

# German Supreme Court declares asylum seekers benefit law unconstitutional

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On July 18, 2012, Germany's Supreme Court (BVG) declared that the "Asylum Seekers Benefits Act" of 1993 contravenes the constitution. The court said the allowance for asylum seekers, which is 40 percent lower than that for recipients of the miserly Hartz IV welfare benefits, the supposed subsistence level in Germany, was "evidently insufficient". The allowance had not been increased since 1993, regardless of which coalition government was in power and despite the general rate of inflation amounting to more than 30 percent during this period.

The first chamber of the BVG ordered an immediate increase in the benefits. With immediate effect, an unmarried adult asylum seeker is now to receive an allowance of €336 instead of €224 per month, until parliament has enacted a new law. The rates for family members, which have until now been €199 for adults and €133 for children, will also have to be adjusted. Claims in currently running asylum cases will be granted and backdated to January 1, 2011.

The court was of the opinion that previous allowances violated the fundamental right to a decent minimum standard of living. "This applies as a human right in equal measure to all persons, including asylum seekers", said BVG Vice President Ferdinand Kirchhof, announcing the judgement.

The court ordered the new rates to be calculated on a realistic basis in a transparent procedure and "without delay". It supported the ruling by referring to its 2010 adjudication regarding the calculation of Hartz IV payments. The judgement delivered on the Asylum Seekers Benefits Act was essentially unanimous; two of the eight judges voted against the adoption of a transitional arrangement.

Delivering their ruling, the judges expressly took a position opposing the intended deterrent effect of the previous benefits system. "The right of a person to be accorded human dignity, guaranteed in Article 1,

Paragraph 1 of the constitution, is not to be modified with respect to migration policy", runs the judgement.

The ruling is a clear condemnation and indictment of the asylum-seeker and refugee policies pursued by all federal governments regardless of their party political composition since the de facto abolition of the right to asylum in 1993.

In that year, the conservative government of Helmut Kohl (Christian Democratic Union, CDU) colluded with its de facto coalition partner, the Social Democratic Party (SPD) opposition, to legislate a severe diminution of the right to asylum. This was preceded by a month-long hate campaign directed against asylum seekers and refugees, and supported by virtually the whole of the bourgeois media.

A part of the new law prescribed the systematic deterrence of refugees. They were deliberately treated inhumanely in order to minimise the number of asylum applications. Such treatment included the introduction of the Asylum Seekers Benefits Act, reducing support for asylum seekers below that of the general social welfare allowance.

Asylum seekers were henceforth accommodated in squalid collective centres and given benefits in kind in the form of non-cash vouchers to finance their subsistence. Although this practice was abolished in some states due to the high administrative costs incurred, all governments have continued to intensify the deterrence policy over the last 20 years.

From 1998 to 2005, the SPD-Green Party coalition government allowed inflation to do the job of worsening the situation of refugees. In 1999, when the Pro Asylum refugee support organization urged the then labour minister Walter Riester (SPD) to undertake a review of the allowance system, the ministry replied on February 23, 1999 that it was untrue the increases had always been "forgotten" in the previous years. To the contrary, he

claimed a check on a possible readjustment of benefits had been made several times, but the need for an increase was unwarranted.

This assessment has not been altered in recent years, despite several changes of government. The Greens have played a particularly cynical and foul role in the formation of government policy towards refugees. As long as they were in opposition, they spoke out radically against the Kohl government's policy. As soon as they were in government, they supported the tightening of asylum and immigration laws on countless occasions.

Following the limitation of the right to asylum, and exacerbated by the increasingly restrictive EU policy towards asylum seekers and refugees, the number of asylum seekers in Germany rapidly declined. It fell from 200,000 to 100,000 a year between 1995 and 2000.

In all the years that followed—especially after the sharpening of the situation with the March 2002 “Immigration Act”, introduced by the SPD-Green government and coordinated by former Federal Interior Minister Otto Schily (SPD)—the number of asylum seekers in Germany then shrank to a few tens of thousands. Furthermore, only a fraction were deemed entitled to asylum.

However, the Asylum Seekers Benefits Act covers not only those directly seeking political asylum (about 80,000 people); as a result of several extensions to the law, it also applies to war refugees and all foreigners whose right of stay remains unsanctioned and is merely tolerated. According to Supreme Court judge Susanne Baer, about 130,000 people in Germany are currently affected. The period of entitlement to the lower rate of benefits, as stipulated by the Asylum Seekers Benefits Act and originally limited to only one year, was also gradually extended to cover longer periods.

Until recently, lawsuits challenging the asylum legislation have been unsuccessful. The fact that the state social court of North Rhine-Westphalia recently submitted the legal cases of two fugitives to a review by the Supreme Court, which in turn upheld the cases, is attributable to the 2010 BVG judgement regarding the Hartz IV benefit rates. At that time, the court found that the Unemployment Benefits II law (stipulating allowances for unemployed job seekers, including refugees) failed to provide for a “decent subsistence” and therefore had to be recalculated.

This decision had an impact on asylum legislation. However, the federal government's actual response to the Hartz judgement shows that a change in refugee policy is

unlikely to arise from the recent ruling.

Many Hartz IV recipients had hoped the BVG judgement would lead to a significant increase in their allowances. But the government implemented the Supreme Court's statutory provisions—with the help of a few statistical tricks—by raising the Hartz IV benefit rate for adults by only €10, from €364 to €374 per month. Such an allowance is totally incapable of securing a person's subsistence and genuinely enabling him or her to lead a decent life.

The BVG also declared in its current ruling on the Asylum Seekers Benefits Act that the amount of allowance must be adequate to guarantee the right “to conduct interpersonal relationships and participate at least to a minimum extent in social, cultural and political life”.

But this right will be guaranteed by neither the BVG's transitional arrangements, which still remain below the Hartz IV rates, nor by an adjustment of asylum seekers' benefits to the currently valid Hartz IV rates.

Nor do the BVG's provisions realistically take into account the fact that asylum seekers and foreigners without a secure residency status are burdened with significant expenses arising from their constant struggles with the German immigration authorities, including having to cover regular travel costs to government departments, pay certain fees demanded by those offices, and finance legal assistance in suits against the authorities.

Moreover, the one-year ban on employment for asylum seekers remains in force, depriving them of any chance of earning their own livelihood or providing for their dependents. Following the elapse of this first year, refugees are confronted with additional restrictions, such as only being able to accept a job for which no EU citizen could previously be found.

Despite the Supreme Court's recent ruling delivering a damning indictment of the role of all federal governments of the past 20 years, it will not lead to any fundamental change in the reactionary bias and deterrent policies directed against asylum seekers, refugees and immigrants in Germany.



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