

Reform of the Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz – AsylbLG)

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Enhancing the living conditions and health care of asylum seekers
in Germany

Enhancing the living conditions and health care of asylum seekers in Germany requires a reform or the abolishment of the Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz – AsylbLG)

According to AsylbLG § 1 Asylum seekers, tolerated persons, and foreigners who are required to leave the country, along with their families, are provided public support, ensuring their sustenance until a final decision is made regarding their recognition as asylum seekers or as individuals with subsidiary protection. The comprehensive scope of services for this group is governed by the AsylbLG, which renders the conventional German Social Codes (Sozialgesetzbuch - SGB I-XIV), regulating the standard social welfare system in Germany, inapplicable to the aforementioned category of individuals.

However, this arrangement presents significant drawbacks for those affected, particularly concerning their financial assistance, housing options, and healthcare provisions. Specifically, affected individuals receive a lower allowance than what is provided in the SGB II and SGB XII, and they are ineligible for additional benefits such as child allowance (BKGG § 1). Moreover, they are generally compelled to reside in group accommodations for varying amounts of time, unless specific conditions are met (*Wohnpflicht*, §47 AsylG). Lastly, the healthcare services available to them are limited to emergency care (AsylbLG § 4), falling significantly short of the minimum standards outlined in § 12 of the SGB V. Access to additional treatments and services is only granted in severe situations and necessitates separate application (AsylbLG § 6).

The underlying rationale behind restricting medical services to only essential care, as well as imposing various other limitations within the AsylbLG that deviate from the standard services provided in Germany like the liberty to freely chose a doctor was the presumption that the AsylbLG would only be applicable for a short period (BeckOK/Korff AsylbLG § 4 Rn. 1).¹ However, this assumption often proves false, as overwhelmed authorities, uncooperative countries of origin, or other obstacles prolong the asylum procedure, not to mention the potential appeals against negative asylum decisions. In 2017, the average waiting time for a first decision was 11 months for asylum seekers, which decreased to approximately 8 months in 2022. Some individual cases can endure even longer delays. Even without the length of the transition period, the conditions are in many regards unbearable. Throughout their waiting period, asylum seekers typically endure distressing conditions, lacking access to adequate healthcare, and often living in relative social segregation and isolation from potential family

¹ BT-Drs. 12/4451, 9 <https://dserver.bundestag.de/btd/12/044/1204451.pdf> (last accessed 2023/05/23 16:28)

members they may have in Germany. The negative consequences of the conditions have already been subject to substantial scientific research, both in relation to the character of the collective accommodation² and looking at the health care of the affected³.

This longstanding issue has garnered attention, with NGOs and civil society organizations consistently highlighting the challenging circumstances in which refugees often find themselves after enduring years of hardship before reaching Germany. Consequently, it is imperative to advocate for the abolition of the AsylbLG and the provision of regular social support to asylum seekers under the SGB II and SGB XII. At the very least, the legislature must strive to align the social services and freedoms guaranteed under the AsylbLG with those provided by the SGB.

This legislative change would prove to greatly enhance the conditions for asylum seekers in Germany to a standard that can potentially realize the general right of all humans – regardless of their nationality and residential status – to the highest degree of physical and mental health, that Germany subscribed to under international law through the UN International Covenant on Economic, Social and Cultural Rights.

The likelihood of this legislative change occurring in the near future appears to be relatively low. However, it is worth noting that over the past 15 months, there have been positive outcomes resulting from similar changes with regards to the treatment of Ukrainian citizens seeking protection or refuge in Germany. These favorable circumstances along with other factors, contributed to the tremendously better conditions for this respective group. This could make it an opportune time to advocate for this change on a broader level through media outlets and refugee rights organizations. It is also worth noting that criticisms from ministries and international organizations regarding the existing regulations, particularly the double standards in healthcare provisions, could further contribute to the potential for these desired changes.⁴

² A.o.: Kleist 2022; Glaubitz 2019

³ A.o.: Wahedi 2020; Thöle 2017, relatively reserved: Hollederer 2020

⁴ United Nations: E/C.12/DEU/CO/6

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