

Federal Social Court

Judgment of 12 May 2017 - B 7 AY 1/16 R

The dispute involved a claim to increased benefits under the Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz - "AsylbLG") for the month of January 2013.

The plaintiff entered the Federal Republic of Germany in 2002. He claimed to be a citizen of Cameroon. He did not provide a passport or passport substitute. The rejection of his application for asylum became final in 2004. Since then, the plaintiff has been permitted to remain on a discretionary basis (temporary suspension of deportation under section 60a subsection (2) first sentence Residence Act (Aufenthaltsgesetz - "AufenthG")). Through April 2013 the immigration authorities requested that he assist in obtaining a passport or passport substitute at least 19 times; he was interviewed twice by Cameroon's embassy for this purpose. At both of these interviews, the plaintiff remained silent in response to all questions he was asked. Since 2005, the defendant district has only granted the plaintiff reduced basic benefits under the AsylbLG (cf. section 1a number 2 AsylbLG - prior version; since 1 March 2015: section 1a subsection (3) AsylbLG). For the last month subject to dispute, January 2013, the defendant merely provided him vouchers that could be used to purchase food, clothing and health and hygiene items totalling € 168.12 (so-called "physical subsistence minimum") in addition to accommodation at shared accommodations in as in-kind benefit, however he was not provided money that could be freely spent (so-called "socio-cultural subsistence minimum").

The Cottbus Social Court denied the plaintiff's complaint requesting increased benefits. The "leapfrog appeal" filed by the plaintiff was denied by the Federal Social Court on the following grounds: Pursuant to section 1a number 2 AsylbLG in the version in effect through 28 February 2015, foreign nationals who actually reside within the Federal Republic of Germany, are permitted to stay temporarily under section 60a AufenthG and for whom measures to end their residency cannot be executed on grounds for which they are responsible, only receive benefits under the AsylbLG to the extent unavoidable based on the circumstances of the specific case. Based on the application of this standard, during January 2013 the plaintiff was only entitled to benefits to the extent that they were unavoidable. The plaintiff had no right to additional benefits in order to satisfy personal needs of daily life (so-called "socio-cultural subsistence minimum"). This was the case because he had prevented the execution of his final deportation order only by virtue of his failure to cooperate in obtaining a passport and thus deliberately violated his duties of cooperation under immigration law following conclusion of the asylum proceedings. Under these circumstances, benefits below those necessary for basic necessities under section 3 AsylbLG may be provided according to the determinations of the legislature.

Constitutional law does not require a different interpretation. Section 1a number 2 AsylbLG, prior version, does not violate the fundamental right to providing a subsistence minimum that is in line with human dignity (Article 1 (1) in conjunction with Article 20 (1) Basic Law of the Federal Republic of Germany). Constitutional law does not preclude the legislature from linking the unrestricted grant of benefits to ensure a subsistence minimum under the AsylbLG

to complying with obligations applicable under immigration law. The legislature is exercising its available discretion on a constitutional basis in section 1a number 2 AsylbLG, prior version. This does not result in the qualification of the right to benefits (on a standardised basis) based on immigration policy. On the contrary, the limitation on benefits is tied to abusive behaviour for which the eligible beneficiary is at fault and which the beneficiary may cease at any time - thus restoring unrestricted benefits. Furthermore, section 1a number 2 AsylbLG, prior version, requires that the particular circumstances of a given case be taken into consideration. In light of this, benefits may likewise be reduced over a period of years because the plaintiff was aware of his opportunities to avoid the reduction in benefits from the outset.