GESELLSCHAFT FÜR FREIHEITSRECHTE

Submission form for individual communications

General Information

Complaint Number:**WUR/21251**
Submission Language:**English**
Committee:**Committee on Economic, Social and Cultural Rights**
State Party:**Germany**
Has the same matter been submitted under another procedure of international investigation or settlement?:**No**
Have you exhausted all domestic remedies?:**Yes**

Correspondent

Gender	[redacted]
First Name	[redacted]
Last Name	[redacted]
Nationality	[redacted]
Date of Birth	[redacted]
Organization Name	Not Available
Email	[redacted]
Country	Germany
Phone Number	[redacted]
Address	[redacted]
Request to Anonymize	No
Is the correspondent a victim?	No

Alleged Victims

Gender	[redacted]
First Name	[redacted]
Last Name	[redacted]
Nationality	[redacted]
Date of Birth	[redacted]
Email	[redacted]
Country	Germany

Phone Number	[redacted]
Address	[redacted]. The author is homeless. He can be reached through his lawyer ([redacted]. He also regularly stays at [redacted] Germany).
Request to Anonymize	Yes

International investigation or settlement

2ulfil2 same matter been submitted under another procedure of international investigation or settlement?**No**

Facts

Facts:

The author of the communication, now 20 years old, comes from the war zone in Syria and fled to Germany via Libya and Malta. After entering the country, he initially received benefits to ensure a decent minimum standard of living. Since 15 January 2025, he has no longer been receiving social benefits. The author has been homeless since then and has no access to medical care. He is in a situation of distress that can only be remedied by material support. He has attempted to take legal action against the withdrawal of all social benefits, but has failed in all domestic instances.

1. Main facts of the case

The author of the communication was born on [redacted] Syria. The war in Syria began in Dar'ā with the violent suppression of peaceful protests in 2011. The author grew up in the war zone. In February 2021, the author left Syria at the age of 16. He initially lived in Libya for two years and seven months before migrating to Malta in November 2023. He applied for asylum in Malta on [redacted] 2023, but no decision has been made on his application to date. In Malta, he was housed for four and a half months in a so-called refugee camp in Ħal-Far. According to his own statements, he was detained there as a refugee. He received cash benefits of between EUR 97 and EUR 130 per month. He was not offered any other benefits, such as language or integration courses.
As the author has two aunts in Germany ([redacted]) and a cousin with whom he was in regular contact, he travelled to Germany by plane on 9 April 2024.

Shortly after his arrival, the author submitted an informal application for asylum.

Based on the applicant's submission and the corresponding EURODAC result, according to which entry into the European Union took place via the Member State of Malta, the Federal Office for Migration

and Refugees sent a request to Malta on [redacted]2024 to take charge of the applicant in accordance with the Dublin III Regulation (Regulation (EU) No 604/2013, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604).

On [redacted] 2024, the author submitted a formal application for asylum to the Federal Office for Migration and Refugees. On the same day, the author received a temporary residence permit valid until [redacted] 2025.

In a letter dated [redacted] 2024, the Maltese authorities declared their responsibility for processing the asylum application in accordance with Art. 18 (1) I of the Dublin III Regulation.

In this letter, they stated:
'Transfers are to be affected from Monday to Thursday from 0800 till 1700. Please note that we do not accept transfers on Friday. Arrangements for the transfer of the applicant to Malta should be made via DubliNet or with the International Protection Agency Dublin Unit, Fafner House, Triq Nazzjionali, Hamrun, Malta. Telephone no.: +356 21255257. You are kindly requested to provide the relevant details of the transfer at least seven working days in advance.' (See International Protection Agency Malta, response to request for admission dated [redacted] 2024, **attachment 1**).

On [redacted] 2024, the author was assigned to the [redacted] in the Bundesland (German state) Thuringia (Landkreis [redacted]) and accommodated there in temporary accommodation for refugees. In a notification of benefits dated [redacted] 2024, the author was granted social benefits for an indefinite period in accordance with Asylum Seekers Benefits Act. He received benefits in kind to cover his needs for accommodation, electricity, heating and household goods. He also received EUR 229 per month for food, clothing and healthcare. In addition, he was granted benefits to cover his personal daily needs, such as local transport tickets, a mobile phone, media and stationery, in the amount of EUR 184 per month.

On [redacted] 2024, the Federal Office for Migration and Refugees issued a so-called Dublin decision. In this decision, the author's asylum application was rejected as inadmissible on the grounds that Malta was responsible for the asylum procedure (Section 29(1)(1) of the Asylum Act, see **attachment 2**). It found that there were no grounds for prohibiting deportation under Art. 4 Charter of the Fundamental Rights of the European Union and Art. 3 European Convention on Human Rights and ordered deportation to Malta (Section 34a (1) sentence 1 Asylum Act, see **attachment 2**).

Regarding the possibility of self-initiated and voluntary departure by the author himself to Malta, the Federal Office for Migration and Refugees stated:
'The applicant is advised of the possibility of voluntary departure, provided that this has been agreed with all the countries involved. The order for deportation to Malta is based on Section 34a (1) sentence 1 of the Asylum Act.' (see Federal Office for Migration and Refugees, Dublin decision of the author dated [redacted] 2024, p. 11, **attachment 3**).

An announced transfer attempt to Malta on [redacted] 2024 failed because the author was not at the accommodation.

The transfer period was then extended from six to eighteen months and now ends on [redacted] 2025. This complies with the provisions of Article 29(2) of the Dublin III Regulation. Member States must transfer the person to the state responsible for the asylum procedure within this period. If they fail to do so, they themselves become responsible.

The author's residence permit was declared invalid on [redacted] 2024 by the [redacted] Foreigners' Registration Office (see [redacted] **ID Document**).

In a decision dated [redacted] 2024, the social welfare office of the Ilm district administration revoked the last benefit notice with effect from December 31, 2024 (see social welfare office of the Ilm District, administration notice, [redacted] 2025, **attachment 4**).

It bases its decision on Section 1 (4) sentence 1 no. 2 of the Asylum Seekers Benefits Act, which will be discussed below. The law, which has been in force since 31 October 2024, states:

'Persons entitled to benefits under paragraph 1 number 5 whose asylum application has been rejected as inadmissible by a decision of the Federal Office for Migration and Refugees pursuant to Section 29, paragraph 1, number 1 in conjunction with Section 31, paragraph 6 of the Asylum Act, for whom deportation has been ordered pursuant to Section 34a (1) sentence 1 second alternative of the Asylum Act and for whom, according to the determination of the Federal Office for Migration and Refugees, departure is legally and factually possible, even if the decision is not yet final, are not entitled to benefits under this Act. Foreign nationals in need of assistance who fall under sentence 1 shall be granted limited assistance once every two years until their departure, but for a maximum period of two weeks, in order to bridge the period until their departure (bridging benefits) (...)' (See Section 1 Asylum Seekers Benefits Act **Attachment 5**).

In summary, this means that so-called Dublin refugees in Germany will no longer receive social benefits if
1. they are required to leave the country,
2. their asylum application in Germany has been rejected because another member state of the CEAS is responsible for the procedure,
3. a deportation order has been issued, and
4. the Federal Office for Migration and Refugees has determined that it is legally and factually possible for them to leave the country.

However, it can already be stated here that the author's case fulfilled the first three requirements and that the legislator, as will be discussed later, determined the fourth requirement to be purely declaratory (see 2(b)). Also the background of Dublin refugees will be discussed later (see 2.a).

In its decision of [redacted] 2024, the authority grants the author so-called *bridging benefits* for the period from January 1, 2025, to January 14, 2025. The *bridging benefits* comprised a cash benefit of EUR 94.39 and benefits in kind in the form of the provision of accommodation, heating and electricity, and household goods. No further benefits will be granted after receipt of the *bridging benefits*. The author is therefore no longer entitled to any social security benefits as of January 15, 2025.

As justification, the social welfare office referred abstractly to the legal situation and stated that the author's asylum application had been rejected as inadmissible and that deportation had been ordered. No comments were made regarding the possibility of the author leaving the country independently.

On 18 February 2025, he was ultimately forced to leave the refugee accommodation and hand in his health card. He no longer has a room there and was turned away when he asked for one. He no longer receives any cash or benefits in kind from the state and has no other income or assets. The author is not permitted to work. He has been homeless and destitute ever since.
The author is unable to meet his basic needs. The author describes his situation as one in which he lives in constant fear and worry, uncertainty, and overload. He is dependent on the voluntary care of friends.

The author frequently, but irregularly, stays overnight with [redacted] in [redacted], who offers this support as private assistance. Sometimes he also sleeps at friends' houses. He is deeply ashamed of being dependent on the help of others. He has no place of refuge where he has privacy. Some nights he remains homeless and spends the night at the train station or walking the streets. He tries to stay awake because he fears racist attacks. In the [redacted], 41.2% voted for the Alternative for Germany party in the last federal election on 23 February 2025. Since 2021, the party has been classified as proven right-wing extremist by the Office for the Protection of the Constitution at the Thuringian Ministry of the Interior and Local Government (see Free State of Thuringia, Constitutional Protection Report 2024, **attachment 6**, p. 15).

The author is also dependent on the generosity of friends and people who help him for food, clothing and washing facilities. He has no way of washing his clothes or buying new ones. He lacks winter clothing, which is why he often feels cold, especially at night.
He does not have regular access to adequate water and sanitation.
According to his own statement, the author needs psychological help. He also has toothache, which he attributes to the lack of opportunity to brush his teeth regularly. He has no access to medical help, which means he has no way of obtaining a diagnosis or medical treatment (see affidavit of the author, 12 June 2025 and 23 September 2025, **attachment 7**; affidavit of [redacted], 6 June 2025, **attachment 8**).

2. Relevant background information

a. Background information on the group of people affected

Some background information on the situation of so-called Dublin refugees and the newly introduced law on the withdrawal of benefits for these refugees is necessary. First, the provisions of the Dublin III Regulation are briefly discussed. Second, the new law is introduced and impossibility for these individuals to leave voluntarily is described.

The Dublin III Regulation stipulates that the Dublin Member State in whose territory an asylum seeker coming from a third country first entered is generally responsible for the asylum procedure (Art. 13 (1) Dublin III Regulation, available at https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:en:PDF, Art. 7 Commission Regulation (EC) No 1560/2003, available at https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32003R1560).

In Germany, the Federal Office for Migration and Refugees, which is responsible for examining asylum applications, first checks whether it is responsible under the Dublin III Regulation after receiving an asylum application. During this time, applicants receive a residence permit and are legally entitled to social benefits under the Asylum Seekers Benefits Act.

If the Federal Office for Migration and Refugees determines that Germany is not responsible because the applicant entered via another Member State, it submits a request for admission to the responsible state (Art. 21(1) Dublin III Regulation). If the requested state accepts responsibility or if consent is deemed to have been given due to the lack of a response (Art. 22 (7) Dublin III Regulation), the asylum application in Germany is rejected as inadmissible (Section 29 (1) No. 1 in conjunction with Section 31 (6) Asylum Act).

In addition, the Federal Office for Migration and Refugees issues a deportation order as soon as it is established that the deportation can be carried out (Section 34a (1) sentence 1 Var. 2 Asylum Act). To this end, it only examines obstacles to deportation that relate primarily to the destination country in general. It examines whether the living conditions expected in the respective Member State would constitute a serious risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union and Article 3 of the European Convention on Human Rights. However, the Federal Office does not examine whether it is possible for the asylum seeker to leave the country immediately on their own initiative. Nor does it examine the specific period of time in which a transfer can be organised in the specific individual case.

It is precisely for this moment, the Dublin refugee's asylum application has been rejected and a deportation order has been issued, that the new law (Section 1 (4) sentence 1 no. 4 of the Asylum Seekers Benefits Act) provides for an exclusion from benefits.

The legislator claims that affected persons can, in principle, leave the country during the two weeks in which they receive bridging benefits. However, this does not correspond to the actual possibilities. As a result, numerous individuals – such as the author – are affected by the exclusion from benefits and have no choice but to remain in Germany without social assistance.

The legislator states in the explanatory memorandum to the law:
'These are generally foreigners who can typically be assumed to have entered Germany only very recently. It is therefore reasonable to assume that, as a rule, it would not involve any disproportionate effort for them to leave Germany at short notice and return to the country that (...) is responsible for conducting their asylum proceedings.' (see German Bundestag, 20/12805, p. 31, **attachment 9**).

The legal and actual possibility of departure for Dublin refugees is governed by the provisions on transfers in the Dublin III Regulation. According to this, unlike EU citizens who have the right to freedom of movement, it is not typically possible for Dublin refugees to leave the country on their own initiative. Dublin refugees are legally required to leave the country but, de facto, are not always able to do so.

European law provides for three forms of transfer: Firstly, at the request of the asylum seeker, by a certain specified date; by supervised departure, with the asylum seeker being accompanied to the point of embarkation by an official of the requesting Member State, the responsible Member State being notified of the place, date and time of the asylum seeker's arrival within an agreed time limit; and thirdly, under escort, the asylum seeker being accompanied by an official of the requesting Member State or by a representative of an agency empowered by the requesting Member State to act in that capacity and handed over to the authorities in the responsible Member State (Art. 7(1) Commission Regulation (EC) No 1560/2003).

Each transfer is carried out in consultation between the state in which the person is staying and the destination state (Art. 29(1) Dublin III Regulation). The exchange is essential for the destination state, as it is the only way for it to 7ulfil its obligation to receive the person seeking protection and make appropriate arrangements for their arrival (Art. 22(7) Dublin III Regulation). Agreements are required on the modalities of the transfer, in particular the form of transfer, but also on the time and place (Art. 8(2) Dublin III Regulation). As a rule, travel documents, such as a laissez-passer, must be issued by the requesting state (Art. 7(2) Dublin III Regulation). In addition, the journey must be planned and the travel costs approved.

The choice of the type of transfer is at the discretion of the transferring and receiving Member States. The asylum seeker has no legal right to a specific form of transfer.
Although transfer by supervised departure or under escort is the norm in Germany, such transfers rarely take place. In 2024, 74,583 transfer requests resulted in only 5,827 transfers, despite 44,431 approvals for transfer from the responsible Member States. Only 22 transfers to Malta took place throughout the entire year (see German Bundestag, 20/15133, p. 37, **attachment 10**).

German transfer practice in particular does not provide for unaccompanied transfers within a period of two weeks. In Germany, the Federal Office for Migration and Refugees coordinates the transfer, while the immigration authorities or the federal police are responsible for enforcement. According to the relevant administrative regulation, unaccompanied transfers designated as "voluntary departure" are only approved by the Federal Office for Migration and Refugees in exceptional cases. It states:
'In Section 34a (1) of the Asylum Act, the legislator has deliberately opted for controlled transfers. Unlike in the national asylum procedure, Section 34a (1) of the Asylum Act does not require a prior deadline to be set for voluntary departure in Dublin procedures. (...) Voluntary transfer to the Member State concerned must – as with controlled transfers – be coordinated by Division 32C with all the authorities involved – the Member State, the competent immigration authority and the Federal Police. The feasibility of a voluntary transfer in a specific individual case must be coordinated with the Federal Office in advance of planning a specific transfer date. Depending on the Member State, the lead time is between three and fourteen days.'

Due to this procedure, travel at the request of the asylum seeker is generally no longer possible four weeks before the expiry of the transfer period (see Federal Office for Migration and Refugees, Dublin Service Instruction, **attachment 11**).

Even if the person concerned takes the initiative, departure therefore generally takes place within the framework of an officially supervised transfer procedure.

In this context, the Federal Ministry of the Interior and Homeland refers to complex interaction between Member States in the transfer process. It states that the Federal Government is working on concluding administrative agreements with the Member States of the European Union and, in particular, on establishing simplified transfer procedures and binding, practicable transfer modalities in order to improve the Dublin transfer system (See: Federal Ministry of the Interior and Homeland, interpretative letter on the Dublin exclusion of 7 February 2025, p. 2**, attachment 12**).

Many Member States also do not agree to self-initiated departure from Germany. For example, France states in its readmission form: 'The authorities in France do not accept transfers initiated by the applicant.' (see France, Procédure Dublin, anonymized, **attachment 13**).

Furthermore, it must always be determined whether the asylum seeker has a passport or a passport substitute, as this is a prerequisite for legal departure. The absence of a passport can lead to a ban on departure at the border. Crossing the border without a passport or passport substitute is an administrative offense for third-country nationals (see Federal Ministry of the Interior and Community, Travel documents, rights and duties, https://verwaltung.bund.de/leistungsverzeichnis/EN/rechte-und-pflichten/102711702).

In summary, it can be concluded that persons whose asylum application has been rejected as inadmissible and who have received a deportation order are generally not able to decide for

themselves when and how they can travel to the responsible member state. In any case, they need comprehensive and understandable information about the organisation of their departure.

b. No examination of the possibility of departure by the authorities

The law does not clearly stipulate that exclusion from benefits can only be considered if departure is possible within two weeks.

According to the wording of the law, the exclusion of benefits requires a determination by the Federal Office for Migration and Refugees regarding the legal and actual possibility of departure (Section 1 (4) sentence 1 no. 2 of the Asylum Seekers Benefits Act). Affected persons must therefore actually be able to leave the country in a timely manner.

In case law and literature, the significance of this requirement is controversial, particularly in light of its compliance with EU and constitutional law, but also in light of the legislative intention.
For example, in the present case, the Gotha Social Court and the Thuringian Regional Social Court claim that this is a purely declaratory requirement. The authorities and courts in this case assume that the Federal Office for Migration and Refugees made a sufficient determination, even though it didn't examine whether a transferal or voluntary departure would be possible within two weeks (Federal Office for Migration and Refugees, Dublin decision of the applicant of [redacted] p. 11, **attachment 12**; and Gotha social court, decision of 13 may 2025, **attachment 14**).

Other courts require that the authorities carefully examine whether actual departure is possible in a timely manner in each individual case. They conclude that only if the reasonable possibility of self-help through voluntary departure is guaranteed is the exclusion of benefits in accordance with EU and constitutional law (see, for example, regional social court Lower Saxony-Bremen, decision of 13 June 2025, **attachment 15**, p. 7).

The legislator itself states in October 2024:
'The amendment is of a clarifying nature. The decision on inadmissibility by the Federal Office for Migration and Refugees already establishes the factual and legal possibility that is relevant under this provision. In particular, the Federal Office for Migration and Refugees has already verified that the foreign national is not at risk of a violation of Article 3 of the Human Rights Convention or Article 4 of the Charter of Fundamental Rights in the other Member State. Self-initiated departure is generally possible within two weeks of the inadmissibility decision if the transfer is guaranteed. For this purpose, the foreign national is issued with a laissez-passer.' (German Bundestag, 20/13413, p. 53 (number 3), **attachment 16**).

In a government draft for the renewed tightening of the law of 3 September 2025, the Federal Government now states:

'However, the application and interpretation of Section 1 (4) No. 2 of the Asylum Seekers Benefits Act has led to misunderstandings and uncertainties. The version now chosen emphasises more clearly that a separate determination by the Federal Office on the legal and actual possibility of departure is not necessary, as has been the case up to now.' (see Federal Government, draft bill dated 3. September 2025, p. 175, abrufbar unter https://www.bmi.bund.de/SharedDocs/gesetzgebungsverfahren/DE/Downloads/kabinettsfassung/MI4/kabinett-GEAS-Anpassungsgesetz.pdf?__blob=publicationFile&v=1, **attachment 17** (excerpt).

In conclusion, it can be said that the law does not sufficiently ensure that only persons who are able to leave the country in the near future will have their benefits completely cancelled. In Thuringia, at least, the authorities do not check whether departure is possible, and there is no successful legal recourse against this.
It should also be noted that once the persons concerned have become homeless, the authorities regularly lose contact with them as they no longer have an address. Transfers or subsequent information about possibilities for departure are then hardly conceivable.

c. Legal consequence: No social security

Under the new regulations, affected persons are generally no longer entitled to benefits to secure their minimum subsistence level. They receive no benefits under the Asylum Seekers Benefits Act or under any other legislation. They are excluded from receiving citizen's income and social assistance. As those affected do not have a work permit, they have no way of earning money to cover their needs. They become destitute, homeless and lose access to any healthcare system.

The exclusion from benefits leads to a complete exclusion from social benefits. Only *bridging benefits* are granted for a period of two weeks and, if necessary in individual cases due to special circumstances to overcome particular hardship, so-called *hardship benefits* (Section 1 (4) sentence 2 ff. of the Asylum Seekers Benefits Act, **attachment 5**).

Bridging and hardship benefits do not compensate for the complete exclusion from benefits.
Bridging benefits are paid for a maximum period of two weeks (Section 1 (4) sentence 2 Asylum Seekers Benefits Act, **attachment 5**). After this period has expired, there is no longer any entitlement to them.

Hardship benefits are only provided if this is necessary in individual cases due to special circumstances in order to overcome particular hardship and to cover temporary needs (Section 1 (4) sentence 6, second half-sentence Asylum Seekers Benefits Act, **attachment 5**). A particular hardship is characterised by the fact that it is not typical for all persons affected by the exclusion from benefits, i.e. that individual circumstances specific to the beneficiary are added to the hardships typically associated with the reduced scope of benefits.

A corresponding interpretation is also confirmed by the explanatory memorandum to the law. The mere fact that the person obliged to leave the country remains in the federal territory or the prospect of lower benefits in the Member State granting protection or the Member State responsible does not constitute exceptional hardship (see German Bundestag 20/12805, p. 31, **attachment 9**; and German Bundestag 20/13413, p. 53, **attachment 10**).

In an interpretative aid to the federal states dated 7 February 2025, the Federal Ministry of the Interior and Homeland clarified that the hardship provision is not intended to compensate for underprovision. It states: "Provision is generally not made in the form of asylum seeker benefits. The hardship provision in Section 1 (4) sentence 6 of the Asylum Seekers Benefits Act requires individual circumstances in each case that justify special hardship." (see Federal Ministry of the Interior and Homeland, interpretative guidance to the Hamburg Ministry of the Interior and Sport dated 7 February 2025, **attachment 17**),

In a letter dated April 3, 2024, to the competent authorities, the State Administration Office of the Free State of Thuringia also states that hardship benefits are only to be provided in cases of inability to travel, physical or mental illness, to traumatized persons, persons with disabilities, and other persons in need of special protection, e.g., pregnant women and minor children (see Free State of Thuringia, Thuringian State Administration Office, letter to benefit authorities of the districts and independent cities dated April 3, 2025, p. 5, **attachment 18**).

In this further ruling, the Gotha Social Court considers that the requirements for hardship claims have not been met. The court states that even in the case of a family of five with three minor children, one of whom suffers from a thyroid condition requiring treatment and another of whom requires emergency care due to a broken arm, no hardship can be assumed (Gotha Social Court, decision of 30 May 2025, S 5 AY 482/25 ER, unpublished).

In normal circumstances, which include homelessness and a lack of healthcare provision, this means no social security for the refugees affected.

It should also be noted that hardship benefits do not need to be applied for. They must be provided as soon as the authorities are aware of all relevant circumstances (Section 6b of the Asylum Seekers Benefits Act in conjunction with Section 18(1) of Book XII of the Social Code). Both the authorities and the social court could therefore have granted the benefits in this case.

d. Administrative practice and case law since the new law came into force

Since the new regulation in Section 1 (4) sentence 1 no. 2 of the Asylum Seekers Benefits Act (see **attachment 5**) came into force on 31 October 2024, a heterogeneous administrative practice has established.

More than 80 urgent decisions by social courts have already determined that the exclusion from benefits is likely to violate EU law and the German constitution (for example, Regional Social Court Lower Saxony-Bremen, decision of 13 june 2025, attachment 15).

According to these decisions, Germany is responsible for the social security of these persons. In particular, a violation of the currently still valid Article 17 of Directive 2013/33/EU is possible (https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013L0033). The Directive requires that the Member State in which a person resides shall ensure that he or she enjoys an adequate standard of living. Furthermore, the authorities do not sufficiently check whether the persons concerned are actually able to leave the country in order to apply for social benefits in another country that cover their living expenses while receiving bridging benefits.

Domestic Remedies

Have you exhausted all domestic remedies?:**Yes**

Details of steps taken to exhaust domestic remedies:

The author has exhausted all possible administrative and judicial remedies against the exclusion from benefits that are not unreasonably prolonged in view of the serious violation of rights (Optional Protocol to the ICESCR, Article 3(1)).

1. Administrative remedies

On January 6, 2025, the author lodges an appeal with the authorities against the exclusion from benefits. An appeal (Widerspruch) is an administrative procedure in which the authority can review its own decision for legality and appropriateness. It is a necessary prerequisite for bringing an action against an administrative act in Germany. The author argued that the Federal Office for Migration and Refugees had not made a determination regarding the possibility of departure to Malta. Furthermore, he argued that the exclusion from benefits was not compatible with the case law of the Federal Constitutional Court on the fundamental right to the guarantee of a subsistence minimum (Judgment of 9 February 2010, 1 BvL 1/09, 1 BvL 3/09, 1 BvL 4/09, https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2010/02/ls20100209_1bvl000109en.html).

In a decision dated 6 March 2025, the competent authority rejected the appeal as unfounded. It considers itself bound by the law, despite doubts about the conformity of the legal basis for the exclusion of benefits with EU and constitutional law (see Thuringian State Administration Office, Appeal decision, 6 March 2025, **Attachment 19).**

There are no other administrative remedies.

2. Urgent legal protection at the social court

The author pursued all available interim proceedings. He was represented by his lawyer in all proceedings, who presented extensive arguments in each case.
On 21 January 2025, the author filed an urgent application with the Gotha Social Court against the exclusion from benefits. In his reasoning, he explained at length, citing supreme court rulings and commentary literature, that the Federal Office for Migration and Refugees had failed to determine the possibility of escape and that the basis for authorization was unconstitutional and contrary to EU law. In a decision dated 13 March 2025, the Gotha Social Court rejected the admissible urgent application as unfounded (see Gotha Social Court, decision of 13 March 2025, **Attachment 14**). The court recognises an overriding public interest in the enforcement of the authority's decision. False incentives to remain in Germany illegally despite an enforceable obligation to leave the country need to be prevented. The author's interest in social benefits must take second place to this. The court considers the prospects of success in the main proceedings to be low, as the legal basis is in line with EU and constitutional law.

On 13 March 2025, the author lodged an appeal with the Thuringian Regional Social Court. The author pointed to the otherwise uniform current decisions of other social courts in which applicants were granted benefits because the exclusion of benefits was likely to be contrary to EU law. The practice of transferring so-called Dublin refugees and the impossibility of leaving the country voluntarily was also explained in detail once again.

The legal representative pointed out that the author was homeless and was sometimes allowed to stay overnight at [redacted] but spent most of his time in the Ilmenau area in the Ilm district. As evidence, he submitted a printout of an email from [redacted] and photos of the author in the Ilm district with a current newspaper.

On 16 May 2025, the Thuringian Regional Social Court dismissed the admissible appeal as unfounded (see Thuringian Regional Social Court, decision of 16 May 2025, **attachment 20**).

In its reasoning, the Court stated that the conditions for exclusion from benefits had been met. The Court briefly noted that a determination regarding the actual and legal possibility of departure was contained in the decision of the Federal Office for Migration and Refugees on the inadmissibility of the asylum application. Finally, obstacles to deportation related to the destination country had already been examined.

Regarding the unconstitutionality of the exclusion of benefits, the Senate briefly states:
"The Senate has no doubts about the conformity with Union law or the constitution; in particular, Malta is responsible here according to its own statement, and the applicant is therefore sufficiently

protected within the EU. There is no entitlement to protection by an EU member state of choice." (p. 7)
Finally, the court expresses considerable doubt about the applicant's actual residence, even though the author's contact addresses were known and his residence in the [redacted] was proven.
There is no further instance in urgent proceedings against the decision of the Thuringian Regional Social Court (Section 177 of the Social Court Act).

3. Constitutional complaint and application for interim measures

The author therefore lodged a constitutional complaint and an application for interim measures with the Federal Constitutional Court on 23 June 2025 (see, constitutional complaint, 23 June 2025, **attachment 21**).
The author complains of a violation of his right to effective legal protection under Article 19(4) of the Basic Law and his right to a guaranteed minimum standard of living under Article 1(1) in conjunction with the principle of the social state under Article 20(1) of the Basic Law as a result of the court decisions (see Basic Law for the Federal Republic of Germany https:// www.gesetze-im-internet.de/englisch_gg/).

The author's situation and his progressive impoverishment were described and documented. The legal situation of Dublin refugees was also discussed at length.

Among other things, it was argued that the courts had failed to sufficiently examine the violation of the author's human dignity in the summary proceedings. The more serious the threat to fundamental rights and the higher the probability of its occurrence, the more intensive the factual and legal examination of the matter must be, even in proceedings for provisional legal protection. This is particularly true when, as in this case, human dignity is threatened. The courts did not sufficiently address the constitutional and European law issues that arise here.

It was argued that the author's fundamental right to a guaranteed minimum standard of living was violated by the exclusion of benefits, which the courts disregarded. The constitutional obligation to secure a decent minimum standard of living must not be restricted or ignored in order to achieve migration policy objectives (see Federal Constitutional Court, Judgment of 18 July 2012, 1 BvL 10/10, 1 BvL 2/11, Paragraph 62 et seq., available at https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2012/07/ls20120718_1bvl001010en.html). The cancellation of all benefits cannot be justified because the people affected are obliged to leave the country under residence law. The exclusion of benefits is also disproportionate (see Federal Constitutional Court, Judgment of 5 November 2019, 1 BvL 7/15, Paragraph 117 et seq., available at https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2019/11/ls20191105_1bvl000716en.html). The purpose of the law is not achieved because the author is not actually able to leave the country in the near future. Furthermore, a person's most basic needs must always be met

as soon as they arise; provision must therefore be ensured until the person actually leaves the country. In order to enforce the obligation to leave the country, the authorities also have at their disposal means under residence law which have not been exhausted here. For example they can accelerate the process of transferal.

The intended purpose is therefore disproportionate to the burden placed on those affected by the permanent and complete exclusion from benefits.

In its decision of 1 July 2025, the Federal Constitutional Court did not accept the complaint for a ruling and therefore also denied the application for interim measures. The court considered that the principle of subsidiarity had not been fulfilled and suggested that it would be possible to apply to the Administrative Court for a temporary injunction against the transfer to Malta. According to the court, there was a possibility that the transfer period to Malta was not legally prolonged from 6 months to 18 months. The prolongation is legally possible, if a concerned person had absconded or was deliberately not present for an announced transferal (see Federal Constitutional Court, decision of 1 July 2025**, attachment 22**).

For clarification, it should be noted that the action proposed by the Federal Constitutional Court was not brought before the constitutional complaint due to a lack of prospects of success.

4. Proceedings at the administrative court

The author then filed a lawsuit with the competent administrative court in Meiningen on 28 July 2025 as proposed and submitted a corresponding application. The Administrative Court dismissed the lawsuit. The plaintiff had absconded, which is why the transfer period was eighteen months (see Meiningen Administrative Court, decision, 4 September 2025, **attachment 23**).
The author is therefore still required to leave the country and is excluded from receiving social benefits.

5. Main proceedings at the social court

On 12 March 2025, the author also filed a regular lawsuit against the exclusion of benefits at the Gotha Social Court (see statement of claim, 12 March 2025, **attachment 24**).
No decision has yet been made on the action. In 2023, main proceedings in the first two instances in Thuringia (Social Court and Regional Social Court) lasted an average of 49 months. Proceedings at the Federal Social Court concerning benefits under the Asylum Seekers Benefits Act mostly lasted between 12 and 18 months. More recent figures have not been published, as far as can be seen. Proceedings before the Federal Constitutional Court generally took around one year in 2024. It can therefore be expected that proceedings on the merits would take around six years. The author cannot be expected to wait for the decision, as it is taking an unreasonably long time and his predicament must be resolved as soon as possible.

6. Conclusion

The communication meets the admissibility criterion set out in Article 3, paragraph 1, of the Optional Protocol. The Athor has exhausted all available and effective options to obtain legal protection in good time. Any further domestic proceedings would lead to unreasonable delays. He has used every possible administrative procedure to assert his right to social security. Also he has pursued all legal proceedings at the social court that could help him in a timely manner. There is also no further possibility for the author to appeal against the exclusion of benefits before the Federal Constitutional Court.

The complainant cannot wait for the main proceedings before the social court. He is homeless and lives on the streets. He urgently needs accommodation and clothing before winter sets in. He has also been in need of medical care for several months. The author is subject to a ban on employment and has no way of helping himself.

In addition, redress is hardly possible. The author faces a serious, unreasonable disadvantage that is irreparable. A person's basic needs can generally only be met at the moment they arise. Although financial payments can be made retrospectively, the current lack of housing, nutrition, adequate clothing and healthcare cannot be remedied retrospectively. However, during the main proceedings, the absolute minimum necessary for subsistence is not covered. The constitutionally protected minimum subsistence level must therefore be guaranteed in all cases and at all times.

It should be noted that the constitutional complaint did not fail because the author did not give the social courts the opportunity to review the decision. Rather, the legal remedies for interim proceedings at the social court were exhausted, so that the courts had the opportunity to deal with the case. This has already taken almost four months, during which the social courts were able to examine the legal and factual situation. In this respect, the case is different from, for example, *C.A.P.M. vs. Ecuador* (E/C.12/58/D/3/2014), paras. 7.5 and 7.6.

Rather, the constitutional complaint failed because the Federal Constitutional Court was not aware of all the circumstances that would have led to the clear conclusion that the complainant was to be regarded as 'abscond' within the meaning of Article 21(2) of the Dublin III Regulation. Otherwise, it would have become clear to the court that the author could not obtain legal protection at the administrative court either. This is demonstrated by the proceedings before the administrative court, which the author lost. The legal situation is therefore completely clear. However, German law does not provide for the possibility of returning to the Constitutional Court after the constitutional complaint has been rejected. The deadline for appealing against judgements is one month (Section 93 of the Federal Constitutional Court Act). This deadline had already expired when the decision was received.

Gesellschaft für Freiheitsrechte e.V.
Boyenstraße 41
10115 Berlin

info@freiheitsrechte.org
Amtsgericht Berlin-Charlottenburg
Registernummer VR 34505 B

GLS Gemeinschaftsbank eG
IBAN · DE 88 4306 0967 1182 9121 00
BIC · GENODEM1GLS

It should be added that the Committee only calls for proceedings to be brought in cases which have a 'direct relation' to the violation of rights (see *Soraya Moreno Romero and children vs. Spain* (E/C.12/69/D/48/2018), para. 8.2). Proceedings against the exclusion from social benefits are brought before the social courts in Germany. These proceedings were brought by the author. The proceedings before the administrative court concerning the author's residence status are not directly related to the exclusion from benefits.
There is no worse violation of the right to social security (Art. 9 of the Covenant) than a complete exclusion from benefits. The right to social security is of central importance in guaranteeing human dignity. All competent German courts had the opportunity to deal with the case. Particularly in a case where the absolute minimum is at stake and all national procedures for urgent legal protection have been exhausted, it should be recognised that all other remedies take an unreasonably long time (see Article 3(1) sentence 2 of the Optional Protocol to the ICESCR).

Date of adoption or notification of the last decision by domestic authorities:**01/07/2025**

Claims

Claim 1 - Article: 9

The author's right to social security (Art. 9 of the Covenant) has been violated.

1. Elements of the right to social security

The right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realize their Covenant rights. This right plays an important role in preventing social exclusion and promoting social inclusion (*Miguel Ángel López Rodríguez v. Spain* (E/C.12/57/D/1/2013), para. 10.1).

It's a core obligation to ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education (general comment No. 19 (2008) on the right to social security (art. 9) of the Covenant, para. 59(a); see also Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights (E/C.12/2017/1), para. 9 and Statement by the Committee on "Social protection floors: an essential element of the right to social security and of the sustainable development goals" (E/C.12/2015/1), paras. 7-8).

The rights under the Covenant, including the right to social security, apply to all people, including non-citizens, regardless of their legal status and documentation (Secretary-General, Right to

adequate housing (2010), A/65/261, paras.11, 48; general comment No. 20, paras. 7, 30; general comment No. 4, para. 6; *Yaureli Carolina Infante Díaz v. Spain*, E/C.12/73/D/134/2019, Para. 7.6).

States parties must guarantee the right to social security without discrimination (general comment No. 19, paras. 4, 29; *Miguel Ángel López Rodríguez v. Spain* (E/C.12/57/D/1/2013), para. 10.1). Especially for disadvantaged and marginalized individuals and groups, states must ensure the right of access to social security systems or schemes on a non-discriminatory basis (general comment No. 19, para. 59(b)). Most vulnerable and disadvantaged persons include, in particular, informal workers and non-citizens, to whom special attention is paid (A/HRC/28/35, paras. 37-53).

Even non-nationals should be able to access non-contributory schemes for income support, affordable access to health care and family support. Any restrictions, including a qualification period, must be proportionate and reasonable. All persons, irrespective of their nationality, residency or immigration status, are entitled to primary and emergency medical care (general comment No. 19, para. 37). Refugees, stateless persons and asylum-seekers, and other disadvantaged and marginalized individuals and groups, should enjoy equal treatment in access to non-contributory social security schemes, including reasonable access to health care and family support, consistent with international standards (general comment no. 19,
para. 38).

2. Violation by direct action of State party

The author's right to social security has been violated by an act of commission by the Ger-man legislature (see general comment No. 19, para. 64). Germany is in violation of its obligation to guarantee the right to social security without discrimination (see general comment No. 19, para. 62). The exclusion of benefits in Section 1(4) sentence 1 no. 2 of the Asylum Seekers Benefits Act is an active denial of the ICESCR for a group of marginalised individuals that are legally (denial of the right to work) and factually (lack of financial, social and political capital) not able to provide for themselves. In doing so, it has adopted a deliberately regressive measure that is incompatible with its core obligations.

Section 1(4) sentence 1 no. 2 of the Asylum Seekers Benefits Act excludes certain refugees from entitlement to social benefits. The author belongs to a group of migrants who are required to leave the country because another state is responsible for his asylum procedure. Consequently, the law is violating the core obligation of the State party to guarantee non-discriminatory access to social security and to ensure access to a social security scheme that provides a minimum essential level of benefits to all people regardless of their legal status and documentation (Secretary-General, Right to adequate housing (2010), A/65/261, paras.11, 48; general comment No. 20, paras. 7, 30; general comment No. 4, para. 6; *Yaureli Carolina Infante Díaz v. Spain*, E/C.12/73/D/134/2019, Para. 7.6).

The entitlement to hardship benefits under Section 1(4) sentence 5 of the Asylum Seekers Benefits Act does not compensate for this loss. Firstly, the conditions for entitlement are not met in 'normal' cases of homelessness and impoverishment; and secondly, the provision is so vague that it is insufficient to guarantee non-discriminatory access to social security (see facts, section 2(c)). This case in particular shows that authorities and courts do not consider themselves obliged to provide hardship benefits even in cases of material hardship and destitution.

The author is affected by this exclusion from benefits. Since 15 January 2025, he has had no access to a social security scheme that provides a minimum essential level of benefits. Initially, he was allowed to stay in temporary accommodation for refugees until 16 February without any legal entitlement. On 17 February, he had to leave the accommodation and hand in his health card. He has been homeless ever since and does not even have access to basic medical care. The author no longer receives any social benefits. As he has no assets and is prohibited from working, he is confronted with circumstances that deprive him of the capacity to realise his rights under the Covenant. Despite these circumstances he was denied hardship benefits, as his situation is precisely the purpose of the law and not considered an atypical case.

In any case, the law does not sufficiently ensure that only persons who can leave for another Member State are affected by the exclusion from benefits (more on this below, see 1(d)). Dublin refugees cannot typically leave the country without further ado, even if a deportation order has been issued (see facts, section 2(a)). In any case, the law does not expressly require that each individual case be examined to determine whether departure is actually possible. In the explanatory memorandum to the law and other documents, the legislator makes it clear that such an examination of the actual possibility of departure is not necessary in individual cases (see facts, section 2(b)).

The introduction of benefit exclusions is a deliberately regressive measure (see general comment no. 19, paras. 42, 64). Before the new regulation came into force, persons required to leave the country were entitled to benefits under the Asylum Seekers Benefits Act. The committee had already criticised the provision of benefits under the Asylum Seekers Benefits Act as discriminatory in its concluding observations from 2011 and 2018 and had made corresponding recommendations (see Concluding observations of the Committee on Economic, Social and Cultural Rights (2011), E/C.12/DEU/CO/5, para. 13; see also Concluding observations on the sixth periodic report of Germany (2018), E/C.12/DEU/CO/6, paras. 58, 59). Instead of taking the necessary steps towards the realisation of the right to social security (see general comment No. 19, para. 62), Germany has now opted for regressive measures, thereby violating the rights of the Covenant.

3. Violations by direct actions of the authorities and social courts

The author's right to social security under Article 9 of the Covenant was also violated by the decision of the authority in the administrative act of 20 December 2024 and in the notice of appeal of 6 March 2025 (see facts, section 1, and domestic remedies, section 1). In these documents, the authority ordered the exclusion of benefits without paying sufficient attention to the rights under the Covenant. The complete exclusion from all benefits already constitutes a violation. In any case, however, failing to inform the author of his options for leaving the country and failing to check whether he is able to leave within the period of the bridging benefits violates the Covenant.

The decision of the Gotha Social Court of 13 March 2025 and the decision of the Thuringian Regional Social Court of 16 May 2025 also violate the author's rights (see domestic remedies, section 2). The courts interpret Section 1 (4) sentence 1 no. 2 of the Asylum Seekers Benefits Act in accordance with the instructions of the legislature, but in disregard of the rights of the Covenant.

4. No reasonable grounds and no adequate evaluation on a case-by-case basis

The infringement cannot be justified either. There are no reasonable grounds for the general exclusion of all Dublin refugees from social benefits. In any case, there is a lack of adequate evaluation on a case-by-case basis.

Any withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, and provided for in national law (general comment No. 19, para. 24). Qualifying conditions for benefits must always be reasonable, proportionate and transparent. The reasonableness and proportionality of the measure should be evaluated on a case-by-case basis, taking account of the beneficiary's personal situation (*Miguel Ángel López Rodríguez v. Spain* (E/C.12/57/D/1/2013), para. 11.2).

The exclusion from social benefits is provided for by law. Section 1 (4) sentence 1 no. 2 of the Asylum Seekers Benefits Act expressly provides for the exclusion of Dublin refugees from benefits. However, it is not based on reasonable grounds and is not sufficiently evaluated on a case-by-case basis.

The author's unauthorised residence and the obligation to leave the country do not in themselves constitute grounds for excluding him from all social benefits. In the context of evictions, the Committee considers that being unlawfully present in the territory of the State party should not, in

itself, be a criterion for excluding from public housing services (*Yaureli Carolina Infante Díaz v. Spain* (E/C.12/73/D/134/2019), para. 7.6). This applies analogously to the right to a minimum level of social security (see concluding observations of the Committee on Economic, Social and Cultural Rights (2011), E/C.12/DEU/CO/5, para. 13).

A lack of available resources can only be regarded as an objective and reasonable justification for different treatment in exceptional cases (see general comment No. 20 (2009), paras. 13 and 51; see also Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights (E/C.12/2017/1), para. 5). No such exceptional case is apparent. The State party is one of the most economically developed countries.

The author's needs have not changed, so the exclusion of benefits cannot be explained by this either (see *Miguel Ángel López Rodríguez v. Spain* (E/C.12/57/D/1/2013), para. 13.3).

The possibility of leaving the country to claim social benefits in another country does not justify the exclusion of benefits either. Germany is obliged to guarantee a minimum level of social security to all persons residing within its territory, even if they are subject to enforceable deportation orders. A minimum level of social security must not be linked to any preconditions. It is something to which every person in economic need is entitled simply by virtue of being human.

Furthermore, it should not be permissible to use benefit cuts or exclusions to enforce aims that do not serve social security or the realization of the ICESCR by the state party. The obligation to leave the country does not aim to overcome the individual's need for assistance, unlike, for example, the obligation to take up adequate employment. Rather, those affected remain in need of welfare – albeit in another country. Germany is solely concerned with enforcing migration law obligations and saving money. Both are legitimate goals. However, Germany can achieve these goals through a milder measure: EU law, for example, gives it the option of controlled or accompanied transfers, which can also be carried out unannounced and in conjunction with detention (see Art. 7(1)(b) and (c) Commission Regulation (EC) No 1560/2003, available at https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32003R1560) and Art. 28(2) Dublin III Regulation, available at https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:en:PDF).

The law also does not provide for a detailed case-by-case review, even though it is currently required. The exclusion from benefits also affects persons who are unable to leave the country within two weeks. In order to prevent forced homelessness and deprival of basic needs, affected persons must be able to leave the country within the period during which bridging benefits are

provided. However, this is generally not possible for Dublin refugees (see Facts, section 2(a)). Therefore, each individual case must be examined carefully. The German legislature repeatedly points out that it considers such reviews to be dispensable (see Facts, section 2(b)). Even if, as the legislature argues, departure would typically be possible, it is obvious that persons who are unable to leave the country are also affected by the generalised exclusion from benefits. The author's case illustrates this point impressively: the authorities cancelled his benefits without consulting Malta about the author's self-initiated departure. No relevant travel documents were issued, nor were any travel options sought. The author was also not informed about his options for leaving the country, even though this information has a significant impact on his social security. In doing so, states should pay particular attention to individuals and groups who traditionally have difficulty exercising this right, such as refugees without the necessary language skills (*Marcia Cecilia Trujillo Calero v. Ecuador*, E/C.12/63/D/10/2015, para. 13.1.-16.4.). The author was merely informed that he would be notified when "voluntary departure" was possible. He did not receive any information on how to obtain the necessary documents, how long the arrangements between the German authorities and Malta would take, or how to organise the journey.

The complete exclusion of benefits is also disproportionate to the aim. For example, a gradual reduction in benefits could have an equally effective impact. There are serious concerns about the complete withdrawal of benefits, particularly because it can – as in the author's case - result in the loss of accommodation. Making people homeless, in turn, has the effect that the authorities loose contact to the person concerned and cannot carry out the transfer or issue the documents for a self-initiated departure. The complete exclusion from benefits also contradicts the requirement that special measures must be adopted to counteract the cumulative negative effect of systemic marginalisation and discrimination (Secretary-General, Right to adequate housing (2010), A/65/261, para. 11). Measures whose effectiveness has not been proven must not lead to an increase in the risks faced by migrants (Secretary-General, Right to adequate housing (2010), A/65/261, para. 5, 48). Migrants in particular are at increased risk of racist violence when they are homeless. Especially in places in Germany where racist resentment is on the rise, Germany should therefore guarantee them safe accommodation without restriction in all cases. For example, the author describes how he does not dare to sleep on the streets at night in the [redacted] because he is afraid of racist violence (see affidavit by the author, **attachment 7**).

The law is also unreasonable because it does not provide for the possibility of regaining benefits through certain actions. Even if the person concerned is willing to cooperate in leaving the country, this does not lead to the entitlement to benefits being 'revived'.

The threshold for justifying regressive measures are also high and are not met here. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the State party (general comment No. 19, para. 42; general comment No. 3, paragraph 9). Regressive measures with regard to social security may sometimes be permitted, as states have discretion over the use of tax revenues. However, in such cases, the State must demonstrate that the decision was based on the most thorough consideration possible and was justified in respect of all the rights under the Covenant and that all available resources were used (*Ben Djazia et al. v. Spain* (E/C.12/61/D/5/2015), para. 17.6). The generalised exclusion of Dublin refugees as a measure of domestic migration control and politics does not meet these requirements. As shown, there is no justification for the measure. The specific living situation of Dublin refugees was not sufficiently considered. Alternatives, such as a change in the transfer measures, were not comprehensively examined. The measure is also discriminatory and denies a group of migrants an indispensable minimum level of social security notwithstanding their particular vulnerability.

There are therefore no reasonable grounds for excluding the author from receiving benefits. The exclusion of benefits is not justified. Section 1 (4) sentence 1 no. 2 of the Asylum Seekers Benefits Act (see **attachment 5**) and the administrative and judicial decisions in the proceedings violate the right to social security under Article 9 of the Covenant.

Claim 2 - Article:11 (1)

The author's right to an adequate standard of living under Article 11(1) of the Covenant has been violated. Due to the exclusion of benefits, the author has no accommodation, adequate food, water and clothing.

The author's right to adequate housing has been violated (art. 11 (1) of the Covenant). The human right to adequate housing is a fundamental right of central importance for the enjoyment of all economic, social and cultural rights and of other, civil and political rights. The right to housing should be ensured to all persons irrespective of income or access to economic resources (general comment No. 4, paras. 1, 4, 7, 12, 13; *Hamid Saydawi et al. v. Italy*, E/C.12/75/D/226/2021, para. 8.1.). Art. 11 (1) includes the right to live somewhere in security, peace and dignity (general comment No. 4 (1991) on the right to adequate housing (art. 11 (1) of the Covenant), para 7). Undocumented migrants must also be granted a minimum level of housing assistance that ensures humane living conditions (Secretary-General, Right to adequate housing (2010), A/65/261, para. 48). The right to adequate

housing is specifically aimed at ensuring that people are not left homeless (general comment No. 4, paras. 4, 13; general comment No. 7, para. 16; CESCR, Communication No. 2/2014, E/C.12/55/D/2/2014, para. 11.1-11.4. *Hakima El Goumari v. Spain*, E/C.12/69/D/85/2018, para. 8.1-9.4. *Hamid Saydawi et al. v. Italy*, E/C.12/75/D/226/2021, paras. 8.1-9.4). The Autor has been homeless since 17 February 2025. He has no place of refuge where he can enjoy privacy (see affidavit by the author, **attachment 7**).

The author's right to freedom from hunger has also been violated (art. 11 (2) of the Covenant; see also general comment No. 12 (1999) on the right to adequate food (art. 11 of the Covenant), para. 19). The right to adequate food is indivisibly linked to the inherent dignity of the human person (general comment No. 12, para. 4). Access to food must be granted without discrimination (general comment No. 12, para 18). The author is no longer free from hunger. In order to eat he has to ask friends for help (see affidavit by the author, **attachment 7**).

The exclusion of benefits violates his right to water (arts. 11 (1) and 12 (1) of the Covenant). Water must be available. The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene (general comment No. 15 (2002) to the right to water (arts. 11 und para. 12 of the Covenant), para. 12 (a)). Refugees and asylum-seekers should be granted the right to water on the same conditions as granted to nationals (general comment No. 15, para. 16(f)). There is a strong presumption that retrogressive measures taken in relation to the right to water are prohibited under the Covenant (general comment No. 15, para. 19). The right to water includes the obligation to fulfil (general comment No. 16, para. 25). Access to adequate sanitation is fundamental to human dignity and privacy (general comment No. 15, para. 29). The author does not have constant access to clean water. He does not have regular access to adequate sanitation facilities. In particular, he has no opportunity to brush his teeth regularly, which already leads to considerable toothache. He usually has no way of washing his clothes (see affidavit by the author, **attachment 7**). Germany is violating its core obligations (general comment no 16, para. 37). The cancellation of the entitlement to benefits is a retrogressive measure incompatible with the core obligations (general comment No. 15, para. 42). The violation is not due to inability, but to unwillingness (general comment No. 15, para. 41).

The author's right to clothing has been violated (art. 11 (1) of the Covenant). He has no money for new clothes. He also lacks the means to buy clothes for the coming winter (see affidavit by the author, **attachment 7**).

There is no justification for the infringement. To avoid repetition, please refer to the explanations above.

Claim 3 - Article:12 (1)

The author's right to health (art. 12 (1) oft he Covenant) is violated by the exclusion of benefits. Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity (general comment no. 14 (2000) on the right to the highest attainable standard of health (Art. 12), para. 1). States have a special obligation to provide those who do not have sufficient means with the necessary health insurance and health-care facilities, and to prevent any discrimination on internationally prohibited grounds in the provision of health care and health services, especially with respect to the core obligations of the right to health (general comment No. 14, para. 19). In particular, States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including asylum-seekers and illegal immigrants, to preventive, curative and palliative health services (general comment No. 14, para. 34). States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant, including essential primary health care (general comment No 14, para 43). These core obligations include the obligations to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups and to ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone, and to ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water (general comment No. 14, para. 43 (a, b, c)).

The author had to hand in his health card in mid-February and has not had no access to healthcare since then (see Facts, section 1). As the author was previously entitled to medical treatment, this constitutes a violation of the prohibition of retrogressive measures (see General Comment No. 14, para. 32, 48).

Article 12 of the Covenant is not absolute and may be subject to such limitations as permitted by article 4 of the Covenant. Article 4 is primarily intended to protect the rights of individuals rather than to permit the imposition of limitations by States. Consequently, a State party imposing a restriction on the enjoyment of a right under the Covenant has the burden of justifying such serious measures in relation to each of the elements identified in article 4. Such restrictions must be in accordance with the law, including international human rights standards, compatible with the nature of the rights protected by the Covenant, in the interest of legitimate aims pursued, and strictly necessary for the promotion of the general welfare in a democratic society. In line with article 5.1, such limitations must be proportional (general comment No. 14, paras. 28 and 29; *S.C. and G.P. v. Italy*, E/C.12/65/D/22/2017, para. 9).

The exclusion from benefits is not in the interest of legitimate objectives and is not necessary to promote the general welfare in a democratic society. Excluding refugees from access to healthcare

is a discriminatory measure that does not pursue any legitimate objective. As already explained, enforcing the obligation to leave the country cannot generally be achieved by excluding refugees from benefits. Germany is not being unable of fulfilling its obligation, but unwilling (general comment No. 14, para. 47). To avoid repetition, please refer to the explanations above.

Claim 4 - Article:2 (2)

The exclusion from social benefits based on residence status violates the author's right to non-discrimination (Article 2(2) of the Covenant). The Covenant obliges states to ensure that the rights proclaimed in this Covenant can be enjoyed without discrimination.

The Committee classifies unequal treatment based on residence rights as discrimination on grounds of 'nationality'. Nationality is an 'other status' within the meaning of Article 2, paragraph 2, of the Covenant (see general comment No. 20 (2009) on the right to non-discrimination in economic, social and cultural rights (art. 2, para. 2 of the Covenant), para. 30). Unequal treatment based on 'nationality' includes any discrimination against non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation (general comment No. 20, para. 30). The prohibition of discrimination therefore also applies in general to unequal treatment based on legal status in the host country (see General Assembly, Note by the Secretary-General, A /65/261, para. 48; see also Concluding observations on the sixth periodic report of Germany (2018), E/C.12/DEU/CO/6, para. 59). Any distinction, exclusion, restriction or preference, or other differential treatment on grounds of nationality or legal status, should therefore be in accordance with the law, pursue a legitimate aim and remain proportionate to the aim pursued. A difference in treatment that does not satisfy such conditions should be seen as unlawful discrimination prohibited under article 2 (2) of the Covenant (Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights (2017), E/C.12/2017/1, para. 5).

The author is excluded from social benefits as a Dublin refugee due to his lack of right of residence. The author is a Syrian national residing in Germany. He has applied for asylum, which has already been rejected because Malta is responsible for his asylum procedure. He is required to leave the country (see Facts, section 1).

Dublin refugees are excluded from entitlement to social benefits under Section 4(1) sentence 1 no. 2 of the Asylum Seekers Benefits Act. Other refugees, however, as well as other persons required to leave the country, receive social benefits. The two groups of people have no differences other than their specific residence status. They both consider themselves to have been in Germany for a relatively short time and are equally in need of financial support.

Thus, the exclusion from social benefits is a 'formal discrimination'. The law directly excludes the author from equal social benefits based on a discriminatory characteristic (see general comment No. 20, para. 8a).

The exclusion from benefits based on residence status is disproportionate to the objective pursued. There is no justification for the discrimination.

The Author is in a critical economic situation because he has no income or assets (see Facts, section 1). The overlap between his social background and the fact that he is a migrant makes him particularly vulnerable to discrimination. High standards must therefore be set for justification.

As already explained, it cannot be assumed that Dublin refugees are typically able to leave for another country in the near future (see Facts, section 2(a)). They are therefore equally dependent on social security. No other differences between the groups are apparent. There is therefore no reason to treat Dublin refugees differently from other persons residing in Germany who are required to leave the country.

Excluding people from social benefits based on their residence status violates the author's right to non-discrimination (Article 2(2) of the Covenant).

Interim Measures

Request interim measures:**Yes**

Details of interim measures or measures of protection:

The Committee is requested to transmit to Germany a request for urgent consideration, asking Germany to take interim measures. Exceptional circumstances make it necessary to avoid irreparable damage to the victim (Article 5(1) of the Optional Protocol).

The author has been homeless for over seven months and no longer receives any social benefits. He has no income or assets. He is subject to a work ban, which is why he is unable to earn an income (see Facts, section 1). He does not have sufficient access to food and clean water, which is why he regularly suffers from hunger and thirst. He lives on food donations from private individuals. Sanitary facilities are only occasionally available to him, which is why he can only wash irregularly. He has no way of obtaining new clothes. He lacks warm clothing in particular, which is why he often feels cold, especially at night. The applicant describes his situation as one of constant fear and worry, uncertainty and overwhelm.

The author sleeps irregularly at friends' houses. He has no place where he can sleep permanently without fear of attack. Due to his right of residence, he is obliged to stay in an area where right-wing extremist parties enjoy a high level of support and where there has been a massive increase in politically motivated crimes from the 'right-wing' phenomenon in recent years (see Free State of Thuringia, constitutional protection report 2024, p. 12 ff., **attachment 6**).
Due to his experiences in the war in Syria, the author is also in poor mental health. His condition is deteriorating due to his precarious situation in Germany. He suffers from anxiety and insomnia and has suicidal thoughts.

The complete exclusion from benefits represents an extraordinary burden for the author, which is not reasonably acceptable, even on a temporary basis. This considerable impairment, which has already lasted for a long time, cannot be compensated for retrospectively. A person's existential needs can, in principle, only be satisfied at the moment they arise.

His plight can only be ended by immediate material support from the state. If no interim order is issued, the author will continue to live without housing, food, clothing or medical care. It can be assumed that his physical and mental health will continue to deteriorate and that the applicant will become increasingly destitute.

The author urgently needs adequate accommodation and benefits to cover his physical and socio-cultural minimum subsistence level.

Expected date of alleged irreparable harm: -

Additional Comments

It is proposed that the following recommendations be made (Art. 9 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights):

Recommendations in respect of the author

The State party is under an obligation to provide the author with an effective remedy, including by: (a) granting the benefits to which he is entitled under Sections 3, 3a, 4 and 6 of the Asylum Seekers Benefits Act; (b) granting the author adequate compensation for the injuries suffered during the period in which he was denied the right to social security and for any other damage directly related to those injuries; and (c) reimbursing the author for the reasonable legal costs incurred in connection with the processing of this communication.

General recommendations

The Committee requests Germany to repeal Section 1(4) sentence 1 no. 2 of the Asylum Seekers Benefits Act in order to ensure non-discriminatory access to social security for refugees regardless of their residence status.

In the alternative, it is requested that Section 1 (4) sentence 1 no. 2 of the Asylum Seekers Benefits Act be amended in order to ensure non-discriminatory access to social benefits for refugees as long as they are residing in Germany. They may only be excluded from receiving a minimum level of social benefits if, in each specific case, it can be reliably established in a legally regulated procedure that there is a factual and legal possibility of them leaving for the EU Member State responsible for their asylum procedure. Those affected must be informed in their own language about the possibilities for leaving the country. Appropriate transitional benefits must be provided during a transitional period. Homelessness, hunger and thirst must also be prevented beyond this period. A minimum level of health care and weather-appropriate clothing must always be guaranteed.

It is also requested that Germany be reminded that similar violations should be prevented in future.

Attachments

(...)