



Collana diretta da Angela Di Stasi

**DONNE MIGRANTI E VIOLENZA DI GENERE  
NEL CONTESTO GIURIDICO  
INTERNAZIONALE ED EUROPEO**

**MIGRANT WOMEN  
AND GENDER-BASED VIOLENCE  
IN THE INTERNATIONAL AND EUROPEAN  
LEGAL FRAMEWORK**

a cura di

**Angela Di Stasi**

**Raffaele Cadin Anna Iermano Valentina Zambrano**

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*Alla cara memoria di Maria Rita Saulle,  
donna, educatrice, giurista, giudice  
e sensibile garante delle vulnerabilità*





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# MIGRANT WOMEN IN GERMANY: CHALLENGES AND PROTECTION

*Réka Friedery\**

SOMMARIO: 1. Background and data. – 2. Legal frame of (migrant) women protection. – 3. Violence against migrant women upon arrival. – 4. The asylum procedure in the light of gender-based violence. – 5. Violence against migrant women living in the country. – 5.1. Forced marriage. – 5.2. Female genital mutilation. – 6. Conclusion.

## *1. Background and data*

The European Gender Equality Index ranks Germany nearly at the same level (68.7) than the EU average (68.6) and Germany ranks 11th in the EU on the Gender Equality Index. Gender based violence is not an exact term, more like a definition including several categories: harmful acts such as sexual or mental harm, coercion, and deprivations of liberty that are committed against a person's will and that are based on a person's socially endorsed gender. Sexual and domestic violence are also used to maintain male dominance over women<sup>1</sup>. Gender based violence concerning migrant women show a two-sided vulnerability: being woman and migrant. To get a wide range picture of the position of women migrants in a host country, first and foremost, the unique position of Germany as a main destination country needs to be presented through data related to migration. Germany has a population of 84,220,184 (2023 est.), with ethnic groups of German

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<sup>1</sup> MiMI (Gewaltprävention mit Migranten für Migranten). *Gewaltschutz für Frauen in Deutschland-Ratgeber für geflüchtete Frauen, Migrantinnen und Jugendliche*, Hannover, 2018, p. 4.

(86,3 %), Turkish (1,8%), Polish (1%), Syrian (1%), Romanian (1%) and other/stateless/unspecified (8.9%)<sup>2</sup>. The net migration rate<sup>3</sup> is 1.78 migrant(s)/1,000 population (2023 est.) that puts Germany on the 51 place on the world list<sup>4</sup>.

In 2015, Chancellor Angela Merkel decided to leave German borders open to war refugees – mainly coming from Muslim countries – as a humanitarian necessity. As a result, Germany hosted the second largest numbers of international migrants<sup>5</sup> worldwide (12 million each)<sup>6</sup> in 2015 and the country has also observed an increase over the years, from 8.9 million in 2000 to 13.1 million in 2019<sup>7</sup>. Over 1.2 million first-time asylum applications were lodged in the EU member states in 2015, and Germany was the number one destination country. With the influx of 890,000 people seeking protection in 2015 and a further 210,000 by the end of September 2016, refugee migration in Germany has reached its peak for the time being since the founding of the Federal Republic<sup>8</sup>.

Moreover, Germany remained the main OECD destination country in 2016, with over 1.7 million new international migrants (more

<sup>2</sup> CENTRAL INTELLIGENCE AGENCY (CIA), *The World Factbook. Germany*, <https://www.cia.gov/the-world-factbook/countries/germany/#introduction>.

<sup>3</sup> The net migration rate indicates the contribution of migration to the overall level of population change. The net migration rate does not distinguish between economic migrants, refugees, and other types of migrants nor does it distinguish between lawful migrants and undocumented migrants.

<sup>4</sup> CENTRAL INTELLIGENCE AGENCY (CIA), *The World Factbook. Germany*, <https://www.cia.gov/the-world-factbook/countries/germany/#introduction>.

<sup>5</sup> Foreign-born people.

<sup>6</sup> UNITED NATIONS, *International Migration Report 2015. Highlights*, New York, 2016, p. 1.

[https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015\\_Highlights.pdf](https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015_Highlights.pdf).

<sup>7</sup> IOM, *World Migration Report 2020*, Geneva, 2019, p. 25. [https://publications.iom.int/system/files/pdf/wmr\\_2020.pdf](https://publications.iom.int/system/files/pdf/wmr_2020.pdf).

<sup>8</sup> H. BRÜCKER, N. ROTHER, J. SCHUPP, CH. BABKA VON GOSTOMSKI, A. BÖHM, T. FENDEL, M. FRIEDRICH, M. GIESSLMANN, Y. KOSYAKOVA, M. KROH, E. LIEBAU, D. RICHTER, A. ROMITI, D. SCHACHT, J. A. SCHEIBLE, P. SCHMELZER, M. SIEGERT, S. SIRRIES, P. TRÜBSWETTER, E. VALLIZADEH, *Flucht, Ankunft in Deutschland und erste Schritte der Integration*, in *IAB KURZBERICHT*, 2016, n. 24, p. 1.

than double the levels registered in 2000, but with a decrease compared with more than 2 million in 2015) arriving that year<sup>9</sup>. As the Federal Office for Migration and Refugees fell behind with the registration and application procedures, the number of asylum applications continued to increase in 2016 (around 722,000 first time applications), even though the number of arriving asylum seekers dropped since the introduction of border controls along the Balkan migration route in 2016<sup>10</sup>. By the end of 2017, 970,364 people were recognized as refugees under the 1951 Geneva Convention (compared with 121,837 in Britain and 337,143 in France). An additional 222,683 claims for formal asylum were filed in 2017, and 185,853 more in 2018<sup>11</sup>. Germany was the only European country among the top 10 refugee-hosting countries and continued to host the largest population of refugees and asylum seekers in Europe and the fifth largest in the world in 2018. The scale of refugees and the granted asylum during the peak of crises is well presented by the table below.

Table 1. Germany Refugee Statistics 2015-2018

Date	Refugees Granted Asylum	Annual % Change
2015-12-31	316115	45.69
2016-12-31	669482	111.78
2017-12-31	970302	44.93
2018-12-31	1063837	9.64

Source: <https://www.macrotrends.net/countries/DEU/germany/refugee-statistics>

<sup>9</sup> IOM, *World Migration Report 2020*, Geneva, 2019, p. 31. [https://publications.iom.int/system/files/pdf/wmr\\_2020.pdf](https://publications.iom.int/system/files/pdf/wmr_2020.pdf).

<sup>10</sup> B. GLORIUS, *Migration to Germany: Structures, processes and discourses*, in *Regional Statistics*, 2018, n. 1, p. 18. <http://www.ksh.hu/docs/hun/xftp/terstat/2018/rs080101.pdf>.

<sup>11</sup> T. TRIADAFILOPOULOS, *Germany's Post-2015 Immigration Dilemmas*, in *Current History*, 2019, n. 118, p. 108.



Table 2: Gender breakdown of the total number of applicants 2015-2018

Gender	2015	2016	2017	2018
Men	69%	66%	60%	57%
Women	31%	34%	40%	43%

Source: <https://www.bpb.de/gesellschaft/migration/flucht/zahlen-zu-asyl/265710/demografie>

In Germany, while women accounted for 27.4 per cent of all persons applying for asylum for the first time in the EU-28 in 2015, they accounted for 32.3 per cent in 2016 and 33.2 per cent in 2017. With almost 16 million migrants in 2020, Germany had the largest foreign-born population of any country in Europe<sup>12</sup>, and had around 11 million women with a migration background, including about 3 million third-country nationals<sup>13</sup>.

The pandemic left serious prints in everyday life: closures disrupted long-standing migration patterns and processes, causing significant labour shortages in key sectors such as the agriculture and horticulture<sup>14</sup>. Migrants became worldwide stranded in transit and destination countries, loss of residence permits and lack of resources to return home were among the factors that have affected mobility, COVID-19 outbreaks were detected in camps or migrant reception centres as well in Germany<sup>15</sup>.

In 2021, around 648 000 applications were handed in for international protection in the EU+countries, which is an increase of one third compared to 2020, bringing the number to the same level as in 2018. In the first few months of 2021, the number of applications re-

<sup>12</sup> M. MCAULIFFE, A. TRIANAFYLLIDOU, *World Migration Report 2022. International Organization for Migration (IOM)*, Geneva, 2021, p. 88.

<sup>13</sup> FEDERAL OFFICE FOR MIGRATION AND REFUGEES, *Integration von Migrantinnen in Deutschland*, EMN Deutschland Paper, 08.03.2023, <https://www.bamf.de/SharedDocs/Meldungen/DE/2023/230308-am-weltfrauentag-emn-studie-migrantinnen.html>.

<sup>14</sup> M. MCAULIFFE, A. TRIANAFYLLIDOU, *World Migration Report 2022*, cit., p. 162.

<sup>15</sup> *Ibid.*, p. 163.

mained roughly the same. Record numbers in applications were reached in September and November 2021. The number of people seeking refuge in Europe essentially returned to pre-pandemic levels even while some COVID-19 restrictions were still in place<sup>16</sup>. Germany received the most asylum applications (191,000), rising applications by Afghans and Syrians<sup>17</sup>, between 216 and 266 applications for every 100,000 inhabitants<sup>18</sup>.

Regarding women, many arrived because of family reunification reason, fleeing sexual violence, forced marriage or so-called honour killings. In 2015, women made up some 30 percent of all asylum applicants while in 2023 almost 76 percent of asylum applicants in Germany were males aged 25 to 30 years, while around 19 percent were female. Among asylum seekers 48 percent were girls<sup>19</sup>.

## 2. Legal frame of (migrant) women protection

In Germany, Article 16a (1) of the Basic Law ensures politically persecuted person a basic individual right to asylum in Germany<sup>20</sup>. The recognition procedure for asylum seekers is mainly regulated by the German Asylum Act (AsylG)<sup>21</sup>. Besides that, the regulations of the so-called Common European Asylum System (CEAS) apply, in particular the Dublin Regulation<sup>22</sup>, the EURODAC

<sup>16</sup> EUROPEAN UNION AGENCY FOR ASYLUM (EUAA), *Asylum Report*, 2022, p. 92. [https://euaa.europa.eu/sites/default/files/publications/2022-06/2022\\_Asylum\\_Report\\_EN.pdf](https://euaa.europa.eu/sites/default/files/publications/2022-06/2022_Asylum_Report_EN.pdf).

<sup>17</sup> *Ibid.*, p. 93.

<sup>18</sup> *Ibid.*, p. 94.

<sup>19</sup> See, *Distribution of asylum applicants in Germany in 2023, by age group and gender* <https://www.statista.com/statistics/1107952/asylum-applicants-age-group-gender-germany/>.

<sup>20</sup> Basic Law for the Federal Republic of Germany, [https://www.gesetze-im-internet.de/englisch\\_gg/index.html](https://www.gesetze-im-internet.de/englisch_gg/index.html).

<sup>21</sup> Asylum Act, [https://www.gesetze-im-internet.de/asylvfg\\_1992/index.html](https://www.gesetze-im-internet.de/asylvfg_1992/index.html).

<sup>22</sup> Regulation 604/2013 of the European Parliament and of the Council of 26 June 2013 *establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the*

Regulation<sup>23</sup>, the Asylum Procedures Directive<sup>24</sup>, the Reception Directive<sup>25</sup> and the Qualification Directive<sup>26</sup>.

Germany signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)<sup>27</sup>, an international human rights treaty on preventing and combatting violence against women and domestic violence in May 2011 and ratified it in October 2017. The Istanbul Convention is unique in the sense that it does not contain “rights” but concrete “obligations” as seen in its wording, too<sup>28</sup>. The treaty entered into force in February 2018<sup>29</sup> with obligations binding the Federal Government, the Länder and municipalities. We shall point out that a reporting body

*Member States by a third-country national or a stateless person (recast)*, OJ L 180, 29 June 2013, pp. 31-59.

<sup>23</sup> Regulation 603/2013 of the European Parliament and of the Council of 26 June 2013 *on the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast)*, OJ L 180, 29 June 2013, pp. 1-30.

<sup>24</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 *on common procedures for granting and withdrawing international protection (recast)*, OJ L 180, 29 June 2013, pp. 60-95.

<sup>25</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 *laying down standards for the reception of applicants for international protection (recast)*, OJ L 180, 29 June 2013, pp. 96-116.

<sup>26</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 *on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, OJ L 337, 20 December 2011, pp. 9-26.

<sup>27</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210).

<sup>28</sup> Art. 31 para. 1 of the Istanbul Convention.

<sup>29</sup> Law on the Council of Europe Convention of 11 May 2011 on Preventing and Combating Violence against Women and Domestic Violence of 17 July 2017, BGBl. 2017 II, p. 1026.

on gender-based violence to support the implementation of the Istanbul Convention does not exist yet in Germany<sup>30</sup>.

Regarding the Convention, Germany upholds a territorial residence restriction in connection with Article 59(2) and (3) of the Istanbul Convention that safeguards women with dependent residency suffering from domestic abuse. The Memorandum of the Federal Government regarding the Istanbul Convention lists laws and policies to justify this reservation, among others that the German legal system already guarantees a high level of protection against the various manifestations of domestic violence and violence against women in the areas of criminal law, criminal procedure law and civil law<sup>31</sup>. The concerned article states that necessary legislative or other measures shall be ensured so that victims may obtain the suspension of expulsion proceedings initiated in relation to a residence status dependent on that of the spouse or partner as recognised by internal law to enable them to apply for an autonomous residence permit. Also, it says that a renewable residence permit shall be issued to victims where the competent authority considers that their stay is necessary owing to their personal situation and/or where the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings. Additionally, we can find in Article 31 of the Residence Act<sup>32</sup> about the independent right of residence for spouses regarding domestic violence. It states that if marital cohabitation ends, the spouse's temporary resi-

<sup>30</sup> DEUTSCHES INSTITUT FÜR MENSCHENRECHTE, *Expertise. Gesamtkonzept für zwei Berichterstattungsstellen zu geschlechtsspezifischer Gewalt und Menschenhandel*, Berlin, 2022, p. 8. [https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Weitere\\_Publikationen/Gesamtkonzept\\_BST\\_gG\\_und\\_MH\\_final.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Weitere_Publikationen/Gesamtkonzept_BST_gG_und_MH_final.pdf).

<sup>31</sup> DEUTSCHER BUNDESTAG, Entwurf eines Gesetzes zu dem Übereinkommen des Europarats vom 11. Mai 2011 zur Verhütung und Bekämpfung von Gewalt gegen Frauen und Häusliche Gewalt (Denkschrift), *Bundestagsdrucksache* (BT-Drs.) 18/12037 (2017), 18/ 12037 vom 24. April 2017, p. 51. <https://dserver.bundestag.de/btd/18/120/1812037.pdf>.

<sup>32</sup> Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Residence Act, [https://www.gesetze-im-internet.de/englisch\\_aufenthg/](https://www.gesetze-im-internet.de/englisch_aufenthg/).

dence permit is extended by one year as an independent right of residence unrelated to the purpose of the subsequent immigration of dependants if marital cohabitation has lawfully existed in the federal territory for at least three years and the foreigner possessed a temporary residence permit, permanent settlement permit or EU long-term residence permit up to that time, unless the foreigner was unable to apply for an extension in time for reasons beyond his or her control. However, the requirements for three-year-long lawfully existed marital cohabitation shall be waived if necessary to enable the spouse to continue his or her residence in order to avoid particular hardship. Particular hardship means especially if the marriage is not valid or has been suspended under German law if continuing marital cohabitation is unreasonable due to the harm to the foreigner's legitimate interests; in particular, this is to be assumed if the spouse is the victim of domestic violence.

### *3. Violence against migrant women upon arrival*

The right to humane accommodation and protection from violence derives from the German Constitution, national laws and international treaties: in Germany, the responsibility for accommodating refugees lies with the Länder and the municipalities. Since 2019, the Asylum Act requires the Länder to ensure the protection of women and vulnerable groups with offering accommodation. Section 44 (2a) Asylum Act states that federal states should take suitable measures to ensure the protection of women and vulnerable persons when accommodating asylum seekers in accordance with paragraph 1. As seen in section 53 (3) this applies to accommodation in communal centres. In Germany, we can find so-called AnKER facilities which are arrival, decision-making and return facilities. Besides these, there are other accommodation facilities, like initial reception centres with different requirements in the federal states, municipalities, districts and cities.

After the 2015's crises, in 2016, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth launched a Joint Initiative to improve the protection, care and support among other women living in refugee accommodation and to contribute to their well-being and integration. Besides that the Ministry published in 2022 the fourth

edition of the Minimum Standards for the Protection of Refugees in Refugee Accommodation Centres<sup>33</sup>. This document contains guidelines for the development, implementation and monitoring of individual protection plans. The Federal Ministry also funds several projects to support the Länder and refugee accommodations in the implementation of measures to protect against violence<sup>34</sup>.

Many female refugees are chronically exposed to sexual violence, either by other refugees or by facility staff<sup>35</sup>, and many community refugee hostels are not safe for refugee women. There is no legal requirement to separate men and women in facilities that are also overcrowded making very hard or impossible to separate. This can lead to a more vulnerable position to sexual violence. When sexual violence occurs, many women do not file a report for fear of harming their chances of being granted asylum. In addition, “sexual violence offenders are sent back to reception or accommodation centres after serving time in prison”, further endangering the safety of female residents<sup>36</sup>.

#### 4. *The asylum procedure in the light of gender-based violence*

Women are informed on their arrival at the accommodation center about the possibility of gender-specific asylum in accordance with sec-

<sup>33</sup> FEDERAL MINISTRY FOR FAMILY AFFAIRS, SENIOR CITIZENS, WOMEN AND YOUTH, *Minimum Standards for the Protection of Refugees in Refugee Accommodation Centres*, Köln, 2021. <https://www.bmfsfj.de/resource/blob/184702/8c9c4cf873963d1ffcb51d1370222d1a/mindeststandards-fuer-gefluechteten-menschen-englisch-data.pdf>.

<sup>34</sup> *Comments submitted by Germany on GREVIO's final report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence* (Baseline Report) Received by GREVIO on 30 September 2022 GREVIO/Inf(2022)22 Published on 7 October 2022, p. 35.

<sup>35</sup> A. BONEWIT, R. SHREEVES, *Reception of female refugees and asylum seekers in the EU. Case study Germany*. Brussels, 2016, p. 27.

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

<sup>36</sup>A. ESPOSITO, *Integrating Refugee Women into Germany*, in *Harvard International Review*, 24 January 2022, <https://hir.harvard.edu/integrating-refugee-women-into-germany/>.

tion 3a (2) no. 6 Asylum Act (AsylG), should they have experienced gender-specific violence in their country of origin or while they were fleeing, or should they be threatened by gender-specific violence.

The Federal Office for Migration and Refugees has internal guidelines in the context of gender specific persecution and revised and updated its concept for identifying vulnerable persons in the asylum procedure. There are specially trained case officers for particularly vulnerable groups of individuals as unaccompanied minors, victims of torture, victims of trauma and persons persecuted because of their gender, as well as victims of trafficking in human beings<sup>37</sup>. These specialised officers will take over the interviewing and decision-making process for asylum status from non-specialised officers<sup>38</sup>.

According to the EU legislation, gender is an aspect which needs to be taken into account when assessing an applicant's individual position, acts of a gender specific nature are recognised as acts of persecution and gender is recognised to be a ground for membership of a particular social group and gender-based violence shall be taken into account as grounds for persecution as required for a refugee status. However, we shall point out that for example female genital mutilation is not explicitly mentioned in asylum procedures in Germany, and as a result, the affected women often do not know that they have the right to claim protection and that they can claim it as a reason for asylum<sup>39</sup>.

Regarding gender-based violence cases, we can see that when granting refugee status, the applicant's age is taken into consideration when at risk of female genital mutilation. We can follow this in case 2 K 562/07. It concerned an applicant, born in 2005 in Germany, a Nigerian citizen. Her mother, also a Nigerian citizen and member of the Edo ethnic group, came to Germany in 2004. The applicant's mother was the holder of a residence permit because of another child, born in

<sup>37</sup> FEDERAL OFFICE FOR MIGRATION AND REFUGEES, *The stages of the German asylum procedure. An overview of the individual procedural steps and the legal basis*, 2023, cit., p. 39.

[https://www.bamf.de/SharedDocs/Anlagen/EN/AsylFluechtlingsschutz/Asylverfahren/das-deutsche-asylverfahren.pdf?\\_\\_blob=publicationFile&v=18](https://www.bamf.de/SharedDocs/Anlagen/EN/AsylFluechtlingsschutz/Asylverfahren/das-deutsche-asylverfahren.pdf?__blob=publicationFile&v=18).

<sup>38</sup> A. BONEWIT, R. SHREEVES, *Reception of female refugees and asylum seekers in the EU*, cit., p. 23.

<sup>39</sup> TERRE DES FEMMES, *Weibliche Genitalverstümmelung*, cit.

2008 and having German citizenship. The applicant's father, also a Nigerian citizen, entered Germany in 1990 and applied for asylum. Because he was married to a German woman, he received a residence permit in 1993. They were divorced in 1998, and he had "tolerated status". After an application for a residence permit was rejected, the applicant applied for refugee status. Her mother, in her name, argued that the applicant, in case of return to Nigeria, would be at risk of being circumcised by force. The Administrative Court Aachen found that it was unlikely that the applicant was at risk, because at her age (five years) she was older than the age when the ethnic group used to circumcise children and the fact that both her parents opposed the practice<sup>40</sup>.

The Court took into consideration the place of women in a society, too. This was in a case when it stated that the applicant belonged to the particular social group of "unmarried women from families whose traditional self-image demands a forced marriage" and her rights would be violated by forced marriage, including the use of physical and psychological violence, it constitutes severe violations of basic human rights, thus according to the court the applicant was eligible for refugee status. In this case the applicant, born in 1991, was an Afghan citizen and belonged to the Hazara ethnic group. She came to Germany in January 2011 and applied for refugee status. She went to school in Iran for six years, but had no vocational education and no work experience. She stated that her father had forced her to marry the friend of a paternal uncle in Iran. After the wedding ceremony she ran away to her aunt, who organised her departure to Germany<sup>41</sup>.

<sup>40</sup> Administrative Court Aachen, 10 May 2010, 2 K 562/07.A  
<https://www.asylumlawdatabase.eu/en/case-law/germany-administrative-court-aachen-10-may-2010-2-k-56207a#content>.

<sup>41</sup> Administrative Court Augsburg, 16 June 2011, Au 6 K 30092.  
<https://www.asylumlawdatabase.eu/en/case-law/germany-administrative-court-augsburg-16-june-2011-au-6-k-30092#content>.



## 5. Violence against migrant women living in the country

### 5.1. Forced marriage

The Universal Declaration of Human Rights states that a marriage may only be contracted when the future spouses freely and unreservedly consent to it<sup>42</sup>. In the case of forced marriage, a marriage takes place against the will of one or both spouses. We shall point out that it is not a forced marriage but an arranged one when the family arranges the marriage but the spouses agree. Also, minors are not allowed to marry in a religious or traditional ceremony, even if supposedly voluntary. Child marriage occurs if one spouse has not yet reached the age of marriage. In 2022, there were 67 cases of forced marriage recorded by the police in Germany<sup>43</sup>.

The origin of the threat or execution of forced marriages is linked to specific, hardly generalisable mixtures of different factors, tends to indicate a decoupling of objectively describable socio-economic situations and complexes of motives that are to be found in the case of (threatened) forced marriage<sup>44</sup>.

According to the German Criminal Code (StGB)<sup>45</sup>, forced marriage in Germany is prohibited. Section 237 (1) states that whoever unlawfully, by force or threat of serious harm causes a person to enter into a marriage incurs a penalty of imprisonment for a term of between six months and five years. The act is unlawful if the use of force or the threat of harm is deemed reprehensible in respect of the desired objective. In addition, if somebody by force or threat of serious harm or through deception takes that person or causes a person to travel to a

<sup>42</sup> Article 16, Universal Declaration of Human Rights.

<sup>43</sup> See, *Anzahl der polizeilich erfassten Fälle von Zwangsheirat in Deutschland von 2013 bis 2022*, März 2023, <https://de.statista.com/statistik/daten/studie/309403/umfrage/polizeilich-erfasste-faelle-von-zwangsheirat-in-deutschland/>.

<sup>44</sup> T. MIRBACH, T. SCHAACK, K. TRIEBL, *Zwangsverheiratung in Deutschland—Anzahl und Analyse von Beratungsfällen*, Kurzfassung, Wissenschaftliche Untersuchung im Auftrag des Bundesministeriums für Familie, Senioren, Frauen und Jugend, Hamburg, 2011, p. 44.

<sup>45</sup> German Criminal Code (Strafgesetzbuch – StGB) see [https://www.gesetze-im-internet.de/englisch\\_stgb/](https://www.gesetze-im-internet.de/englisch_stgb/).

territory outside the territorial scope of this statute or prevents that person from returning from there incurs the same penalty<sup>46</sup>. According to Section 237 (2) of the StGB, those persons who cause forced marriages to take place abroad by force, threat or trickery are to be punished. Parents can also initiate a forced marriage in order to secure entry into another country or residence status for the child and the family. However, according to the Civil Code, a forced marriage can be annulled<sup>47</sup> with an application period of one year or three years, respectively<sup>48</sup>. Criminal offences like rape, smuggling, abduction, trafficking in human beings can be prosecuted in connection with a forced marriage. We shall point out that according to section 37(2a) of the Residence Act a trafficked person who is forcibly married abroad and prevented from returning to Germany can be granted a right of return, if it can be presumed that the person will integrate in Germany due to his or her education and previous living conditions.

Here, we should mention early marriages, too. The Act to Combat Child Marriage came into force in 2017 with the minimum age for marriage at 18 without any exceptions. There is a possibility to annual

<sup>46</sup> Section 237 (1) StGB.

<sup>47</sup> Section 1314 StGB. (2) In addition, a marriage may be annulled if 1. a spouse was in a state of unconsciousness or temporary mental disturbance at the time the marriage was concluded; 2. a spouse did not know, at the time the marriage was concluded, that a marriage was taking a spouse was induced to enter into the marriage by deceit as to circumstances that, had they been aware of the factual position and correctly appreciated the nature of marriage, would have prevented that spouse from entering into the marriage; this does not apply where the deceit relates to financial circumstances or was committed by a third party without the knowledge of the other spouse; 4. a spouse was unlawfully induced to enter into the marriage by duress; 5. both spouses were in agreement at the time the marriage was concluded that they did not intend to create a duty under section 1353 (1).

<sup>48</sup> Section 1317 StGB.

(1) In the cases governed by section 1314 (2) nos. 2 and 3, the petition may be filed only within one year, and in the cases governed by section 1314 (2) no. 4, it may be filed only within three years. The period for filing begins on the discovery of the mistake or the deceit or upon the duress having ended; however, the period for the legal representative of a spouse who is incapable of contracting does not begin before the date on which they become aware of the circumstances that cause the period to commence. Section 206 and section 210 (1) sentence 1 are to be applied accordingly to the running of the period.

the marriage if a spouse was 16 years old at the time of marriage. In this regard, the Federal Constitutional Court ruled on the question of whether parts of the above-mentioned Act are compatible with the Basic Law. According to its judgement, marriages of under 16 years old persons and contracted abroad can still be declared null and void in the future without a case-by-case examination, however, this requires more precise follow-up regulations, which have been lacking in the law so far<sup>49</sup>. The grounds of this judgement lay in family court proceedings that concerned a marriage between Syrian nationals, a man born in January 1994 and a woman born in January 2001. The marriage took place in 2015 before a Sharia court in Syria in accordance with the law of that country. Due to the Syrian war, they fled together to Germany, where they arrived in August 2015. The local youth welfare office took care of the young woman and placed her in a youth welfare facility for unaccompanied female minors. In addition, it suggested the appointment of a guardian for her. The family court determined that parental care for the young woman was suspended, ordered guardianship and appointed the youth welfare office as official guardian. The husband then turned to the family court and applied for a review of the custody and, referring to the marriage being valid under Syrian law, for his wife to be returned to him. The Federal Court of Justice, which had final jurisdiction in the original proceedings, referred the question to the Federal Constitutional Court as to whether it is compatible with Section 1, Article 2(1), Article 3(1) and Article 6(1) of the German Basic Law that Section 13 (3)1 of the Introductory Act to the German Civil Code<sup>50</sup> qualifies a marriage concluded with the participation of a minor under foreign law as a non-marriage under German law – subject to the exceptions in the transitional provision of Article 229 (4)4 of the Introductory Act to the German Civil Code –

<sup>49</sup> Beschluss vom 01. Februar 2023 1 BvL 7/18, Gesetz zur Bekämpfung von Kinderehen mangels Regelungen zu den Folgen und zu Fortführungsmöglichkeiten nach inländischem Recht unwirksamer Auslandskinderehen mit dem Grundgesetz unvereinbar, Pressemitteilung Nr. 36/2023 vom 29. März 2023, <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2023/bvg23-036.html>.

<sup>50</sup> Einführungsgesetz zum Handelsgesetzbuch. See <https://www.gesetze-im-internet.de/hgbeg/index.html>.

without a case-by-case examination if the minor had not yet reached the age of 16 at the time of the marriage. It considered the domestic invalidity of the foreign marriages concerned, as stipulated in Article 13, paragraph 3, no. 1 of the Introductory Act to the German Civil Code, to be incompatible above all with Article 6, paragraph 1 of the Basic Law.

### 5.2. *Female genital mutilation*

Female genital mutilation (FGM) is a gender-specific human rights violation, and a transcultural problem<sup>51</sup>. Proponents judge female genital mutilation within their culture and see enough perceived benefits to continue the practice with motivations as tradition, religion, medical myths and economic reasons<sup>52</sup>. Female genital mutilation affects approximately 200 million women and girls worldwide<sup>53</sup>. The number of women affected by in Germany (without German citizenship) was at least 47,359, and most of these affected women came from Eritrea, Indonesia, Somalia, Egypt and Ethiopia in 2016<sup>54</sup>, a year after the start of the migration wave. The number of women and girls in Germany who have undergone female genital mutilation has increased to 68,000 in 2020, up to 44% from the estimated number in 2017, and attributed to greater immigration from countries where female genital mutilation

<sup>51</sup> DAMIGRA-DACHVERBAND FÜR MIGRANTINNENORGANISATIONEN, *Gewalt gegen ALLE Frauen stoppen!*

<https://www.damigra.de/themen/gewaltschutz/>.

<sup>52</sup> TERRE DES FEMMES, *Weibliche Genitalverstümmelung*, cit.

<sup>53</sup> DAMIGRA-DACHVERBAND FÜR MIGRANTINNENORGANISATIONEN, *FGM-C: Warum ein Eintrag ins Strafgesetzbuch Frauen und Mädchen noch nicht schützen wird*  
<https://www.damigra.de/meldungen/fgm-c-warum-ein-eintrag-im-strgesetzbuch-allein-frauen-und-maedchen-nicht-schuetzen-wird/>.

<sup>54</sup> J, NESTLINGER, P. FISCHER, S. JAHN, I. IHRING, F. CZELINSKI, *Eine empirische Studie zu weiblicher Genitalverstümmelung in Deutschland Daten-Zusammenhänge-Perspektiven*, Freiburg, 2017, p. 22.

<https://www.netzwerk-integra.de/wp-content/uploads/2021/07/Eine-empirische-Studie-zu-Genitalverstuemmung-in-Deutschland.pdf>.

is more common<sup>55</sup>. Current figures<sup>56</sup> show that 70,000 women in Germany are affected by female genital mutilation with the number continued to rise in times of the Corona pandemic.

As for the legal background, Articles 38 and 42 of the Istanbul Convention describe the obligation to prevent and condemn FGM and to protect those threatened and affected. In Germany, female genital mutilation has been a criminal offence according to Section 226a of the StGB since 2013. Section 226a of the StGB states that person who mutilates the external genitalia of a female person incurs a penalty of imprisonment for a term of at least one year, with in less serious cases, the penalty is imprisonment for a term of between six months and five years. Moreover, the principle of extra-territoriality applies to the Code. Thus, according to section 5, offences against physical integrity committed abroad with specific domestic connection in cases under section 226a are to be penalised if the offender is a German national at the time of the offence or if the offence is directed against a person whose domicile or habitual residence is in Germany.

Furthermore, section 7 declares that in other offences committed abroad against a German national are to be penalised, if the act is a criminal offence at the place of its commission or if that place is not subject to any criminal law jurisdiction and if the act is a criminal offence at the place of its commission or if that place is not subject to any criminal law jurisdiction. Here, the offender shall be a German national at the time of the offence or became a German national after its

<sup>55</sup> DEUTSCHE WELLE, *Female genital mutilation: 68,000 victims in Germany*, June 25, 2020.

<https://www.dw.com/en/female-genital-mutilation-report-shows-68000-victims-in-germany/a-53937735>.

<sup>56</sup> The Federal Statistical Office as well as the surveys of UNICEF work with the categorization by citizenship – although female genital mutilation is practiced on the basis of ethnical identity – the calculated numbers can differ from reality especially in countries with a low prevalence rate. See, TERRE DES FEMMES, *Statistics Female Genital Mutilation*, cit.

commission or else was a foreign national at the time of the offence, was found to be staying in Germany<sup>57</sup>.

We shall point out that according to section 171, violation of duties of care or education is punishable, too. This means parents can be prosecuted, when they did not prevent a mutilation committed abroad. Not only assisting another person in Germany or abroad in performing female genital mutilation, but persuading others to perform female genital mutilation is a criminal offence. In addition, persons performing female genital mutilation, persuading others to help them or failing to protect their daughters may additionally lose their residence title and they may be refused entry to Germany.

## 6. Conclusion

Women can experience sexual violence in their home countries, during the journey to a new country, and in the new country. The paper analyses their life-situations, three final stages of the migration process into a new country where women migrant can meet gender-based violence: the arrival to accommodations, the asylum procedure and living in the new country. Migrant women are more isolated in their accommodations than men. They hardly know about their rights or support system. Authorities are in central position regarding the protection against gender-based violence and even though women can base their asylum claims on gendered-base violence, often they feel shame to use this possibility. In order ensure that the concerned women have access to and can use protection measures, gender-specific violence shall be discussed in connection with standards, complaints and assistance. As for prevention, when living in a new country, information about the host country's legal provisions regarding gender-based violence, in our case forced marriage and female genital mutilation can help to prevent committing these offences.

<sup>57</sup> And although extradition legislation would permit extradition for such an offence, is not extradited because no request for extradition is made within a reasonable period, is rejected or the extradition is not feasible.

*Abstract*

Migration motives for migrants can be among other work or family reunification. But not for everybody is migration voluntary for reasons as fleeing war or persecution. Germany became one of the main destination countries during the migration crises of 2015. The aim of the paper is to analyse the gender based challenges met by a vulnerable migrant woman group, refugees and asylum seekers in Germany. The paper analyses three stages: the arrival, the asylum procedure and living in the host country. The analyse is made through two types of violence: forced marriage and female genital mutilation thus it enables us to gain a picture about the hindrance of protections for this vulnerable women group.

**KEYWORDS:** Women migrants – gender-based violence – Germany – female genital mutilation – forced marriage

## DONNE MIGRANTI IN GERMANIA: SFIDE E PROTEZIONE

I motivi che spingono i migranti a migrare possono essere, tra gli altri, il lavoro o il ricongiungimento familiare. Ma non per tutti la migrazione è una scelta volontaria essendo causata da ragioni come la fuga da guerre o persecuzioni. La Germania è diventata uno dei principali Paesi di destinazione durante la crisi migratoria del 2015. L'obiettivo del presente contributo è analizzare le sfide di genere affrontate da donne migranti vulnerabili, rifugiate e richiedenti asilo in Germania. Il documento analizza tre fasi: l'arrivo, la procedura di asilo e la vita nel Paese ospitante. L'analisi è condotta attraverso il riferimento a due tipi di violenza: il matrimonio forzato e le mutilazioni genitali femminili e ci permette di avere un quadro dei motivi che ostacolano la tutela di questo gruppo di donne vulnerabili.

**KEYWORDS:** Donne migranti – violenza di genere – Germania – mutilazioni genitali femminili – matrimoni forzati