

**The Committee on Petitions
German Bundestag
Platz der Republik 1**

11011 Berlin

Petition for culture-sensitive, mother-tongue psychotherapeutic services for persons with a migration background

The Committee on Petitions is asked to recommend to the German Bundestag that it amend the German Social Security Code to the effect that in Germany, as an immigration country, the services of mother-tongue psychotherapists are made available as a social service, and in particular as a normal benefit of the statutory health insurance system, and that provision be made for culture and gender-sensitive, mother-tongue psychotherapists.

The individual demands are as follows:

1. that psychotherapy for adults, young persons and children persons provided by culture- and gender-sensitive, mother-tongue psychotherapists be included in the catalogue of benefits of the healthcare system;
2. that the structural conditions be created for implementing the "key points in improving and recognizing professional and vocational qualifications obtained abroad" as passed by the German government so as to speed up recognition of academic and vocational qualifications and professional experience, accompanied, if necessary, by measures to facilitate the adjustment of qualifications needed to obtain a licence to practise in Germany;
3. that a guaranteed quota of the licences to practise granted by the licensing boards be reserved for psychotherapists able to provide mother-tongue psychotherapeutic services for patients who need psychotherapeutic treatment in their mother tongue;
4. that If no culture-sensitive, mother-tongue psychotherapist is available, the health insurance schemes, in fulfilment of their contract to provide public health services for persons insured under said health insurance schemes, shall finance the provision of the appropriate services by specially trained professional interpreters; and
5. that research projects be commissioned concomitant with the aforementioned demands so as to provide scientific knowledge and understanding
 - of the psychological health and treatment of people with a migration background,
 - of the number, qualifications and countries of origin of psychotherapists living in Germany, and
 - of the effects of a scarcity of culture-sensitive psychotherapists on migrants' psychological health.

Argument

Experts, representative psychotherapy bodies in the individual länder, the respective providers in the public healthcare system, a range of professional organizations, etc. have determined that there is no guarantee in the Federal Republic of Germany that persons with a migration or refugee background have access to adequate psychotherapeutic services of an assured quality such as demanded by the authors of the 12 Sonnenberger Leitlinien (Sonnenberger Guidelines) of 2002¹. This scarcity affects in particular socially and economically disadvantaged children and adults with a migration or refugee background. In principle, they have access to no or at best totally inadequate culture- and gender-sensitive psychotherapeutic services.² Migrants who have experienced violence are also seriously affected by this scarcity, for, as a rule, it is essential that they have access to mother-tongue psychotherapy provided by female psychotherapists. In this regard, however, the services on offer are usually unsuitable, or at least insufficient. Furthermore, there is shortage of "safe" psychotherapeutic services for migrants in Germany who are either undocumented or whose application for asylum is being processed. According to the Report of the European Commission of 26 November 2007, the situation in Germany violates EU law. EU law obliges host countries – and thus also the Federal Republic of Germany – to provide treatment³ for vulnerable persons with special needs.^{4,5} And according to EU law, "vulnerable" persons are persons who have been subjected to "... torture, rape or other serious forms of psychological, physical or sexual violence".^{3,6}

Because of the scarcity of services, long waiting times and cancellations are common. (Employees at Turkish-language facilities in Berlin report that waiting times of two years are the rule.)

Inadequate provision of psychotherapeutic services can result in illnesses becoming chronic, which puts a heavy strain not only on the sick person, but also on the person's entire family, in particular children, and causes costs for the healthcare system that could be avoided.

Concomitant with the scarcity of mother-tongue psychotherapeutic services in Germany there is a ready supply of psychotherapists from a wide range of countries of origin of persons with a migration background able to provide mother-tongue, culture- and gender-sensitive therapy. For a variety of reasons (e.g. high barriers for persons from non-EU countries), it is virtually impossible for many of them to obtain recognition of their professional

¹ Machleidt, W., Die 12 Sonnenberger Leitlinien zur psychiatrisch-psychotherapeutischen Versorgung von MigrantInnen in Deutschland. *Der Nervenarzt* 2002, 73: 1208-1209 and http://www.migration-boell.de/web/integration/47_2105.asp

² See Berliner Erklärung (Berlin Declaration): On the need for psychological and psychotherapeutic services for persons with migration and refugee backgrounds (*in German*), http://www.berlin.de/imperia/md/content/batempelhofschoneberg/abtgesstadtqm/ges/planleit/berliner_erklaerung_migration_pdf.pdf

³ European Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers, Art. 20

⁴ 2003/9/EC of 27 January 2003, Official Journal of the European Union 2003 L 31

⁵ 2004/83/EC of 29 April 2004, Official Journal of the European Union 2004 L 304

⁶ Thüringer Erklärung (Thuringia Declaration): Ensuring the rehabilitation of vulnerable refugees (*in German*). Baff, IPPNW, General Medical Council of Germany, DTPPP, DeGPT, Diakonie, Pro Asyl, etc. http://www.baff-zentren.org/index.php?option=com_content&view=article&id=59:eu-richtlinien&catid=46:eu-richtlinien&Itemid=66 and: www.refugio-vs.de/downloads/files/32/BAfF_Thüringer_Erklärung.pdf

qualifications, which is a prerequisite for a licence to practise in Germany. Moreover, on account of existing general restrictions on new independent medical practices, many psychotherapists with a migration background who do have a licence to practise have to wait years for permission from the Regional Association of Statutory Health Insurance Physicians to practise as independent therapists. Even though they have the specific qualifications necessary for mother-tongue, culture-sensitive psychotherapy, their applications for authorization are turned down – ostensibly because of the existing oversupply. As a result, there is in Germany a considerable need for mother-tongue psychotherapeutic treatment. A scientific study is urgently needed to obtain exact data on the actual need for culture- and gender-sensitive and mother-tongue psychotherapeutic services and the number, qualifications and countries of origin of psychotherapists living in Germany – whereby this study may not serve to delay the drafting of immediate measures to redress the situation.

Legal aspects

Although the immigration policy of the European Union, German immigration law and the policy of intercultural openness in the German healthcare system provide a framework for statutory regulation of immigration in the Federal Republic of Germany, the German federal social court has rejected on the one hand claims of migrants with no or an inadequate command of German for performance on the part of their health insurance and, on the other, the need for healthcare insurance systems to provide special language services on the grounds that in Germany the official language of the country and the official language used in court is German. This argument is not convincing because in social law the official language is relevant only to administrative procedures, not to the relationship between patient and therapist. Furthermore, the additional argument presented by the federal social court in this respect that language competence is only an ancillary service of the treatment ignores the fact that in psychotherapy communication is not a secondary issue, but a *basic requirement*, and thus the main issue, in the treatment. To this extent, psychotherapy through the medium of German does not fulfil the rightful claim of contribution-paying insured persons with no or an inadequate command of German. This group of persons also has a right to state-of-the-art performance – which must mean that they receive culture- and gender-sensitive mother-tongue psychotherapy in accordance with their needs.

The federal social court is right when it argues against a general case for psychotherapeutic treatment only in a patient's mother tongue; for, many persons with a migration background are culturally and linguistically integrated into German society. However, foreign-language competence is often severely lacking among in particular the following groups of persons, thereby rendering psychotherapeutic treatment in German impossible:

- older migrants, especially those over 60 years of age, who have never attended German-language classes,
- patients who have only recently arrived in Germany and do not speak German yet, and
- patients with clinical disorders: depression, psychosis, addiction, dementia and post-traumatic disorders.

Among the last group of persons – those suffering from psychological disorders – a key symptom is lower concentration and cognitive ability. Psychotherapy patients with attention-deficit and cognitive disorders are particularly dependent on receiving medically indicated treatment in their mother-tongue.

There is some support for the view that the need for psychotherapy in a foreign language can establish a right to authorization or even a right to recognition of a special need. Court practice, however, has generally rejected such claims, as reflected in several decisions of the federal social court and about a dozen lower-court decisions.

Professor Ulrike Davy of the University of Bielefeld has critically examined the objections, which were raised once again in a 2008⁷ ruling of the federal social court against a psychotherapist's claim to authorization. She comes to the conclusion that none of the arguments presented by the federal social court against authorizing mother-tongue therapy is convincing: "In the case in question, the federal social court decided that an inadequate command of German on the part of the insured is irrelevant in health insurance law. It did not provide convincing reasons for its view. In terms of § 2 para. 1 of the German Social Security Code, Book V – which is the decisive criterion – the question is still open."⁸

The object of this petition is to achieve or to expedite adequate provision of culture- and gender-sensitive and mother-tongue psychotherapeutic services for persons with a migration background.

⁷ Sixth senate of the federal social court of 6 February 2008 – B 6 KA 40/06 F

⁸ "Command of a foreign-language as a requirement for a psychotherapist to obtain a licence to practise – communication in a non-German mother tongue as a guaranteed service of the statutory health insurance" (*in German*), in: Die Sozialgerichtsbarkeit 2009, 296 – 298