

Minimum Income Protection in Germany: The Relevance of Fundamental Social Rights in Times of Crisis

Ute Kötter

I. Introduction	108
II. Overview	112
1. Normative Framework	112
a) International Law	112
b) European Union Law	113
c) Constitutional Law	114
aa) The Welfare State Principle	114
bb) A Fundamental Right to a Guaranteed Subsistence Minimum	115
cc) Self-Responsibility as a Limit to the Fundamental Right	118
2. Social Benefits	119
a) A Structured System of Livelihood Benefits	119
aa) The Principle of Subsidiarity (Section 2 SGB II, Section 2 SGB XII)	120
bb) Interplay with Social Security Benefits	121
cc) Interplay with Social Support (<i>soziale Förderung</i>)	123
b) Requirements for the Citizen's Benefit According to SGB II	128
aa) Eligibility	128
bb) Need for Assistance as a Reflection of the Principle of Subsidiarity	130
c) Scope and Amount of Benefits to Secure Subsistence	132
aa) The Standard Needs	132
bb) Additional Needs and Alternative Provision of Benefits	133
cc) Needs for Accommodation and Heating	134
d) Exclusions from Benefits	136
III. Analysis	137
1. Determination of a Minimum Level of Subsistence	137
a) Procedure to Determine Standard Needs	137
b) Indexation	139
2. Between Poverty Reduction and Labour Market Integration	140
a) Activation	140
b) Sanctions	144
3. Lessons from the Coronavirus Crisis	145
IV. Conclusions	147

I. Introduction

German social minimum protection has roots in church and communal charity dating back to the Middle Ages,¹ even though modern systems of social assistance only emerged at the turn of the 18th to the 19th century.² Welfare laws for the poor required local authorities to care for “their” poor, thereby establishing poverty relief as a State responsibility. While today’s social minimum protection schemes still reflect their roots in Poor Law,³ they have been considerably influenced by more recent developments.⁴ The Federal Social Assistance Act (*Bundessozialhilfegesetz* – BSHG) of 1961 laid the foundation of the current system of subsistence benefits. Based on a new understanding of citizens’ legal status under the new Constitution⁵, the Basic Law of the Federal Republic of Germany (*Grundgesetz* – GG),⁶ this Act established, for the first time, a statutory legal entitlement to social assistance benefits. A means-tested cash benefit for all (*Hilfe zum Lebensunterhalt* – livelihood assistance) was introduced in addition to social and medical services to address specific needs (e.g. in case of illness, old age, disability, in need of care) that cannot be met through personal resources (*Hilfen in besonderen Lebenslagen* – assistance in special life situations). Other features of the social welfare scheme such as tax-based funding, administration by local authorities, and guiding principles including the coverage of individual needs, the principle of human dignity or of

1 For an overview, see M. Stolleis, *Geschichte des Sozialrechts in Deutschland, Ein Grundriss* (UTB 2003), pp. 13–35.

2 The regulation of the General Land Law for the Prussian States (ALR, II, 19, Section 6) is generally regarded as the first law that regarded poor relief as a state task. See Stolleis (n 1), pp. 23 f. Cf. also the Ordinance on Poor Relief of 17 November 1816, Kgl. Baierisches Reg. Bl. 1816, 780, Art. 1, 7 quoted from Stolleis (n 1), p. 24, which transferred the duty to care for the poor to the municipalities.

3 See also C. Sachße and F. Tennstedt (eds.), *Bettler, Gauner und Proleten, Armut und Armenfürsorge in der deutschen Geschichte. Ein Bild-Lesebuch* (Rowohlt Taschenbuch 1983).

4 On the historical development of German legislation on minimum income, especially after 2010, see H. Spindler, ‘Dispute over the statutory right to a minimum subsistence in Germany’ *Labour and Social Security Journal* 10 (2019), pp. 10–15 < <https://www.pwe.com.pl/pobierz.php?id=2087915698&mode=artykul> > accessed 22.3.2025.

5 Cf. BVerwGE 1, 159, paras. 28–30. Critical of the reception of the judgment, K. Hauer, *Die „Fürsorge-Entscheidung“ des Bundesverwaltungsgerichts (BVerwGE 1, 159) aus rechtshistorischer Sicht* (Nomos 2020).

6 *Grundgesetz* (Basic Law) as promulgated on 23 May 1949 (Federal Law Gazette 1949, p. 1).

subsidiarity are still evident in recent social minimum income protection schemes. One main difference between the Federal Social Assistance Act scheme and recent social minimum income protections schemes lies in its universal coverage approach. *Anyone* who meets the conditions stipulated by law is entitled to social assistance benefits. The universal coverage of the BSHG was abandoned for the first time in 1993, when— *inter alia* in response to a sharp increase in the number of refugees from the war in former Yugoslavia⁷—asylum seekers and persons without residence status were excluded from the personal scope of its application. Since then, minimum income protection for asylum seekers and tolerated persons has been provided under the 1993 Asylum Seekers' Benefit Act (*Asylbewerberleistungsgesetz*) at a significantly lower level than that offered under the social assistance scheme. With the enactment of the Act on Means-Tested Basic Income Support in Old Age and in the Event of Reduced Earning Capacity (*Gesetz über eine bedarfsorientierte Grundsicherung im Alter und bei Erwerbsminderung*),⁸ which was introduced as a supplement to the pension reforms around the turn of the millennium, another benefit system was separated from the BSHG as of 1 January 2003. Aimed at addressing 'concealed poverty in old age',⁹ the law did not provide for recourse for dependants required to pay maintenance for persons in need of assistance, if the dependants' annual income was less than EUR 100,000.

In 2004, the so-called Hartz IV reform¹⁰ replaced the general social welfare scheme under the Federal Social Assistance Act with two categorical schemes of basic income support. It also reintegrated the previously mentioned Basic Income Support in Old Age and in Case of Reduced Earning Capacity. Implemented through the Fourth Law on Modern Services in the Labour Market, the reform was part of a comprehensive package of

7 See W. Bosswick, 'Kriegsflüchtlinge aus dem ehemaligen Jugoslawien nach Zielland' (2022) < https://www.efms.uni-bamberg.de/ds27_2_d.htm > accessed 22.3.2025. Cf. V. Gerloff, *Das Asylbewerberleistungsgesetz für die Soziale Arbeit* (Nomos 2023), p. 12, n 1: Increase in asylum applications in Germany from 193,063 in 1990 to 438,191 in 1992.

8 Act as promulgated on 26 June 2001 (Federal Law Gazette I 2001, pp. 1310, 1335).

9 The term refers to the non-take up of minimum income benefits by the elderly to avoid financial consequences for their children who have maintenance obligations.

10 For an overview, see I. Dingeldey, 'Hartz IV in Context: The German Way to Employability' (18 March 2005) < <https://www.realinstitutoelcano.org/en/analyses/hartz-iv-in-context-the-german-way-to-employability/> > accessed 22.3.2025.

labour market reforms introduced at the beginning of the 21st century.¹¹ It fundamentally restructured the traditional system of social assistance with the aim of addressing growing and persistent mass unemployment.¹² The personal scope of application of the two schemes was delimited with the help of the criterion of employability: while the new Book II of the Social Code (SGB II: *Grundsicherung für Arbeitsuchende* – Basic Income Support for Jobseekers)¹³ provided benefits for jobseekers capable of working and their partners and children, the target group for social assistance benefits under Book XII of the Social Code (SGB XII: *Sozialhilfe* – Social Assistance)¹⁴ were individuals with no capacity for work, persons of pensionable age and all those in need of assistance whose level of subsistence could not otherwise be secured.

The reform was rooted in a workfare approach¹⁵ that placed strong pressure on employable recipients of basic income support benefits to accept job offers or participate in labour market integration measures, with non-compliance penalised by reductions in basic income support benefits of up to 100 per cent. The reform also reduced the duration of unemployment benefits, abolished unemployment assistance and transferred its recipients to the new basic income support scheme for those with capacity for work under SGB II (*Arbeitslosengeld II*). Insured persons, including long-term insured, were relegated to the subsistence-level support of social assistance once their unemployment benefits expired.

- 11 For a summary of the four Laws on Modern Labour Market Services, see Landeszentrale für politische Bildung, 'Die Hartz-Gesetze. Wie die Gesetze entstanden sind und was sie umfasst haben' (February 2021) < <https://www.lpb-bw.de/hartz-gesetze#c65719> > accessed 22.3.2025.
- 12 The unemployment rate in 2005 was 13 per cent for the reunified Federal Republic of Germany, 20.6 per cent in the new Federal States, 11 per cent in the old Federal States, see Statista, 'Arbeitslosenquote der Bundesrepublik Deutschland in den Jahren 1955 bis 2024' (2025) < <https://de.statista.com/statistik/daten/studie/1127090/umfrage/arbeitslosenquote-der-bundesrepublik-deutschland> > accessed 23.3.2025.
- 13 For a brief overview, see Federal Ministry of Labour and Social Affairs, 'Citizen's Benefit: Assistance and Needs' (24 April 2024) < <https://www.bmas.de/EN/Labour/Basic-income-support-for-jobseekers/basic-income-support-for-jobseekers-art.html> > accessed 23.3.2025.
- 14 For a brief overview, see Federal Ministry of Labour and Social Affairs, 'What is Social Assistance?' (21 February 2023) < <https://www.bmas.de/EN/Social-Affairs/Social-assistance/social-assistance-art.html> > accessed 23.3.2025.
- 15 W. Voges, H. Jacobs and H. Trickey, 'Uneven Development – Local Authorities and Workfare in Germany', in: I. Lodemel and H. Trickey (eds.), *An Offer You Cannot Refuse – Workfare in International Perspective* (Bristol University Press 2001), pp. 71–104.

This made the Hartz IV reform one of the most controversial social law reforms in Germany since World War II. The controversy was even brought before the Federal Constitutional Court, with far-reaching implications for social assistance law, prompting multiple revisions in line with the requirements of the Federal Constitutional Court's case law.

Nearly 20 years later, in 2023, several restrictive regulations of the Hartz IV legislation were reversed: under the new name "SGB II – Basic Income Support for Jobseekers, Citizen's Benefit" (*Bürgergeldgesetz*)¹⁶, the regulation on the priority of employment over education, vocational training and professional development was withdrawn, the thresholds for income and asset allowances were raised and the six-month limit on the reimbursement of inadequate accommodation costs was extended to one and a half years.

According to the Federal Statistical Office, around 7.3 million of Germany's 84.669.000 inhabitants were receiving basic income support at the end of 2023, which includes 5.5 million recipients of basic income support for jobseekers under SGB II; 1.2 million recipients of basic income support in old age and for those with a reduced capacity for work under SGB XII, and 523,000 recipients of basic benefits under the Asylum Seekers Benefits Act (*AsylbLG*).¹⁷ The rise in the basic income support rate (proportion of benefit recipients in the total population) from 8.0 per cent at the end of 2021 to 8.6 per cent by the end of 2023 is primarily attributed to the influx of refugees from Ukraine who are entitled to subsidiary protection under EU law. Since 1 June 2022, refugees from Ukraine have been entitled to benefits under SGB II or SGB XII. The at-risk-of-poverty rate (proportion of people with less than 60 per cent of the population's median personal net equivalent income) deviates from this by definition: 14.4 per cent of the population were at risk of poverty in 2023,¹⁸ while the share of those at

16 *Zwölftes Gesetz zur Änderung des Zweiten Buches Sozialgesetzbuch und anderer Gesetze – Einführung eines Bürgergeldes (Bürgergeld-Gesetz)* as promulgated on 16 December 2022 (Federal Law Gazette I 2022, p. 2328).

17 The numbers have risen by 22 per cent compared to the previous year (= 88,000, of which 40,000 are from Ukraine): Statistisches Bundesamt, *Asylbewerberleistungen* (2025) < https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Soziales/Asylbewerberleistungen/_inhalt.html > accessed 22.3.2025. For more detailed figures, see Statistisches Bundesamt, 'Zahl der Empfängerinnen und Empfänger sozialer Mindestsicherungsleistungen 2023 um 1,6 % gestiegen' (2025) < <https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Soziales/Mindestsicherung/aktuell-mindestsicherung.html> > accessed 23.3.2025.

18 Statistisches Bundesamt, 'Armutsgefährdungsquote (monetäre Armut) nach Geschlecht und Alter' (2025) < <https://www.destatis.de/DE/Themen/Gesellschaft>

risk of poverty and social exclusion in the total population (AROPE) stood at 21.3 per cent.¹⁹ Public expenditure on the Citizen's Benefit amounted to around EUR 42,59 billion in 2023.²⁰

II. Overview

1. Normative Framework

a) International Law

Although Germany has ratified the International Covenant on Economic, Social and Cultural Rights²¹ and the European Social Charter²²—both of which enshrine traditional social rights such as the right to social security (Art. 9 ICESR, Art. 12 ESC), the right to an adequate standard of living (Art. 9 ICESR)²³ or the right to social assistance (Art. 13 ESC)—their impact²⁴ on the development of Germany's national social assistance law has remained limited so far.²⁵

t-Umwelt/Einkommen-Konsum-Lebensbedingungen/Lebensbedingungen-Armuts-gefährdung/Tabellen/armutsgef-quote-nach-sozialleistung-mz-silc.html> accessed 23.3.2025.

19 Statistisches Bundesamt, 'Gefährdung durch Armut oder soziale Ausgrenzung: AROPE-Indikator nach Geschlecht und Alter' (2025) < <https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Einkommen-Konsum-Lebensbedingungen/Lebensbedingungen-Armutsgefährdung/Tabellen/eurostat-armut-sozialeausgrenzung-mz-silc.html> > accessed 23.3.2025.

20 Response of the Federal Government to a minor interpellation by MPs and the AfD parliamentary group dated 4 July 2024, BT-Drs. 20/12225.

21 Federal Law Gazette II 1976, p. 428.

22 Federal Law Gazette II 1964, p. 1261. Germany also ratified the RESC in 2021. It came into force on 1 May 2021.

23 On the content and interpretation, see G. Vonk and M. Olivier, 'The fundamental right of social assistance: A global, a regional (Europe and Africa) and a national perspective (Germany, the Netherlands and South Africa)' *European Journal of Social Security* 21 (2019)3, pp. 219–240.

24 On the significance of international legal acts for the development of minimum social benefits, see *ibid.*, pp. 223 ff., who particularly highlights the Gaygusuz Judgment of the European Court of Human Rights of 16 September 1996 *Gaygusuz v Austria* Application No. 19371/90.

25 On the right to strike (Art. 6 AESC) and on fair pay (Art. 4 ESC), see H. Brecht-Heitzmann and M. Sadat Khonsari, 'Beachtung der Europäischen Sozialcharta durch Deutschland' *ZESAR* II (2017), pp. 463–468.

b) European Union Law

Despite Member States' exclusive responsibility for social security legislation, they are required, according to established case law of the European Court of Justice (ECJ), to comply with the principles of EU law when designing their social security systems.²⁶ This has had a major impact on German social assistance law. Between 2013 and 2019, the ECJ was repeatedly called upon to assess the compatibility of Germany's exclusion of foreign nationals from minimum income benefits under SGB II (Section 7, para. 1, sentence 2 SGB II) with EU law. In a partial departure from its previous, more integration-friendly case law,²⁷ the ECJ upheld the exclusion of economically inactive foreign nationals (i.e. Union citizens and their family members) from basic income support for jobseekers under SGB II.²⁸ According to the ECJ's case law, EU citizens are only entitled to equal treatment with the host Member State's nationals if their residence complies with the requirements of the Freedom of Movement Directive (2004/38/EC). Exclusions based on the absence of a substantive right to freedom of movement in accordance with Directive 2004/38/EC are therefore consistent with European law.²⁹ As already mentioned, the ECJ has upheld the exclusion of foreign nationals (i.e. Union citizens and their family members) from benefits during their first three months of residence in Germany as being in line with European law.³⁰ However, in its most recent decision³¹ on

26 ECJ 28 April 1998 – C 120/96 (Kohll); EuGH 28.4.1998 – C 120/95 (Dekker).

27 ECJ 12 May 1998 – C-85/96 (Sala); ECJ 7.9.2004 – C-45/02 (Trojani); ECJ 20.9.2001 – C-184/99 (Grzelczyk); ECJ 23.3.2004 – C-138/02 (Collins).

28 ECJ 11 November 2014 – C-333/13 (Dano) para. 69; ECJ 15 September 2015 – C-67/14 (Alimanovic), paras. 49–51; on the discussion, see U. Kötter, 'EU-Sozialbürgerschaft oder Menschenrecht auf Gewährleistung eines menschenwürdigen Existenzminimums? – Zur aktuellen Diskussion um das Recht von Unionsbürgerinnen auf soziale Grundsicherung in Deutschland', in: W. Sartorius and H. Weth (eds.), *Rechtsstaat, Markt und Menschenwürde – Herausforderung Armut und Migration* (Lambertus 2016), pp. 43–71.

29 ECJ 11 November 2014 – C-333/13 (Dano) para. 69; ECJ 15 September 2015 – C-67/14 (Alimanovic), paras. 49–51.

30 ECJ 25 February 2016 C-299/14 (Garcia-Nieto).

31 ECJ 6 October 2020 – C 181/19 (J.D. v Jobcenter Krefeld); for a discussion, see S. Devetzi and C. Janda, 'Das Gesetz zur Regelung von Ansprüchen ausländischer Personen in der Grundsicherung für Arbeitssuchende und in der Sozialhilfe' ZESAR 5/6 (2017), pp. 197 ff. and U. Berlit, 'Die Regelung von Ansprüchen ausländischer Personen in der Grundsicherung für Arbeitsuchende und in der Sozialhilfe' NDV 2 (2017), p. 68.

such exclusions under SGB II, the ECJ found that the exclusion from benefits of persons whose right of residence derives from the right of residence of a child under Art. 10 Regulation 492/2011, and for whom they have care responsibilities, is contrary to European law. The Court based its decision on the objective of Regulation No. 492/2011 to integrate migrant workers and their families into the host country's society as effectively as possible. The ECJ's judgments on the exclusion of foreign nationals from SGB II has had an impact on German case law and legislation, extending well beyond the direct affirmation of Germany's legal framework. The Federal Social Court (*Bundessozialgericht*, BSG) initially made social assistance benefits accessible for foreign nationals who fall under the exclusion criteria and are excluded from entitlement to basic security benefits in accordance with Section 7, para. 1, sentence 2 SGB II, by interpreting Section 23 SGB XII as being in conformity with the Constitution.³² However, this access was blocked by the legislator with the extension of exclusions to SGB XII and the introduction of entitlement to transitional benefits (for 1 month within 2 years) and to loans for travel expenses.³³

c) Constitutional Law

aa) The Welfare State Principle

In contrast to the Weimar Constitution,³⁴ the Basic Law of 1949, the Constitution of the Federal Republic of Germany, does not contain a detailed catalogue of fundamental social rights, but only roughly outlines the framework of the German welfare state through the welfare state principle enshrined in Art. 20.1.1 and Art. 28.1.1 of the Basic Law. Like the other foundational principles of the Basic Law, the welfare state principle binds the State directly as the "benchmark for all State action"³⁵. Nevertheless,

32 BSG (German Federal Social Court), Judgment of 3 December 2015, B 4 AS 44/15 R.

33 *Gesetz zur Regelung von Ansprüchen ausländischer Personen in der Grundsicherung für Arbeitsuchende (SGB II) und in der Sozialhilfe (SGB XII)* as promulgated on 22 December 2016 (Federal Law Gazette I 2016, p. 3155).

34 Art. 155 Weimar Constitution as promulgated on 11 August 1919 (Reich Law Gazette 1919, p. 1383).

35 H. Zacher, *Sozialpolitik und Verfassung im ersten Jahrzehnt der Bundesrepublik Deutschland* (De Gruyter 1980), pp. 676 ff., 706 ff.

its content is characterised by a high degree of vagueness.³⁶ In its case law, the Federal Constitutional Court has emphasised the State's obligation to establish a "just social order" and to support persons in need (*Fürsorge für Hilfebedürftige*).³⁷ Their concretisation lies primarily within the remit of the democratically elected legislator.³⁸ The welfare state principle thus supplements the constitutional guarantees of individual freedom by addressing the applicable prerequisites and conditions, the organisation of which remains the responsibility of the legislator.

bb) A Fundamental Right to a Guaranteed Subsistence Minimum

Fundamental social rights³⁹ have traditionally been rejected as non-justiciable in view of their uncertain legal consequences and fiscal risks.⁴⁰ According to prevailing opinion, claims to enforceable rights can neither be exclusively derived from the welfare state principle⁴¹ nor from the principle of human dignity pursuant to Article 1.1 of the Basic Law.⁴² Initially, the Federal Constitutional Court also interpreted these principles as imposing an obligation on the legislator to create the foundations for a life in dignity, requiring the legislator to exclude income up to the amount of the

36 H. Zacher, 'Das soziale Staatsziel', J. Isensee and P. Kirchhof (eds.), *Handbuch des Staatsrechts der Bundesrepublik Deutschland* (C. F. Müller 1987), pp. 1045 ff., paras. 61 ff.

37 BVerfGE 22, 180 (1st Guiding Principle of the Judgment of the Federal Constitutional Court); 43, 13 (19).

38 H. Zacher (n 36), pp. 1045 ff., para. 440. For the current understanding of the design mandate derived from the social state principle, see J. Heesen, 'Menschenwürde und Existenzminimum', in: U. Berlit, W. Conradis and A. Pattar (eds.) *Handbuch des Existenzsicherungsrechts* (3rd ed. Nomos 2019), paras. 32 ff.

39 For an overview, see Wissenschaftlicher Dienst des Bundestags, 'Soziale Grundrechte – Eine Ausarbeitung' (2007) < <https://www.bundestag.de/resource/blob/419210/91fa0b6b3f13da93d5f798346438ab02/wd-3-050-07-pdf-data.pdf> > accessed 22.3.2025.

40 J. Isensee, 'Grundrechtsvoraussetzungen', in: J. Isensee and P. Kirchhof (eds.), *Handbuch des Staatsrechts der Bundesrepublik Deutschland* (C. F. Müller 1987), para. 174; on the current discussion, see I. Winkler, 'Interpreting the Right to a Dignified Minimum Existence: A New era in German Socio-Economic Rights Jurisprudence?' *Human Rights Law Review* 13 (2013)2, pp. 388–401, 394, with further references.

41 Except in cases of evident and arbitrary disregard of the objectives and mandates of the welfare state, see H.-J. Papier, 'Der Einfluss des Verfassungsrechts auf das Sozialrecht', in: B. von Maydell and F. Ruland (eds.), *Sozialrechtshandbuch* (2nd ed. Nomos 2003).

42 BVerfG Decision of 19 December 1951 – 1 BvR 220/51 para. 104.

minimum level of subsistence from taxation.⁴³ This interpretation changed fundamentally with the landmark ruling⁴⁴ of the Federal Constitutional Court of 9 February 2010.⁴⁵ The so-called Hartz IV ruling led to a reorientation of constitutional case law towards fundamental social rights. In this judgment, the Federal Constitutional Court for the first time explicitly recognised a fundamental right to a minimum level of subsistence that ensures human dignity (*Grundrecht auf Gewährleistung eines menschenwürdigen Existenzminimums*). This represents a remarkable constitutional shift,⁴⁶ given that the framers of the Constitution had deliberately refrained from including fundamental social rights in the Basic Law and had only granted the legislature a social mandate based on the principle of the social state.⁴⁷ Since this ruling, the Federal Constitutional Court has repeatedly intervened to correct legislation governing basic income support for job-seekers.

The fundamental right to the guarantee of a minimum level of subsistence is derived from the principle of human dignity in Article 1.1 of the Basic Law, in conjunction with the principle of the welfare state in Article 20.1 of the Basic Law: “The fundamental right to the guarantee of a minimum level of subsistence that is in line with human dignity (...) ensures that every person in need of assistance receives the material means that are indispensable for his or her physical existence and for minimum participation in social, cultural and political life.”⁴⁸ The Court emphasised

43 BVerfG Judgment of 19 May 1990, 1 BvL 20/84.

44 The judgment resonated not only in Germany, but also internationally: G. Vonk and M. Olivier (n 23), p. 219; see ESCR, ‘Hartz IV GFCC, Judgment of the First Senate of 09 February 2010 – 1 BvL 1/09, 1 BvL 2/09, 1 BvL 4/09’ (26 March 2020) < <https://www.escr-net.org/caselaw/2020/hartz-iv-gfcc-judgment-first-senate-09-february-2010-1-bvl-109-1-bvl-309-1-bvl-409> > accessed 22.3.2025.

45 BVerfG 1 BvL 1/09, ‘Judgment of 9 February 2010 (Hartz VI)’ (9 February 2010) < www.bverfg.de/entscheidungen/lis20100209_1bvl000109en.html > accessed 22.3.2025.

46 For more details, see U. Kötter, ‘Die Rechtsprechung des Bundesverfassungsgerichts der Bundesrepublik Deutschland zum Grundrecht auf Gewährleistung eines menschenwürdigen Existenzminimums: erste Konturen eines sozialen Grundrechts’, in: A. Hekimler (ed.), *Festschrift für Otto Kaufmann. Armağanı* (Legal Yayincılık 2021), pp. 751–774.

47 W. Abendroth, ‘Zum Begriff des demokratischen und sozialen Rechtsstaates im Grundgesetz der Bundesrepublik Deutschland’, in: A. Hermann (ed.), *Aus Geschichte und Politik. Festschrift zum 70. Geburtstag von Ludwig Bergsträsser* (Droste 1954), pp. 279–300.

48 BVerfG Judgment of 9 February 2010 1 BvL 1/09, 1st Guiding Principle of the Judgment of the Federal Constitutional Court.

that “[i]n addition to the right under Article 1.1 GG to respect the dignity of every individual, which has absolute effect”⁴⁹, the fundamental right to the guarantee of a minimum level of subsistence, in conjunction with Article 20.1 GG, holds autonomous significance as a right of entitlement. This right is not subject to the legislature’s discretion and must be honoured.⁵⁰ The right to a minimum level of subsistence includes both physical necessities which, according to the Federal Constitutional Court, include food, clothing, personal and health care, housing, heating, household electricity and household goods,⁵¹ as well as participation in social, political and cultural life and the maintenance of social contacts.

With its 2010 judgment, the Federal Constitutional Court established the fundamental right to the guarantee of a minimum level of subsistence that is in line with human dignity as a justiciable constitutional entitlement for all inhabitants of the Federal Republic of Germany.⁵² However, determining and adjusting the level of the “socio-cultural subsistence minimum” (*sozio-kulturelles Existenzminimum*) remains the responsibility of the legislature, “which must align the benefits to be provided with the respective stage of societal development and the prevailing conditions of life”.⁵³ In this respect, the Court exercises limited judicial review, intervening only when the level of benefits is evidently inadequate.⁵⁴ At the same time, it outlines detailed guidelines for the procedure to determine the level of benefits: “In order to ascertain the extent of the claim, the legislature must realistically and comprehensively assess all expenditures necessary for subsistence, using a

49 Ibid., 2nd Guiding Principle of the Judgment of the Federal Constitutional Court.

50 Ibid, para. 133

51 BVerfG Judgment of 9 February 2010 – 1 BvL 1/09 para. 135; BVerfG Order of 23 July 2014 – 1 BvL 10/12 para. 90. Cf. J. Heesen (n 38), para. 11.

52 In its judgment of 18 June 2012 (1 BvL 10/10) concerning the level of benefits for asylum seekers, the Court clarified that the fundamental right to the guarantee of a subsistence minimum that safeguards human dignity is not only a citizen’s right but a human right that applies to both German and foreign residents alike. Differentiations in the level of benefits are therefore only permissible if the needs of the comparison groups differ. The fundamental right may not be relativised by migration policy considerations. In contrast to the Hartz IV decision, however, the Court found in this case that the benefits, which had not been adjusted to the evolving living conditions in Germany and the inflation rate for nearly 20 years, were manifestly inadequate.

53 BVerfG Judgment of 9 February 2010 1 BvL 1/09, 2nd Guiding Principle of the Judgment of the Federal Constitutional Court.

54 I. Winkler (n 40), p. 398.

transparent and appropriate procedure based on reliable data and plausible methods of calculation.”⁵⁵

Accordingly, the Federal Constitutional Court found the provisions regulating the amount of ‘Hartz IV’ benefits for children to be unconstitutional⁵⁶ and instructed the legislature to reassess and set basic income support in a way that complies with the constitutional requirements. Notably, the Court conducted a detailed review of the rules and criteria applicable for defining the “social minimum” and placed particular emphasis on the legislator’s procedural obligations.⁵⁷

cc) Self-Responsibility as a Limit to the Fundamental Right

The 2010 judgment was followed by a series of further appeals to the Federal Constitutional Court challenging other provisions of the Hartz IV reform, providing the Court opportunities to consolidate and further develop its case law.

In its 2019 “sanctions” judgement,⁵⁸ the Federal Constitutional Court dealt with the constitutionality of reducing the level of benefits in the event of a breach of obligations to “cooperate”.⁵⁹ Reinforcing the principle of subsidiarity through self-help obligations subject to sanctions does not in itself violate the Constitution, provided the person in need of assistance can overcome this need through their own efforts.⁶⁰ Reductions in benefits must, however, be reviewed in light of the fundamental right to a guaranteed minimum level of subsistence. Since the benefits intended to ensure such a minimum level that is in line with human dignity are, by definition, already limited to the bare minimum, any reduction exceeding 30 per cent of the standard benefit is not permissible. The judgment recalibrates the relationship between rights and duties in the context of receiving the

55 BVerfG Judgment of 9 February 2010 1 BvL 1/09, 3rd Guiding Principle of the Judgment of the Federal Constitutional Court.

56 BVerfG Judgment of 9 February 2010 BvL 1/09, paras. 190–198.

57 See III.1.a.

58 BVerfG Judgment of 5 November 2019, 1 BvL 7/16, ‘Judgment of 5 November 2019’ (5 November 2019) < https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2019/11/ls20191105_1bvl000716en.html > accessed 22.3.2025.

59 For a detailed description and assessment, see S. Rixen, ‘Abschied vom Sozialstaat der Sanktionen? Das Urteil des BVerfG v. 5.11.2019 zu den Sanktionen im SGB II („Hartz IV“)’ *Die Sozialgerichtsbarkeit* (2020)1, pp. 1–7.

60 BVerfG Judgment of 5 November 2019, 1 BvL 7/16, paras. 123 ff.

Citizen's Benefit by limiting the extent to which this can be reduced in case the obligation to cooperate is violated, but at the same time emphasises the fundamental duty of beneficiaries to help themselves. The fundamental right to a decent minimum level of subsistence does not entitle the recipient to an unconditional basic income.

In its decision of 23 September 2024 on the amount of educational assistance provided to individuals during a course of study,⁶¹ the Federal Constitutional Court reaffirmed its established case law on the limitation of the fundamental right to a minimum level of subsistence that is in line with human dignity through the principle of self-help: 'Entitlement to benefits that ensure subsistence under Article 1.1 of the Basic Law in conjunction with the principle of the social state (Article 20.1 of the Basic Law) guarantees a dignified existence for those who are unable to do so on their own and is limited to the means absolutely necessary to achieve this. This entitlement does not exist if this need can be remedied or avoided, for example, by taking up gainful employment that would secure the individual's livelihood, even if the exercise of certain fundamental freedoms, such as the right to pursue a university degree under Article 12.1.1 of the Basic Law, is no longer possible as a result.'

2. Social Benefits

a) A Structured System of Livelihood Benefits

Germany's social security system has evolved over time into a highly structured framework. Its legal foundation is set out in the 13 Books⁶² of the German Social Code and other federal laws listed in Section 68 SGB I. Social assistance (*soziale Hilfe*) benefits under SGB II and SGB XII are subordinate to social insurance (*Sozialversicherung*) benefits, social compensa-

61 BVerfG Order of 23 September 2024, 1 BvL 9/21, 1st Guiding Principle of the Order of the Federal Constitutional Court.

62 Recently, social compensation law was codified in Book 14 of the German Social Code. The 13th book is not yet occupied.

tion (*soziale Entschädigung*)⁶³ and social support (*soziale Förderung*),⁶⁴ and are mutually exclusive.

As regards social assistance schemes, SGB II—which applies to around 2/3 of recipients of minimum income benefits—serves as a reference system. However, it is important to bear in mind that the regulatory systems of the SGB II and of Book XII on social assistance (SGB XII) have diverged considerably since the Hartz IV reform.⁶⁵ The most important subsistence benefit under SGB II is the Citizen's Benefit (*Bürgergeld*). The Citizen's Benefit is provided to individuals who have capacity for work, as well as to those who are unable to work and live with beneficiaries who are able to work but are not entitled to benefits in accordance with SGB XII.⁶⁶

aa) The Principle of Subsidiarity (Section 2 SGB II, Section 2 SGB XII)

The principle of subsidiarity (*Nachranggrundsatz*) requires those entitled to benefits to first exhaust all possibilities for ending or reducing their need for assistance and to cover their living costs using their own resources and means before claiming benefits intended to secure their livelihood.⁶⁷ This principle also directs those affected to utilise assistance from third parties, in particular from persons liable for maintenance, but also from providers of other social benefits.⁶⁸ In relation to other social benefits, social assistance benefits therefore have a 'catch-all' function in terms of addressing unmet needs that are not covered by other social benefit schemes. To meet current needs in a timely manner (so-called principle of needs coverage, *Bedarfsdeckungsgrundsatz*), subsistence benefits must also be provided as advance payments (Sections 42 f. SGB I, Section 91 SGB XII), especially

63 On functional overlaps between compensation law and social welfare law, see U. Becker, *Soziales Entschädigungsrecht* (Nomos 2018), p. 5.

64 H. Zacher, 'Grundtypen des Sozialrechts', in: W. Fürst, R. Herzog and D. Umbach (eds.), *Festschrift für Wolfgang Zeidler* (De Gruyter 1987), p. 571, 583 ff.

65 See U. Klerks and W. Conradis, 'Die problematischen Unterschiede der Regelungen nach dem SGB II und SGB XII' info also (2024)3 and 4, pp. 99–106 (part 1) and pp. 147–155 (part 2).

66 See II.c) aa).

67 However, some benefits under SGB XII are not subordinate: this applies to assistance for overcoming specific social difficulties (e.g. counselling and support for homeless persons, persons released from prison or social participation) and to benefits for persons with disabilities under SGB IX. See J. Siefert, 'Sozialhilferecht', in: F. Ruland, U. Becker and P. Axer (eds.), *Sozialrechtshandbuch (SRH)* (7th ed. Nomos 2022).

68 Section 2 SGB II, Section 2 SGB XII.

in cases where institutional responsibility has not yet been determined (Sections 37 f., SGB XII). The right to reimbursement under Sections 102 to 114 SGB X requires the competent institutions to subsequently reimburse the costs incurred.

Entitlement to benefits to cover basic needs is also influenced by regulations governing preferential means, e.g. family law provisions on the amount of child maintenance,⁶⁹ but also labour law provisions, such as statutory or collectively agreed provisions on the amount of income from dependent employment (e.g. statutory minimum wages)⁷⁰, as well as remuneration provisions for freelance or commercial services.⁷¹

bb) Interplay with Social Security Benefits

Social insurance laws do not currently contain regulations guaranteeing a minimum level of protection.

Until 2004, unemployment assistance (Sections 190 – 197 SGB III, former version) was provided as a follow-up benefit under the unemployment insurance scheme after the fixed-term⁷² unemployment benefit had expired in accordance with the unemployment insurance scheme under SGB III. This benefit was open-ended for those insured under the unemployment insurance scheme, calculated based on their previously earned income and was means-tested only in relation to their own and their spouse's income and assets. The Hartz IV reform reduced both the amount and

69 See the Düsseldorf Table: OLG Düsseldorf, 'Düsseldorfer Tabelle' (1 January 2024) < https://www.olg-duesseldorf.nrw.de/infos/Duesseldorfer_Tabelle/Tabelle-2024/2023_12_11_Duesseldorfer_Tabelle_-2024.pdf > accessed 22.3.2025.

70 *Gesetz zur Regelung eines allgemeinen Mindestlohns* as promulgated on 11 August 2014 (Federal Law Gazette I 2014, p. 1348). In 2024, the statutory minimum wage was EUR 12.41, in 2025 EUR 12.82 per hour. For a 40-hour week it is about EUR 2220 gross per month, see < <https://www.dgb.de/service/ratgeber/mindestlohn/> > accessed 14.07.2025.

71 For an overview, see S. Heitzer and A. Kaufhold, 'Managervergütung, Mindestlohn, Mietpreisbremse, Vergütungsregelungen als Steuerungsinstrumente in einer sozialen Marktwirtschaft' *Der Staat* 60 (2021)3, pp. 353–386.

72 The period of entitlement is staggered depending on the beneficiary's previous insurance period and age (Section 147 SGB III). From 1 February 2005, the maximum period of entitlement for older employees was reduced from 36 to 18 months and then increased again to 24 months in 2008, see Institut für Arbeitsmarkt- und Berufsforschung, 'Aktueller Bericht 2016' (March 2016) < https://doku.iab.de/aktuell/2016/aktueller_bericht_1603.pdf > accessed 22.3.2025.

duration of unemployment benefits and abolished unemployment assistance. In its place, a means-tested and comprehensively needs-assessed basic income support for jobseekers (*Grundsicherung für Arbeitsuchende*) was introduced.⁷³ Once entitlement to unemployment benefits ends, even those who were previously employed in positions subject to social security contributions for many years must accept any form of gainful employment without job or income protection or to rely on transfers of income at the subsistence level and be subject to extensive⁷⁴ liquidation of their own or their partner's assets. The associated risk of occupational and social marginalisation are a central point of criticism of the Hartz IV reform.⁷⁵

Even the basic pension supplement in the statutory pension insurance scheme introduced in 2021 does not guarantee a minimum level of security equivalent to the statutory level of minimum subsistence in accordance with SGB II and SGB XII. The basic pension supplement is provided after at least 33 years of contributions or other qualifying periods (child-rearing, caregiving or periods of receipt of social benefits due to illness or rehabilitation) as an increase in the statutory pension calculated according to general rules (Section 76g SGB VI). It is calculated individually and currently amounts to an average of EUR 86 per month for 1.1 million beneficiaries.⁷⁶

Income-replacing social insurance benefits may therefore fall below the minimum level of subsistence due to the insurance principle, e.g. in cases of low incomes earned prior to the onset of risk or short insurance periods, as well as the absence of minimum security provisions. Inadequate social

73 Around 10 per cent of the 2 million former recipients of unemployment benefit lost entitlement to state support as a result. See K. Bruckmeier and D. Schnitzlein, 'Was wurde aus den Arbeitslosenhilfeempfängern? Eine empirische Analyse des Übergangs und Verbleibs von Arbeitslosenhilfeempfängern nach der Hartz-IV-Reform' IAB Discussion Paper (2007)24 < <http://doku.iab.de/discussionpapers/2007/dp2407.pdf> > accessed 22.3.2025.

74 According to the version under Section 12 SGB II at the time, the asset limit was EUR 200 per year of life, with a minimum of EUR 4,100 and a maximum of EUR 13,000, and an additional EUR 200 per year of life for old-age provision after the age of 60. In addition, company pensions, the Riester pension or other statutory pension subsidies as well as owner-occupied residential property are included in the so-called protected assets.

75 See C. Butterwege, *Hartz IV und die Folgen: Auf dem Weg in eine andere Republik?* (3rd ed. Beltz 2018).

76 Deutsche Rentenversicherung, 'Der Grundrentenzuschlag' (2025) < <https://www.deutsche-rentenversicherung.de/DRV/DE/Rente/Grundrente/grundrente.html> > accessed 22.3.2025.

insurance benefits must then be supplemented with minimum income benefits.

Since the Hartz IV reform, recipients of subsistence benefits under SGB II are mandatorily insured under the statutory health insurance scheme, which ensures comprehensive coverage in the event of illness (Section 5, para. 1, No. 2a SGB V).⁷⁷ Partners and children who are not otherwise insured are covered free of charge through the family insurance of the Citizen's Benefit recipient (Section 10 SGB V). If the recipient of subsistence benefits, e.g. a formerly self-employed person, already has health and long-term care insurance, subsidies may be provided towards the recipient's contributions to statutory or private health and long-term care insurance (Section 26 SGB II). In accordance with SGB XII, there is no compulsory insurance for recipients of minimum income support and/or of care assistance. However, under Section 264 SGB V, they are entitled to statutory health insurance benefits equivalent to those of insured persons, with the costs covered by the social welfare authorities (*Sozialhilfeträgern*).⁷⁸

The regulations on compulsory insurance in long-term care insurance correspond to those of statutory health insurance (Section 20 para. 1 No. 2 a SGB XI). If the limited long-term care insurance benefits, along with the individual's own income and assets and support from those legally obligated to provide maintenance, are insufficient to cover the costs of long-term care, these may be supplemented by long-term care assistance benefits under SGB XII (Sections 61 ff. SGB XII).

cc) Interplay with Social Support (*soziale Förderung*)

The aim of social support benefits is to promote equal opportunities and to reduce disparities in wealth and social disadvantages. These include, in

77 Contributions to statutory health insurance are covered by the federal government in accordance with Section 251, para. 4, sentence 1 SGB V.

78 In SGB II, these are the Federal Employment Agency together with the municipal institutions (the district-free cities and districts, Section 6 (1) SGB II), and in SGB XII, the local and supra-local institutions (Section 3 SGB XII). The local institutions are generally the district-free cities and the districts, while the supra-local organisations differ in the various federal states. However, the federal states may deviate from this and they also determine the local institutions. Cf. on this, for example, Art. 80 ff. AGSG of the State of Bavaria.

particular, educational support⁷⁹, family support benefits, but also child and youth welfare benefits in accordance with SGB VIII⁸⁰ and benefits for persons with disabilities under SGB IX.⁸¹ Since social support benefits effectively contribute to securing beneficiaries' minimum level of subsistence, their distinction from social assistance benefits is controversial.⁸² However, social support benefits serve different functions, such as enhancing the social position of individuals, families and groups when there is a fundamentally desired and recognised situation of special need,⁸³ which may even contribute to the common good.⁸⁴ Moreover, the cash benefits associated with social support do not guarantee a minimum level of subsistence in accordance with SGB II and SGB XII. Social support and social assistance benefits are therefore generally mutually exclusive.

This applies in particular to educational support benefits under the *BAföG*, which are intended to secure students' livelihood when their own income and the maintenance provided by parents or spouses who are legally obligated to support them is insufficient. Although these benefits are not intended to ensure subsistence, recipients of *BAföG* benefits are, in principle,⁸⁵ excluded from the scope of minimum income support under SGB II (Section 7, paras. 5 und 6 SGB II).⁸⁶

79 The vocational training allowance according to Sections 56 ff. SGB III, as well as the benefits of the *Bundesausbildungsförderungsgesetz* (*BAföG*).

80 See Art.1 *Gesetz zur Neuordnung des Kinder- und Jugendhilferechts* (*Kinder- und Jugendhilfegesetz – KJHG*) as promulgated on 26 June 1990 (Federal Law Gazette I 1990, p. 1163).

81 See F. Welti, 'Recht der Rehabilitation und Teilhabe' in F. Ruland, U. Becker and P. Axer (eds.), *Sozialrechtshandbuch (SRH)* (7th ed. Nomos 2022), paras. 22–23.

82 E. Eichenhofer, 'Kapitel 3: Vorrangige Sozialleistungszweige', in: U. Berlit, W. Conradis and A.K. Pattar (eds.), *Existenzsicherungsrecht* (4th ed. Nomos 2025) p. 47, paras. 12–13. Eichenhofer therefore speaks of special branches of livelihood security, a categorisation that is not followed here, as support benefits have a different function than livelihood-securing benefits, even if they have a livelihood-securing effect.

83 H. Zacher (n 64), p. 588.

84 U. Becker, 'Das Sozialrecht: Systematisierung, Verortung und Institutionalisierung' in: F. Ruland, U. Becker and P. Axer (eds.), *Sozialrechtshandbuch (SRH)* (7th ed. Nomos 2022), p. 53, paras. 21–22.

85 Exceptions apply, for example, for additional needs not covered by *BAföG*, e.g. in the case of pregnancy and single parenthood and in cases of hardship (Section 27 SGB II).

86 On the constitutionality of the exclusion, see III.3.c) below.

Recipients of subsistence benefits under SGB II and SGB XII are generally excluded from benefits under the *Wohngeldgesetz*⁸⁷ (Section 7, para. 1, Nos. 1, 5 und 6 WoGG). The housing benefit is provided to low-income, single-person or family households to ensure access to adequate and family-friendly housing. Given that this need is already covered by benefits provided for the actual costs of accommodation, an adequate amount of which must be covered (Section 22 SGB II, Section 35 SGB XII), recipients of minimum income support under SGB II and SGB XII are not entitled to additional benefits under the *Wohngeldgesetz*. An exception applies to the so-called child housing benefit, which can be granted upon request for children living in the household of a Citizen's Benefit beneficiary, if the child's subsistence level is covered using his or her own resources (i.e. the child's own income or the child supplement, if applicable) and the housing benefit (Section 12a SGB II).⁸⁸

The most complex intersection arises between means-tested social assistance benefits and the wide range of family benefits⁸⁹ at both the federal and state level.⁹⁰ These include child allowance (*Kindergeld*), which is provided as a tax refund to persons who earn a domestic income⁹¹ and as a social benefit to other parents,⁹² and a parental benefit (*Elterngeld*) for periods of reduced employment due to child-rearing responsibilities,⁹³ and advance maintenance payments for children (*Unterhaltsvorschuss*) who do not receive maintenance payments from a liable parent.⁹⁴ Cash family

87 *Wohngeldgesetz* as promulgated on 24 September 2008 (Federal Law Gazette I 2008, p. 1856).

88 See Bundesagentur für Arbeit, 'Zweites Sozialgesetzbuch – SGB II, Fachliche Weisungen: § 12a SGB II, Vorrangige Leistungen' (1 January 2023), pp. 10 ff. < https://www.arbeitsagentur.de/datei/dok_ba029240.pdf > accessed 22.3.2025.

89 For an overview, see the documentation of the Conference of the German Social Law Association (Deutscher Sozialrechtsverband) on the topic 'Familienleistungen im Bermudadreieck zwischen Verwaltungs-, Steuer- und Sozialrecht' Sozialrecht Aktuell (2023) Sonderheft 1, pp. 125 ff.

90 See, for instance, the Bavarian State Education Allowance of 9 July 2007, GVBl., p. 442.

91 Section 3 (6) EstG (*Einkommenssteuergesetz*) as promulgated on 8 October 2009 (Federal Law Gazette I 2009, pp. 3366, 3862).

92 *Bundeskindergeldgesetz* as promulgated on 28 January 2009 (Federal Law Gazette I 2009, pp. 142, 3177).

93 *Bundeselterngeld- und Elternzeitgesetz* (BEEG) as promulgated on 27 January 2015 (Federal Law Gazette I 2015, p. 33).

94 *Unterhaltsvorschussgesetz* as promulgated on 17 July 2007 (Federal Law Gazette I 2007, p. 1446).

benefits are considered income under SGB II and SGB XII and are deducted in full (e.g. child allowance or advance maintenance payments), or in part (e.g. parental allowance, Section 10 BEEG) from basic security benefits. The amount of child benefits under SGB II has been controversial since the Hartz IV reform. The legislator introduced additional benefits for education in the amount of EUR 100 for school supplies in 2008⁹⁵—likely in anticipation of the Federal Constitutional Court’s decision on the constitutionality of standard benefits for children under SGB II⁹⁶—and expanded these in 2013 to include participation benefits.⁹⁷ Benefits for education and participation in accordance with Section 28 SGB II are intended to guarantee equal access to education (only for pupils) and participation for (all) children of households that receive the Citizen’s Benefit. Educational benefits cover the costs of school trips, class trips, school transport, learning support (tutoring), even if there is no risk of the pupil having to repeat the year, lump sums for daily school supplies (2025: EUR 130 in the first semester, EUR 65 in the second semester), and costs for communal school lunch. For participation in social and cultural life, minors are eligible for a lump sum of EUR 15 per month upon proof of actual expenses for sports, games, cultural and social activities, arts, creative and cultural education activities, as well as for leisure activities (Section 28, para. 7 SGB II). Since benefits for education and participation have a very low take-up rate⁹⁸ due to the bureaucratic hurdles involved in applying for them and the conditions of benefit provision (Section 29 SGB XII), in particular the need to prove the need for assistance to service providers (e.g. tutoring institutions) or third parties (e.g. teachers), they have been repeatedly criticised.⁹⁹

95 Art. 3 *Familienleistungsgesetz* as promulgated on 22 December 2008 (Federal Law Gazette I 2008, p. 2955).

96 For the judgment of the Federal Constitutional Court, see III.3.b) below.

97 Art. 1 *Gesetz zur Änderung des Zweiten Buches Sozialgesetzbuch und anderer Gesetze* as promulgated on 7 May 2013 (Federal Law Gazette I 2013, p. 1167).

98 Deutscher Paritätischer Wohlfahrtsverband, ‘Empirische Befunde zum Bildungs- und Teilhabepaket – Teilhabequoten im Fokus’ (2020) < https://www.der-paritaetische.de/fileadmin/user_upload/Publikationen/doc/expertise-BuT-2020_web.pdf > accessed 22.3.2025.

99 Answer from the Federal Government, ‘Inanspruchnahme der Leistungen im Bildungs- und Teilhabepaket – BT-Drs. 19/31398’ (6 July 2021) < <https://dserver.bundestag.de/btd/19/313/1931398.pdf> > accessed 22.3.2025.

As part of the Hartz IV reform, the so-called child supplement (*Kinderzuschlag*) (Sections 6a, 6b BKG) ¹⁰⁰ was incorporated into Child Benefit Law for parents who are able to cover their own minimum level of subsistence but not that of their children. The child supplement (*Kinderzuschlag*), together with the child allowance and housing benefit, was intended to ensure the minimum level of subsistence for children and thus prevent the need for basic benefits under SGB II. ¹⁰¹ However, the complex access and calculation rules have resulted in high rates of non-take-up. ¹⁰²

With the introduction of the Basic Child Benefit (*Kindergrundsicherung*) ¹⁰³ during the 20th legislative period, the legislator aimed to address the persistently high poverty and marginalisation risk rate of 24 per cent among children under 18, ¹⁰⁴ and to increase opportunities for participation of children at risk of poverty. ¹⁰⁵ In addition to the Guaranteed Child Benefit (EUR 253) provided for all children, and which replaced the child allowance (*Kindergeld*), the reform ¹⁰⁶ envisaged a supplementary child allowance (EUR 153) for all children, which would be graduated in

100 *Bundeskindergeldgesetz* as promulgated on 28 January 2009 (Federal Law Gazette I 2009, p. 142), last amended by Article 10 of the *Bürgergeldgesetz* of 16 December 2022 (Federal Law Gazette I 2022, p. 2328).

101 On the child supplement, see W. Conradis, ‘Kinder und Jugendliche’, in: U. Berlit, W. Conradis and A. Pattar (eds.) *Handbuch des Existenzsicherungsrechts* (4th ed. Nomos 2025), paras. 50 ff.

102 Answer from the Federal Government, Inanspruchnahme des Kinderzuschlags – BT-Drs. 20/5673 (15 February 2023) < <https://dserver.bundestag.de/btd/20/056/2005673.pdf> > accessed 22.3.2025.

103 For different models of basic child protection, see A. Lenze, ‘Kindergrundsicherung – Hintergrund, Kontext, Herausforderungen’ *Sozialrecht aktuell* (2023) Sonderheft 1, pp. 164–170. For the legal arguments in detail, see *ibid.*, pp. 125–178.

104 Statistisches Bundesamt, ‘Jedes siebte Kind in Deutschland armutsgefährdet’ (1 July 2024) < https://www.destatis.de/DE/Presse/Pressemitteilungen/2024/07/PD24_N033_63.html > accessed 22.3.2025, highlighting the “persistently high poverty and social exclusion risk rate of 24% among those under 18”.

105 BMFSFJ, ‘Die Kindergrundsicherung – eine Leistung für alle Kinder’ < <https://www.bmfsfj.de/bmfsfj/service/publikationen/die-neue-kindergrundsicherung-231364> > accessed 30.4.2025.

106 Draft bill of the Federal Government of 6 November 2023, see BT-Drs. 20/9092 < <https://dserver.bundestag.de/btd/20/090/2009092.pdf> > accessed 22.3.2025. For criticism of the existing system of transfer payments for children, see A. Lenze, ‘Die Ermittlung der Bedarfe von Kindern – Probleme, Herausforderungen, Vorschläge: Rechtsgutachten’ (May 2019) < https://noa.gwlb.de/receive/noa_mods_00000385 > accessed 22.3.2025.

accordance with the parents' and children's income and their age. These would not count towards the minimum level of subsistence. The supplementary child allowance was intended to replace the child supplement, standard benefits and part of the education and participation benefits for children under SGB II and SGB XII. An online tool was supposed to simplify the application for benefits procedure for families. The reform ultimately failed due to political differences within the governing coalition, primarily due to financial sustainability concerns related to the Basic Child Benefit, but also due to the fact that the reform did not make a sufficient contribution to simplifying the application procedure for family benefits.¹⁰⁷ One positive side effect of the discussion surrounding the Basic Child Benefit was the increase in the number of recipients of supplementary child allowance (from 764,900 in January 2023 to 1,045,172 in March 2024), which was likely driven by the heightened media coverage.¹⁰⁸

b) Requirements for the Citizen's Benefit According to SGB II

aa) Eligibility

Beneficiaries who have capacity for work must be at least 15 years old but may not have reached retirement age, they must have a need for assistance, and their habitual residence must be located in Germany (Section 19, para. 1, sentence 1 SGB II in connection with Section 7, para. 1, sentence 1, nos. 1–4 SGB II). Individuals who are not prevented by illness or disability from working for three hours a day in the foreseeable future under the standard working conditions of the general labour market are considered to have capacity for work (Section 8, para. 1 SGB II). The final decision in the event of disputed capacity for work is made by the Employment Agency after obtaining an expert opinion from the respective pension insurance provider, which is binding for all social benefit providers potentially liable for providing benefits in the event of incapacity for work. In the case of foreign

107 For a critical review, see also I. Vorholz, 'Wege aus dem bürokratischen Irrgarten der Kindergrundsicherung' *Sozialer Fortschritt* (2024)4, pp. 331–340.

108 For the figures, see Bundesagentur für Arbeit, 'Kindergeld und Kinderzuschlag – Jahreszahlen 2023' (2023) table 1.4, p. 16 < https://statistik.arbeitsagentur.de/Statistikdaten/Detail/202312/famka/famka-jz/famka-jz-d-0-202312-pdf.pdf?__blob=publicationFile&v=2 accessed 22.3.2025.

nationals¹⁰⁹—apart from EU citizens entitled to the freedom of movement right and their relatives—an employment permit is also required (Section 8, para. 2 SGB II). Habitual residence is established when the person's centre of life is in Germany (Section 30, para. 3, s. 2 SGB I). A place of residence is not required in this regard. This means that homeless people are also entitled to social assistance benefits if they have a postal address, e.g. at a facility for homeless people¹¹⁰ and are therefore not excluded from receiving benefits under SGB II due to lack of reachability (Section 7b SGB II).

Beneficiaries who are unable to work receive the Citizen's Benefit if they are in need of assistance, live in a community of need with an individual who has capacity for work, and are not entitled to benefits to ensure their livelihood due to old age or reduced earning capacity in accordance with SGB XII (Section 19, para. 1, s. 2 SGB II). According to Section 7, para. 3 SGB II, a community of need includes partners and/or children of those entitled to benefits who have capacity for work. The partners can be married (including different-sex and same-sex couples), in a registered partnership (only for same-sex couples) or in an informal marriage-like or civil partnership-like relationship. Children are considered part of the community of need if they live with an individual who is entitled to benefits and who has capacity for work, if they are the child of an employable beneficiary or of that person's partner, live in the same household, are unmarried and have not yet reached the age of 25. Being a member of a community in need not only determines entitlement to benefits, but also the benefit amount based on classification in a specific standard needs level, on the one hand, and the distribution of income and assets among the community of need members, on the other.

109 The proportion of foreigners (individuals without German citizenship, all age groups) among basic income support recipients was around 47 per cent in August 2024. See Bundesagentur für Arbeit, Statistik, Strukturmerkmale von Bedarfsgemeinschaften und Personen, Tabelle 4, < https://statistik.arbeitsagentur.de/SiteGlobals/Forms/Suche/Einzelheftsuche_Formular.html?nn=15024&r_f=ur_Deutschland&topic_f=zeitreihekreise-zr-gruarb > accessed 21.12.2024.

110 Beneficiaries' accessibility to the job centre in accordance with Section 7b SGB II is not a prerequisite for entitlement to benefits, but a reason for exclusion from entitlement to benefits. Accessibility presupposes that those entitled to benefits are in the immediate vicinity of the responsible job centre and are able to receive and respond to its notifications and requests on every working day.

bb) Need for Assistance as a Reflection of the Principle of Subsidiarity

The subsidiarity principle is applied on a case-by-case basis by means of an individual assessment of the need for assistance. A person is considered in need of assistance if they are unable (or only partially able) to cover their living expenses using their own income and assets or through third-party benefits (e.g. maintenance payments or overriding social benefits), as stipulated in Section 9, para. 1 SGB II.

In case of a community of need, the partner's income and assets are also included in the assessment; in the case of children under the age of 25, the parents' income and assets are also considered (Section 9, para. 2, s. 2 SGB II). The concept of the community of need also extends to the income and assets of individuals who are not liable for maintenance under civil law (unmarried partners or partners living in a civil partnership who are not the parent of the child). After a cohabitation period of no more than one year¹¹¹ in the community of need (Section 7, para. 3a, No. 1 SGB II), the income and assets of the partner (who is not the parent of the child) are also included in the calculation of the child's entitlement to benefits. Consequently, children will no longer be entitled to the Citizen's Benefit in the full amount, despite the absence of maintenance obligations of their parent's partner.

In principle, all cash income is considered income, subject to certain deductions (Section 11, para. 1, s. 1 SGB II). These include taxes and mandatory social security contributions, as well as other contributions to compulsory (e.g. motor vehicle liability insurance) or voluntary insurances (e.g. liability insurance, household contents insurance), contributions to private state-subsidised pension schemes and maintenance payments for children who do not live in the same household, and expenses incurred to generate income (e.g. for further vocational training, trade union dues) (see Section 11b SGB II). An additional allowance for gainfully employed persons is intended to incentivise individuals to take up work. It amounts to 20 per cent for incomes between EUR100 and EUR 520, 30 per cent between EUR 520 and EUR 1,000 and 10 per cent for incomes between EUR 1,000 and EUR 1, 200 (or EUR 1,400 for parents of minors). The most recent adjustment to the sliding scale in the income range between EUR 520 and EUR 1,000 as part of the Citizen's Benefit reform aims to

111 The regulation is a legal presumption that can be rebutted by the beneficiaries.

encourage individuals to increase their working hours beyond the threshold for social security contributions (EUR 520 – so-called mini-jobs). Certain types of income are excluded from the assessment (Sections 11a SGB II, Section 1 *Bürgergeld-Verordnung*¹¹²): these, inter alia, are any benefits in kind (e.g. food banks, clothing banks), monetary donations from voluntary welfare associations (to a limited extent), but also compensation pensions, expense allowances for volunteer work subsidised under tax law and, in the case of students who have not yet reached the age of 25, income from holiday jobs.

According to established case law,¹¹³ the distinction between assets and income follows the inflow principle. All disposable assets available at the beginning of the period of need (the month in which benefits are received) represent the beneficiary's assets. All inflows during the period of need are treated as income. The assets are assessed at their market value (Section 12, para. 5, s. 1 SGB II). However, certain 'protected' assets are excluded, for example, adequate household goods, a reasonable motor vehicle,¹¹⁴ specific forms of old-age provision, and an owner-occupied home of up to 140 m², or an owner-occupied flat of up to 130 m² if it is being used by up to four persons (Section 12, para. 1 s. 2 SGB II).¹¹⁵

As a result of the experiences with "new" beneficiaries during the coronavirus pandemic,¹¹⁶ a waiting period of one year from the beginning of the month in which benefits are first received (Section 12, para. 3, s. 1 SGB II) was introduced in 2023. During this waiting period, only substantial assets, namely if these exceed EUR 40,000 for the beneficiary and EUR 15,000 for each additional member of the community in need, are included (Section 12, para. 3, s. 2, para. 4 SGB II). After the waiting period ends, a lower asset allowance of EUR 15,000 per community of need member applies, although

112 *Verordnung zur Berechnung von Einkommen sowie zur Nichtberücksichtigung von Einkommen und Vermögen beim Bürgergeld* as promulgated on 17 December 2007 (Federal Law Gazette I 2007, p. 2942).

113 BSG Judgment of 10 August 2016 – B 14 AS 51/15 R.

114 According to the Federal Employment Agency's administrative regulations, a car is considered reasonable if the sales proceeds after deduction of liabilities would not exceed EUR 15,000, see Bundesagentur für Arbeit, 'Zweites Sozialgesetzbuch – SGB II: § 12 SGB II, Berücksichtigung von Vermögen' (30 April 2025), para. 12.13 < https://www.arbeitsagentur.de/datei/dok_ba015849.pdf > accessed 30.4.2025.

115 In case of more members, the relevant living space is increased by 20 m² for each individual.

116 See III.2.b) below.

unused exemptions can be transferred within that community (Section 12, pars. 2 SGB II).

Ultimately, a need for assistance only exists if beneficiaries are unable to secure support from third parties. They must first exhaust preferential social benefits made available by other welfare providers.¹¹⁷ The obligation to seek recourse from third parties also means that claims for benefits must be made against persons with maintenance obligations or other debtors (e.g. in case of unpaid wages).

c) Scope and Amount of Benefits to Secure Subsistence

In addition to benefits for securing livelihoods (the Citizen's Benefit for those who have capacity for work and for those who are unable to work, benefits for education and participation in social and cultural life), benefits for integration in training and employment¹¹⁸ and counselling¹¹⁹ are also provided under SGB II (Section 1, para. 3 SGB II).

The Citizen's Benefit includes standard needs, costs for accommodation and heating and additional needs (Section 19, para. 1, s. 3 SGB II). Moreover, one-off benefits, loans (Section 24 SGB II) or subsidies may also be granted in special cases (e.g. subsidies for health and long-term care insurance for privately insured persons, Section 26 SGB II).

aa) The Standard Needs

Standard needs include, in particular, food, clothing, personal hygiene, household goods, household energy, excluding costs associated with heating and hot water, as well as personal everyday needs, which include an acceptable degree of participation in social and cultural life (Section 20, para. 1, s. 1 SGB II). The standard needs amount is paid as a monthly lump sum, which depends on the beneficiary's categorisation into one of six standard needs levels (Section 20, paras. 2 – 4, Section 23, No. 1 SGB XII).

117 This applies, in particular, to the obligation to apply for a pension, although this has been restricted by the Citizens' Benefits Act to applications for a pension without deductions until 2026 (Section 12a, sentence. 1 no. 1 and sentence. 2 SGB II).

118 See III.1.b) below.

119 See III.1.c) below.

The standard needs levels depend on marital status (single, single parent or with a partner) and age.

The amount of standard needs according to the six standard needs levels in 2025 are:

Standard Needs Levels		Amount
Level 1	Single individuals, single parents, persons with a minor partner	EUR 563
Level 2	Partner in a community of need	EUR 506
Level 3	Other employable beneficiaries in a community of need aged 18 and older (SGB II), adults in institutions (SGB XII)	EUR 451
Level 4	Teenagers from 14 – 17 years	EUR 471
Level 5	Children from 6 – 13 years	EUR 390
Level 6	Children up to 5 years	EUR 357

The standard needs amount for each standard needs level is determined using the so-called statistics model using data from the Income and Expenditure Sample (*Einkommens- und Verbrauchstichprobe - EVS*), conducted every five years by the Federal Statistical Office and the statistical offices of the federal states (Section 20, para. 1a SGB II in conjunction with Section 28 SGB XII).¹²⁰

bb) Additional Needs and Alternative Provision of Benefits

Additional needs in accordance with Section 21 SGB II are intended to cover increased needs arising from special life situations (e.g. pregnancy, single parenthood) or special needs (e.g. for schoolbooks or additional costs for dietary needs due to illness). After the 12th week of pregnancy, for example, women are entitled to an additional 17 per cent of their standard needs. Single parents receive an additional 36 per cent of their standard needs if they live with one child under the age of 6 or with two or three children under the age of 16. In all other cases, the benefit amounts to an additional 12 per cent per child, up to a maximum of 60 per cent of standard needs.

Needs not covered by the standard needs benefit, such as initial equipment for pregnancy and birth, or initial equipment for housing, or needs

¹²⁰ See III.1.a) below.

ranging from repairs to therapeutic devices and equipment, are provided as one-off special benefits (Section 24 SGB II). On the basis of Section 24 SGB XII, in individual cases where an unavoidable need ordinarily covered by the standard need cannot be met (e.g. replacement of a defective washing machine), the necessary amount can be provided as an interest-free loan, which must be repaid by the beneficiary in the following months.

cc) Needs for Accommodation and Heating

The nationwide determination of standard needs is intended to ensure uniform living conditions across Germany, but this objective might fall short, especially in large cities and metropolitan areas with high housing costs. The requirements for accommodation and heating are therefore excluded from the standardised benefit rates. They are covered in addition to the standard needs benefit in their actual amount, provided this amount is considered appropriate (Section 22 SGB II).

The appropriateness¹²¹ of accommodation and heating costs is determined by the responsible local authorities (Section 6, para. 1, No. 2 SGB II) through administrative regulations or in bylaws (Section 22a-c SGB II). According to the Federal Social Court's case law, the determination of an abstract adequacy limit must be based on a "coherent concept"¹²² that reflects the actual conditions of the relevant local¹²³ housing market (e.g. by referring to a rent index). The concept must justify the standard of living to which beneficiaries are entitled by using accommodation that meets simple basic needs as a benchmark in terms of facilities, location and building

121 The absence of a clear legal definition for this undefined legal term and its interpretation by case law and administrative practice raises normative and methodological concerns. See U. Berlit, 'Annäherungen an die Angemessenheit der Unterkunftskosten – das Unterkunftskostengutachten des IWU v. Januar 2017' info also (2017)4, pp. 147 ff. and S. Knickrehm, 'Das schlüssige Konzept im Wandel von Rechtsprechung und Politik' Die Sozialgerichtsbarkeit (2017)5, p. 241, 247 ff.

122 Established case law since BSG Judgment of 7 November 2006 – B 7b AS 18/06 R; cf. U. Berlit, 'Unterkunft und Heizung', in: U. Berlit, W. Conradis and A. Pattar (eds.) *Handbuch des Existenzsicherungsrechts* (3rd ed. Nomos 2019), paras. 58 ff.

123 H. Thomé publishes coherent concepts of various municipal providers on his website, see H. Thomé, 'Bundesweite Mietobergrenzen und KdU Richtlinien' (2025) <<https://harald-thome.de/informationen/bundesweite-dienstanweisungen-kdu.html>> accessed 22.3.2025.

materials. It must be based on a segment of the housing market that ensures that all beneficiaries have access to housing that meets this standard.¹²⁴

The maximum appropriate gross rent (excluding utilities) is calculated by multiplying the appropriate rent per square metre determined according to the amount of appropriate square metres for a certain number of household members. As long as the rent for a flat remains below the applicable limit for the respective number of household members, it is considered to be appropriate, regardless of any individual factors.¹²⁵ In the City of Munich¹²⁶ (which has a significantly higher rent level compared to the rest of Germany), the rent appropriateness limits have been set as follows since January 2024:

Persons	Flat size up to m ²	'Rent caps' from 1 January 2024 in euro
1	50	890
2	65	1092
3	75	1286
4	90	1569
5	105	1939
6	120	2188

The statutory minimum level of subsistence under SGB II is partially individualised through reference not only to the regional, but also to the individual¹²⁷ housing situation.

124 However, neither SGB II nor SGB XII include an entitlement to the provision of housing as a benefit in kind.

125 For the so-called product theory of the Federal Social Court, see BSG Judgment of 2 July 2009, B 14 AS 36/08 R, para. 14.

126 LH München, 'Kosten der Unterkunft (SGB II)' (8 August 2024) <https://stadt.muenchen.de/dam/jcr:ec15cb97-5642-4f31-90e2-d97c186fbb95/Kosten_der_Unterkunft_SGB_II.pdf> accessed 22.3.2025.

127 A rent that deviates from the abstract appropriateness limit may be individually appropriate, e.g. due to the special needs of those affected (e.g. care by or from relatives who live close by, integration of families with underage children into the social environment). See LH München (n 126), p. 13.

d) Exclusions from Benefits

Despite meeting all eligibility requirements for the Citizen's Benefit, individuals who have capacity for work or who are unable to work, and members of certain groups are excluded from the scope of benefits.

First, certain groups of foreign nationals are excluded from eligibility to benefits according to Section 7, para.1, sentence 2 SGB II. This clause applies, in particular, to foreign nationals who are not workers or self-employed persons and to whom the right of freedom of movement under EU law does not apply for the first three months of their residence in Germany; to foreign nationals who have no right of residence in Germany; to foreign nationals whose right of residence arises solely based on their status as jobseekers; to foreign nationals who have a right of residence derived from their child's right of residence and which is enrolled in a school in Germany; as well as to the family members of the aforementioned groups of individuals.

The exclusion of certain foreign nationals has been the subject of considerable controversy in case law and legal doctrine.¹²⁸ While the ECJ confirmed that most of these exclusions from benefits under Section 7, para. 1, s. 2 SGB II were consistent with EU law,¹²⁹ the Federal Constitutional Court has not yet issued a ruling on the constitutionality of the exclusionary provisions.¹³⁰ Foreign nationals who are excluded from entitlement to the Citizen's Benefit are only entitled to transitional benefits (for one month within a two-year period) and to loans for travel expenses.¹³¹

Moreover, under Section 7, paras. 4–6 SGB II, individuals who receive an old-age pension or similar benefits; are residents in an inpatient facility (e.g. in a nursing home, addiction treatment centre) and cannot pursue gainful employment in the general labour market for at least 15 hours a week, as well as prisoners and students at state and state-recognised universities and trainees are excluded as well. The livelihoods of these

128 See E. Eichenhofer, 'Kapitel 2: Völker- und europarechtliche Vorgaben an die Existenzsicherung in Deutschland mit weiteren Nachweisen', in: U. Berlit, W. Conrads and A. Pattar (eds.) *Handbuch des Existenzsicherungsrechts* (4th ed. Nomos 2019) and H. Thomé (n 123).

129 See above II.1.b).

130 Cf. on the inadmissibility of the referral, BVerfG, Decision of 4 December 2019, 1 BvL 4/16.

131 *Gesetz zur Regelung von Ansprüchen ausländischer Personen in der Grundsicherung für Arbeitsuchende (SGB II) und in der Sozialhilfe (SGB XII)* of 22 December 2016 (Federal Law Gazette, p. 2016, 3155).

groups are typically ensured through other means, e.g. through a pension, social welfare benefits in accordance with SGB XII (in case of institutional care in a nursing home), benefits in kind for prisoners or corresponding regulations for trainees in vocational training.

Finally, the main issue of contention is the legislative decision to exclude students from entitlement to the Citizen's Benefit, although exceptions are made for individuals not covered by BAföG, such as additional needs in the event of pregnancy or single parenthood or transitional support in emergency situations at the end of their studies (Section 27 SGB II).¹³² Students are not entitled to benefits that guarantee their subsistence, as their need for assistance could potentially end or be avoided by taking up gainful employment.¹³³

III. Analysis

Social assistance law consistently faces the challenge of striking a fair balance between social solidarity and individual responsibility. The key instruments for achieving this are the determination of benefit amounts and defining beneficiaries' obligation to cooperate, as well as the consequences of non-compliance.

1. Determination of a Minimum Level of Subsistence

a) Procedure to Determine Standard Needs

With the Standard Needs Determination Act (*Regelbedarfsermittlungsgesetz*) of 24 March 2011,¹³⁴ a statistical procedure was introduced to determine standard benefits. A distinction is made between so-called levels of standard needs (*Regelbedarfsstufen*), which depend on family status (single, single parent or living with a partner or spouse) and age. The amount of the standard needs for each of the six individual levels is determined by applying the so-called statistical model based on the income and consumption sample (*Einkommens- und Verbrauchsstichprobe*, EVS), which is

132 BVerfG, Order of 23 September 2024, 1 BvL 9/21.

133 1st Guiding Principle of the decision of the Federal Constitutional Court of 23 September 2024. See below for details.

134 Federal Law Gazette I 2011, p. 453.

carried out every five years by the Federal Statistical Office of Germany. The EVS is a voluntary survey of around 80,000¹³⁵ private households that collects data on their financial and real estate assets, their living conditions and their ownership of selected consumer goods. It is conducted as a quota sample to ensure representation of various population groups. Among others, participating households maintain a diary for three months to record the type and amount of their income and expenditures. The data collected and extrapolated to the general population serve as the basis for the special evaluations conducted by the Federal Ministry of Labour and Social Affairs to determine the standard needs levels. Only the expenditure of low-income households is considered in the special evaluations. For single-person households, the expenditure of the lowest 15 per cent of households, stratified by income, is considered, and in the case of family households, the expenditures of the lowest 20 per cent are used.

To avoid circular reasoning, households that only receive subsistence benefits under SGB II, SGB XII or *AsylbLG* are excluded from the assessment. The sum of the average expenditure values in various categories, such as food, drinks, tobacco products or clothing and shoes, determines the standard needs of a single-person or family household. The results of the special evaluation are then defined as the standard needs in the Standard Needs Determination Act (*Regelbedarfsermittlungsgesetz*).¹³⁶ The special evaluation does not consider all consumption expenditures of the surveyed households, but only the so-called standard needs-relevant expenditures (Section 28, para. 4 SGB XII). Expenditures on items such as gambling, domestic help or all-inclusive holidays, for example, are excluded from the assessment. These exclusions, as well as the procedure and results of the statistical model, have long been subject to criticism for both methodological¹³⁷ and socio-political reasons.¹³⁸ However, the Federal Constitutional

135 This figure is provided by the Federal Statistical Office for the 2023 EVS. Around 55,000 households participated in the most recent EVS in 2018.

136 *Regelbedarfsermittlungsgesetz* as promulgated 9 December 2020 (Federal Law Gazette I 2020, p. 2855), which was amended by Art. 12 sec. 13 of the Act of 16 December 2022 (Federal Law Gazette I 2022, p. 2328).

137 This is partly because it does not take the compensation of higher expenditure in one area by lower expenditure in another area into account. See I. Becker, 'Existenzsicherung und Armutsforschung', in: U. Berlit, W. Conradis and A. Pattar (eds.) *Handbuch des Existenzsicherungsrechts* (4th ed. Nomos 2025), paras. 11 ff.

138 The Paritätische Wohlfahrtsverband regularly calculates significantly higher standard needs in its reports: EUR 813 for a single-person household in 2024 instead of EUR 563 (Der Paritätische/Paritätische Forschungsstelle: 'Regelbedarfe

Court has upheld the empirical-normative approach for determining the socio-cultural minimum level of subsistence with the help of the EVS's assessment as well as the exclusion of individual consumption goods, to be constitutionally valid.¹³⁹ The legislator's responsibility is to guarantee a dignified subsistence level. The legislator must therefore record the needs that are necessary to cover the socio-cultural minimum level of subsistence in a timely and realistic manner and justify these in a sustainable manner. However, there is room for manoeuvre both in the methodology used and in assessing actual living circumstances and necessary needs, and the legislator is not required "to make an optimal determination of the minimum level of subsistence by including all conceivable factors".¹⁴⁰ Consequently, the subsequent exclusion of individual items from the statistical calculation of the minimum level of subsistence by the Standard Needs Determination Act is also deemed constitutional, insofar as the standard needs are calculated in such a way that ensures the minimum level of subsistence is met, whether through internal equalisation of shortfalls, by saving or by additional benefit entitlements.¹⁴¹

b) Indexation

Between the periodic EVS reassessments, the standard needs are adjusted annually based on the development of wages and salaries (30 per cent) and prices (70 per cent) using a mixed index and a two-stage procedure. First, the national average rate of change is calculated for both the prices of goods and services relevant to the standard needs and the net wages and salaries per employee during the period from 1 July of the previous

2024, Fortschreibung der paritätischen Regelbedarfsforderung' (December 2023) < https://www.der-paritaetische.de/fileadmin/user_upload/Publikationen/doc/expertise_regelsatzberechnung-2023.pdf > accessed 22.3.2025.

139 See BVerfG, Decision of 23 July 2014 (1 BvL 10/12, 1 BvL 12/12 BvR 1691/13), paras. 76 ff.

140 BVerfG of 23 July 2014 1 BvL 10/12, 1 BvL 12/12, 1 BvR 1691/13.

141 Ibid, 2nd guiding Principle.

year to 30 June of the year before last¹⁴² and published in a regulation.¹⁴³ The 2023 Citizen's Benefit Act introduced a second stage for calculating the rate of change. This allows for a more up-to-date adjustment of standard benefits by comparing the development of wages and prices during the three-month period from 1 April to 30 June of the previous year with the same period of the year before last, in line with the Federal Constitutional Court's demand for a regular and timely adjustment of standard needs.¹⁴⁴ This is intended to more accurately capture current developments such as the recent sharp price increases as a result of the COVID-19 pandemic and the war in Ukraine.

2. Between Poverty Reduction and Labour Market Integration

a) Activation

As a result of the Hartz IV reform, the function of social assistance underwent a shift. While the fight against poverty and providing social support remain the primary focus of SGB XII, under SGB II, the fight against poverty was reduced to the function of providing basic income (*Grundsicherung*),¹⁴⁵ together with integration into the labour market (under the political motto 'support and demand') as the central function of the system. By adopting the workfare approach, which "require(s) people to work in return for social assistance benefits", ¹⁴⁶ the relationship between the rights and duties in social assistance was recalibrated and the welfare

142 For a critical review of the determination and the updating procedure, see I. Becker, 'Regelbedarfe im Konzept des neuen Bürgergelds – das Fortschreibungsverfahren' (4 November 2022) < <https://netzwerk-sozialrecht.net/regelbedarfe-im-konzept-des-buergergelds-das-neue-fortschreibungsverfahren/> > accessed 22.3.2025, with further references to the discussion.

143 Most recently, Federal Law Gazette, 'Regelbedarfsfortschreibungsverordnung' (2024) < <https://www.recht.bund.de/bgb/1/2023/287/VO> > accessed 22.3.2025.

144 BVerfG, Decision of 2 September 2010 – 1 BvL 1/09, paras. 204, 209.

145 The term itself indicates a departure from the "aid" (Hilfe) concept of social assistance. In the original version of Section 1 SGB II, the reference to the fulfilment of a dignified minimum level of subsistence that was added later was missing.

146 On the definition, see I. Lodemel and H. Trickey (eds.), *An Offer You Cannot Refuse – Workfare in International Perspective* (Bristol University Press 2001), p. 6.

conditionality¹⁴⁷ in the Law on Basic Income Support for Jobseekers was significantly tightened.

The Hartz IV reform prioritised the labour market integration of employable beneficiaries as a means of ensuring their livelihood.¹⁴⁸ In addition to prioritising employment placement over potential integration benefits (Section 3, para. 1 SGB II), this shift was primarily reflected in the expansion of beneficiaries' obligations to cooperate and the tightening of sanctions for breaches of duty.¹⁴⁹

At the centre of the special obligation to cooperate under Section 31 SGB II is the duty to take up and continue reasonable work, training or work opportunities.¹⁵⁰ In addition, beneficiaries are subject to reporting obligations, such as complying with summonses from the job centre, e.g. to verify eligibility for benefits or to attend a medical or psychological assessment. This obligation to cooperate must be formalised in an integration agreement between the job centre and the beneficiary, which may be replaced by an administrative act if the individual refuses to participate. The threshold of reasonableness in the basic income support for jobseekers has been lowered considerably compared to that in unemployment insurance (Section 140 SGB III): beneficiaries are generally expected to accept any type of work, regardless of their qualifications or previous occu-

147 B. Watts and S. Fitzpatrick, *Welfare Conditionality* (Routledge 2018); N. Harris, 'Unfavourable Conditions: Highlighting Welfare Conditionality' *Journal of Social Security Law* 25(2018) 3.

148 Draft bill of the parliamentary groups SPD and Bündnis 90/Die Grünen, BT-Drs. 15/1516, p. 44 < <https://dserver.bundestag.de/btd/15/015/1501516.pdf> > accessed 22.3.2025.

149 For a comprehensive description of the Hartz IV reform, see U. Becker, "'Hartz IV" und was sich dahinter verbirgt – Ziele, Inhalt und Bewertung des SGB II', in: T. Tomandl and W. Schrammel, *Sicherung von Grundbedürfnissen* (Wilhelm Braumüller Universitätsverlag 2007), pp. 23–61.

150 Work opportunities also include those with additional expenses ("1-euro jobs"), which are controversial not only from a workfare perspective, but also because of their displacement effects on the regular labour market. See H. Spindler, 'Fordern und Fördern – zur Eingliederung arbeitsuchender Arbeitsloser in den Arbeitsmarkt', in *ArchSozArb* (2008), pp. 70–80; G. Stahlmann, 'Die Zusätzlichkeit bei Arbeitsgelegenheiten ohne Arbeitsvertrag nach § 16 Par. 3 SGB II' *ZFSH/SGB* (2008), pp. 337–346 (part 1) and pp. 403–424 (part 2); W. Spelbrink, 'Gelingt durch die neuen Instrumente die Integration von Langzeitarbeitslosen in den Arbeitsmarkt?' *Die Sozialgerichtsbarkeit* (2008)8, pp. 445–45.

pation,¹⁵¹ the distance between their place of residence and the place of employment or less favourable working conditions (even if the pay is below the collectively agreed or local wage). Until the introduction of the statutory minimum wage ten years after Hartz IV,¹⁵² individuals were expected to accept reductions in income up to the limit of an exploitative wage.¹⁵³

While the obligation to cooperate already existed in principle under the Federal Social Assistance Act (BSHG), unlike workfare schemes in other countries, social assistance benefits in Germany were not directly tied to community work¹⁵⁴ (with the exception of some pilot schemes).¹⁵⁵ Compared to the BSHG, however, the relationship between the rights and obligations has assumed a new quality through the new focus on the priority of labour market integration in SGB II, which is now primarily oriented towards the beneficiary's employability.¹⁵⁶

Despite fierce political resistance from unemployment initiatives¹⁵⁷ and social welfare associations¹⁵⁸, a high rate of successful legal challenges against job centre decisions¹⁵⁹, and multiple minor legislative amend-

151 J. Greiser, 'Zumutbare Arbeit i.S.d. § 140 SGB III und des § 10 SGB II. Gibt es noch einen Berufsschutz im SGB III und SGB II?' *Vierteljahresschrift für Sozial- und Arbeitsrecht* (2021)1, pp. 1–21.

152 Gesetz zur Einführung eines allgemeinen Mindestlohns as promulgated on 11 August 2014, *Federal Law Gazette I* 2014, p. 1348.

153 H. Spindler, 'Grenzen der Zumutbarkeit für Sozialhilfebedürftige bei Niedriglöhnen und Lohnwucher' info also (2003)2, < <https://tacheles-sozialhilfe.de/aktuelles/archiv/grenzen-der-zumutbarkeit-von-arbeit-fuer-sozialhilfeberechtigte-bei-niedrigloehnen-und-lohnwucher.html> > accessed 22.3.2025.

154 H. Spindler, 'Arbeiten für die Grundsicherung, Für die Gewährung des Existenzminimums wird zunehmend eine Gegenleistung verlangt' *Soziale Sicherheit* (2008)11, p. 366.

155 C. Heinz, C. Hense, et al, 'Modellversuch Bürgerarbeit. Zwischen Workfare und Sozialem Arbeitsmarkt' IAB Forschungsbericht (2007)14 < <https://doku.iab.de/forschungsbericht/2007/fb1407.pdf> > accessed 22.3.2025.

156 U. Becker (n 149), p. 26.

157 See unemployment and social assistance association, Tacheles e.V. (2025) < www.tacheles-sozialhilfe.de > accessed 22.3.2025.

158 In particular, the Paritätische Wohlfahrtsverband, 'Schwerpunkt: Armut und Grundsicherung' (2025) < <https://www.der-paritaetische.de/themen/sozial-und-europapolitik/armut-und-grundsicherung/> > accessed 22.3.2025.

159 Legal Tribune Online, 'Leichte Entspannung bei Hartz IV-Verfahren. Justizbelastung am Sozialgericht Berlin' (18 April 2018) < <https://www.lto.de/recht/justiz/j/sg-berlin-hartziv-verfahren-belastung-pilotprojekt-elektronischer-rechtsverkehr> > accessed 22.3.2025. Approximately 35 per cent of complaints against SGB II notices are successful (Haufe, Jobcenter: 'Rückgang bei Klagen und leichter Anstieg der Widersprüche' (11 January 2024) < <https://www.haufe.de/sozialwesen/sgb-rec>

ments,¹⁶⁰ the legislator significantly weakened the workfare components of the Hartz IV reform only as late as 2023. The introduction of the Citizens' Income Act was the legislature's response to the high and stagnating number of long-term unemployed,¹⁶¹ which drew attention to the failure of integration measures to meet their objective and to the neglect of the major differences in the standards of living of the beneficiaries.¹⁶²

Recipients of the minimum income benefit include full-time or part-time workers whose income is insufficient to cover their own and their families' subsistence (so-called "top-up workers"), part-time parents, single parents and caregivers who, due to their family obligations and often limited access to other care options, are restricted in their ability to participate more fully in working life. This group also includes employees across all qualification levels who are 'laid off' during times of economic and other crises, as well as young people facing difficulties transitioning from school to work or addicts and those with mental illnesses who, despite having capacity for work within the meaning of the SGB II, are unable to meet the heightened demands of the modern labour market.¹⁶³ Their inclusion in the labour market requires a broad range of measures for (re)integrating them into the labour market, from job application training, literacy and language acqui-

ht-kommunal/jobcenter-widersprueche-und-klagen_238_534016.html> accessed 22.3.2025.

160 For a chronological overview of the amending laws, see < <https://www.buzer.de/gesetz/2602/l.htm>> and for a chronology of significant changes to the basic income support for jobseekers < <https://www.portal-sozialpolitik.de/index.php?page=Grundsicherung-fuer-Arbeitsuchende>> both accessed 22.3.2025.

161 Statista, 'Anzahl der Langzeitarbeitslosen im Zeitraum von 2010 bis 2024' (2025) < <https://de.statista.com/statistik/daten/studie/666199/umfrage/anzahl-der-langzeitarbeitslosen-in-deutschland/>> accessed 22.3.2025. The long-term unemployed are defined as individuals who have been out of work (working less than 15 hours a week) for over a year. They make up around 50 per cent of the 1.7 million unemployed people receiving the Citizen's Benefit. See B. Fitzenberger, 'Warum die aktuelle Bürgergelddebatte nicht die richtigen Schwerpunkte setzt' (11 March 2024), p. 3 < <https://www.iab-forum.de/warum-die-aktuelle-buergergelddebatte-nicht-die-richtigen-schwerpunkte-setzt/>> accessed 22.3.2025. According to a well-founded estimate, between January 2005 and December 2014, around 1 million people were continuously dependent on basic security benefits. H. Seibert, A. Wurdack, et al., 'Typische Verlaufsmuster beim Grundsicherungsbezug: für einige Dauerzustand, für andere nur eine Episode' IAB-Kurzbericht (2017) 4.

162 See the draft bill of the Federal Government, 10 October 2022, BT-Drs. 20/3873, p. 1.

163 Paritätischer Wohlfahrtsverband (ed.), *Wer die Armen sind* (Der Paritätische Gesamtverband 2018) < https://www.der-paritaetische.de/fileadmin/user_upload/Schwerpunkte/Armutsbericht/doc/2018_armutsbericht.pdf> accessed 22.3.2025.

sition, vocational training and long-term pedagogically-supported interventions aimed at overcoming difficult life circumstances. This also includes job placement and follow-up support. SGB II provides for a variety of integration services to facilitate this process, although their implementation is largely at the job centre's discretion. The obligation to participate in integration measures was to be specified in an integration agreement, which could be formalised in an administrative act in case of the beneficiary's refusal to participate. The integration agreement was replaced by the non-legally-binding 'cooperation plan' introduced by the Citizen's Benefit Act. After the *Sofort-Angebot* (immediate offer) under Section 15a SGB II was abolished in 2018,¹⁶⁴ the Citizen's Benefit Act enhanced the opportunities of sustainable labour market integration, above all, by abolishing the priority of job placement over the completion of educational qualifications and participation in integration and language courses, but also by (re-)introducing holistic support through individual coaching (Section 16k SGB II).

b) Sanctions

Since the obligation to cooperate under SGB II constitutes—from a legal standpoint—a duty to cooperate that is not reciprocally linked (i.e. not in synallagma) to the entitlement to basic income support, fulfilling this obligation is not a prerequisite for receiving basic income benefits. However, non-compliance with the obligation to cooperate may result in a reduction of benefits, in which case the legal subsistence level is not met, even over extended periods. This applies in particular when benefit reductions coincide with claims for reimbursement of overpaid benefits (Section 42 SGB II in connection with Section 50 SGB X), claims for repayment of a loan granted by the job centre (Section 42a SGB II) or claims for compensation, e.g. due to anti-social behaviour prior to receiving benefits¹⁶⁵ or due to periods of ineligibility for unemployment insurance (Section 31, para. 2, No. 3 SGB II). Pursuant to the original version of Sections 31 et seq. SGB II,

164 Art. 1 of the 9th *Gesetz zur Änderung des Sozialgesetzbuchs* as promulgated on 26 July 2016 (Federal Law Gazette I 2016, p. 1824, 2718) < https://www.bgbl.de/xaver/bgbl/start.xav#__bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl116s1824.pdf%27%5D__1742664246074 > accessed 22.3.2025.

165 Section 43 No. 2 in conjunction with Section 34 SGB II. Such claims were discussed but rejected by case law in the case of a lorry driver's drunk driving incident outside working hours, leading to unemployment, as well as payments made by a later recipient of the Citizen's Benefit to a romance scammer. See U. Klerks, 'Ausgewählte

reductions in the standard benefit ranging from 30 per cent to 100 per cent were possible in the event of breaches of the obligation to help oneself, e.g. by refusing an offered job, training position or integration measure. As a consequence, violations of the obligation to cooperate could result in extended periods during which recipients were denied a minimum level of subsistence adequate to uphold human dignity.

The situation changed following the Federal Constitutional Court's 2019 "sanctions" ruling,¹⁶⁶ in which the Court affirmed that benefit cuts must comply with the fundamental right to a guaranteed minimum level of subsistence. In response, the legislature initially issued a one-year moratorium on sanctions for breaches of the duty under SGB II, which came into force in July 2022.¹⁶⁷ Subsequently, the Citizen's Benefit Act of 2023 amended Section 31a SGB II Sanctions to meet constitutional requirements. The Act limited the sanctions, which were renamed into 'reduction in benefits' to a maximum of 30 per cent in the event of a breach of the obligation to cooperate. However, on 28 March 2024,¹⁶⁸ this regulation was corrected again by the new provision reducing the benefits to zero (Section 31a, para. 7 SGB II) for so-called 'total objectors' who deliberately refuse to accept an actual and direct offer of employment.

3. Lessons from the Coronavirus Crisis

The legislator has also incorporated lessons learned from the coronavirus crisis into the Citizen's Benefit reform. Due to the pandemic-related restrictions, many self-employed persons and small business owners, as well as employees in marginal employment in sectors heavily impacted by the lockdowns (such as gastronomy and culture), lost their livelihoods and had to apply for basic income support, as they lacked overriding claims to unemployment or short-time working benefits. The number of communities

Fragen zum Ersatzanspruch wegen sozialwidrigen Verhaltens gem. § 34 SGB II' info also (2021), pp. 3–8 and 56–60.

166 See Sec. II.1.c).cc).

167 *Elftes Gesetz zur Änderung des Zweiten Buches Sozialgesetzbuch* (11. SGB II-Änderungsgesetz, so-called "Sanktionsmoratorium") as promulgated on 19 June 2022 (Federal Law Gazette I 2022, p. 921) < https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl122s0921.pdf%27%5D__1742664432219> accessed 22.3.2025.

168 Art. 5 *Zweites Haushaltsfinanzierungsgesetz 2024* as promulgated on 27 March 2024 (Federal Law Gazette I 2024, No. 107).

in need (single or multiple-person households) increased by around 1.2 million.¹⁶⁹ The legislator facilitated access to basic income support and social assistance for this new category of individuals in need by means of a waiting period of one year within which inadequate accommodation costs could be covered and non-substantial assets are excluded from assessment,¹⁷⁰ as stipulated in the first social protection package.¹⁷¹

As part of the measures introduced in response to the pandemic and in anticipation of the introduction of a basic child benefit, an immediate supplement of EUR 20 for children in receipt of the minimum income benefit was also introduced to improve children's chances of participating in society, in education, and in training and labour market integration.¹⁷² This measure was intended to serve as a temporary bridge until the introduction of the basic child benefit. After the failure of the child benefit reform in the last legislative period the benefit was increased by EUR 5 on 1 January 2025.¹⁷³

The adoption of revised waiting periods for assessing the adequacy of coverage of accommodation costs and the increase in exemption of assets in the Citizen's Benefit Act allowed for cushioning the loss of financial stability for a limited period while receiving the Citizen's Benefit and thus made basic income support accessible to jobseekers belonging to socio-politically vulnerable groups in case of future crises as well. Due to the different political majorities in the Bundestag and Bundesrat, however, longer waiting periods and the introduction of a one-year waiting period without the risk of sanctions could not be implemented.

169 BT-Drs. 19/1807, p. 5.

170 Section 67 (1) in conjunction with 2–5 SGB II as amended by the Act of 27 March 2020.

171 Art. 1–5 *Gesetz für den erleichterten Zugang zu sozialer Sicherung und zum Einsatz und zur Absicherung sozialer Dienstleister aufgrund des Coronavirus SARS-CoV-2* as promulgated on 27 March 2020 (Federal Law Gazette I 2020, p. 575).

172 *Gesetz zur Regelung eines Sofortzuschlages und einer Einmalzahlung in den sozialen Mindestsicherungssystemen sowie zur Änderung des Finanzausgleichsgesetzes und weiterer Gesetze* as promulgated on 23 May 2022 (Federal Law Gazette I 2022, p. 760).

173 Art. 5 *Steuerfortentwicklungsgesetz* as promulgated on 30 December 2024 (Federal Law Gazette I 2024, No. 449).

IV. Conclusions

Since the Hartz IV reform entered into force, its provisions have been controversial. The political dispute is fuelled by the inherent contradiction between the two functions of basic income support for jobseekers, namely guaranteeing a minimum level of subsistence and promoting labour market integration, driven by divergent political goals, concepts of poverty and views of society. The Federal Constitutional Court has not resolved the fundamental functional conflict within the basic income support system through its rulings. However, it has affirmed the right to social assistance as an individual fundamental right and has delineated its boundaries based on the Basic Law's fundamental value judgments. At the same time, the constitutional framework provides the legislature with room to adapt basic income support measures to different economic and social requirements in times of crisis.

The relationship between the legislation and the Federal Constitutional Court in the design of social assistance is therefore not so much an endless constitutional tale of woe¹⁷⁴ but rather an example of successful 'social self-regulation'.¹⁷⁵ The constitutional requirement that legal measures aimed at regulating the behaviour of benefit recipients be grounded in empirical evidence of their effectiveness¹⁷⁶ can foster a more objective political discourse on the balance between rights and obligations in the context of means-tested benefits, one that also considers the complex and diverse life situations of individuals experiencing poverty in Germany.

174 Rixen (n 59), p. 1.

175 I. Ebsen, *Das Bundesverfassungsgericht als Element gesellschaftlicher Selbstregulierung. Eine pluralistische Theorie der Verfassungsgerichtsbarkeit im demokratischen Verfassungsstaat* (Duncker & Humblot 1985).

176 Implemented in Section 55 SGB II.

