

## Guaranteed minimum income for all ?

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This article was created with financial support from Research Programme Id. No.Q3 „Soukromé právo a výzvy dneška“.

### Introduction

The case for an unconditional guaranteed minimum income (hereinafter “the uGMI”) has recently gained momentum in a few countries in Europe and outside. Experiments are currently being undertaken in Utrecht, the Netherlands and Finland. The uGMI has also attracted much interest in Scotland, where it has been backed by the governing Scottish National Party and where talks have been held in Fife over conducting trials. Outside of Europe, in Ontario, Canada, a pilot project has already started. The uGMI has even attracted enthusiastic support from Silicon Valley. In the Czech Republic the uGMI has been discussed regularly since 2006; the last pre-election promises towards the uGMI are made by the radical Pirates Party.<sup>1</sup>

The call for the uGMI is not new. The recent ambitions are mirroring the negative impacts of economic crises. EU income guarantee supporters champion the uGMI as the fundamental instrument that can reinforce solidarity, beat Euroscepticism and even enhance unity in the European Union.<sup>2</sup> The idea is simple to understand but radical one. It is certainly wide-ranging in its appeal and supposedly holds the capacity to remedy an extensive list of social and economic ills as much as we are allowed to believe that progressive legal interventions may reach and alter fundamental social conditions.

The uGMI proposal will only succeed following a serious political and public debate among EU Member States and in the Member States. There are three reasons why winning a public debate on the uGMI will be difficult or even impossible. The universal or, full-scale European uGMI goes against the European idea of welfare state. Social protection had been developed and grasped by the modern state for one crucial purpose: the State aimed to protect

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<sup>1</sup> Cf.: [http://ekonomika.idnes.cz/zaruceni-prijem-pruzkum-08h-/eko-zahranicni.aspx?c=A170509\\_111340\\_eko-zahranicni\\_vem;](http://ekonomika.idnes.cz/zaruceni-prijem-pruzkum-08h-/eko-zahranicni.aspx?c=A170509_111340_eko-zahranicni_vem;_or_https://www.novinky.cz/ekonomika/427325-zaruceny-prijem-pro-vsechny-byl-bych-nejradsi-kdyby-to-chtel-trump-rika-exministr-tlusty.html) or <https://www.novinky.cz/ekonomika/427325-zaruceny-prijem-pro-vsechny-byl-bych-nejradsi-kdyby-to-chtel-trump-rika-exministr-tlusty.html>. Citation 4 September 2017.

<sup>2</sup> Opinion of the European Economic and Social Committee on European minimum income and poverty indicators of 5 June 2014, point 1.1 .

citizens against certain social risks to gain internal loyalty of their citizens (the principle of personality). Since its inception the social state has had as a goal the strengthening of national unity. Internal social integration is being achieved at the cost of demarcating new external borders (first section of this contribution). Although there are prototypes of the GMI, Member States are reluctant to enact the uGMI (second section). In both analysed countries, there are two fundamental principles of welfare state that make the enactment of uGMI particularly difficult. They are deservingness and notions of contribution and reciprocity: a ‘something-for-something’ society (third section).<sup>3</sup>

## I. New thresholds

The apparent generosity of social protection in Europe should never be mistaken for its goal. Social protection had been developed and grasped by the modern state for one crucial purpose: the State aimed to protect citizens against certain social risks to gain internal loyalty of their citizens (the principle of personality). Since its inception the social state has had as a goal the strengthening of national unity. Internal social integration is being achieved at the cost of demarcating new external borders. In this way, the development of the welfare state has always been interconnected with the idea of building a national state, at least since Bismarck’s times (the end of the 19<sup>th</sup> Century).<sup>4</sup>

The social citizenship had been created in order to support the implementation of political rights. Supporting equality in relation to material security via public law social security systems has been worked out as a supplement to political equality that had been fully used only by the natives. Material equality was designed to simplify political freedom. Yet modernizing as well as intensifying the care for the citizens’ (the inhabitants’) social welfare also led to severe obstacles in integrating the aliens into the hosting society in a situation where an externally or internally caused rapid migration growth had occurred. The European welfare state emerged as a prevalently national state and has hitherto retained this characteristic.<sup>5</sup> Above all during the 20<sup>th</sup> century the welfare state became the main feature of

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<sup>3</sup> Cf. for Germany Zacher, H.F.: Das soziale Staatsziel, p. 744 and 745 in Handbuch des Staatsrechts der Bundesrepublik Deutschland, Volume II, C.F.Müller Verlag, Third Edition, Heidelberg 2004.

<sup>4</sup> Cf. Eichenhofer, E.: Social Insurance in Germany: The Bismarck Model and Its Challenge in the 21st Century in Reforms and Perspectives on Social Insurance, Lessons from the East and West, p. 22. Bommers, M.: The welfare state: between inequality and universalism conscious of diversity in Reconciling migrants’ well-being and the public interest, Welfare state, firms and citizenship in transition No. 19, Trends in social cohesion, Council of Europe Publishing 2008, pp. 129 – 158.

<sup>5</sup> See Eichenhofer, E.: The Social Insurance in Germany: The Bismarck Model and Its Challenge in the 21<sup>st</sup> Century, p. 22.

European states, giving the national state a new and more coherent structure through the deepening of internal solidarity.<sup>6</sup> Society became more inclusive and protective but the advantage of having the nationality of a particular European welfare state still has its significance, especially in times adverse for the national economy of such a state.<sup>7</sup> The reason for this is that the necessity to limit the distribution of social welfare results from the restricted sources necessary to socially protect the population, or – in order to maintain the particular country's economic performance.<sup>8</sup>

Nevertheless, it cannot be neglected that mature welfare states had started to be confronted with massive migration long before 2015 and had been so for quite long period time. One example could be years from 1945 to mid 70ties.<sup>9</sup> Despite being under strong immigration flow they did not hinder immigration in accordance with Article 22 of the United Nations' Universal Declaration of Human Rights of 1948. Reasons could be found in a prevailing assumption among host states that they are in a position of dominance (they are able to steer, manage, and control migration processes) or in changed understanding of welfare state. Britons and many nations started to view the provision of welfare started rather in terms of consumption within their own family than as a source for better soldiers or loyal workforce. European welfare states developed into a means to the end of the betterment of social conditions.<sup>10</sup>

Apart from changes in opinions of welfare states, there are two other main circumstances that shaped limits of national welfare states: the project of European integration and the process of globalisation. Both of them, shoulder on shoulder, have been gradually strengthening personal universalism present in the existing European national welfare states.

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<sup>6</sup> See Eichenhofer, E. in Koldinska, K.; Štefko, M. (eds.): Reflections on 20 years of social reform in Central and Eastern Europe, Auditorium, Prague 2010, p. 61.

<sup>7</sup> This remains true in spite of the fact that foreign labour migrants represent a significant financial source both for the public budget as well as for the social insurance systems. Recent World Bank research has furthermore demonstrated that the labour migrants' input into the tax system significantly surpasses the amounts used by the migrants via social security benefits. See Barbone, L.; Bontch-Osmolovsky, M.; Zaidi, S.: The Foreign-born Population in the European Union and Its Contribution to National Tax and Benefit Systems, CASE Network Reports 0120, CASE-Center for Social and Economic Research, p. 4.

<sup>8</sup> See e.g. the Czech Constitutional Court's finding from 16.6.2010, docum. sign. 6 Ads 155/2009 and the finding from 24.6.2010, docum. sign 6 Ads 170/2009. For further information, see e.g. Šimáčková, K.: Cizinci v Čechách aneb komu zvoní hrana in Jílek, D.; Pořízek, P.: Vízová politika a praxe ČR v kontextu Evropské unie. Quo vadis, visum? Kancelář veřejného ochránce práv 2010, str. 16 a 17 [*Aliens in the Czech Republic, or – For whom the bell tolls. In: Jílek, D.; Pořízek, P.: Visa policy and use in the Czech Republic within the context of the European Union. Quo vadis, visum? The Ombudsman's office 2010, p. 16 and 17*].

<sup>9</sup> Compare Miller, M. J.: Foreign workers in Western Europe: an emerging political force. New York: Praeger 1981. For situation in Germany see Westdeutscher Verlag, Opladen 1986, Franz, H.W.; Kruse, W.; Rolff, H.G.: Neue Alte Ungleichheiten, p. 229 et seq.

<sup>10</sup> Rose, R.; Shiratori, R. (eds.): The Welfare State East and West, Oxford University Press, Oxford 1986, p. 100.

Western welfare states followed by their Eastern fellows after the fall of the Iron Curtain have had an internal tendency to produce entitlements and social rights for those legally residing on their territory. It was exactly the expansionist climate of the 1950s, 1960s and 1970s when the legally resident but non-nationals were endowed with social rights.<sup>11</sup> This could have happened because the institution of state (political) citizenship had gradually lost its original meaning, or rather transformed into the principle of territoriality and into a requirement of competitiveness among the insured. Nevertheless, the evolution of “denizenship” did not erode the restrictive face of welfare states totally. The emphasis on territoriality could be maintained onwards if the acquisition of citizenship was understood as a technical fix or repair.

Modern welfare states might be limited in their interventionist capacity by their borders and losing their ability to bind their citizen to them but, even so, the principle of territory remains indispensable as a central foundation for the political inclusion of individuals. In this regard, the prevailing opinion in social assistance is that it is not the host state but the state of origin which is responsible for offering support to the needy.<sup>12</sup> Due to the minimum significance of multilateral agreements guaranteeing social rights to third country citizens and to the European Union’s legislative branch’s competence limitation, there is almost exclusivity provided for national regulations on substantive social security. Thus, social policy of various member states remains one of few legal fields that were only to a small degree influenced by the European Union (EU)’s legislature. Every European state has been maintaining its specific social laws, including laws governing the guaranteed minimum income, as an important part of national protection system against social risks.

## II. No Consensus

There is nothing like universally recognized guaranteed minimum income in international law.<sup>13</sup> Taking into consideration, and considering the European Union’s

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<sup>11</sup> Hammar, T.: *Democracy and the nation state: aliens, denizens, and citizens in a world of international migration*. Aldershot: Avebury 1990. See Andersen, U.: 'Consultative institutions for migrant workers', in Zig Layton-Henry (ed.), *The Political Rights of Migrant Workers in Europe*, London: Sage 1990, pp. 113-26.

<sup>12</sup> Vonk, G.J.: *Migration, social security and the law, some European dilemmas*, *European Journal of Social Security* 2002, p. 320.

<sup>13</sup> Cf. vague language in article 10 II of the Community Charter of Fundamental Social Rights of Workers of 1989, Article 1 and 34 III of the Charter of Fundamental Rights of the EU (2000) or article 53 I Lit. h) of the Treaty on Functioning of the European Union. Council Recommendation 92/441/EEC of 24 June 1992 on common criteria concerning sufficient resources and social assistance in social protection systems, or Commission Recommendation of 3 October 2008 on the active inclusion of people excluded from the labour market.

legislative branch's competence limitation as well as the indefiniteness of the individual countries' constitutional law, including the Czech Republic,<sup>14</sup> the individual hosting country's national regulation of secondary law plays a crucial role for migrants.<sup>15</sup>

The GMI schemes have grown significantly in national welfare states over the past 20 years. Standards of social protection differ throughout the EU; the same is true for Contracting States of European Economic Area. The variability has to do with the overall policy that its country follows in terms of social protection. Even so, Austria, Belgium, Cyprus, the Czech Republic, Germany, Denmark, Estonia, Spain, Finland, France, Hungary, Iceland, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Sweden, Slovakia and the United Kingdom have the GMI.

Only Italy and Greece have not yet incorporated a minimum income scheme to their national social protection systems.<sup>16</sup> Italy rejected the GMI after a pivotal project; the Greek government attempted two times to enact the GMI (first in 2000, second in 2005).<sup>17</sup> One year ago, the Greek legislature foresaw a pilot program to be launched in September 2014, and universally applicable in 2015.<sup>18</sup> The third problematic country is Bulgaria. Although Bulgarians have implemented certain minimum income, the scheme is very limited or restricted to narrow categories of people and fails to cover all those in need of support.

Based on the research done under auspices of the EMIN, national approaches to the GMI can be classified as simple and comprehensive in 15 states, quite simple but restrictive in 7 states and categorical and rather complicated in 4 states. Most countries have relatively simple and comprehensive schemes which are open to all those with insufficient means to support themselves. Examples are the Czech Republic, France or Germany. The second group is composed of Baltic countries, Hungary, Poland and Slovakia. These countries have quite simple and non-categorical schemes but have rather restricted eligibility and coverage of

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<sup>14</sup> This again is a Europe-wide characteristic, clearly resulting from Becker, U.; Pieters, D.; Ross, F.; Schoukens, P.: Security: A General Principle of Social Security Law in Europe, Groningen/Amsterdam, Europa Law Publishing 2010.

<sup>15</sup> For EU Citizen and their family members, as well as for residents, the coordination process of the EU member state countries' social systems plays an important role as well.

<sup>16</sup> Italy previously regulated a MIS (Reddito Minimo d'Inserimento) that was introduced on an experimental basis. It was rejected after evaluation. In 2002 the competence for social policies was transferred to the regions. Van Lancker, A.: Toward adequate and accessible Minimum Income Schemes in Europe, Analysis of Minimum Income Schemes and roadmaps in 30 countries participating in the EMIN project, Synthesis report, EMIN

January 2015, EU, p. 8.

<sup>17</sup> Greece has also provided a rental fee, paid to unsecured and financially weak elderly persons or in couples that do not own a house. For recent discussion see <http://www.basicincome.org/news/2015/08/greece-government-to-roll-out-a-guaranteed-minimum-income-scheme/> (Cit.: 15 October 2015).

<sup>18</sup> See Hellenic Parliament Parliamentary Budget Office: Minimum Income Schemes In European Union and Greece, a Comparative Analysis, Interim Report, October 2014.

people in need, due to the low level at which the means-testing is set. The last group summoned countries with a complex network of different, often categorical, and sometimes overlapping schemes, which cover most people in need of support. The third type of the GMI can be found in Spain, Ireland, Malta or the UK. By the way, asylum seekers who do not have refugee status yet, and undocumented migrants are not eligible for the GMI in all mentioned countries.<sup>19</sup>

### III. Czech and German Dilemma

After a brief comparison of the GMI throughout Europe, two welfare states have been chosen for an in-depth analysis: the Czech Republic and Germany. They were distinguished not because of their overall classification (both of them represent the most numerous first type of the GMI in Europe) but to demonstrate common defensive strategies across different traditions, history and foreign policy priorities. The Czech Republic is a Central and Eastern European welfare state model that could be recognised still as a new member state, low-wage country with social security influenced by long communistic and totalitarian history.<sup>20</sup> To the contrary, Germany as an old member state, democratic and well-known as the Holy Grail for the recent migrant wave.

#### III.1. The Czech Republic

The social and cultural values acknowledged by Czech society has been reconsidered since the end of the Communist regime in 1989 and are set forth in the Charter of Fundamental Rights and Freedoms (hereinafter ‘the Charter’).<sup>21</sup> Article 30 of the Charter lays down both the base for the obligatory Czech pension insurance and welfare assistance. The

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<sup>19</sup> Van Lancker, A.: Toward adequate and accessible Minimum Income Schemes in Europe, Analysis of Minimum Income Schemes and roadmaps in 30 countries participating in the EMIN project, Synthesis report, EMIN January 2015, EU, p. 11.

<sup>20</sup> Mixed legacy can be demonstrated on other benefits and services than health care. Citizens who did not reside within the territory of the Czechoslovak Socialist Republic were not eligible for benefits and services. By ‘citizens’ was understood own nationals and citizens of other states. So Section 103 of Law No. 100/1988 Coll., concerning social security.

<sup>21</sup> Charter of Fundamental Rights and Freedoms was adopted as an appendix of the statute No. 23/1991 Collection. Regarding the extraordinary situation during 1992, when the Charter’s predecessor in the Czech Republic was abolished, the Charter was declared again on 16 December 1992 as a component of the Czech constitutional order (Manifestation No. 2/1993 Coll.). The Charter was amended by Act No. 162/1998 Coll. Social assistance has a long history in the Czech Republic and its legal predecessors, compare Rakosnik, J.; Tomeš, I. and others: *Socialni stat v Československu* (in English “Welfare State in Czechoslovakia”), Auditorium, Prague 2012, p. 366 et seq. or Kober, J.: *Právo na práci ve starším československém právním diskursu* (The right to work in old Czechoslovakian legal literature in Stefko, M. (ed.): *Great Persons in Czech Social Policy School*, Charles University, Prague 2015, p. 120.

former has to be developed in order to satisfy and, to some extent, cover the needs of people endangered by age, disability to work and death of the “breadwinner”. The latter represents the last safety net intended for people with insufficient income. Jurisprudence refers to Article 30 as the regulation of right on social security. Despite of Article 30 of the Charter<sup>22</sup> that lays down welfare assistance, an individual is not entitled to derive his or her rights to social security directly from the Charter. Article 30 of the Charter represent rather constitutional ideas on the Czech social security system and constitute therefore limits for ordinary statutes.

Czech laws are forged by social developments of the so-called Czech Social Policy School that disseminated sense of public morality, aspects of traditional liberalism (an individual initiative) and self-help movement. Therefore, the Czech legislator’s leading idea was that benefits and services should, to some extent, be targeted at those who require them the most. In 2006, the Parliament passed a couple of new laws in order to create a modern social assistance scheme (in Czech “pomoc v hmotne nouzi”, the word-to-word translation to English would be “the material need”) targeting on individuals with insufficient income but the scheme does not enjoy constitutional protection.<sup>23</sup> The material need scheme is regulated in the Act No.111/2006 Coll. (hereinafter “the Act on assistance in material need”). Income support benefits provided under this scheme are three: Income Support for Living, Supplement for Housing and Extraordinary Immediate Assistance. The competence to decide whether and in which form to provide aid in material need benefits was given the Labour Office of the Czech Republic.

The Act on assistance in material need defines a number of qualifying criteria. First of them is the personal scope of beneficiaries. A person in material need can be an individual or family that does not have enough income where their overall social and property relations prevent them from enjoying what society accepts to be basic living requirements. At the same time, these persons are objectively unable to increase their income (through the due application of entitlement and claims or through the sale or other disposal of their own assets), thereby improving their situation through their own actions. There is also a negative legislative definition of a person in material need. Persons who are not deemed to be persons in material need are those who do not try to improve their situation by their own actions, who are not in an employment or similar relationship, are not self-employed or not listed in the

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<sup>22</sup> According to Articles 3 and 112 of the Czech Constitution, the provisions of the Charter have a unique position within the Czech legal order; the Charter has the same legal effect as the Czech Constitution.

<sup>23</sup> The first law on minimum income support after 1989 was passed in 1991. It was Act No. 482/1991 Collection.

register of job seekers, who are listed in the register of job seekers and who have refused to take up short-term employment or to participate in an active employment policy programme without serious reason, who are not entitled to sickness benefit or who have been awarded a reduced level of benefit because they intentionally brought about their illness, who are self-employed and their income after the deduction of reasonable housing costs is lower than the amount of living due to the fact that they were not enrolled in sickness insurance, who have been sanctioned for failing to comply with their obligations as a child's legal representative connected with the truancy of the child (during the time of compulsory school attendance), or who are in preventive detention or in remand (for a full calendar month).<sup>24</sup>

There is also the habitual residence test and the "needs test". The habitual test is carried out on all applicants and its purpose is to show that the applicant is qualified to live in the Czech Republic<sup>25</sup> and that a genuine link between the individual and the State had been established for the time being. There are usual exceptions for EEA citizens, EU Residents, family members, aliens eligible under international agreements binding the Czech Republic, and refugees (but not asylum-seekers)<sup>26</sup> or those who have been granted discretionary leave or leave under humanitarian rules. Foreigners beyond the personal scope are excluded from the social assistance scheme and they might be granted discretionary income support if his/her health is under serious threat.<sup>27</sup> Persons or families are entitled to benefits if their income is less than the amount of living when reasonable housing costs have been deducted (the needs test).<sup>28</sup>

Taken from financial point of view, the Act on assistance in material need has never been an overnight success but over time it gets even worse. The flagship benefit, Income Support for Living amounts up to CZK of 3410 or EUR 122 for one adult living without children. There was an extensive research conducted during preparatory works on this law but

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<sup>24</sup> See Koldinska, K.; Lang, R.: the Czech Republic, Social Security Law – Suppl. 89 (2013), Wolters Kluwer, p. 153 et seq.

<sup>25</sup> For a foreigner it means that he/she has been living in the Czech Republic for at least five years and have acquired a permanent reside permission.

<sup>26</sup> Asylum seekers were denied chances for social inclusion in order to reverse the migration process. The same story is taking place in the United Kingdom and other European countries.

<sup>27</sup> Section 2 III in connection with section 5 III and IV of the Act on assistance in material need. Information would not be complete without a brief notice that the Czech Constitutional Court brought significant improvement to the status of illegal (unregistered or informal) migrants in March 2008. The Constitutional Court allowed the negotiation of valid employment relationships with illegal migrants, who thenceforth are protected like other employees.

<sup>28</sup> The amount of living is established on a case-by-case basis based on an evaluation of the person's income, efforts and opportunities. The amount of living for families is determined by the sum of the amounts of living of each family member. The amount of living is derived from the existence minimum and the subsistence minimum.



the Parliament diminished proposed benefits because budget reasons. The same is true for the aftermath. The legislation ended the prior practice of matching grants and turned instead to block grants. The current block grants have been increased only once since 1 January 2012; they have been not adjusted for inflation and as a result, the block grants have lost much of their buying power. Experts doubt that the GMI has any substantial potential to reverse the situation in the Czech Republic. Although income inequality and relative poverty continue to be low in comparison with other Western European countries the main reason is not the material need scheme but rather slow stratification of Czech ex-communistic society. The decline of the share of workless households happened thanks to the overall economic recovery.

### **III.2. Germany**

Unlike its predecessor, the Weimar's Constitution, the Basic Law of the Federal Republic of Germany<sup>29</sup> contains, with very few and limited exceptions (neither of them is connected with social assistance), no fundamental social rights. The situation between states' constitutions differs greatly. For example the Bavarian Constitution of 8 December 1946 contains two comprehensive parts on "Community Life" and "Economy and Work" or the constitutions of "New States" formed after 1990 mostly contain a complex catalogue of social rights. Nevertheless, the enactment of status regarding social security lies within the competence of the federation.<sup>30</sup>

An obligation of Germany to act in the field of social security arise from the principle of the welfare state (mentioned i.e. Article 20 I of the Basic Law), whereby Germany shall be a "democratic and social federal state". Yet, this obligation only exists objectively, without any individual's connotations. Although no citizen's subjective rights may be deduced from the language of the constitution, the Federal Constitutional Court (hereinafter "BVerfG")<sup>31</sup> has over time derived the state's responsibilities on this field as follows: the state is to see to a just social order,<sup>32</sup> it shall share the burden arisen from a common fate that only

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<sup>29</sup> In force since 23 May 1949, BGBl. (Federal Law Gazette) p. I.

<sup>30</sup> See Article 28 II of the Basic Law of the Federal Republic of Germany.

<sup>31</sup> The BVerfG is very powerful because it may be called upon by anyone who feels that his/her fundamental rights have been violated. The constitutional complain (Verfassungsbeschwerde) can be addressed against a statute, but also against administrative measures or judicial decisions.

<sup>32</sup> BVerfG decision 18 Juli 1967, BVerfGE 22, 180.

coincidentally affects a specific group of individuals,<sup>33</sup> the state shall care of individuals' in need of help,<sup>34</sup> it shall provide for vicissitudes of life,<sup>35</sup> and finally it is to ensure certain social equality of opportunity.<sup>36</sup> Nevertheless, the legislator always enjoys a relatively wide scope of action. As long as an effective procedure for the enforcement of claims is ensured it is free to decide what criteria shall apply, which kind of social security is to apply, amounts of benefits, organisation. This principle has been once again confirmed when German Parliament (Bundesrat) has recently approved strict defensive legislative changes as a response to unstoppable flow of migrants. Amendments are going into force on 1 November 2015<sup>37</sup> and they are probably constitutional.<sup>38</sup>

Low income benefits are paid from a tax-financed scheme of means-tested minimum resources to secure a decent standard of living<sup>39</sup> for persons in need who are incapable of working, and who do not earn a sufficient income to meet the needs, or who do not receive the necessary support from other people.<sup>40</sup> The scheme is not confined to citizens only; certain foreigners may qualify themselves in accordance with their right to reside. EEA nationals as well as other privileged aliens are treated, as a rule, as German nationals.<sup>41</sup> To the contrary, the German government refused to grant persons who are covered by the Council of Europe European Convention on Medical and Social Assistance of 1953 equal treatment as to its own nationals to enable the beneficiary to make a living, or assistance to overcome

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<sup>33</sup> BVerfG decision 3 December 1969, file number 1 BvR 624/56, BVerfGE 27, 253. Said decision can be found in German here: <http://www.servat.unibe.ch/dfr/bv027253.html> (Cit.: 7 August 2014).

<sup>34</sup> BVerfG decision 12 October 1976, file number 1 BvL 9/74, BVerfGE 43, 13, 19. For application towards disables see BVerfG decision 24 May 1977, file number 2 BvR 988/75, BVerfGE 44, 353, 375.

<sup>35</sup> BVerfG decision 27 May 1970, file numbers 1 BvL 22/63 and 1 BvL 27/64, BVerfGE 28, 324, 348. For the duty to protect citizens against accidents see BVerfG's decision 45, 376, 387, against diseases see BVerfGE 68, 193, 209 and 115, 25, 43, and to some extent against unemployment see BVerfGE 51, 115, 125.

<sup>36</sup> BVerfG decision 1 December 1954, file number 2 BvG 1/54, BVerfGE 51, 115, 125.

<sup>37</sup> The amendment lowers benefits. The federal government is to provide a lump sum of EUR 670 a month per refugee to cover costs. Other limits on cash payments are to be implemented to deter new applicants. Cf. [http://www.bundesregierung.de/Content/EN/Artikel/2015/09\\_en/2015-09-29-asyl-fluechtlingspolitik\\_en.html](http://www.bundesregierung.de/Content/EN/Artikel/2015/09_en/2015-09-29-asyl-fluechtlingspolitik_en.html) (Citation 15 October 2015). The government published an extensive reasoning in German to explain its decision. See [http://www.bundesregierung.de/Content/EN/Anlagen/2015-09-24-bund-laender-fluechtlinge-beschluss\\_en.pdf?\\_\\_blob=publicationFile&v=5](http://www.bundesregierung.de/Content/EN/Anlagen/2015-09-24-bund-laender-fluechtlinge-beschluss_en.pdf?__blob=publicationFile&v=5).

<sup>38</sup> Cf. BVerfG decision of 17 March 2004, file number 1 BvR 1266/00.

<sup>39</sup> Section 1 of the Federal Social Assistance Act (in German Sozialgesetzbuch or SGB) XII as published on 23 March 1994 (Federal Law Gazette, I, pp. 646 and 2975), last amended by Article 1 of Act of 27 December 2003, BGBl. I S. 3022. The term income support has been several times interpreted by the BVerfG, i.e. decision of 9 February 2010, file number 1 BvL 1/09.

<sup>40</sup> Knickrehm, S.; Kreikebohm, R.; Waltermann, R.: Kommentar zum Sozialrecht 4. Auflage, C.H.Beck, 2015, Section 27 marg. No. 1 et seq.

<sup>41</sup> Knickrehm, S.; Kreikebohm, R.; Waltermann, R.: Kommentar zum Sozialrecht 4. Auflage, C.H.Beck, 2015, Section 23 marg. No. 1 et seq.

particular social difficulties.<sup>42</sup> Refugees are also excluded.<sup>43</sup> There is a separate social assistance scheme only for them based on the Act for asylum-seekers<sup>44</sup> and operated by the Central Agency for Asylum-seekers (Zentrale Leistungsstelle für Asylbewerber).<sup>45</sup> Nevertheless, it has to be highlighted that foreigners who move to Germany with the intention to draw social assistance benefits are not entitled to those benefits.<sup>46</sup>

Individuals below the age of 65 who cannot meet their own needs and are temporarily unable to work receive a subsistence allowance (in Germany Hilfe zum Lebensunterhalt) as part of social assistance. Persons over the age of 65, and those over the age of 18 who are permanently unable to work for medical reasons, are entitled to claim a needs-based pension supplement in old age and in the event of reduced earning capacity (Grundsicherung im Alter und bei Erwerbsminderung).

Unemployed persons who are capable of work and without means can apply for the basic provision for jobseekers Assistance towards living (in German “Hilfe zum Lebensunterhalt”) expenses is tax-financed schemes of means-tested minimum resources to secure a material and socio-cultural subsistence level for beneficiaries who are capable or incapable of working and who do not earn a sufficient income in order to meet their needs and do not receive sufficient support from other people.

Each member of an eligible household is entitled to claim social assistance in his/her own right. The total amount increases with the size of the family. The income and assets of the claimant and spouse or partner who share the same house hold are taken into account for the calculation of benefits. The standard rates (Regelsätze) are set by the Länder.<sup>47</sup> The

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<sup>42</sup> Cf. Annex II to the European Convention on Social and Medical Assistance Reservations formulated by the Contracting Parties.

<sup>43</sup> Cf. Supreme Social Security Court (BSG) decision of 2 December 2014, file number B 14 AS 8/13 R.

<sup>44</sup> Asylum-seekers who are not entitled to stay in Germany, but who are allowed to stay nevertheless for political, humanitarian or other reasons, are only entitled to draw aid to subsistence and sick aid at reduced benefit rates under a special Law on Social Benefits for Asylum-Seekers (In German Asylbewerberleistungsgesetz). These persons may, however, under certain conditions be granted other aids on a merely discretionary basis.

<sup>45</sup> Cf. Grube, Ch.; Wahrendorf, V.: SGB XII, Sozialhilfe mit Asylbewerberleistungsgesetz, 5. Auflage, C.H.Beck 2014, commentary to Section 3, marg. No. 30. BVerfG has found it unconstitutional when legislature neglected the updating of Asylum-Seekers' special benefits. See decision of 18 July 2012, file number 1 BvL 10/10 and file number 1 BvL 2/11.

<sup>46</sup> See Section 23 III first sentence of the SGB XII. It is up to the social assistance authorities to prove that there is such a benefit fraud. Becker, U.; Olivier, M. (eds.): Access to Social Security for Non-citizens and Informal Sector Workers, An International, South African and German Perspective, Sun Press, 2008, p. 109. Knickrehm, S.; Kreikebohm, R.; Waltermann, R.: Kommentar zum Sozialrecht 4. Auflage, C.H.Beck, 2015, Section 23 marg. No. 1 et seq.

<sup>47</sup> They relate to the socially acknowledged social cultural minimum of subsistence levels for persons or households and the actual cost of accommodation in Germany.

amounts of the standard rates vary according to the age and the beneficiary's position in the household. In 2015, a single adult is entitled to EUR 399.<sup>48</sup>

#### **IV. Conclusion**

The much-discussed unconditional guaranteed minimum income could change social conditions and the EU's social cohesions dramatically. A guaranteed income – even a supplementary one – could challenge the idea that people are only valuable members of society if they work; improve formal employment; empower weak groups and enhance productivity. However, these kinds of bold proposals for legal change find little traction in the court of public opinion. Opponents of proposed laws that would establish unconditional guaranteed minimum income castigate the proposals as wasteful spending, pro-inflation incentives, discouraging to work, government over-reaching, and excessive paternalism.

Although the reform of GMI would be necessary to reduce poverty and economic inequality in general it is not currently even in the discussion stage. Czech and after the migration crises even the German problem is that the most powerful actors and lawmakers of recent times have used law less to reduce inequalities than to define, continue and perhaps increase it.

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<sup>48</sup> This is so-called first and highest rate. Cf. Section 28 et seq. of the SGB XII. Wendl/Dose, Das Unterhaltsrecht in der familienrichterlichen Praxis, 9. Auflage, C.H.Beck, 2015, marg. No. 51.

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## Abstract

The natural tendency for creation new barriers that is inherent for each national welfare state as an international threshold of inequity has been even enhanced by pending European integration. All mature European welfare states are restrictive and every nation has filters which separates out desirable migrants in terms of their labour market potential. This article proves that neither old member states, nor the new ones exception are an exception. In our comparison, German social assistance scheme (especially the special Law on Social Benefits for Asylum-Seekers) guarantees, thanks to the active Constitutional Court, better positions for migrants than respective Czech laws. Even so, German laws set forth enough protective clauses to being able marginalised asylum-seekers as in the Czech Republic or any other member state of the EEA.

Key-words: Guaranteed Minimum Income, European Welfare State, Social Security