Ulrike Davy: „Refugee crisis“ in Germany and subsistence minimum of asylum seekers

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### How are claims processed?

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<th>First step</th>
<th>Second step</th>
<th>Third step</th>
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<td><strong>Before 2016</strong></td>
<td>Preliminary registration: EASY (distribution)</td>
<td>Reception center (accommodation)</td>
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<td>Branch Office (decision-making)</td>
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<tr>
<td><strong>After 2016</strong></td>
<td>Preliminary registration: EASY (distribution)</td>
<td>Arrival center (quick decision-making)</td>
<td>Centers for decisions and dispatching</td>
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<td>Focal points: Processing lanes</td>
<td>Reception center (accommodation)</td>
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<td>Waiting rooms</td>
<td>Branch Office (complex decision-making)</td>
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General regime for a state-provided minimum of subsistence

1949 German Basic Law, Article 1(1):

Human dignity is inviolable. To respect and protect it shall be the duty of all state authority.
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General regime: Social Law Book II on the basic security for jobseekers

Beneficiaries

- who have reached the age of 15, but have not yet reached the age of 67
- who are able to work
- who are not able to provide for themselves
- who ordinarily reside in Germany (stay is not just temporary)
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General regime: Social Law Book XII on social assistance

Beneficiaries

- Persons who are indefinitely unable to work
- Persons have reached the age of 67
- Persons who do not qualify under Social Law Book II
- AND: who cannot provide for themselves
- AND: who reside in Germany
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General regime: Social Law Book II and Social Law Book XII

Benefits
- cash transfers (allowance)
- means-tested
- public health insurance

Monthly flat rate
- single person: 409 €
- couple: 368 € per person
- children (depending on age): 237 €, 291 €, 311 €

Costs of accommodation (if adequate), for a single person: 250 €
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Particular regime of the asylum seekers‘ benefits (ASBA)
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Particular regime of the asylum seekers‘ benefits (ASBA)

Beneficiaries

- asylum seekers who have made their claim and wait for the decision on their claim
- foreign nationals who have been granted humanitarian titles
- foreign nationals whose stay is „tolerated“
- foreign nationals bound to leave the country (rejected asylum seekers; aliens entering the country illegally; overstayers; persons under deportation order)
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Particular regime of the asylum seekers‘ benefits (ASBA)

Benefits

Regular benefits

- cover essential needs and essential personal needs
- accommodation in reception center: essential needs are provided in kind; essential personal needs ought to be provided in kind
- accommodation in other facility: cash transfer for part of essential needs (219 € for single); cash transfer for essential personal needs (145 € for single) [total = 364 €]
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Particular regime of the asylum seekers‘ benefits (ASBA)

Benefits
*Downgraded benefits*
- cover some essential needs, no essential personal needs
- are provided in kind
- are due for designated groups: foreign nationals who hamper deportation; asylum seekers who violate obligation to cooperate; asylum seekers who have not yet received certificate of arrival
The differences between the general and the particular regime: Do they matter?
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Federal Constitutional Court, judgement of 18 July 2012

Main holdings of the court

- Article 1(1) German Basic Law implies a **human** right
- **Every right holder** must be provided with a minimum of subsistence
- **Differing treatment**: requirements
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Building a case against the constitutionality of the ASBA

Differing amounts of benefits
- **Basic** benefits under the ASBA (364 € versus 409 €)
- **Downgraded** benefits under the ASBA

Differing forms of benefits
- **Unfettered** discretion of parliament?
- **No!**
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