

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



Lecture at: The University of Hong Kong, February 27, 2017

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## How are claims processed?

	First step	Second step	Third step
Before 2016	Preliminary registration: EASY (distribution)	<b>Reception center</b> (accommodation) <b>Branch Office</b> (decision-making)	
After 2016	Preliminary registration: EASY (distribution) Focal points: Processing lanes Waiting rooms	<b>Arrival center</b> (quick decision-making) <b>Reception center</b> (accommodation) <b>Branch Office</b> (complex decision-making)	Centers for decisions and dispatching

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**General regime for a state-provided minimum of subsistence**

**1949 German Basic Law, Article 1(1):**

Human dignity is inviolable. To respect and protect it shall be the duty of all state authority.

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**General regime: Social Law Book II on the basic security for jobseekers**

## **Beneficiaries**

- who have reached the age of 15, but have not yet reached the age of 67
- who are able work
- who are not able to provide for themselves
- who ordinarily reside in Germany (stay is not just temporary)

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**General regime: Social Law Book XII on social assistance**

## **Beneficiaries**

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

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## General regime: Social Law Book II and Social Law Book XII

### Benefits

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

### Monthly flat rate

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

**Costs of accommodation** (if adequate), for a single person: 250 €

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**Particular regime of the asylum seekers' benefits (ASBA)**



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## Particular regime of the asylum seekers' benefits (ASBA)

### Beneficiaries

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

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## Particular regime of the asylum seekers' benefits (ASBA)

### Benefits

#### *Regular benefits*

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

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## Particular regime of the asylum seekers' benefits (ASBA)

### Benefits

#### *Downgraded benefits*

- cover some essential needs, no essential personal needs
- are provided in kind
- **are due** for designated groups: foreign nationals who hamper deportation; asylum seekers who violate obligation to cooperate; asylum seekers who have not yet received certificate of arrival

# The differences between the general and the particular regime: Do they matter?

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**Federal Constitutional Court, judgement of 18 July 2012**

**Main holdings** of the court

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

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## Building a case against the constitutionality of the ASBA

### Differing amounts of benefits

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

### Differing forms of benefits

- **Unfettered** discretion of parliament?
- **No!**

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