Quarterly on Refugee Problems, 2024, Vol. 63, Issue 3, 229-238
ISSN 2750-7882, Section: Research Articles
Open Access Publication, https://doi.org/10.57947/qrp.v63i3.195

QRP

Social Welfare Benefits to Asylum Seekers: Disadvantages due to German Procedural Law[1]

Prof. Dr. Jens Löcher[2]

Abstract

Asylum seekers and other foreigners whitout permanent right of residence in the Federal Republic of Germany do not receive social welfare benefits in accordance with the Code of Social Law but in accordance with a special regulation called Asylum Seekers' Benefits Act (Asylbewerberleistungsgesetz). This leads to procedural disadvantages.

Key Words:

asylum seekers, social welfare benefits, administrative procedural law, Germany

1 The Asylum Seeker Benefit Law (AsylbLG)

Since November 1, 1993, the livelihood of asylum seekers in Germany has no longer been covered by social welfare benefits, but by a separate law, the Asylum Seekers' Benefits Act (Asylbewerberleistungsgesetz – AsylbLG)[3]. The same accords to other persons who do not have a permanent right of residence in the Federal Republic of Germany (cf. the group of persons listed in § 1 AsylbLG). The departure from the structural principles and benefits regulated in the Federal Social Assistance Law (Bundessozialhilfegesetz – BSHG),[4] a law that granted social welfare benefits to all people in need without differentiating between age, ability to work or right of residence, was made for migration policy purposes (see BVerfG [Federal Constitutional Court], Judgement of 18/07/2012, 1 BvL 10/10, 1 BvL 2/11, para. 84). By reducing subsistence benefits and converting cash benefits into benefits in kind, the economic incentive for unauthorized entry and migration of foreigners to the Federal Republic of Germany was intended to be reduced (Federal Parliament, BT-Drs. 12/4451: 1; Federal Parliament, BT-Drs. 12/5008, p. 13). In particular, asylum seekers whose applications for asylum had been rejected were to be covered by reductions in benefits in order to reduce incentives to remain in Germany (Federal Parliament, BT-Drs. 12/4451, p. 5; summarizing the legislative objectives also BVerfG, Judgement of 18/07/2012, para. 3). The explanatory memorandum to the law clearly stated: "In essence, however, this is a regulation of the right of residence and settlement

 It was developed based on a lecture given by the author on the occasion of the 5th Speyer Social Law Days 2023, which took place at the German University of Administrative Sciences Speyer under the topic "Migration and Social Benefits".

[2] Dr. Jens Löcher is a Professor for Social Law at the Campus Wiesbaden of the Hessische Hochschule für öffentliches Management und Sicherheit (Hessian University for Public Management and Security).

[3] Asylbewerberleistungsgesetz (AsylbLG) of June 30, 1993, Federal Law Gazette 1993 I p. 1074.

[4] Bundessozialhilfegesetz (BSHG) of June 30, 1961, Federal Law Gazette 1963 I p. 815. The BSHG largely expired with effect from January 1, 2015 and was replaced by the Second and Twelfth Book of the Code of Social Law (SGB II, SGB XII).

Löcher, J. (2024). Social Welfare Benefits to Asylum Seekers
Quarterly on Refugee Problems, 2024, Vol. 63, Issue 3, 229-238
ISSN 2750-7882, Section: Research Articles
Open Access Publication, https://doi.org/10.57947/qrp.v63i3.195

of foreigners." (Federal Parliament, BT-Drs. 12/4451, p. 5). From this, it was and still is concluded that the AsylbLG is part of aliens law. Oppermann and Filges (2024, MN 24) call it an annex to alien law. Aliens law is understood here as the entirety of legal provisions that regulate the entry and residence of persons in the Federal Republic of Germany who do not have German citizenship.

At the same time, however, the AsylbLG is part of social law in its material sense, as it provides persons entitled to benefits under § 1 AsylbLG with social security and, to a certain extent, social justice through benefits in kind, cash and services that are necessary for a dignified life in the sense of securing their physical existence and a socio-cultural minimum as a standard of living; §§ 2, 3, 3a, 4 and 6 AsylbLG guarantee benefits for subsistence, in the event of illness, need for care and in other situations of need. Benefits in accordance with §§ 5 and 5b AsylbLG – i.e. work opportunities and participation in an integration course – also ultimately pursue objectives that are part of a humane existence, namely the integration of the beneficiary into society.

Let us remember: It was not until a decision by the Federal Constitutional Court (Bundesverfassungsgericht) in 2012 that the obvious was clarified, namely that the fundamental right to be guaranteed the conditions necessary for a life in the Federal Republic of Germany in accordance with human dignity, derived from Art. 20 para. 1 Basic Law (the German Constitution – Grundgesetz [GG]) (welfare state principle) in conjunction with Art. 1 para. 1 Basic Law is a human right. As such, it is therefore not only granted to German nationals, but also to foreign nationals residing in the Federal Republic of Germany (BVerfG, Judgement of 18/07/2012, para. 63). This fundamental right therefore also extends to asylum seekers and other persons entitled to benefits under § 1 AsylbLG. The judges of the Federal Constitutional Court stated unequivocally that migration policy considerations to avoid migration movements through low benefits in no way justify a benefit assessment below the physical and socio-cultural minimum subsistence level (BVerfG, Judgement of 18/07/2012, para. 95). The human dignity guaranteed in Art. 1 para. 1 Basic Law must not be relativized in order to achieve migration policy objectives. This was confirmed in later jurisdiction of the Court (most recently BVerfG, Decision of 19/10/2022, 1 BvL 3/21, para. 56).

Since claims of asylum seekers to benefits from the other benefit systems that secure a livelihood – i.e. in particular benefits under the second or twelfth book of the Code of Social Law (SGB II, SGB XII), laws providing benefits for a living in accordance to human dignity for the majority of people in need – are excluded by law (cf. in this respect § 9 para. 1 AsylbLG, § 7 para. 1 cl. 2 no. 3 SGB II, § 23 para. 2 SGB XII), the AsylbLG alone fulfills the human right of persons entitled to benefits under § 1 AsylbLG to be guaranteed the conditions for a life in dignity. There is no doubt that the AsylbLG is therefore part of social law in its substantive sense. Quite contrary, it is doubtful whether and, if so, to what extent the AsylbLG still has the character of aliens law.

It could be argued that the sanction norms continue to justify classification as aliens law. These sanction undesirable actions by those entitled to benefits in order to persuade them to leave the Federal Republic or to create the conditions for this, or to motivate those entitled to benefits to take part in an integration course (i.e. in particular § 1a and 5a para. 2 AsylbLG). However, if one looks at the law as a whole, it becomes clear that it consists predominantly of provisions dealing with benefits that ensure human dignity, which are only supplemented by procedural and responsibility-related standards. A few provisions

Quarterly on Refugee Problems, 2024, Vol. 63, Issue 3, 229-238
ISSN 2750-7882, Section: Research Articles
Open Access Publication, https://doi.org/10.57947/qrp.v63i3.195

that merely regulate the consequences of breaches of obligations can hardly determine the character of an entire law. To interpret it the other way around would mean to determine the rule via the exception, which would be an illogical, unsystematic interpretation.

Furthermore, even a restricted entitlement to benefits that ensure human dignity in accordance with § 1a AsylbLG is still an entitlement to benefits that should (and must) serve the fundamental right to guarantee a life that corresponds to human dignity.

Since the decision of the Federal Constitutional Court in 2012, the AsylbLG can therefore no longer be counted as part of aliens law, but solely as part of social law in the substantive sense. The purpose of the law has changed, or, if you want to apply a quote of the Court from a different context: “The law can be smarter than the fathers of the law.” (BVerfG, Decision of 29/1/1974, 2 BvN 1/69, para. 46).

2 Administrative Procedure Law vs. Social Procedure Law: (L)VwVfG vs. SGB I and SGB X

What at first glance appears to be a purely academic classification under aliens law or social law – in the sense: "It's nice, but useless" – at second glance reveals far-reaching consequences that relate to administrative procedural law: Since the legislator has not designated the AsylbLG - as its official title already shows - as one of the books of the Code of Social Law (Sozialgesetzbuch, SGB), and as it is also not referred to via § 68 SGB I as to be considered as an integral part of the Code of Social Law, it is not part of social law in the *formal* sense. As a result, administrative procedural law is by and large not governed by SGB I – though this is challenged by Siefert (2020, MN 19), who considers it possible to analogously apply provisions of the SGB I – and SGB X (cf. in this respect § 37 cl. 1 SGB I). Instead it is ruled by the administrative procedure law of the responsible federal state (Land) as the Federal Social Court (Bundessozialgericht – BSG) has clarified (BSG, Judgement of 25/10/2018, B 7 AY 2/18 R). This is consistent from the perspective of the legislator, who on the one hand created the AsylbLG as aliens law and on the other hand wanted to enable flexible handling of the law by the federal states (Federal Parliament, BT-Drs. 12/4451, p. 10, regarding § 9 of the draft bill, which corresponds to the current § 10 AsylbLG and deals in particular with local responsibility).

However, § 9 para. 3-5 AsylbLG deviates from this systematics and calls for the according application of individual regulatory complexes of SGB I and SGB X. The standards so included in particular deal with

- the revocation of administrative acts (§§ 44-49 SGB X),
- the reimbursement of wrongly provided benefits after an administrative act that gave rise to a claim has been revoked (§ 50 SGB X),
- obligations of third parties to provide information (§ 99 SGB X, § 117 SGB X),
- automated data synchronization,
- the reimbursement of services rendered between authorities (§§ 102 ff. SGB X), and last but not least,
- the obligations of those entitled to benefits to cooperate and the legal consequences of their violation (§§ 60-67 SGB I).

The fact that most of the references to SGB I and SGB X were not made when the law came into force in 1993, but only in the course of the following years, cannot be seen as

Löcher, J. (2024). Social Welfare Benefits to Asylum Seekers
Quarterly on Refugee Problems, 2024, Vol. 63, Issue 3, 229-238
ISSN 2750-7882, Section: Research Articles
Open Access Publication, https://doi.org/10.57947/qrp.v63i3.195

an indication that the legislator had become somewhat uncomfortable with seeing the AsylbLG as aliens' law. There are no indications of such an examination of the legal nature of the AsylbLG in the legislative materials.

When the AsylbLG came into force, the law only contained a reference to § 102 et seq. SGB X, which was intended to simplify administration (Federal Parliament, BT-Drucks 12/4451, p. 10, on § 8).

Moreover, according to the legislative materials, the legislator had not given any discernible thought to the administrative procedure. This then changed with the First Act Amending the Asylum Seekers' Benefits Act. According to the explanatory memorandum, the lack of regulations on the benefits procedure – in particular with regard to local responsibility, reimbursement of costs, the transfer of claims and the recipients' duty to cooperate – made the implementation of the Asylum Seekers' Benefits Act more difficult (Federal Parliament, BT-Drs. 13/2746, pp. 1, 11). In addition, there were no regulations that allowed for sanctions in the event of a lack of cooperation (Federal Parliament, BT-Drs. 13/2746, pp. 17). The legislator then declared the listed provisions of SGB I and SGB X to be applicable accordingly, which also affected §§ 44-50 SGB X and §§ 60- 67 SGB I.

In other words, the focus on preventing unwanted migration initially blocked the view of procedural law; later, provisions of social administrative procedure were declared applicable in order to meet the requirements of the authorities. The partial application of social administrative procedural standards was never intended to improve the legal position of those entitled to benefits.

3 Legal and Practical Consequences

If the legislator decides to declare only very specific standards from SGB I and SGB X to be applicable accordingly, then the other standards from these codes should not be applicable. Since there is no unintended loophole in this respect, analogous application is also ruled out.

Accordingly, it has been decided in judicial decisions, for example, that § 64 SGB X, which regulates, among other things, the cost-free nature of administrative procedure and of extrajudicial remedies, is not applicable by analogy to the procedure under the AsylbLG (BSG, Judgement of 16/01/2019, B 7 AY 2/17 R, para. 7 et seq.; deviating LSG Rhineland-Palatinate, Judgment of 26/05/2011, L 1 AY 16/10). Nothing else applies to § 47 SGB I, which regulates, among other things, the free transfer of cash benefits to the account of the person entitled to benefits (LSG Berlin-Brandenburg, Judgement of 11/03/2022, L 15 AY 13/20 R, para. 47) or to § 44 SGB I (BSG, Judgement of 25/10/2018), which provides for interest on social benefits to be paid in arrears if, for example, these were initially wrongly rejected or determined to be too low. In consequence, although benefits under the AsylbLG that were initially withheld unlawfully are paid retrospectively, unlike social benefits they do not bear interest.

Even this cursory examination shows that those entitled to benefits under § 1 AsylbLG are not only treated differently from those entitled to social benefits, but are also placed in a worse position, due to the special procedural status they have because they receive benefits that belong to social law in the substantive sense only, and not also to social law in the formal sense.

Quarterly on Refugee Problems, 2024, Vol. 63, Issue 3, 229-238
ISSN 2750-7882, Section: Research Articles
Open Access Publication, https://doi.org/10.57947/qrp.v63i3.195

This finding can be continued.

§ 2 para. 2 SGB I obliges service providers to observe the social rights listed in SGB I when interpreting and exercising discretion and to ensure that the social rights listed in §§ 3-10 SGB I are realized as far as possible. Even if this interpretation guideline is not suitable for establishing legal positions, but rather presupposes them (BSG, Judgement of 19/03/2020, B 4 AS 1/20 R, para. 40), it does at least state that the scope for interpretation of the individual bases of entitlement should be filled with the normative content of the respective social right concerned and thus brought to bear as far as possible (BSG, Judgement of 10/11/2011, B 8 SO 12/10 R, para. 23). The Administrative Procedure Law (Verwaltungsverfahrensgesetz – VwVfG), a general administration procedure law on the federal level, and its state law equivalents on the level of the German federal states (L-VwVfG) do not contain a corresponding provision. When it comes to the interpretation of applications for benefits, the interpretation rule of § 133 Civil Code (Bürgerliches Gesetzbuch – BGB) remains applicable, according to which it is not the wording but the externally recognizable intention behind the declaration that is to be investigated and thus literal interpretation is barred (Busche, 2021: MN 7; OLG Dresden, Judgement of 18/10/2023, 12 U 484/23, para. 25). In individual cases, this can lead to results that fall short of those that would result from the application of the "principle of maximum support".

Interestingly, a look at the judicial decisions shows that many senates of the social courts – apparently influenced by their daily dealings with the "principle of maximum support" (Meistbegünstigungsprinzip) – readily apply it not only to the interpretation of procedural declarations of intent (BSG, Judgement of 30/10/2013, B 7 AY 7/12 R, para. 12; BSG, Judgement of 25/10/2018, B 7 AY 1/18 R, para. 9), but also in relation to the administrative procedure of the AsylbLG (BSG, Judgement of 26.06.2013, B 7 AY 3/12 R, para. 8; LSG Lower Saxony-Bremen Judgement of 03/11/2022, L 8 AY 55/21, para. 21; LSG North Rhine-Westphalia, Judgemet of 09/02/2012, L 9 AS 36/09, para. 88) and thus lose sight of the original justification of this principle.

§§ 13-15 SGB I, § 1 para. 3 no. 1 SGB II, § 11 SGB XII and other social or livelihood security law standards are special forms of the social law or social benefit relationship and oblige service providers to provide information, advice and information so that those entitled to benefits are aware of and assert possible social law claims. In the event of a breach of the duty to provide advice under § 14 SGB I, there is a risk of an official liability claim or a claim to remove the effects of the violation (sozialrechtlicher Herstellungsanspruch). § 17 para. 1 no. 3 SGB I obliges service providers to use generally understandable application forms, § 16 para. 3 SGB I to work towards clear and relevant applications without delay and to complete incomplete information. In contrast, the first two paragraphs of § 25 (L)VwVfG only contain "meagre" support obligations, which are not extended by the AsylbLG.

Significant differences between the administrative procedure governed by the (L)VwVfG and the administrative procedure governed by SGB X can also be found when comparing provisions that pursue fundamentally similar purposes and have similar content.

One example may suffice here:

The obligation to be heard is regulated in § 28 (L)VwVfG on the one hand and in § 24 SGB X on the other. Through a hearing, an authority informs a party that it intends to

Löcher, J. (2024). Social Welfare Benefits to Asylum Seekers
Quarterly on Refugee Problems, 2024, Vol. 63, Issue 3, 229-238
ISSN 2750-7882, Section: Research Articles
Open Access Publication, https://doi.org/10.57947/qrp.v63i3.195

interfere with its rights. From the authority's point of view, the investigation of the facts has therefore been completed and the decision to interfere with rights has already matured to such an extent that the only obstacle to issuing the intended administrative act is the obligation to hold a hearing. Until the hearing, the parties involved often have no idea of the sword of Damocles that hangs over them and could adversely affect their legal position at any moment. They do not know that information has been obtained about them for weeks or months without their knowledge, that – depending on the area of law – their income and assets have been examined, possibly with the involvement of the tax office and their employer, that doctors providing treatment have been contacted and asked to provide medical opinions on their physical or mental state of health, their ability to work or earn a living, and so on. Only the hearing provides the person involved with knowledge of the proceedings and at the same time gives them the opportunity to inspect the files and thus also to access the information collected by the authority which it does not wish to include in the intended decision – perhaps to their disadvantage. Consultation and access to the file serve the self-determination of the citizen in the administrative procedure, the control of official action, a fair procedure by creating equality of knowledge and, in this respect, equality of arms, and overall ensure that the citizen is not merely the object, but the subject of the administrative procedure. In this regard it is instructive to read VGH Munich, Judgement of 17/02/1998 - 23 B 95.1954, NVwZ 1999, pp. 889, 890.

Consultation may be dispensed with under the exceptional circumstances provided for by law. A clear difference can already be seen in the fact that § 24 para. 2 SGB X defines an exhaustive catalog of exceptions, whereas the catalog in § 28 (L)VwVfG only lists standard examples of exceptions that can be extended by other, equivalent ones; the catalog of exceptions is therefore not exclusive (Kallerhoff & Mayen, 2023: MN 48, with further reference).

If the party involved is not consulted on the basis of a statutory exception, they often only become aware that an administrative procedure exists when the administrative procedure is concluded. Only the administrative act confronts the party with the results of the investigations initiated and controlled unilaterally by the authority alone. It is true that the addressee of the administrative act can defend himself against the regulation made by means of an appeal procedure – in this respect, he is generally first entitled to an objection, which triggers an internal administrative review procedure, and if the burden continues to exist, legal recourse to the social courts is open to him (Art. 19 para. 4 Basic Law, § 51 Social Court Act [Sozialgesetzbuch – SGG]) – so that he can correct untrue facts and present new facts. However, this in no way puts the person concerned on an equal footing with someone who has already had the opportunity to influence the issuing of the administrative act by submitting facts and legal arguments during the ongoing administrative procedure.

Before the administrative act is issued, the authority's legal opinion has not yet been established. If the party involved is heard, it can expose the facts already established by the authority as incorrect or incomplete. It is also possible that an evaluative decision, a balancing decision or a discretionary decision planned up to this point may turn out differently due to the new facts presented. It is particularly important here that the fact that it is now possible to inspect the files reveals which facts were collected by whom and which were not. This knowledge helps the party involved to steer their presentation of facts in a targeted manner, to supplement or correct facts, to suggest expert opinions, to

Quarterly on Refugee Problems, 2024, Vol. 63, Issue 3, 229-238
ISSN 2750-7882, Section: Research Articles
Open Access Publication, https://doi.org/10.57947/qrp.v63i3.195

contribute their own legal opinions and, if necessary, to change an evaluative decision or discretionary decision with the relevant facts. In such a procedural situation, it cannot be said that the party involved is merely an object of state action, that he is an object in the sense of the procedural law and understanding of the law applicable at the time of the Weimar Constitution. He is not ensnared in a relationship of domination that is derived from a great primal right to obedience (Gröschner, 2004: 414; with refence to Meyer, 1924: 101, 104, 106) and makes him an administrative object (Schuler-Harms, 2023: para. 5). He is the subject of the procedure and literally *a participant* in the administrative procedure, so that the promise of the rule of law is fulfilled. In this sense, the Federal Constitutional Court formulated in 2020:

> "In a state governed by the rule of law, the person concerned must not be a mere object of the proceedings; he or she must be given the opportunity to influence the course and outcome of the proceedings in order to safeguard his or her rights" (BVerfG, Decision of 12/11/2020, 2 BvR 1616/18, para. 34).[5]

The Federal Social Court reiterated this almost passionately in 2022 to justify the right of a party to be accompanied by a counselor during a court-ordered medical examination. Both courts also emphasized the right to a fair trial (BSG, Judgement of 27/10/2022, B 9 SB 1/20 R, para. 25 to 34).

Anyone who now thinks that the non-heard party has the same opportunities to influence the decision through the possibilities for factual and legal submissions opened up in the appeal and legal proceedings is mistaken. They overlook the fact that public authority employees are not "service delivery machines", but human beings. It does not seem far-fetched that the person who has spent a great deal of time and intellectual effort investigating and legally assessing the facts of the case will not regard an appeal against the administrative act in redress proceedings as the assertion of a right based on the rule of law or even the Basic Law. Instead, they might strive to defend their decision against the attack they have encountered, while still aiming to make as objective an assessment as possible based on the aspects presented in the objection.

In appeal proceedings, with the exception of cases of evident illegality of the contested administrative act, a priming effect (Myers & DeWall, 2023: 375) must be assumed, which will lead to an influence by the decision already made, particularly in the case of discretionary decisions and decisions made on the basis of a balancing of interests; a completely independent assessment of the factual and legal situation by the appeal authority, detached from the previous assessment, can therefore not be expected. In legal proceedings, judicial review is in any case only limited to the legality of a discretionary decision; neither the fact that an official in charge in the original proceedings would have

[5] At the same time, the Court made it clear that the requirements of an effective administration of justice must also be taken into account as part of the overall view of procedural law to be taken (with reference to BVerfG, Decision of 14/2/1978, 2 BvR 406/77, BVerfGE 47, 239 <250>; BVerfG, Decision of 14/9/1989, 2 BvR 1062/87, BVerfGE 80, 367 <375>; BVerfG, Decision of 15/1/2009, 2 BvR 2044/07, BVerfGE 122, 248 <272>; BVerfG, Judgement of 19/3/2013, 2 BvR 2628, 2883/10, 2155/11, BVerfGE 133, 168 <200 f.>). Procedural arrangements that serve the requirements of an effective administration of justice therefore do not already violate the right to a fair trial if the procedural positions of the person concerned are set back in favor of an effective administration of justice (see BVerfG, Decision of 15/1/2009, <273>; BVerfG, Judgement of 19/3/2013, <201>). This is to be applied to the requirements of a functioning state administration

Löcher, J. (2024). Social Welfare Benefits to Asylum Seekers
Quarterly on Refugee Problems, 2024, Vol. 63, Issue 3, 229-238
ISSN 2750-7882, Section: Research Articles
Open Access Publication, https://doi.org/10.57947/qrp.v63i3.195

personally made a different lawful discretionary decision if all the facts had been known in good time, nor any priming that the regulation of the administrative act and its justification may have triggered in the persons appointed to make the opposition decision, would lead to the administrative act being set aside by the court.

The difference is even more dramatic when one considers that it can be assumed that "people with a migration background have higher thresholds to overcome in accessing justice (…) and are therefore more likely not to assert their rights adequately" (Wrase et al. 2022: 70).

Regardless of the language barrier that may stand in the way of legal action, a person who has grown up in a totalitarian system and who is unfamiliar with the rule of law in its German form will in all likelihood not question decisions of the State with the same naturalness as someone who has grown up in the Federal Republic of Germany by lodging an objection and/or filing a lawsuit and will not dare to make a factual and/or legal submission against a state authority. It takes experience of the rule of law and an imprint of the rule of law before people can oppose state decisions without fear of reprisals. If people are reluctant to defend themselves against an official decision by lodging an objection or taking legal action, withholding a hearing means that the decision-makers decide solely on the basis of the facts that are the result of their own investigations.

To return to the initial question: Whether the authority becomes aware of one and the same factual or legal submission *before* or *after* the administrative decision is issued, can lead to different decisions in individual cases. It therefore makes a considerable difference whether the applicable administrative procedural law only allows a hearing to be dispensed within very exceptional cases (as in § 24 para. 2 SGB X) or whether it defines the circle of exceptions broadly (as in § 28 [L]VwVfG). This difference is particularly painful when, as in the case of the AsylbLG, it comes to legal interventions with regard to benefits that guarantee human dignity.

The list of differences between SGB I and SGB X on the one hand and (L)VwVfG on the other could be continued. The finding is always the same: The provisions of SGB I and SGB X that characterize the administrative procedure are more "citizen-friendly" in that they help the legal manifestations of the welfare state principle to unfold and contribute to ensuring that even those who – whether due to mental illness, disability, intellectual overload, lack of literacy or language skills or for other reasons – are unable to pursue their legal interests in a proper, goal-oriented and self-responsible manner can nevertheless assert and enforce their claims to social benefits.

The self-responsibility required by the legislator in social law, which is characterized in particular by the need to find one's way through the maze of different benefit systems under social law, to submit applications according to the respective needs, to fill out application forms (correctly), to respond (correctly) to official inquiries, to fulfil obligations to cooperate, to seek legal remedies, etc., is often only made possible, or at least made considerably easier, by the social administrative procedure law regulated in SGB I and SGB X. Those involved are less reliant on private aid organizations or charities to provide support, as the respective authorities have the task of helping social rights to develop as far as possible, regardless of the costs involved.

Quarterly on Refugee Problems, 2024, Vol. 63, Issue 3, 229-238
ISSN 2750-7882, Section: Research Articles
Open Access Publication, https://doi.org/10.57947/qrp.v63i3.195

4 Legal Policy Requirements and Necessities

It is not surprising that there are voices in the literature calling on the legislator to wrest the AsylbLG from the regime of the (L)VwVfG (Groth, 2020: MN 21; Löcher, 2022, AsylbLG, MN 501)[6] - even if they do not express this quite so drastically. In other words, they demand the application of not only individual provisions, but of the entire SGB I and SGB X for the administrative procedure under the AsylbLG.

This demand is justified. The legislator has responded to the special challenges of social law matters with the SGB I and SGB X. Social law is the social and constitutional response to the occurrence of dramatic life situations in the lives of individuals that are characterized by hunger, housing shortage, illness, need for care, disability, unemployment and other situations of need that threaten financial existence, a dignified life or participation in life in society in order to achieve social security, social justice or socio-political goals. Quite a few people entitled to benefits are not in a position to bear the burden of the social responsibility imposed on them by the legislator. Through the administrative procedural law SGB I and SGB X, the legislator has created a "social" procedural law that is far more supportive of the parties involved than the provisions of the VwVfG, which is *aimed* in particular at ensuring that social benefits are claimed and guaranteed and not, for example, at conserving the official budget.

Particularly when it comes to benefits that secure a livelihood and enable a dignified life for people in need of protection who neither speak German nor understand German culture or the German constitutional State, and who are not capable of legally navigating on their own, the administrative procedure should be based on SGB I and SGB X rather than on the (L)VwVfG. The legislator has not yet noticed the special procedural needs of those entitled to benefits under the AsylbLG, who are probably in even greater need of protection than those entitled to benefits under the Code of Social Law, or at least has not taken the opportunity to order the application of SGB I and SGB X in their entirety. A change in the law is more than desirable.

References

Busche J. (2021). § 133 BGB. In C. Schubert (Ed.), *Münchener Kommentar zum BGB* (9th ed). Beck.

Gröschner R. (2004). § 23 Die Republik. In J. Isensee, & P. Kirchhof (Ed.), *Handbuch des Staatsrechts* (3rd ed.). Otto Schmidt.

Groth, A. (2020). § 9 AsylbLG. In Coseriu, P., & Siefert (Ed.), J., *juris Praxiskommentar SGB XII: Sozialhilfe/mit AsylbLG* (3rd ed.), Juris.

Kallerhoff, D., & Mayen, T. (2023). § 28 VwVfG. In P. Stelkens, H. J. Bonk, & M. Sachs (Ed.), *Verwaltungsgerichtsgesetz: VwVfG* (10th ed.), Beck.

Löcher, J. (2022). Asylbewerberleistungsrecht. In F. Wollenschläger, & S. Wollenschläger (Ed.), *Handbuch des Ausländerrechts der Bundesrepublik Deutschland* (loose-leaf binder, status March. 2022; 2. Abschnitt H.II.). Luchterhand

Meyer, O. (1924). Deutsches Verwaltungsrecht, Vol. I (reprint 1969). Duncker & Humblot.

Myers, D. M., & DeWall, C. N. (2023). Gedächtnis. In D. M. Myers, & C. N. DeWall (Ed.), *Psychologie* (4th ed., 355-394). Springer

Oppermann, D., & Filges, S. (2024). § 3 AsylbLG. In P. Coseriu, & J. Siefert (Ed.), *juris Praxiskommentar SGB XII* (4th ed.). Juris.

[6] also Löcher in Wollenschläger, Handbuch des Ausländerrechts der Bundesrepublik Deutschland, as of 93rd update delivery March 2022, § 9 AsylbLG para. 501.

Löcher, J. (2024). Social Welfare Benefits to Asylum Seekers
Quarterly on Refugee Problems, 2024, Vol. 63, Issue 3, 229-238
ISSN 2750-7882, Section: Research Articles
Open Access Publication, https://doi.org/10.57947/qrp.v63i3.195

Schuler-Harms, M. (2023). § 39 VwVfG. In Schoch, F., & Schneider, J.-P. (Ed.), *Verwaltungsrecht: Verwaltungsverfahrensgesetz – VwVfG* (4th ed., loose-leaf binder, status Nov. 2023). Beck.

Siefert, J (2020). § 9 AsylbLG. In J. Siefert (Ed.), *Asylbewerberleistungsgesetz: AsylbLG* (2nd ed.). Beck.

Wrase, M., Behr, J, Günther, P., Mobers, L., Stegemann, T., & Thies, L. (2022). *Zugang zum Recht in Berlin: Zwischenbericht explorative Phase.* Wissenschaftszentrum Berlin für Sozialforschung. https://bibliothek.wzb.eu/pdf/2022/p22-004.pdf

Legal Materials

Federal Parliament, BT-Drs. 12/4451, Entwurf eines Gesetzes zur Neuregelung der Leistungen an Asylbewerber [Draft law on the revision of benefits for asylum seekers], 02/03/1993, https://dserver.bundestag.de/btd/12/044/1204451.pdf

Federal Parliament, BT-Drs. 12/5008, Beschlussempfehlung und Bericht des Ausschusses für Familie und Senioren (13. Ausschuss) [Recommendation for a resolution and report by the Committee on Family Affairs and Senior Citizens (13th Committee)], 24/05/1993, https://dserver.bundestag.de/btd/12/050/1205008.pdf

Federal Parliament, BT-Drs. 13/2746, Entwurf eines Ersten Gesetzes zur Änderung des Asylbewerberleistungsgesetzes und anderer Gesetze [Draft of a first law to amend the Asylum Seekers' Benefits Act and other laws], 24/10/1995, https://dserver.bundestag.de/btd/13/027/1302746.pdf