human Rights on the draft bill of the Federal Government „Entwurf eines Gesetzes zur Bestimmung von Algerien, Marokko und Tunesien als sichere Herkunftsstaaten“, [online] https://www.frnw.de/images/News/2016/Stellungnahme_DIMR_Sichere_Herkunftsstaaten_AMT.pdf (accessed 15.10.2020).

421 See for instance VG Oldenburg, judgement of 11.12.2018 – 15 A 5700/16 – asyl.net: M26881, [online] <https://www.asyl.net/rsdb/m26881/or> VG Karlsruhe, decision of 27.12.2018 – A 7 K 5461/18 – asyl.net: M26912, [online] <https://www.asyl.net/rsdb/m26912/> (both accessed on 1.10.2020).

422 Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013, [online] <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32013R0604> (accessed on 1.10.2020).

423 Deutscher Bundestag, printed material 19/18201 dated 19.3.2020, [online] <http://dip21.bundestag.de/dip21/btd/19/182/1918201.pdf> (accessed on 1.10.2020).

424 In 2015, about 20–25% of the refugees in Germany were threatened with deportation under the Dublin ruling. ProAsyl 2015: Erste Hilfe gegen Dublin-Abschiebungen, [online] https://www.proasyl.de/wp-content/uploads/2015/12/Dublin_Ratgeber_Erste_Hilfe_2015.pdf (accessed on 1.10.2020).

425 In 2019, almost 30% of transfer requests were made to Italy and just over 20% to Greece; equally, 26% of all legal protection requests against transfers to Italy and 49% of all legal protection requests against transfers to Greece

procedure there is extremely precarious (see below). Recognised beneficiaries of protection do not receive financial support and are often forced into homelessness. As a result, women, whose high risk of experiencing sexualised violence is usually not recognised or ignored, quickly find themselves in exploitative situations such as human trafficking or in forced prostitution, or they simply have no opportunity to free themselves from pre-existing exploitative relationships⁴²⁶.

Refoulement at EU external borders

The Dublin regulation has also contributed to the fact that many women refugees have to live in inhumane conditions in insecure, under-supplied camps in EU states with an external border⁴²⁷. The length of time for which they stay there is getting longer and longer – sometimes people wait for years for their hearing. The risk of experiencing sexualised violence in the camps is very high for women and girls, and medical and psychosocial care for women affected by violence is non-existent⁴²⁸.

Recent years have also seen the establishment of the extremely problematic practice of push-backs at the EU's external borders (e.g. in the Mediterranean or in the Balkans⁴²⁹), which violates international law. The German government and the German President of the EU Commission have not been sufficiently critical of this practice. The opposite is true: Through the cooperation of the European Union with Libyan militias in the framework of so-called sea rescue missions, the EU and its member states contribute to the fact that fleeing women experience sexualised violence and torture in Libyan camps⁴³⁰. There is a very unfortunate trend here. While the implementation of the Istanbul Convention should be a focus of the German Presidency of the EU Council, the German government is simultaneously preventing women refugees from receiving protection from violence through its asylum policy. This contradicts the Convention's idea of a coherent policy being in place to protect women from violence and the prohibition of discrimination (Article 4). This makes it all the more important to critically examine German plans to further externalise asylum policy, as well as cooperating with unsafe unstable third countries such as Libya⁴³¹.

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- were successful in court. Siehe Deutscher Bundestag, Drucksache 19/22405 vom 15.9.2020, [online] <http://dip21.bundestag.de/dip21/btd/19/224/1922405.pdf> (accessed on 1.10.2020).
- 426 Schweizerische Flüchtlingshilfe 2016: Aufnahmebedingungen in Italien, Zur aktuellen Situation von Asylsuchenden und Schutzberechtigten, insbesondere Dublin-Rückkehrenden in Italien, [online] <https://www.borderline-europe.de/sites/default/files/background/italienbericht-SFH-2016-aufnahmebedingungen-de.pdf> (accessed on 1.10.2020).
- 427 The EU-Turkey deal, which was largely negotiated by Germany in 2016, has exacerbated this problem and led to increased refoulement at the EU's external borders. See Bordermonitoring EU 2019: Gefangene des Deals, Die Erosion des europäischen Asylsystems auf der griechischen Hotspot-Insel Lesbos, [online] <https://bordermonitoring.eu/wp-content/uploads/2019/05/bm.eu-2019-aegean.pdf> (accessed on 1.10.2020).
- 428 See for example regarding the situation in Greece, Amnesty International 2018: "I want to decide about my future", Uprooted women in Greece speak out, [online] <https://www.amnesty.org/download/Documents/EU-R2590712018ENGLISH.PDF> (accessed on 14.10.2020).
- 429 See for the Mediterranean, for example, Amnesty International 2020: Malta: Waves of Impunity, [online] <https://www.amnesty.org/download/Documents/EUR3329672020ENGLISH.PDF> (accessed on 1.10.2020), or for the Balkan region Border Violence Monitoring Network 2019: Illegal Pushbacks & Border Violence Reports Balkan Region November 20019, [online] https://www.borderviolence.eu/wp-content/uploads/November_Report_2019.pdf (accessed on 1.10.2020).
- 430 The conditions in Libyan camps are now well known. See for example, United Nations Support Mission in Libya / Office of the High Commissioner for Human Rights 2018: Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya, [online] <https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf> (accessed on 1.10.2020).
- 431 Seehofer will Asylsystem reformieren, in: Tagesschau, 7.6.2020, [online] <https://www.tagesschau.de/ausland/asylreform-eu-praesidentschaft-101.html> (accessed on 1.10.2020).

Recommendations

We recommend the following to the Federal Government:

- » Withdraw or at least redact the “safe country of origin” regulation in order to guarantee individual rights to asylum. At the very least, however, ensure that the classification of a “safe country of origin” is evaluated from a gender-aware perspective.
- » Implement Section 25a, b of the AufenthG in order to prevent the practice of renewed exceptional leave to remain.

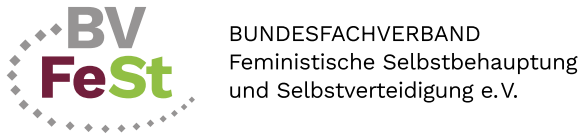
We recommend the following to the Federal Government at a European level:

- » Move ahead with a reform of the Dublin system in order to relieve the burden on states with external borders and to avoid huge refugee camps being established.
- » Insist on compliance with human rights and gender-sensitive standards in relation to care provisions for refugees in all EU states.
- » Cease cooperation with non-democratic third countries in respect of migration control.



BIG e.V.

Bei häuslicher Gewalt
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