

Benefit Sanctions and Human Dignity

How far can we go with ‘non-compliant’ persons?”

Townlab_MEET

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Prof. Dr. Constanze Janda

Minimum Standards for Reception Conditions

- Art. 17 directive 2013/33/EU
 - ➡ eligibility to **material reception conditions** upon application for international protection
 - ➡ level: **adequate standard of living**
 - ➡ reference: **nationals**

- Art. 19 directive 2013/33/EU
 - ➡ at **least emergency health care** and essential treatment of illnesses and of serious mental disorders
 - ➡ necessary medical or other assistance to applicants with special needs

Minimum Standards for Reception Conditions

- Art. 20 directive 2013/33/EU
 - ➡ reduction / withdrawal of material reception conditions
 - ➡ in **exceptional** and **duly justified** cases
 - **abandoning the place of residence** determined by the competent authority
 - **non-compliance** with reporting duties, requests to provide information or to appear for personal interviews concerning the asylum procedure
 - lodging a subsequent application

Minimum Standards for Reception Conditions

- Art. 20 directive 2013/33/EU
 - ⇒ reduction / withdrawal of material reception conditions
 - **not lodging an application for international protection** as soon as reasonably practicable after arrival (reduction)
 - **concealing financial resources**, and therefore unduly benefitting from material reception conditions (reduction or withdrawal)
 - serious breaches of the rules of the accommodation centres or **seriously violent behavior** (sanctions)

ECJ, November 12th 2019, C-230/18 (Haqbin)

- Mr Haqbin - Afghan nationality - unaccompanied minor - application for international protection in Belgium
- hosted in a reception center - in a brawl between residents of various ethnic origins - exclusion from material support in the reception center for 15 days

ECJ, November 12th 2019, C-230/18 (Haqbin)

- “**respect for human dignity** ... requires the person concerned not finding himself or herself in a **situation of extreme material poverty** that does not allow that person to meet his or her most basic needs such as a **place to live, food, clothing and personal hygiene**, and that undermines his or her physical or mental health or puts that person in a **state of degradation** incompatible with human dignity”
- **unaccompanied minors = vulnerable** persons → particular **situation** of the minor and of the principle of **proportionality** has to be especially taken into account

Benefit Sanctions in Germany

- material support limited to **food, accommodation, heating, personal hygiene** as benefit in kind and **emergency health care** for
 - ➡ persons **obliged to leave the country**, from the day following the date of departure, unless they are not responsible for the failure to leave the country
 - ➡ persons **obstructing their expulsion**
 - ➡ persons who entered the country for the sole **purpose of receiving social benefits**
 - ➡ persons for whom another member state or a third state is responsible because of **relocation**

Benefit Sanctions in Germany

- material support limited to food, accommodation, heating, personal hygiene as benefit in kind and emergency health care for
 - ➡ persons who have been **granted international protection** / a residence permit in another member state or in a third state
 - ➡ persons **violating their obligations to cooperate** in their asylum procedures
 - ➡ persons deliberately **concealing financial recourses**
 - ➡ persons whose application has been rejected as inadmissible due to **responsibility of another Dublin State** and whose expulsion has been imposed

Benefit Sanctions in Germany

- compatibility with EU law?
 - ⇒ the mentioned situations of non-compliance go **beyond EU law**, e.g. persons who have been granted international protection elsewhere or responsibility of another Dublin state
 - ⇒ **no discretion**
 - ⇒ **no specific rules on vulnerable persons**
 - ⇒ however, **hardship clause** allows for taking into account personal circumstances AND **place to live, food, clothing and personal hygiene** are covered at any time

Benefit Sanctions in Germany

- compatibility with German constitutional law?
 - ➡ right to minimum of subsistence = human dignity + social state principle
 - ➡ **physical** and **socio-cultural subsistence** must be guaranteed at any time
 - ➡ sanctions must be **appropriate** to bring about the desired behaviour or end the undesirable behaviour
 - ➡ no punishment for **reasons of migration policy**

Thank you very much for your attention.

Prof. Dr. Constanze Janda

German University of Administrative Sciences

Freiherr-vom-Stein-Str. 2

D-67346 Speyer/Germany

janda@uni-speyer.de

www.uni-speyer.de/janda