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Assessing the severity of domestic violence

Sociological background report

Sociological considerations regarding the stipulation by the Federal Supreme Court that spousal violence must be "of a certain intensity" in order to qualify as important personal reasons for the independent right of residence in Switzerland within the meaning of Art. 50 para 2 of the Federal Act on Foreign Nationals (FNA) (*Ausländergesetz AuG*).

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Contents

| | | |
|----------|---|-----------|
| 1 | Introduction | 3 |
| | A) Mandate | 3 |
| | B) Procedure and contents of the report | 4 |
| | | |
| 2 | Discussion | 5 |
| | A) Differentiation of patterns of violence in couple relationships | 5 |
| | Initial situation: "certain intensity of marital violence" according to the Federal Supreme Court decision | 5 |
| | Reasons for differentiating patterns of violence | 6 |
| | Research indicates different patterns of violence | 6 |
| | | |
| | B) Key aspects for differentiating domestic violence | 7 |
| | Introductory remarks | 7 |
| | a) Intimate terrorism | 9 |
| | b) Situational couple violence | 11 |
| | c) Impact of domestic violence on health and personality | 12 |
| | d) Behaviour of victims of domestic violence and response of the institutions | 14 |
| | e) Conclusions regarding the endangerment to the personality | 18 |
| | | |
| 3 | Conclusions | 20 |
| | A) "Intensity" as an inadequate criterion | 20 |
| | B) No severity threshold, but rather plausibility | 20 |
| | C) Prerequisites for adequate assessment | 21 |
| | | |
| | Annex | 23 |
| | Bibliography | 23 |
| | List of experts | 26 |

*Violence does not start,
with one person strangling another.
It begins when one person says:
"I love you: You belong to me!"*
Erich Fried, translation of "Die Gewalt" (1st verse)

1 Introduction

A) Mandate

In Article 50 paragraph 2 of the new Federal Act on Foreign Nationals (FNA, *Ausländergesetz*) which came into force on 1 January 2008, domestic violence is explicitly included as an "important personal reason" for the granting or extension of a residence permit for a victim of violence: "There are important personal reasons (...) in particular if a spouse has been the victim of marital violence ..." (Art. 50 para 2 FNA). This is intended in particular to prevent cases of hardship for people who are the victims of violence within an intimate relationship and whose residency status is dependent on remaining together with their spouse.¹

In November 2009, the Swiss Federal Supreme Court made a key decision affecting application in practice by stipulating a condition that marital violence must meet in order to qualify as an important personal reason within the meaning of Art. 50 para 2 FNA (Federal Supreme Court Decision: BGE 2C_460/2009). According to this condition, domestic violence must exhibit a "certain intensity":

S'agissant de la violence conjugale, il faut toutefois qu'il soit établi que l'on ne peut exiger plus longtemps de la personne admise dans le cadre du regroupement familial qu'elle poursuive l'union conjugale, parce que cette situation risque de la perturber gravement. La violence conjugale doit par conséquent revêtir une certaine intensité. (from: BGE 2C_460/2009, E 5.3)
(As regards marital violence, it must be established that a person admitted for reasons of family reunification may not be expected to live with his/her spouse any longer because this situation risks seriously upsetting him/her. Marital violence must therefore involve a certain intensity.)

This marital violence condition formulated by the Supreme Court throws up questions and requires further clarification – especially with regard to its application in practice.

- What does "marital violence of a certain intensity" mean?
- How can this be adequately judged? Or, in other words, what must be taken into account when assessing the severity of domestic violence in couple relationships?

¹ Cf. the Federal Council Dispatch concerning the Federal Act on Foreign Nationals of 8 March 2002 (section 1.3.7.6, p. 3754).

At the beginning of 2012, the Federal Office for Gender Equality (FOGE) commissioned Social Insight to reflect on the Supreme Court's stipulation of a "certain intensity of marital violence" from a sociological perspective. Social Insight was asked to produce a background report addressing the above questions, what violence of a certain intensity means and what must be taken into account when assessing the severity of such violence. In answering these questions, the report should reference and encompass the experience and knowledge of sociological research in the field of domestic violence.

B) Procedure and contents of the report

The report is based on the following:

- Web search on the topic
- Reception of the relevant literature and research in the field
- Reception of relevant materials: legislation, ordinances and directives, Federal Supreme Court decisions (BGE) etc.
- International research network: consultations with experts on the issue (list in Annex)

Part A of section 2 sets out fundamental considerations and the state of research on the subject of the severity of domestic violence.

Part B of section 2 answers the question of how domestic violence can be understood with respect to the issue under discussion and what aspects need to be taken into account when assessing it.

Section 3 presents the conclusions.

We would like to express our thanks to all the experts and colleagues consulted for their assistance in illuminating the issues examined in this report.

2 Discussion

A) Differentiation of patterns of violence in couple relationships

Initial situation: "certain intensity of marital violence" according to the Federal Supreme Court decision

In its decision of 4 November 2009 (2C_460/2009 E. 5.3), the Federal Supreme Court requires that marital violence must be of "*une certaine intensité*" to qualify as an "important personal reason" for continued residence in Switzerland. If marital violence of a "certain intensity" is present, then a person granted residence for the purpose of family reunification is to be permitted to remain independently in Switzerland. If the violence intensity criterion is not met, then an independent residence permit is not to be granted, or at least not on the grounds of marital violence. The stipulation that violence suffered is acceptable as an important personal reason, that is to say as a case of hardship, only above a "certain degree of severity", is confirmed again in the decision of 12 March 2010 (BGE 2C_554/2009 E. 2.1). On 7 July 2011, section 6.14.3 'Important personal reasons' of Directive 6 on family reunification (*Weisung 6 Familiennachzug*) of the Foreign Nationals Act issued by the Federal Office for Migration (FOM), which is also definitive for application in practice by the authorities, was consequently amended, and on 1 January 2012 paragraph 6bis was added to Article 77 of the Ordinance on Admission, Residence and Gainful Employment (*Verordnung über Zulassung, Aufenthalt und Erwerbstätigkeit VZAE*).

Reasoning: Domestic violence is seen as an important personal reason "if the personality of the individual admitted for family reunification purposes [usually the female spouse] is seriously endangered by cohabitation and that [consequently] continuance of the spousal relationship may no longer reasonably be expected" (BGE 2C_554/2009 E. 2.1).² An endangerment to the personality of an individual and the unreasonable expectation of cohabitation is, according to the Federal Supreme Court, not to be assumed for marital violence in general, but only when the violence perpetrated exceeds a "certain intensity".

With domestic violence, therefore, a distinction is drawn between two groups: a) cases of marital violence *with* a certain intensity and consequently, although this remains implicit in the respective statement of the Supreme Court, b) cases of marital violence *without* such an intensity. In other words, a distinction is drawn between cases which demonstrate "sufficient" violence to qualify for independent residence and ones which demonstrate "too little" violence.

² From: Directive on Foreign Nationals Act (version of 30 September 2011, p. 30; for German pdf see: http://www.bfm.admin.ch/content/bfm/de/home/dokumentation/rechtsgrundlagen/weisungen_und_kreisschreiben/auslaenderbereich/familiennachzug.html; accessed on: 9.02.2012)

Reasons for differentiating patterns of violence

To many ears it will seem cynical to differentiate between "sufficient" and "too little" violence or, what amounts to the same thing, between marital violence with a "certain intensity" and marital violence without such a "certain intensity".³

Consequently, if we nevertheless discuss differentiated patterns of violence in couple relationships in the text below, as can be helpful in illuminating the issue in question, this requires an ethically sound explanation. We consider a differentiated and empirically informed discussion of the forms and impact of domestic violence as a necessary prerequisite to enable us to (better) identify and adequately evaluate and address the patterns of violence involved in "domestic violence" in legal rulings and administrative practice. If domestic violence is identified as such, then this contributes to the actual application of Art. 50 para 2 FNA in the intended manner. Affected spouses and their children who have immigrated into Switzerland for the purpose of family reunification and are affected by the problem of domestic violence can then be protected from inhumane situations that are unworthy of the humanitarian tradition of Switzerland.

Research indicates different patterns of violence

Based on the current state of knowledge and research into violence in intimate relationships, we do not assume (contrary to the decision of the Federal Supreme Court) that the "intensity" of certain (physical) acts of violence can/may/should be a meaningful criterion for assessing marital violence.

Instead we must focus – as research has shown – on the patterns of behaviour of the perpetrators of violence and above all on the experience of violence and its effects on the persons affected.⁴

Domestic violence is not simply about one-off violent incidents. The impact and significance of violence cannot be defined and/or measured (solely) in terms of the type and the number of physical

³ Several considerations point out the unsoundness of attempts by states to legitimize, either directly or indirectly, any form of violence in relationships. To mention in this context is the due diligence owed by the state to accept responsibility for protecting the human rights of individuals; an obligation which, in the area of violence against women – even if perpetrated by private individuals – is grounded in international law (UN: CEDAW Rec. 19 1992). Reference is furthermore to make to the practice of the civil courts in Switzerland which, when a person applies for divorce or separation on the grounds of domestic violence, does *not* require a certain degree of violence in order to grant a separation. The Basel-Landschaft cantonal court, for instance, states the following with respect to the requirements for granting a separation: "In accordance with Art. 175 of the Swiss Civil Code, a spouse is entitled to dissolve the shared household for as long as his or her personality, financial security or the well-being of the family is seriously threatened by cohabitation. The concept of personality is interpreted very broadly here, namely encompassing the right to self-fulfilment, self-determination and autonomy. Moreover, every serious matrimonial breakdown qualifies as a serious endangerment to the personality of the spouse seeking separation. The broad definition of the concept of endangerment to an individual's personality takes particular account of the fact that, in such an intensive, that is to say emotional/spiritual, physical and economic relationship as a marriage, the right to independence is more greatly affected than in any other relationship or community (...)" (see: <http://www.baselland.ch/033-htm.315041.0.html>). If the Federal Supreme Court's argumentation for migrants with a residency clause implicitly presents a "low level", or whatever degree is posited, of marital violence as legitimate and not posing an endangerment to the personality, then this takes no account whatsoever of the aforesaid close intensive relationship in a marriage.

⁴ Martinez et al. (2005, 2007), Schröttle (2008a), Stark (2007: 92ff.), Piispa (2002).

attacks/assaults. In the context of an intimate life partnership such as marriage, the impact is determined by the collective effect and the interrelatedness of the (individual) acts.

This means that for the purposes of assessment it is necessary to take into account both the behaviour *patterns* of the perpetrator *and* the experience of violence, i.e. the (subjectively experienced) threat and the short and long-term effects of the violence on the person concerned.

In academic discourse about violence in couple relationships, it has long been recognized that domestic violence is to be understood as a multilayered pattern of behaviour that encompasses a wide range of acts which cannot be reduced to physical attacks, nor can it be measured primarily in terms of such attacks.⁵ In the 1990s, M.P. Johnson, a USA-based researcher in the field of violence, proposed a distinction between two different types of violence in intimate relationships which proved helpful for research in this field. Johnson differentiates between the pattern of violence exhibited by "intimate terrorism" and incidents that he categorizes as "situational couple violence".⁶ Johnson's theoretically and empirically substantiated distinction contributed to the differentiation of the pattern of domestic violence and to insights into its specific dynamics. Stark (2007) uses the term "coercive control" to describe and analyse the "intimate terrorism" pattern of violence. In the following, we will use Johnson's terms "intimate terrorism" and "situational couple violence" to describe the two types of pattern.

Both concepts – "intimate terrorism" and "situational couple violence" – may be subsumed under the umbrella term of "domestic violence".

It is very important to emphasize that the two types do not simply refer to two and only two concrete forms of domestic violence. "Intimate terrorism" and "situational couple violence" are rather *analytical or theoretical concepts*.⁷ In everyday life, the forms and patterns of domestic violence are extremely diverse.

B) Key aspects for differentiating domestic violence

Introductory remarks

Over the last ten to fifteen years, many things have changed in the field of "domestic violence". As in other countries, new policies and laws, directives, checklists and recommendations have been developed by the state and various institutions in Switzerland. These set out how professionals working in social services and healthcare, including psychology, as well as the police and justice authorities should proceed with respect to victims and perpetrators in cases of domestic violence and

⁵ Hagemann-White et al. (1981), Kelly (1988), Hanmer (1996), Hagemann-White, Kelly, Römkens (2010: Annex 3, p. 48).

⁶ For a description of the different patterns of violence see, for example, Johnson (2005).

⁷ Johnson (2005) developed the two types of patterns of violence ("intimate terrorism" and "situational couple violence") following the discovery that wide-scale population surveys on violence in couple relationships and institutional point-of-service samples produced different findings. The empirical and theoretical determination of the two different patterns of violence provides an explanation of the different data obtained from the two types of survey. This also has a bearing on the gender dimension of the issue. For an in-depth discussion see: Gloor/Meier (2003).

how they can provide support. As a result, a number of other bodies and institutions have joined the ranks of the advisory services specializing in violence within couple relationships (women's advice centres, women's shelters, victim counselling and victim support services). At the same time, the specialist sector has grown to include, for instance, specialist services for perpetrators of violence and also for male victims of violence. The driving force behind this process has been the cantonal intervention agencies for domestic violence that have become established in Switzerland since the end of the 1990s.

At the same time, over the intervening period a certain image of how domestic violence is manifest has become established in people's minds: a black eye, a large bruise, perhaps even broken bones.⁸ The violence as imagined focuses on identifiable (repeated) physical assaults which, if sufficiently serious, can be medically attested and which in police terms can be categorized as assaults, actual bodily harm or grievous bodily harm etc. "Domestic violence" is primarily equated with physical violence; battering is the prototype for this type of violence. It is this compelling image which has become established in public debate, and in some cases also in various professions. It is both simple and intuitive, as well as convenient, not least because it enables violence to be visibly documented and classified and thus readily covered by common judicial categories.

Nonetheless, this image which reduces domestic violence simply to physical assault, does not adequately reflect the reality of the problem and is (often) wrong, as both existing research evidence and the expert knowledge and daily experience of the specialist agencies working in the field show. Targeted intimidation and denigration, instilling fear and making (death) threats, forbidding and systematically undermining social contacts (social isolation), stalking and constant controlling, reprimanding and punishing a person, to name but a few examples, are just as big a part of domestic violence – but are not covered at all by a purely physical definition of violence. The concept of "intimate terrorism", however, does allow such violence to be included in the definition.⁹

Physical violence thus represents only a part of the whole story.¹⁰ Working with an understanding of domestic violence which is limited to this will make reliable identification impossible. This consequently prevents appropriate social and legal responses – and likewise the recognition of entitlements – by the state and society at large.¹¹

In the following we will present the current state of scientific knowledge relating to the definition and understanding of intimate partner violence, and will discuss the key elements with respect to the

⁸ The consistently similar depiction of the issue of domestic violence in the media reflects this perception of domestic violence as primarily physical violence (e.g.: <http://www.aargauerzeitung.ch/aargau/aargau-will-taetern-von-haeuslicher-gewalt-helfen-106951212>; accessed on: 9.02.2012). For a rare example of visual representation see: www.tagesanzeiger.ch/leben/gesellschaft/Der-Staat-legitimiert-ein-gewisses-Mass-an-Gewalt-gegen-Frauen-/story/12680248 (accessed on: 9.02.2012).

⁹ If domestic violence is to be reliably identified, reliance solely on the terms used in the criminal justice system is of little help.

¹⁰ Domestic violence encompasses the following forms of violence (which may be used alone or in combination): psychological violence, threatening behaviour, sexual violence, social violence, financial violence, stalking and physical violence.

¹¹ For the consequences and risks of an inadequate definition of domestic violence see Regan et al. (2007), Stark (2007:84ff.).

specifics and meaning of "domestic violence". Sections a) to e) address the various aspects as follows:

- a) "Intimate terrorism" as a form of violence is defined. The definition has the disadvantage that it is more complex and multilayered than the neat equation "domestic violence = physical violence". It nevertheless has advantages: qualitatively it much better captures what constitutes domestic violence and what victims of domestic violence suffer, that is to say in a way that is closer to reality.
- b) "Situational couple violence" in intimate relationships is then defined, which differs from the above pattern of violence.

We then discuss the key factors and research findings to be considered in connection with domestic violence and which are of vital importance for dealing with the problem:

- c) The impact and consequences of experiencing violence are examined.
- d) Also set out are the characteristics and special aspects of the behaviour of victims and how the problem is dealt with (by institutions) which arise from the specific situation of the close relationship between victims and perpetrators of domestic violence.
- e) Conclusions with respect to the endangerment to the personality caused by domestic violence round off Part B.

a) Intimate terrorism

Among researchers in the field, the key defining characteristics of intimate terrorism within a relationship that Johnson and other researchers highlighted are now considered to be fundamental elements of the problem definition. Johnson describes the analytical concept of "intimate terrorism" as a *general* pattern of a range of controlling behaviours designed to control the relationship and the partner, to limit the partner's self-determination and to assert one's own rights (of dominance). With this type of behavioural pattern, physical assaults and acts of physical violence are *one* of numerous other acts and behaviours that cumulatively undermine the partner and their position.¹² In this context, research has reached the consensus that domestic violence is to be understood as a multilayered phenomenon.¹³ The use of physical violence per se, or the experience of physical violence respectively, does not adequately define the pattern of domestic violence. The concept of physical

¹² Johnson (2005:323), first described in Johnson (1995). Likewise already at an earlier date: Hagemann-White et al. (1981), Kelly (1988), and Hanmer (1996).

¹³ In recent European research this was shown, for example, by: Heiskanen and Piispa (1998), Piispa (2002), Walby and Allen (2004), Watson and Parsons (2005), and Schrötle (2008a). The wide range of behaviours associated with "intimate terrorism" are shown. It is also clear that the pattern of "intimate terrorism" is *gender-specific*: men are very often the perpetrators, while women are frequently the victims. As the findings make clear, the aim of violent behaviour is to exert control over the partner and determine their actions in all areas of life, i.e. to assert the dominance of the one partner (usually the man) over the other partner (usually the woman). The issue is thus clearly situated in a highly gendered context. See also, for example, the information sheet published in 2011 by the Fachstelle gegen Gewalt (Service for Combating Violence): Aktueller Forschungsstand zu Opfern und Tatpersonen häuslicher Gewalt. Download from: www.ebg.admin.ch/themen/00009/00089/00093/00275/index.html?lang=de (under German title). – This also has obvious implications for the practices of the various institutions.

violence is too narrow.¹⁴ Physical violence *may* be one element of domestic violence. But physical violence *need not* actually be practised in every case where domestic violence is committed/experienced within a relationship. Likewise, the extent or the severity of the individual act(s) of physical violence is not a determining factor for the presence of domestic violence in the sense of intimate terrorism. This pattern of violence is characterized *not by individual* (violent) acts, but by a general/constant pattern of controlling, constraining and power-abusing behaviours in the relationship with the other person. Stark clearly supports this finding when he emphasizes that focusing on individual incidents misunderstands the nature of the pattern of violence manifest as an ongoing process or repetitive behaviour.¹⁵

The spectrum of abusive violent behaviours that also constitute domestic violence – short of physical attacks – is wide. It includes emotional abuse and psychological violence (bullying, ridiculing, humiliating, denigrating, calling stupid, belittling, scolding, jealous behaviour, blaming, calling crazy), isolation (undermining, preventing, forbidding social contacts, confinement), sexual violence (forcing sexual intercourse or non-consensual practices), pressuring through children, abuse of animals (pets), economic violence (withholding money, forbidding work, or forcing to work), threats, intimidation and stalking (threatening with death or suicide, surveillance, controlling, limiting space of action, stalking, instilling fear, leaving no personal space) etc.¹⁶

These behaviours may include physical attacks, but this need not necessarily (always) be the case; moreover, the extent of physical violence may range from a relatively minor physical assault through to homicide. It is characteristic that the different strategies of the controlling behaviour and the exercise of coercion and abuse of power clearly acquire a violent significance even if they are not physical assaults.¹⁷

The terms "intimate terrorism" (Johnson) and "coercive control" (Stark) used in English are deliberately chosen. They seek to correct the false perception that has become fixed in people's minds: these conceptual terms avoid the use of the word "violence" altogether, as it is all too often reduced to physical violence. The conceptual terms "intimate terrorism" and "coercive control" extend the concept of "domestic violence". The advantage of the term "domestic violence" is that it is simple and neat – but consequently also very easily misunderstood, as practice in recent years has gradually and

¹⁴ In their exploratory study of homicides in intimate relationships, Regan et al conclude that by focusing on physical violence and not recognizing the "intimate terrorism" / "coercive control" pattern of violence, the institutions are ignoring significant risk factors (Regan et al. 2007). "If only we'd known", as institutions such as the police came to realize, that control and power claims ("coercive control") play a significant role in domestic violence, then we could have recognized and taken the violence seriously, and could have prevented the worst happening.

¹⁵ Domestic violence, or as Stark terms it "coercive control", is described as a "continuous process" or an "ongoing course of conduct" Stark (2007:101; 102).

¹⁶ For an in-depth discussion of the tactics of coercive control see, for example, Pence/Paymar (1993), and the studies of Stark who describes and documents the wide variety of methods and patterns of behaviours, along with their dynamics and effects (Stark 2007: chapter 8: The Technology of Coercive Control). In order to determine whether a person is suffering domestic violence, it is therefore necessary for a *trained and qualified specialist* to interview the person concerned to elicit the controlling, dominating, constraining, threatening behaviours of the perpetrator that are causing psychological and physical harm.

¹⁷ For example, the impact of an intimidating look from a male partner when a woman knows that he has already resorted to physical violence in a similar situation; the next time a look may be enough for the woman to do what he wants without using physical violence (Johnson 2005:324).

increasingly shown in Switzerland and other countries. The advantage of "intimate terrorism" and "coercive control" is that they do not mention the word "violence", but instead emphasize the basic mechanisms that characterize domestic violence.

b) Situational couple violence

The definition of the "situational couple violence" pattern focuses on physical violence, that is to say physical acts of violence within an intimate relationship (Johnson 2005). In contrast to intimate terrorism, the use of physical violence, the second element of the definition, is however *not* embedded in a general pattern of controlling and power-abusing behaviours within the relationship. This pattern primarily describes a specific conflict situation, that is to say a single, clearly demarcated incident.

There are many reasons for such conflicts in relationships, and to a certain extent it may be considered normal/usual for them to arise (either rarely or frequently). Moreover, the behaviour exhibited when such (couple) conflicts occur varies: it may consist of (more or less) rational discussions, noisy arguments, or may escalate to physical violence. Johnson cites family conflict theories to support his description. These theories assume that conflicts will arise sooner or later in families or couples. Every couple experiences periods or events that are stressful, are not always of the same opinion regarding certain issues etc., giving rise to conflicts in certain situations.¹⁸

Many conflict resolution strategies exist, and one option may be to (also) use physical violence. However, the use of violence in such a situation is not, as is the case with intimate terrorism, part of an ongoing power and dominance structure in which one person seeks to control and to dominate the relationship and the partner using a variety of strategies. In this case, physical violence is a response to one specific conflict situation. The severity of the assault may vary here, ranging from relatively minor through to serious physical violence. Conflict situations in which physical violence is used (by one or the other person) may also arise more than just once.

The characteristic feature is that both partners – despite the situational couple violence exhibited by the one or other person – perceive themselves to be equal and autonomous/independent. Attention should be paid to the fact that situational couple violence may metamorphose into intimate terrorism; in actual everyday life, therefore, it is not always possible to clearly delineate the two concepts. This is the case for example if assaults by one partner become more frequent and as a result the relationship structure develops into one where one-sided power and dominance is exerted.

The above comments on understanding and defining the two concepts of a) "intimate terrorism" and b) "situational couple violence" make it clear that these constitute different types of patterns of violence in couple relationships.

It is clear that neither physical violence per se nor the extent of such violence can serve as a reliable measure or identification criterion. Intimate terrorism may rather be identified from the fact that it is embedded in a *power and control context*. One person (usually the man) wishes to control the

¹⁸ Stress factors for couples may be work, unemployment, money problems, child-rearing or schooling/educational issues, health problems, moving house, bereavement, addiction, etc. – as well as the cumulative effect of such stresses.

relationship and the other person (usually the woman); identifying characteristics are the aforementioned strategies and tactics.

There is *no* such power and control context in the case of situational couple violence.

Logically, therefore, if intimate terrorism and situational couple violence are to be reliably identified, we must focus on aspects and criteria other than physical acts of violence and their intensity. Stark puts this in a nutshell and states two important aspects when he writes: "A key implication of Johnson's terminology is that situational violence and intimate terrorism have *different dynamics* and *qualitatively different outcomes* (...)." Stark (2007:104; our italics).

As shown below in c) and d), both the consequences/effects and the dynamics of violence are decisive for identifying domestic violence (c), which also have an impact on the behaviour of those affected (d).

c) Impact of domestic violence on health and personality

The impact and consequences of domestic violence, in particular intimate terrorism, on the physical and emotional health of victims, and also on their ability to cope with everyday life, are serious.¹⁹ This fact may be well known and obvious to professionals who conduct research or practice in the field of domestic violence, but it is still not widely enough known outside such specialist circles. In particular, the range and breadth of effects and consequences is frequently misjudged and/or underestimated.

Again, it is the direct effects of physical violence, i.e. visible injuries, that are most readily perceived and discussed. The injuries caused by physical assaults within a couple relationship range from very minor all the way through to lethal.

One consequence of experiencing violence that often receives too little attention – in particular also as a result of experiencing non-physical violence (coercive control, intimate terrorism) – is psychological damage and (psycho)somatic effects or chronic health problems as well as health-endangering (survival) strategies such as medication and substance abuse. This stands in marked contrast to the current state of research which has been calling attention to these consequences for some considerable time and demonstrating their extent and gravity.²⁰ What must be especially highlighted is the research evidence that the stresses and health impacts for those affected by psychological violence and control can often be more serious than in the case of physical violence.²¹

Following Reemtsma, Hagemann-White and Bohne conclude: violence "injures, degrades and harms, and the traces it leaves behind depend not only on the type of violence used, but also on the history

¹⁹ World Health Organisation (2002).

²⁰ See Hagemann-White/Bohne (2003) for an in-depth overview of current knowledge and research findings. Likewise for the impact of domestic violence on health: Hellbernd et al. (2004:26ff.), Hornberg et al. (2008). For research findings from Switzerland see the study by Gloor/Meier (2004).

²¹ "Many abused women describe the psychological violence as having an even more profound effect on their lives than the physical violence." (House of Commons 2006: 5); also Watson (2005:171). Narrative interviews we are currently conducting in various Swiss cantons with victimized women confirm the serious effects on non-physical forms of violence such as the undermining of social contacts, humiliation, spitting in the face, verbal abuse, sleep deprivation, threats to kill or kidnap a child, etc. (NFP 60, "Betroffenensicht" project).

and the circumstances in which it was perpetrated" (2003:15). If we consider the two basic patterns of violence in relationships, then it is not difficult to understand that they have different contexts and circumstances. It is also readily apparent that the situation of the victims and the consequences – and not simply the behaviour of the perpetrators of violence – are equally important. As Hall Smith et al. (1990) show, in particular the experience of ongoing threats and (repeated) humiliation has far-reaching effects on those affected – irrespective of how often and to what degree they have suffered physical assaults – and leads to serious dysfunction and stresses in their daily lives. The "living space" of those affected by the intimate terrorism pattern of violence becomes increasingly restricted and the individual's autonomy and ability to act freely is curtailed. This has a serious effect on health (both physical and mental health), as well as an impact on social relationships (e.g. friends, co-workers, neighbours etc.). The effects also include the reduction or loss of self-esteem and the feeling of being trapped with no prospect of escape.

Being subjected to repeated and long-term violence, dominance and control tactics intensifies the situation and increases the harm and negative consequences to a much greater extent than what the individual assaults and actions per se would suggest. The effects are more severe and the consequences greater than the sum of the individual assaults and actions would lead one to expect (Stark 2007:94). Aristotle's words hold true for domestic violence: the whole is greater than the sum of its parts.

When examining the effects and impact of intimate partner violence, it is also vitally important to point out the impact it has on children. Children also experience domestic violence directly or indirectly. Various research findings have specifically shown that the impact of domestic violence is not only serious for the victims themselves, but also for their dependent children.²²

Returning to the two basic patterns of violence, it can be seen that both types may result in harm to physical and mental health.²³ Moreover, it is undisputed and substantiated by a variety of research evidence that the intimate terrorism pattern of violence *generally* causes harm to the personality. In the case of situational couple violence, this is also *sometimes* the case. That is to say, one's physical and psychological health, well-being and living space are attacked.²⁴ Or in other words, victims of domestic violence are robbed of the chance to lead a tolerable and decent – "normal" – life.²⁵

²² For an in-depth insight into the situation of children and the impact of domestic violence on the children involved see: Kavemann and Kreysing (2006), Seith (2007), Dlugosch (2010).

²³ In her in-depth investigation of patterns of violence Schrötle shows that even so-called "low-levels of psychological or physical violence" can be detrimental to those affected (2008a:24).

²⁴ A highly informative overview of research findings with respect to the multiple harms – health, socioeconomic, cross-generational, societal – and the exponential effects of domestic violence can be found in GiG-Net (2008:49–75).

²⁵ "To lead a normal life would be a luxury", one woman said in an interview we conducted in the early summer of 2011. And another victimized woman stated, also in the early summer of 2011: "All I want to do is lead a normal life." As these formulations most vividly illustrate – especially through their "simplicity" – domestic violence represents a fundamental attack on the personality of those affected and their associated entitlements and human rights to well-being, health and self-determined living space (NFP 60, "Betroffenensicht" project).

d) Behaviour of victims of domestic violence and response of the institutions

In this section we will discuss special considerations with respect to the behaviour of victims who are suffering or have suffered domestic violence. The behaviour of those affected by domestic violence differs from that of people who have been a victim of a stranger or a person *who is not close to them*. The behaviour of victims of perpetrators they are not closely connected to is however often used as a general benchmark by agencies, institutions and specialists who are *not* familiar with domestic violence. The "unrelated perpetrator" yardstick is often erroneously also applied to the victims of domestic violence. Accordingly, owing to their (misunderstood or poorly decoded) behaviour, in quite a few cases little understanding is shown to women and men affected by domestic violence.

As research has shown, the challenges of seeking out help and dealing with the problem, which will be discussed below, are significantly more difficult for female migrants.²⁶

Agencies and institutions can judge the behaviour of victims of domestic violence to be "inconsistent" or incomprehensible. When assessing rights, this engenders mistrust and leads to the perception that domestic violence is only being used as a pretext – in short it is thought that the situation is not credible and the system is being abused.

From an outsider's point of view, we suspect that the distrust in the authorities that exists to some extent may well be related to the fact that current judgements and procedures are based on a lack of knowledge, and that unfavourable practices are being used.²⁷ The case studies presented in the report on domestic violence among female migrants "Häusliche Gewalt und Migrantinnen" by Dubacher and Reusser (2011), together with the cited excerpts from judgements and reasons stated by the authorities signal various difficulties in recognizing and evaluating domestic violence. Owing to a lack of knowledge of the problem, the behaviour of victims is poorly interpreted.

It is necessary for professionals and agencies that take decisions with respect to victims to be provided with *further training on the subject of domestic violence*. This results in a correct understanding of fundamental correlations and enables the behaviour of victims to be correctly interpreted.

²⁶ E.g. Schröttle and Khelaifat (2008); WAVE (2009); Gloor and Meier (2011).

²⁷ As researchers who have long been working in the field of violence within intimate social relationships, we have repeatedly seen this phenomenon: *ignorance of the mechanisms, manifestations and consequences of domestic violence* lead to inappropriate judgements and actions by agencies, specialists and institutions that deal with domestic violence among other things. This was repeatedly encountered wherever the issue of domestic violence had not yet gained a footing, policies were not in place, and no professional training was provided on the issues concerned: at the beginning of the 1990s in social services (Gloor et al. 1995), at the end of the 1990s in police and justice agencies (Gloor/Meier 1998), at the beginning of the 2000s in the health system (Gloor/Meier 2003a; 2005), and at the end of the 2000s in police investigations into homicides (Gloor/Meier 2009). Over the course of time, various improvements, increased knowledge through professional training, as well as new procedures and policies have been observed; this gives rise to cautious optimism.

Below is a list of several behaviour patterns that victims frequently demonstrate. They often prove to be problematic if *their significance is not recognized within the context of a violent relationship*:

- Returning to the partner/husband
- Withdrawing criminal charges
- "Delayed" reporting
- Reluctance to seek help
- Lack of documentation, no medical attestation
- Significance of having contacted the police, medical practitioners or support centres

Returning to the partner/husband: The prejudice remains that a situation cannot really be so bad or is all in the past if women who have suffered domestic violence return to their partner. This view does not take sufficient account of the fact that victims are/were in an intimate relationship with the person exercising violence and control. It ignores the specific dynamics of such relationships and disregards the multiple dependencies in which wives, and also unmarried partners, frequently find themselves. On the one hand an emotional bond with the partner may still exist. The woman might not want to actually separate, she may "only" want the violence to stop and therefore – following promises to this effect – goes back to her partner. One particular characteristic of this dynamic, frequently referred to as the "cycle of violence", is that episodes of violence and controlling behaviour are frequently followed by apologies and conciliatory overtures, which are subsequently again followed by renewed dominance tactics and assaults.²⁸ In addition, the fear of further escalation is a reason for returning to the husband. There is often also an economic dependency. The woman does not have a job or only works a few hours, does not have her own income or only a very small one, and is additionally responsible for looking after the home and children. This situation has major material and social consequences for the woman (and her children) if she leaves and can lead to her – essentially unwilling – return. Furthermore, children are very often an important reason why women are willing to "nevertheless give it another go" and, despite the possible fear of renewed violence, to return to their spouse.

Withdrawing criminal charges: Victims often press charges – and then drop them again. This is also a "classic" among arguments to the effect that the violence has ended, or presumably was not as bad after all, and that everything is alright again. Much research evidence has shown that in some circumstances the opposite is actually true: charges are often withdrawn by the woman under pressure or following threats by the partner, not voluntarily.²⁹ Victims are frightened of escalating the situation by pressing charges. In many cases, victims do not primarily want their partners to be punished, they "simply" want the violence to stop. It may also be the case that the woman drops the charges of her own free will because she believes the man's promises that the violence will stop and he will "never" do it again. These are all aspects that are typical of the special situation of an *intimate* relationship, indeed are only possible in this context, which is clearly different from the case when a

²⁸ For a discussion and illustration of the dynamics of domestic violence and the associated tactics see for example: Stark (2007), Schmid (2007) and Berry (1995).

²⁹ Crown Prosecution Service (2009:20ff.); Müller and Schrötle 2004b, Chap. 9.4 "Polizeiliche und rechtliche Intervention" (p. 180ff.) set out the reasons for not bringing charges and withdrawing charges in detail.

victim brings charges against a "unrelated perpetrator".³⁰ If victims then later report another offence, this is not evidence of their fickleness, but is an indication that violence has again occurred despite the assurances of their partner.

"Delayed" reporting: Victims of domestic violence rarely bring charges after the first incident. Rather, for reasons of shame, uncertainty, feelings of guilt that are often prompted by the partner, worries about the consequences for the relationship, suppression or being in a state of denial about the incident, they do not seek to make the situation public. Victims often need a long time to reach this decision and, after much hesitation and deliberation, only decide to take this step when they can see no other alternative. Reporting an offence at a later date, relatively long after the (last) incident, is therefore a completely typical pattern in the case of domestic violence. If this behaviour is then erroneously interpreted as an indication of doubt with respect to the plausibility of the events, the reality of people living in a violent relationship is disregarded or misinterpreted.

Reluctance to seek help: An extensive body of research exists on the question of how victims of domestic violence (can) use support and what form that takes.³¹ One recurring finding of these studies shows that victims usually find it difficult to take advantage of institutional help and support. They only do so when they see no other (escape) route. The barriers preventing them accessing help and support are varied: feelings of shame and guilt, trivializing, denial, suppression, feelings of ambivalence, not taking responsibility for oneself, etc. The fear of a violent response from the partner, or fear of a further increase in violence, can prevent affected women leaving their partners for a long time. Intensified abuse such as (death) threats and other forms of violence often occur when the perpetrating partner notices that the woman is seeking help and/or wants to separate and he is therefore in serious danger of losing his partner ("his property").³²

If victims make contact with support services – especially with services specializing in domestic violence – then as a rule this is already a very strong indicator that the situation has become unbearable.

One important aspect that should be taken into account regarding making contact with support agencies is that this step requires the victim to possess certain knowledge and information. It requires a certain amount of know-how to find one's way around the institutions in our society in order to be able to find the agencies responsible for the problem (advice centres, women's shelters, police, civil courts, etc.). Not knowing one's way around the maze of institutions is a hurdle that should not be underestimated for many victims. In particular, female migrants are one of the groups that have little or

³⁰ Reference should be made in this context to the information leaflet published by the Berlin State Ministry of Justice which calls attention to this context for handling investigations into domestic violence and emphasizes that such typical behaviour of victims must be "taken into account when assessing testimony in terms of the trustworthiness of the witness and the credibility of her statements".
(pdf at: http://www.big-projekte.de/sites/default/files/old/veroeffentlichungen/broschueren/pdfs/merk_blatz_strafjustiz.pdf ; accessed on: 9.02.2012).

³¹ Müller and Schröttle (2004a); GiG-Net (2008); Schröttle (2008b:190ff.).

³² Research clearly demonstrates that there is a higher risk of increased violence in separation situations. (e.g. Schröttle 2008a:42; Egger, Schär Moser 2008:26).

no knowledge of this compared with other groups.³³ As a result, they request help even less frequently than other groups – and consequently the violence that has occurred is frequently also undocumented.³⁴ Given that, as already mentioned, victims generally show a reluctance to engage with agencies and authorities, then this applies all the more so to immigrant women. In some cases they bring little experience of dealing with agencies and authorities from their original countries, or their experience of doing so has not been good (for example with officials or police in their country of origin). This often proves to be an additional reason that prevents them from revealing their experiences of violence and control and contacting support services.

Lack of documentation, no medical attestation: The fact that victims often have no concrete evidence to show for their experiences of violence and control also frequently awakens the distrust and doubts of many enforcement authorities. However, the special context of violence in intimate relationships and the typical behaviour of those affected as set out above make it clear why such evidence is not available in every case, and that its existence should not be presumed to be the norm.³⁵ With respect to medical attestations, it is important to note the following: professional medical attestations can only be issued if victims of violence seek the help of medical practitioners and tell them the actual reasons for injuries, sleep disturbances, nervous breakdowns, depression etc. If not told, then only medical practitioners with high awareness and with specific knowledge about domestic violence will take notice of the problem. If practitioners do not know enough about the issue of intimate partner violence, do not ask the right questions, are not able to recognize and identify the particular dynamics at work, then no adequate attestations are possible.

Significance of contacting the police and/or support centres: As the above discussion has shown, the fact that a female migrant has made contact at all with the police, a doctor or a support agency such as victim counselling or a women's shelter etc., should *already* be understood *per se* as very strong evidence that she has actually suffered and/or is still suffering domestic violence, and to a seriously intolerable degree.³⁶

Summary: To conclude we highlight the necessity for the existing specialist and research knowledge on domestic violence to be accepted to a greater and wider degree, especially by professionals who – alongside other core duties – are confronted with the victims of domestic violence in the course of their daily working lives. In such contexts in particular, it is necessary for professionals to be aware of the

³³ GiG-Net (2008:128ff.).

³⁴ If a woman, who has come to Switzerland for the purpose of family reunification, is prevented by her partner from participating in public life (a pattern typical of intimate terrorism), then access to the support system is consequently much more difficult. If she is not in employment, but rather works at home keeping house for her husband and children, the likelihood is also high that she will not (be allowed to) learn the local language and that she will generally not know a lot about the setting. Preventing integration in the local community is a common and effective coercion and control strategy practised by a partner.

³⁵ It should be noted in this context that the question of documentation is primarily aimed at physical violence which, as demonstrated above, does not adequately address the problem of domestic violence.

³⁶ GiG-Net, 2008:118ff, in particular p. 119.

perspectives and living conditions of victims of violence – and especially victimized female migrants – and to be able to access the appropriate knowledge. It is self-evident that an appropriate and correct response is only possible if the characteristic situations and reactions of those affected are recognized and competently evaluated or judged. This is the case if staff in the responsible authorities receive appropriate further training and in addition if specific assessments and judgements are based on external professional knowledge from the field of domestic violence.

e) Conclusions regarding the endangerment to the personality

With regard to the interpretation of Art. 50 para 2 FNA, the Federal Supreme Court has highlighted the "endangerment to the personality" as a key condition that must be met if "continuance of the spousal relationship may no longer reasonably be expected", that is to say independent residence in Switzerland may be granted. Based on the definition of intimate partner violence and knowledge of its impact and consequences, from the standpoint of current research the following conclusions may be drawn with respect to the question of the endangerment to the personality (summarized in Figure 1):

- Related to the personality and integrity of the victim *Intimate terrorism* is in all cases – and irrespective of how often and how severely physical attacks are perpetrated – to be considered as endangering. The physical and mental health of those affected – their personality – along with dependent children who are also affected, are seriously endangered by (close, intimate) cohabitation with the perpetrator.
- The meaning of *situational couple violence* is more complex for victims and their personality. In certain cases in which this pattern of violence is present, there may not necessarily be a lasting impact on the personality of the victim as a result of a physical assault. This is also perceived as such by those affected. Despite a violent incident, they do not perceive their position with regard to their partner to be diminished, nor do they see their freedom of action restricted.

However, situational couple violence can have a serious impact on the equilibrium of those affected and can have a detrimental effect on health. This is always the case if the pattern of conflict occurs frequently and is regularly instigated by the same person and/or extreme physical violence is used. Such cases likewise have a lasting negative impact on the personality of those affected (as is the case with intimate terrorism), which is also perceived by the victims themselves. In their position vis-à-vis their partner, they also see themselves (increasingly) as unequal or subordinate, and feel (increasingly) restricted in their freedom of action.³⁷

³⁷ On the basis of concrete examples, Stark points out that *situational couple violence* can develop into a pattern of violence that can metamorphose into that of *intimate terrorism* and has a negative impact on the personality of the individuals affected (2007:104ff.).

Figure 1 Patterns of violence and endangerment to the personality

| | Patterns of violence: domestic violence | | |
|---|---|---------------------------------|------------------------------------|
| | Intimate terrorism | Situational couple violence | |
| Effects on the personality of victims | <i>Always</i> endangerment to the personality | Endangerment to the personality | No endangerment to the personality |
| Federal Supreme Court decisions ³⁸ | (none known of) | (none known of) | - 2C_460/2009 - 2C_554/2009 |

Summary: When assessing violence, it is crucial to take into account not only the actions of the person perpetrating the violence and control (1), but to the same degree (2) the *experience* of violence of the victim and the impact and consequences of this experience on the life, well-being and health of the person affected (endangerment to the personality). It is also necessary to include knowledge about behaviour and how victims deal with the problem in the assessment (3).

To acquire information on the violence, and understand how it is experienced, and to determine the impact of domestic violence, it is necessary to *carefully examine each individual case*. In individual interviews conducted with the victim by a *trained, qualified domestic violence specialist*, the specific controlling, dominating, constraining and threatening behaviours of the perpetrator that are causing psychological and physical harm can be identified. Such examinations can only be carried out credibly and reliably by people who possess professional knowledge about the specific situation of violence in intimate relationships and have experience of dealing with victims. Professionals can recognize whether the violence suffered and the associated circumstances are plausibly depicted. Only an interview with the individual affected – both about incidents and actions, as well as their perception of situations and day-to-day life as a whole – can reliably, convincingly and vividly ascertain the impact (on health, well-being and autonomy). Only this makes it possible to determine and record the full extent of the experience of violence and – consequently – assess to what extent this experience of violence constitutes an endangerment to the personality or not.

³⁸ We have examined which pattern of violence matches the two cases for which the Supreme Court issued decisions. On the basis of the accessible parts of the decision texts, we have come to the conclusion that *one* case is presumably a case of "situational couple violence" (BGE 2C_460/2009). According to the reasons given for the decision, the wife had shouted at the complainant and had slapped him once. In this case the Supreme Court did not consider that the conditions set out in Art. 50 para 2 FNA were satisfied. In the *other* case, according to the Supreme Court the complainant did not suffer marital violence. The claimed marital violence was qualified as a self-serving assertion; according to the Supreme Court decision, there was "no concrete evidence" of violence. There is no further description or discussion of the occurrence and intensity of violence in the decision. According to the accessible sources, the personality of the complainant was not at risk (BGE 2C_554/2009). What is remarkable is that there are nevertheless clear indications of the presence of "intimate terrorism" in the statements of the Supreme Court, but *not against* the complainant, who wished to be granted independent residence, but *by* the complainant against his wife. The decision states that the complainant had repeatedly beaten the woman and made death threats. Moreover, he also had a previous conviction for threatening and assaulting his wife.

3 Conclusions

In its decision of 4 November 2009, the Federal Supreme Court stipulates that the "intensity" of marital violence is a key criterion for judging whether a spouse may rightfully claim the violence suffered as an important personal reason to be granted the independent right of residence in Switzerland.

As the background sociological research on intimate partner violence shows, the required criterion of marital violence "intensity" has proved to be problematic. Accordingly, we recommend that the current interpretation and concomitant practice should be reviewed, and the directives amended to ensure an appropriate assessment. In addition, the current and newly modified practice should be evaluated for the purposes of legislative research.

The following conclusions are based on the above discussion and the research evidence on domestic violence.

A) "Intensity" as an inadequate criterion

- By using the concept of intensity, the formulation places the focus of domestic violence on *physical violence (physical assaults)*. Such a narrow view of the problem of violence in partner relationships does not do justice to the actual, wide variety of forms of violence in any way.
- Intensity proves to be an inadequate criterion for domestic violence: it incorrectly places the *severity of individual actions* centre stage. It is rather the case that the specifics of domestic violence are characterized by *various forms of violence* and an *ongoing pattern* of violent, controlling behaviours. These behavioural patterns and forms encompass psychological violence, threats, sexual violence, social violence, financial violence, stalking and physical violence; current criminal offences only partially cover domestic violence. For the presence of domestic violence, it is not primarily the severity, but the *interrelatedness and the collective effect* of the various violent acts that are of decisive importance. They characterize the nature of intimate terrorism in couple relationships (synonymous with domestic violence) and have a serious impact on victims. Individual acts may not appear serious in themselves, but *taken collectively, the interrelated acts* have extremely serious consequences and cause severe harm.
- To assess the situation, it is not helpful to measure the intensity of individual violent acts. The focus must rather be placed on the living conditions of the victims, who suffer stress and restrictions as a result of the interrelated acts of violence and control.

B) No severity threshold, but rather plausibility

The intensity stipulated by the Federal Supreme Court's decision posits a severity threshold. This means that it is only from a given threshold that violence assumes an intolerable hardship which renders it impossible for the person affected to remain in the relationship. Conversely, this means that the legal system accepts violence in a relationship as tolerable, provided it does not exceed a certain level. We consider this to be an ethically questionable stance. Moreover, perpetrators are sent the incorrect signal that society sanctions their use of violence – up to a certain degree.

Our researches have found no evidence that other countries such as, for example, Germany, France or the United Kingdom use such severity thresholds in their legal practice relating to the residency rights of spouses who are victims of domestic violence. Rather, the example of Germany shows that the experience of domestic violence as a "hardship case" must be "plausibly presented" by victims.³⁹

C) Prerequisites for adequate assessment

If a victim claims marital violence as an important personal reason within the meaning of Art. 50 para 2 FNA, it is advisable for the assessment to focus on the experience of violence and not its intensity. An adequate assessment as to whether a person has actually suffered/is actually suffering domestic violence can be made if the investigation procedures are adapted to the specific problem and suitable specialist knowledge is applied. We would like to emphasize the following points:

– *Competence centres in administration and professional training:* Competence centres are required within administration. These centres should possess specialized knowledge and should concern themselves with the issues surrounding domestic violence; they can then be consulted internally within the institution whenever concrete cases arise and can take on a coordinating role if investigations need to be instigated and performed.

Staff in the relevant agencies must receive training in the field of intimate partner violence. This includes knowledge of the various forms of violence in couple relationships, and their consequences and impact, as well as a knowledge of the characteristic behaviour patterns and problems of victims, along with the proper reception of evidence and written documents etc. Requests for independent residence can only be adequately handled by staff who have the appropriate basic knowledge of domestic violence.

– *Information for victims:* It should be ensured that victims are proactively informed of their rights and choices – for instance about the possibility of retrospectively documenting the violence suffered. As the above exposition shows, not only is knowledge of this often limited, it is also particularly so for the target group under discussion.

– *Specialist knowledge for investigating how victims are affected:* As demonstrated, the forms of violence and control suffered in an intimate relationship cannot be allocated or reduced to easily defined categories and individual incidents. The impact of domestic violence is determined by the collective effect and the interrelatedness of the (individual) acts. Investigations must therefore also include a) the acts of violence and b) the experience of violence by the victim and the threat to and impact on their personality (health, constraints in their life).

The investigation must be based on the documented details of the individual case. Specialists such as social workers, psychologists or social pedagogues who work with victims should be provided for this

³⁹ It is stated in section 31.2.4 of the general administrative rules relating to the German Residency Act (*Aufenthaltsgesetz*) of 26 October 2009 that: "When examining the prerequisites of paragraph 2 [of §31 of the Residency Act; independent right of residence for spouses], account should be taken of the linguistic, cultural or psychological problems of the affected spouse. Such problems can result in difficulties describing the circumstances that could justify treatment as a special hardship case. In such cases it is sufficient if the hardship reasons can be plausibly presented by the affected spouse." (See: www.verwaltungsvorschriften-im-internet.de/pdf/BMI-MI3-20091026-SF-A001.pdf ; accessed on: 9.02.2012)

purpose. A professional interview with victims is able to reliably discover the controlling, dominating, restricting, threatening and psychologically and physically harmful behaviours of the perpetrator as well as the consequences and impact on the individual affected and her children.

Investigation by specialist professionals is always and only necessary whenever (sufficient) relevant evidence/documents are not available. If *no* written documents/evidence are available, which can often be the case due to the circumstances, careful professional investigation is necessary.

If documentation on interventions and information/reports about contact between the victim and specialist agencies (such as victim counselling services, women's shelters and the like) are available, the research findings indicate that these should be interpreted as strong evidence that domestic violence is present to a significant degree and that the situation should be adjudged to be intolerable and harmful to the personality.

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