

# A Refuge Reduced: How Changes in German Asylum Laws and Practices Impact Syrian Women Refugees

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## **EXECUTIVE SUMMARY**

Since the start of the war in Syria in 2011, over one million Syrians have come to Europe seeking asylum, with over 450,000 applications have been filed in Germany alone. The earlier migrants were overwhelmingly male, but as the war continues, the number of women seeking refuge has steadily increased. Syrian women refugees fleeing war need and deserve coordinated and effective protection responses. Many are not only fleeing war, but are also victims of gender-based violence. In addition, women who have traveled alone or with children, pregnant and nursing women, adolescent girls, and elderly women are more vulnerable to violence, abuse, and rights violations along their route to Europe and once in their destination country. Recent changes in European and German asylum laws and procedures exacerbate these vulnerabilities and have put many women and girls at greater risk, have separated families that could act as support, caused greater psychological trauma, and threatened women's ability to find refuge from the violence in Syria and in their own homes.

## **1. INTRODUCTION**

Due to the civil war in Syria, from April 2011 until September 2016, an estimated [1,177,914](#) Syrians filed asylum applications in Europe, with over 450,000 filed in Germany alone (UNHCR Data Portal, 2017). The earlier migrants were overwhelmingly male, but as the war continues, the number of women seeking refuge has steadily increased. Migration is often arduous, but women who have traveled alone or with children, pregnant and nursing women, adolescent girls, and elderly women are more vulnerable to violence, abuse, and rights violations along their route to Europe and once in their destination country. Women refugees fleeing war need and deserve coordinated and effective protection responses.

While countries within the European Union (EU) are in theory working toward having common laws and principles concerning asylum, the reality is that each country has its own laws and practices. There are worries that Brexit, which has officially begun, will make it more difficult to standardize laws and practices. Already, on the one hand, countries such as Hungary and Poland have refused to participate in EU asylum and relocation programs, which have put their membership in the union in question. Germany, on the other hand, ignored some European agreements about asylum processing in order to provide refuge to many more people. This led to a large influx of migrants from many countries coming into Germany in 2015 and 2016. The largest numbers—about one-third—of those seeking refuge and work in Germany came from Syria, followed by Afghanistan and Iraq. (BAMF, 2014-2016)

## **2. ASYLUM DEFINITIONS AND PROTECTIONS**

Key to understanding current asylum laws and practices is knowing the definitions of various statuses: migrant, refugee, asylum-seeker, and subsidiary protection. A “migrant” moves from one country to another or within his or her own country, often to find work. There may be other reasons for the move, such as family unification or education. A “refugee” has fled armed conflict or persecution. Their own government cannot or will not protect them. To be granted refugee status, an applicant must face a well-founded fear of persecution related to the applicant’s race, religion, nationality, or membership in a particular social group. An “asylum-seeker” is someone whose request for “refugee” status has yet to be granted. “Subsidiary protection” is a temporary protection granted to those who do not otherwise qualify for refugee status but who face a real risk of serious harm if they returned to their own country.

Refugees are protected through international laws, such as the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. From 2011-2014, the European Union established a Common European Asylum System (CEAS), under which international protection is granted to refugees who have a well-founded fear of persecution. Key to the CEAS is the right to asylum

and the prohibition of refoulement, as guaranteed by the Charter of Fundamental Rights of the EU and the Refugee Convention. The Charter and the Convention bind all EU members.

In 2001, the Council of the European Union, which represents the governments of the EU member states, issued Directive (2001/55/EC) that established minimum standards for temporary protection in case of a large influx of displaced people who cannot return to their countries of origin due to conflict or endemic violence, such as what began in 2011. The Directive says that for these cases, immediate and temporary protection can be made available for one year so member countries' asylum systems are not overburdened. However, people who receive this protection must be able to apply for asylum. After their temporary protection has ended, the laws of the country they are residing in are applied. This temporary protection may be extended for an additional year.

In addition, members must comply with the European Convention on Human Rights (ECHR) and EU law, which the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) enforce. The CJEU is meant to ensure a correct interpretation and application of EU asylum law, in particular the ECHR, which establishes the right to asylum, the right to good administration, the rights of the child, and other rights. Several members, including Italy, Greece, Hungary, and Belgium, have been found to be in violation of the EU's legal regime regarding refugees in terms of detention, reception facilities, and a lack of legal remedies. (ECtHR, 2017: 4-7)

### **3. ISTANBUL CONVENTION AND GENDER-RELATED CONSIDERATIONS**

Separate from the European Union, the Parliamentary Assembly of the Council of Europe, which has 47 members, recommended in 2010 that member states take due account of gender-based violence (GBV) and gender-related persecution in their asylum systems, beginning with the collection, analysis and publication of statistics and information on the issue. The Assembly does not have the power to create binding laws, but it can demand action and investigate human rights abuses.

Going one step further in 2011, the Council of Europe passed the Convention on preventing and combating violence against women and domestic violence (known as the Istanbul Convention), which explicitly requires parties to the convention to recognize gender-based violence as a form of persecution when determining refugee status. Furthermore, states must develop gender-sensitive reception procedures and support services for asylum-seekers. The Istanbul Convention also stipulates that women who are victims of domestic violence and whose residence status depends on that of a partner must be granted an autonomous permit for residence, but not necessarily asylum, if that relationship ends.

Since 2011, the EU has recognized physical, mental, and sexual violence and gender-based persecution, including female genital mutilation and domestic violence, as grounds for granting refugee status. (Qualification Directive 2011/ 95/EU Art.4 (3), Art. 9 (2), 10 (1)) And two European Parliament Directives of 2013 (Directive 2013/32/EU and Directive 2013/33/EU)

stipulate that member states may need to establish special procedural guarantees for refugees because of their gender, sexual orientation, gender identity, or consequence of rape, torture, or other “serious forms of psychological, physical or sexual violence... Those applicants should be provided with adequate support, including sufficient time” in their applications. Examination procedures should be gender-sensitive and “[t]he complexity of gender-related claims should be properly taken into account in procedures based on the concept of safe third country, the concept of safe country of origin or the notion of subsequent applications.” Member states should also take gender into consideration in relation to accommodation centers, including taking measures to prevent assault and gender-based violence in such centers. However, there is a clause that allows for exceptions for a “reasonable period which shall be as short as possible” when housing capacities are temporarily exhausted, though basic needs should still be met. Those capacities were tested soon thereafter.

#### **4. THE 2015 MASSIVE INFLUX OF REFUGEES INTO THE EU**

In July 2013, the Dublin III regulation (EU No. 604/2013) came into effect. This regulation determines which EU member state is responsible for processing international protection applications by a third-country national or stateless person. Essentially, the first country of entry (where an asylum claim is first lodged or fingerprints are stored) is responsible and an asylum seeker can be sent back to that first country. This regulation applies to all member states except for Denmark. For many Syrians who came between 2011 and 2017 that would mean they would have needed to return to Greece to have their asylum applications processed.

In 2015, however, an estimated 850,000 people came into Greece and another 200,000 in Italy, overwhelming these two countries and highlighting the burden on countries of first entry. To help Greece and Italy, the EU adopted relocation plan was adopted on September 22, 2015.

But just one month before, the options for refugees changed dramatically. On August 21, 2015, Germany announced that it was temporarily suspending “Dublin,” the first country principle, and would let asylum-seekers who came through third countries like Greece stay and be processed in Germany. This led to a great influx of refugees into Germany. There are efforts to reform the Dublin system, but there has been no consensus as of April 2017.

In November 2015, the European Union and Turkey agreed on an Action Plan to increase cooperation and coordination of actions regarding the refugee crisis, as most of the refugees were coming to the EU through Turkey into Greece and along the so-called “Balkan Route” up to Germany, Sweden, and other northern countries. The decisions by Slovenia, Macedonia, Serbia and Croatia to close their borders (essentially shutting-off the Balkan Route) and the agreement between the EU and Turkey in March 2016 have slowed migration to the EU significantly.



## 5. ASYLUM IN GERMANY

Germany has taken in a disproportionate number of refugees. In 2015, more than one million refugees arrived in Germany, and since 2011, the country received more than 450,000 asylum applicants from Syria alone — about 34% of them women. (BAMF) Government officials, humanitarian workers, and some refugees now say that despite the very good intentions, Germany was unprepared for the massive influx of refugees. The country was not and is not able to adequately accommodate the special needs of women refugees.

Beyond the international treaties that it is party to (such as the 1951 Convention Relating to the Status of Refugees), Germany has codified the right to asylum in its constitution (the *Grundgesetz*). The Asylum Act and the Residence Act outline the rules for admission and regulations for the handling of refugee claims. There have been several amendments since 2008, including most recently in March 2016 because of the current crisis in Europe. (This will be discussed in greater detail in the next section.) Subsidiary protection in the Asylum Act is given to persons who are threatened with serious harm, defined as the “imposition or application of capital punishment, torture or inhuman or degrading punishment or treatment, or a serious individual threat to the life or integrity of a civilian as a result of indiscriminate violence in an international or internal armed conflict” in the country of origin. Under the Asylum Act, protection may be granted for political or humanitarian reasons, but not explicitly gender-based reasons.

In addition, Germany is party to the major UN treaties on women’s rights, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Germany also signed the Istanbul Convention in 2011, but ratification and implementation have not yet happened.

The German Federal Office for Migration and Refugees (BAMF) stipulates in its guidelines that victims of gender-specific prosecution should be handled in a sensitive manner. Since 2005, gender-specific persecution and persecution by non-state actors have been expressly recognized as grounds for asylum in Germany. In asylum procedures, however, this persecution seems only rarely taken into account. For the most part, gender-related persecution (such as fleeing from female genital mutilation, forced marriage, or the threat of “honor killings”) is not recognized as grounds for asylum; it is solely an obstacle to deportation. Whether gender-based violence is considered valid grounds for asylum also appears to depend on the country of origin of the applicant, according to interviews with NGOs that work with, or are organized by, refugees in Germany, including Women in Exile, and reports by NGOs such as the Friedrich Ebert Stiftung (2015).

Moreover, BAMF interviewers and NGOs noted that discussing gender-specific persecution can be difficult at the initial stages due to a lack of female interpreters and female interviewers, a lack of knowledge on the part of the asylum seeker of her rights and options, shame and fear on the part of the asylum seeker, and even unclear accounts of an assault or persecution as some cultures do not directly address these topics, particularly with strangers. So sometimes a woman might say that her family “has been dragged into the dirt” to signify that she was raped,



according to Iris Liebner, Special Representative for Gender-Specific Persecution, BAMF. ([“Geschlechtsspezifische Verfolgung: Keine Relevanz für Schutzsuchende?”](#) 2017)

In an interview for this paper, the NGO Women in Exile reported that for their first in-depth interview, after the quick initial assessment, asylum-seekers had to know that specially trained interviewers were available and request such an interviewer in an application that is only in German. In a December 2016 Refugee Rights Data Project report, 67.5 percent of women refugees said they lacked important information on EU laws on asylum and immigrant rights. Among those that had some knowledge of their legal rights, nearly two-thirds said they received that information through informal sources, putting into question the accuracy and timeliness of the information. Only 22 percent said that they received legal and rights information from German authorities. (RRDP, 2017)

Syrian women and girls come to Germany affected by the conflict in their home country. In addition, they may be fleeing domestic or conflict-related gender-based violence, harassment, or other forms of discrimination. Then along the route, they have faced gender-based discrimination, harassment and violence. And once they are in their destination country awaiting asylum protections, they are subject to conditions that put them at further risk.

Women and children are often traveling alone, dependent on smugglers, and moving/ staying in conditions that are crowded and confusing, further exposing them to sexual violence. In an assessment conducted in Germany by the International Rescue Committee in April 2016, every woman and adolescent girl refugee interviewed spoke of being sexually exploited or harassed by fellow refugees, smugglers, or authorities along their flight. (IRC 2016) This is supported by independent interviews with organizations that support refugee women in Germany. “In our experience, every woman arriving in Germany has been violated before, during and/or after her flight to Europe,” said a representative of Women in Exile, an initiative of refugee women founded in Brandenburg by refugee women to fight for their rights, in an interview April 2017.

## **6. HOUSING AND HEALTHCARE ISSUES**

While their application for protection is pending, Syrian applicants must stay in a reception center and are not allowed to leave that facility without permission at least for the first period of up to three months. Once they are given asylum or refugee status, applicants receive a three-year residence permit. However, the sheer numbers of people coming to Germany in search of protection has led to an overwhelmed system and overcrowding in reception centers. Many refugees are living for several months, perhaps years, in converted airport hangars, vacant administration buildings, schools, hotels, or gymnasiums that are not meant for long-term stays. The Refugee Rights Data Project study found that 46 percent of the refugees surveyed had been in a camp for a year or more. (RRDP, 2017: 6)

As of September 2016, in Berlin alone, there are a total of 152 accommodation centers, of which 99 are emergency shelters, 46 community housing, and seven initial reception centers

with a total capacity of 44,261 (with 40,759 spaces occupied as of September 2016). (RRDP, 2017: 1)

EU Reception Directive regarding accommodation standards, the Istanbul Convention, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Council of Europe Convention on Action against Trafficking in Human Beings, the Charter of Fundamental Rights of the European Union, as well as the Inter-Agency Standing Committee Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action -- all are meant to ensure that basic measures are in place to reduce the risk of assault and GBV, and to protect vulnerable women and girls. In theory this should include separate sleeping accommodations for single women with doors that lock and at minimum gender separate toilet and shower facilities.

However, in many German reception centers, there is a lack of private space for individuals or family groups, and women and girls are unable to change in complete privacy or for the more conservative, to remove their hijabs. Some women report losing their hair because there is never a time they can go without the hijab for modesty reasons as there are always male non-family members around. Men's and women's toilets and showers are not always separated, and there are generally no private sleeping areas in the larger facilities such as converted gymnasiums and airport hangars). In the Refugee Rights Data Project study, 40 percent of respondents were unsatisfied with conditions in their camps, over 20 percent did not feel safe, and eight percent reported sexual violence in the camp. (RRDP, 2017: 16-17)

Moreover, the stress, boredom, and crowding has led to increased domestic and other forms of violence, including sexual assault and harassment. Neither the Ministry for Families, Seniors, Women, and Youth (BMFSFJ) nor the Federal Criminal Agency provide figures on the incidence of sexual abuse in German refugee camps. However, in interviews refugees and NGOs working with refugees spoke to the persistence of the problem. "Harassment is a daily occurrence in reception centers. We always point out that it would be the same if you would put 200 young German men in a big isolated place, take away their hopes and perspectives, and then put five women and no locks and sometimes not even separated toilets and showers," explains a Women in Exile representative in an interview in April 2017.

Many of these reception and accommodation centers are managed by private companies contracting with the government or by NGOs, and several NGOs have expressed their concerns about the risk for sexual violence and abuse of women and girls by staff, guards, and volunteers. The German newspaper Die Welt (among other news outlets) looked into the numerous reports of abuse and harassment at the housing centers. It reported that in the town of Giessen near Frankfurt, 15 women had reported sexual assault at one camp alone. (Laurin and Peters 2015) BMFSFJ spokesperson Verena Herb told The Local, "Many of the women in the camps are scared to speak out about what is happening. Many of them are scared to be sent back home because of it." (The Local, 2016)

In May 2017, an IRIN investigation found that women refugees did not have adequate protection from gender-based violence in Berlin shelters, that minimum standards were not enforced, and that even with separate rooms for women, the female refugees did not feel safe,

since security personnel, who may be harassing the women, have master keys. One woman at the Tempelhof converted airport hangar shelter, Zina, said, "I often have strong pain because I do not use the toilet at night. I am frightened." (Müller, Sukharchuck and Polat, 2017)

During a September 2016 conference in Berlin, Heike Rabe, a lawyer with the German Institute for Human Rights, said that current immigration, asylum, and benefits laws were "sufficient" but that they needed to be put into practice. She used the existing legal provision by which the state can transfer residents and thus protect the survivor by separating her from the perpetrator as an example. Moreover, the Protection Against Violence Act apply to these centers, but what is lacking is the effective application of these provisions. ("Schutz von geflüchteten Menschen vor geschlechtsspezifischer Gewalt," 2016)

Women and girls who have experienced GBV along the route are likely to be overlooked in the absence of a confidential and private space to share their stories. Moreover, many women were unaware of the programs available to them, as well as their legal rights with regard to sexual assault. For example, in Germany there is a federal hotline system that is available for GBV survivors in several languages, but few women, including those working with refugee support organizations, knew of its existence. (Women's Refugee Commission, 2016 and interviews for this report.)

As a result of its failure to implement EU guidelines that dealt with the conditions at reception centers from 2013 in time, Germany faces two investigations by the European Commission. EU states were given two years to ensure applicants have access to housing, food, health care, and medical and psychological care. (RL 2013/33/EU) Asylum-seeking women and girls can access emergency health care in Germany. However, psychosocial support is more difficult to receive as services are not always provided at the reception centers and many women do not know how to access these services and the process to receive care under the healthcare system can be lengthy.

There are now some efforts in Germany to provide separate housing and sufficient medical care for vulnerable women and refugees in general. For instance, in Berlin in March 2016, the German Ministry for Families made 200 million euros available to create protected space for women and children at refugee accommodation centers and create specialist centers to provide counseling and other services to survivors of trauma. "Unfortunately we know that children and women in the camps are not safe from abuse and sexual assault. That's why we have to make sure that they're protected," Junior Minister Ralf Kleindiek said in a statement (The Local, 2016). "Not only measures regarding staff, but also structural measures have to be implemented, such as lockable accommodation units and separate sanitary facilities."

A new collaboration between the German government, UNICEF, and 15 German NGOs seeks to identify children at risk, improve access to services and counseling, train staff to spot incidents of GBV, and generally boost protection systems inside reception and accommodation centers. Germany intends to support states to implement protection measures for women and children across the country, including GBV survivors and torture survivors. Caren Marks, the German Parliamentary Secretary of State, said, "People who fled to Germany before war, bombs and terror wanted to live in safety. We must do everything we can to ensure that children, young

people and women are safe from being attacked in refugee institutions. These minimum standards provide the first nationwide standards to improve protections against violence, access to education and psychosocial support.” (BMFSFJ, 2016)

The pilot program began in 2016 with 25 accommodation centers and expanded in January 2017 to an additional 75. In theory, the “Minimum Standards for the Protection of Children, Adolescents and Women at Refugee Accommodation Centers” (UNICEF, 2017) ensure there is an “adequate number” of female staff with at least one female security staff on duty at all times. If a woman at one of the centers is the victim of violence, center management must assess if the woman is still at risk or if any other resident is at risk. If the perpetrator is also a resident, they must leave the center and management must ensure there is accommodation. If it is a case of domestic abuse, the affected woman will be informed of her options for protection and possible police involvement. If staying in the center is too dangerous for her, the woman must be transferred to a women’s shelter or another safe accommodation. To help women feel comfortable coming forward, centers should offer courses in legal protection and open counseling in native languages. They should also refer women to trained specialist in law and psychosocial support.

In addition, the Minimum Standards state that accommodation centers should have safe common spaces for women, children, and adolescents, as well as safety measures, including lockable, secure living units and gender-segregated sanitary facilities that are lockable and have privacy safeguards like curtains. Women with special needs must be accommodated in suitable apartments or other housing. Some NGOs are skeptical that these efforts will be adopted in full and will be enough to help the women currently at risk or traumatized already, particularly as only 100 centers are being piloted and there are several hundred throughout the country.

Despite these recent efforts, a recent study commissioned by Germany’s Integration Commissioner showed that women refugees are suffering because of inadequate and unsafe accommodations, a lack of psychosocial support, a lack of interpreters to help navigate their new country, and a lack of protection from sexual assaults.

Six hundred thirty-nine women were interviewed from Syria, Afghanistan, Somalia, Eritrea, Iran and Iraq in accommodation centers in five German states. Almost half of the interviewees were between 17 and 29 years old, and 46 percent came from Syria. The most common reasons for fleeing their home country were war, terror, and fear for their lives, as well as fear of kidnapping, torture, “honor killings,” forced marriages, and forced prostitution. Many of the women surveyed came from war zones, have experienced homelessness, hunger, and the death of family members. Many of the women surveyed are struggling with the aftermath of sexual violence that occurred in their countries of origin and/or along their route to Germany. The survey also showed that current housing options are poor, with a lack of privacy, a lack of safe spaces for women, the lack of hygiene in showers and toilets, noise, discrimination, and a climate of disrespect. These conditions exacerbate the emotional and mental suffering of these GBV and other victims.

Many women report mental problems, most commonly severe sadness (40 percent), a tendency to cry (52 percent), sleep problems, nervousness, and anxiety. Five per cent of the refugees reported strong suicide thoughts.

## **7. CHANGES IN GERMAN AND EU LAWS AND PRACTICES**

Despite the recent initiatives by the German federal government and with some local governments, many women and girls are still at risk, and since 2011, several changes to European and German asylum law and practices have created greater vulnerabilities for women and girls.

What complicates matters more is that these changes seem driven less by an overwrought legal system and more by polls that show declining support for welcoming new refugees and for Chancellor Angela Merkel.

In an October 2015 poll for the state broadcaster ARD, for the first time since the crisis began, a majority of Germans said the number of refugees entering the country scared them. Fifty-one percent expressed fear, and 47 percent said they were not afraid. However, only one month before only 38 percent said they were afraid. In addition, only 54 percent said they were satisfied with Chancellor Merkel's performance. It was her lowest rating in almost four years. (Karnitschnig 2015) An April 2017 poll from the Bertelsmann Foundation found that 54 percent of Germans believed that Germany had reached its limit in taking in refugees (up from 40 percent in 2015), and 81 percent said other European countries should take more refugees. However, 59 percent said they welcomed refugees and 70 percent welcomed immigrants. (Saeed, 2017)

Among the changes in Germany was the October 24, 2015 Act on the Acceleration of Asylum Procedures, which amended several laws to accelerate the asylum process and reduce the financial burden on the German states and municipalities. The reform integration policies for refugees were changed as well. In February 2016, the Asylum Package II was enacted. This created stricter measures, including decreased monthly cash benefits and the suspension of family reunification for persons with subsidiary protections for two years. This Act would have lasting negative consequences for families that sent one or a few family members through the unsafe route first, with the idea of bringing wives, children, or other family members via a safer means.

In May 2016, Chancellor Merkel introduced an Integration Law that makes integration courses mandatory (with a cut to social benefits the penalty of missed classes). It also requires asylum-seekers to demonstrate a knowledge of the German language and a salary to support themselves in order to gain a residency permit. If an applicant refuses the work, they can have their benefits cut. In addition, for the next three years, regional governments can determine where refugees may settle and may ban them from certain areas. (Refugees with employment or in a training program are exempt from this rule.)

Some newer laws were ironically cloaked in the language of protection of women in response to the 2016 New Years events in Cologne. In July 2016, in response to large-scale assaults of women during New Year's Eve in Cologne, the German Parliament expanded the definition of what constitutes a sex crime (for instance, groping is now a sex crime). While many German women's groups celebrated the change, it was not as popular with some immigrants as the new law makes it easier for authorities to deport refugees convicted of one of these crimes. As a result, some refugee women are now more reluctant to speak up about GBV or domestic abuse they have suffered at the hands of a family member or community leader, for fear that that person will be deported, or worse, that the entire family will be deported if their status is tied to that man. (Women's Refugee Commission, 2016 and author interviews with refugees and NGOs)

Perhaps the change with the most impact came in November 2016, when the Higher Administrative Court of Schleswig ruled that Syrian asylum-seekers can be granted "subsidiary protection" instead of full refugee status. The court ruled that there was no evidence of systematic interrogations, arrest, torture, or persecution of persons returning to Syria. Fleeing a country because of an ongoing war was not reason enough to be granted asylum, according to the court and BAMF.

The case before the Schleswig court concerned an appeal by BAMF of a previous administrative court ruling that granted a Syrian woman full asylum status. The woman's lawyer argued that since the German Foreign Office has not had representation inside Syria since 2012, it could not answer questions about the woman's safety if she returned to Syria. However, the court cited short written statements from the Foreign Office and the German Orient-Institute that said there was "no knowledge" of systematic interrogations against returnees. These statements are in direct opposition from reports from Amnesty International and UNHCR, which wrote about patterns of Syrians being arrested or disappearing when they return to Syria. In 2015, UNHCR wrote, "most Syrians seeking international protection are likely to fulfill the requirements of the refugee definition ... of the 1951 Convention." (UNHCR, 2015: 22)

There was an immediate reaction to the decision, with refugee rights organizations criticizing the decision, which will likely influence other higher state courts. Immigration lawyer Oda Jentsch told the news organization Deutsche Welle, "The BAMF is already denying refugee status to Christians from Syria, who we know were already facing persecution before the war. It is also refusing Kurds, who are being pursued both by 'Islamic State' and by the Syrian army." (Knight, 2016)

This decision validated a more recent practice by BAMF. Since the beginning of 2016, with the passage of the Asylum Package II, BAMF officials has been determining an applicant's status by whether they personally underwent or would face persecution in Syria. As a result, the majority received subsidiary protection. Prior to that, the great majority of Syrian applicants were granted full refugee status. Under subsidiary protection, a residence permit is for one year instead of three (with the possibility to extend for an additional two years), and there is no possibility of family reunification for two years. For the Syrian woman in the Schleswig Court case, her husband and four children who are in Turkey will not be able to join her in Germany until 2018.

Restrictions to family reunification disproportionately impact women refugees, as the majority of asylum-seekers who came prior to 2016 were men. (UNHCR Data Portal) Female family members stayed behind until international protections were secured and a safer passage to Europe could be arranged. With the new restrictions, many women may be at risk in Syria, choose the perilous journey from Turkey to Greece and on to Germany, or be stranded along the route—a route on which many women have found themselves victims of sexual harassment and assault.

Prior to this decision, several lower courts ruled in favor of asylum-seekers who had contended their subsidiary protection status. In 2016, 41.2 percent (121,562 out of 295,040) Syrian asylum-seekers received only subsidiary protection. That is up significantly from the less than one percent that received it in 2015 (61 out of 105,620) and 12 percent in 2014. (By contrast, of the 4,583 Iraqis whose status was decided in 2014, only 60 received refugee status and 3,161 received subsidiary protection. And in 2016, of the 68,562 decisions on Iraqi applications, 36,801 received refugee protection, 10,912 received subsidiary status, and 14,248 were rejected.) (BAMF, 2014-2016)

The more restrictive policy has also resulted in more work for the German courts. Since January 2016, about one third of the 100,000 about 36,000 Syrians granted only limited protection have turned to the German justice system, forcing courts to take on more personnel to manage the caseload. Most of the time, the legal battle (“upgrade-appeal”) has proved worth it for refugees. According to BAMF figures, three quarters of the cases already heard have been decided in favor of the Syrians, with judges accepting their argument that they risked persecution by the regime of Bashar Al Assad regime for having fled.

However, that might change. In late February 2017, the of North Rhine Westphalia (NRW) in Münster also ruled against a Syrian man’s claim that he qualified for full refugee status under the Refugee Convention, rather than subsidiary protection. The Court ruled that the fact that the plaintiff was a Sunni and had come from a city devastated by the war was not enough to grant him asylum. Combined with the earlier Schleswig Court decision, the Muenster decision sends a strong signal to other courts and to refugees contesting their status. Tens of thousands of Syrians could be affected. By the end of January 2017, in North Rhine-Westphalia alone, there were 12,300 lawsuits brought by Syrians contesting their subsidiary protection status. (Deutsche Welle, 2017)

## **8. CONCLUSION AND RECOMMENDATIONS**

Women fleeing the war in Syria are not only fleeing an active conflict, they are often fleeing gender-based violence that occurred in their home country or along the migration route. Recent changes in European and German asylum laws and procedures exacerbate these vulnerabilities and have put many women and girls at greater risk, have separated families that could act as support, caused greater psychological trauma, and threatened women’s ability to find refuge from the violence in Syria and in their own homes.



Often women refugees are not told of their rights, including their right to a female BAMF interviewer and an interpreter to help with the basic navigation of asylum application. Due to the volume of asylum-seekers that came, particularly during 2014-2016, there were not enough traditional accommodation centers to house everyone. This does not, however, excuse practices that put women and girls at greater risk of being sexually harassed or assaulted in their living quarters, further traumatizing an already vulnerable person. And the most recent court decisions have meant that family members are separated for years, with some family members having to stay in conflict zones, and there is also now the threat that those with subsidiary protection will be sent back to Syria before the war is over.

To improve conditions for women refugees, asylum procedures need to be made more gender sensitive. Government agencies, international organizations, and local civil society organizations must engage the Syrian and other women seeking refuge in Germany and elsewhere in Europe. By engaging the female refugees, policy makers and assistance providers will have a better understanding of the challenges, needs, and capacities of this population. These interviews need to be done in Arabic by women, with an understanding of the customs, trauma, and vulnerabilities of each of the women (some of whom come from religious or ethnic minorities or may be suffering unseen traumas).

The UNICEF guidelines for accommodation centers should be adopted throughout the country in all centers. In accommodation centers there should be more interpreters and translators available, and psychotherapy and suicide prevention should be more widely and more clearly provided. There should be more women and girls-only accommodation centers. And there should be a zero-tolerance policy on sexual exploitation and abuse by housing center staff and volunteers.

In their initial meeting with BAMF, women asylum-seekers should be informed of their right to a specially trained, female interviewer and an interpreter for their interviews for their applications. There should be comprehensive updates on legal changes and how they could impact an individual's asylum or protection applications. These updates should be done in simple language, as to be understood by someone with limited education. These updates should be made available to all accommodation centers and distributed to NGOs and government service agencies for their clients. And as the war continues in Syria without an end in sight, there should be a reassessment of the subsidiary protection status.

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