

**ISA HR NYC Conference  
Human Rights in an Age of Ambiguity  
June 13th -15th 2016  
Fordham University, New York**

# Reception conditions of asylum seekers in the European Union- Is the EU fulfilling its obligations?

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*Panel M06: The Ethics and Politics of Migration*

In many parts of the world, refugees flee their home countries due to violence, war, or the fear of persecution. The search for shelter often leads refugees to Member States of the European Union, countries considered to be safe havens respecting human rights. The EU is one of the main destination regions for asylum seekers, and therefore the Member States of the EU established the Common European Asylum System (CEAS) in 1999, in order to tackle the growing asylum challenges at the European level, and to streamline and harmonise the national asylum systems of the Member States. Over the years, the EU has adopted a variety of crucial legislative measures harmonizing common standards for asylum covering topics such as the asylum procedure<sup>1</sup>, the determination of the Member State responsible,<sup>2</sup> the qualification as a refugee<sup>3</sup> and lastly the minimum standards of reception.<sup>4</sup>

In order to guarantee that the rights of refugees and asylum seekers are not violated at any point during the whole asylum process and beyond, EU Member States theoretically are subject to three distinct layers of human rights protection: the European Convention of Human Rights (ECHR) together with the 1951 Geneva Convention, the Charter of Fundamental Rights, and finally national human rights law. Thus, one might think, that asylum seekers can rely on the protection of their fundamental human rights.

The following paper will compare the national provisions in regards to the provision of reception conditions to asylum seekers in Germany, the Netherlands and the United Kingdom, in order to discuss to what extent the EU Member States comply with EU regulations and in how far they comply with human rights provisions.

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<sup>1</sup> Council Directive 2005/85/EC of the 1st December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. OJ L 326.13.13.2005.

<sup>2</sup> Council Regulation (EC) No.343/2003 of the 18th February 2003 establishing criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by third-country national. OJ L 50.25.2.2003.

<sup>3</sup> Council Directive 2004/83/EC of 29th April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. OJ L 304.30.9.2004.

<sup>4</sup> Council Directive 2003/9/EC of 27th January 2003 laying down minimum standards for the reception of asylum seekers. OJ L 31.6.2.2003.

***Comparison: EU regulations and the national provisions and actual situation in Germany, the Netherlands and the United Kingdom***

**Table 1: Overview reception conditions in Germany, Netherlands and the UK**

	Germany	Netherlands	United Kingdom
<i>Are asylum seekers entitled to material reception conditions according to national legislation?</i>	Limited	Yes	Yes
<i>Types of accommodation used during the regular asylum procedure</i>	Reception centres Private accommodation	Reception centres	Private housing
<i>Are there any problems of overcrowding in the facilities?</i>	Yes	No	Yes
<i>Is it legally possible to reduce the material reception conditions?</i>	Yes	Yes	No
<i>Is there a legal possibility to completely withdraw material reception conditions?</i>	No	Yes	Yes
<i>Do third parties have access to the reception facilities?</i>	Limited	Yes	Limited
<i>Are asylum seekers able to move freely?</i>	Restricted	Restricted	Restricted
<i>Monthly financial support</i>	222.04 €	224.97€	188.81€

*1.1. Access to material reception conditions*

In general, one can say that all of the countries- Germany, the Netherlands and the United Kingdom- are obliged by their national legislation to provide asylum seekers with financial

support and the amount of the support as well as the conditions of receiving the support and the withdrawal of it are also regulated in the national and regional legislative measures.<sup>5</sup>

Even though asylum seekers are entitled to receive financial support and the access to material reception conditions, they are excluded from claiming regular welfare benefits in the concerned countries. Instead of regular welfare benefits, asylum seekers in Germany, the Netherlands and the United Kingdom are subject to specific regulations and benefit rates. However, what can be noted is, that one common factor among the three compared countries is the fact that the financial support that asylum seekers receive is always set a rate that is below the welfare benefits rate that a regular citizen is able to claim ; as an example the financial support under section 95 in the UK was originally calculated and set at 70% of the regular social welfare benefits, but due to the fact that the rates have not been adjusted since 2011, nowadays asylum seekers only receive 52% of the rate for the UK national.<sup>6</sup> In the Netherlands, an asylum seeker is not even receiving one fourth of the social welfare allowance for Dutch citizen.<sup>7</sup> In Germany, the support rate that asylum seekers were receiving was substantially below the general welfare benefit, therefore the financial support rate for asylum seekers was deemed unconstitutional by the Federal Constitutional Court in 2012, due to the fact that the financial support that was provided to asylum seekers has not been adjusted since the introduction of these provisions in 1993 and in the following years they have not been adjusted in a comprehensive manner like the regular welfare benefits. Therefore, the Court advised to dismiss the current regulations governing the provision of financial support and “immediately enact new provisions in the area of application of the Asylum Seekers’ Benefit Act, which secure a dignified minimum existence”.<sup>8</sup>

As a consequence of this decision, until the German government passes a new legislation regulating the provision of financial support for asylum seekers; asylum seekers are entitled to benefits that are similar to the social welfare benefits for German citizen.

Furthermore although Germany, the Netherlands and the United Kingdom are obliged by the EU Receptions Conditions Directive and their own national legislative measures to provide asylum seekers with the necessary means to guarantee a dignified minimum of existence, it

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<sup>5</sup> Asylverfahrensgesetz; Asylbewerberleistungsgesetz; Wet Centraal Opvang Orgaan (1994); Immigration and Asylum Act (1999).

<sup>6</sup> British Red Cross & Boaz Trust (2013). *A Decade of Destitution: Time to Make a Change*.

<sup>7</sup> AIDA (2013) National Country Report: The Netherlands.

<sup>8</sup> Federal Constitutional Court. Decision of 18 July 2012. 1 BvL 10/10, 1 BvL 2/11.

varies from country to country what the amount of provided reception conditions is actually encompassing.

**Table 2 : Comparison of benefits received in various EU Member States**

	<b>Germany</b>	<b>Netherlands</b>	<b>United Kingdom</b>
<i>Benefits that asylum seekers are entitled to according to national legislation</i>	Basic provision of food, accommodation, clothing, healthcare	Financial allowance for food, clothing and personal expenses	Basic provision of accommodation
	Pocket money for personal daily needs	Public transport tickets	Weekly financial support
	Benefits in the event of illness, pregnancy and birth	Opportunity to attend educational and recreational activities	In the case s.95 supports ends: s.4 support → Azure card & accommodation
	Additional benefits in special circumstances	A provision for medical costs	
		Insurance covering legal civil liability	
		Payment of exceptional costs	

While asylum seekers in the Netherlands enjoy a rather high amount of benefits, which cover a variety of different aspects of the daily life, ranging from financial support and accommodation to coverage of medical costs and public transport tickets to attend lawyers and other important meetings;<sup>9</sup> the range of material benefits that asylum seekers are entitled to in the United Kingdom is rather basic and is only encompassing accommodation and financial support.<sup>10</sup>

That the national differences in the calculation and set up of the material reception conditions can lead to the fact, that asylum seekers are not able to cover all of their costs with this financial allowance, can be witnessed in the United Kingdom, where it has been acknowledged by a court ruling in 2014, stating that “ the Secretary of State had failed to factor into the assessment the level of support necessary for essential living needs”, such as household goods e.g. washing powder, cleaning materials, nappies and formula milk as well

<sup>9</sup> Regeling verstrekkingen asielzoekers en andere categorien vreemdelingen (2005).

<sup>10</sup> AIDA (2013) National Country Report: The Netherlands.

as non-prescription medicine.<sup>11</sup> Besides this it was also noted, that the Secretary of State had failed to take into consideration costs, such as travel by public transport, telephone calls as well as writing material, which is necessary for communication and for the education of children.<sup>12</sup>

Another aspect that is distinguishing the United Kingdom and their approach to the provision of financial benefits from the Netherlands and Germany is the introduction and the use of pre-payment cards. The Azure card is issued to asylum seekers, which do no longer qualify for the initial s.95 support, but are eligible to s.4 support. The Azure card is a contested measure due to its restrictions and limitations that it poses on asylum seekers and their choice, as it can only be used in certain stores selected by the Home Office and it can only be used for the purchase of food and essential toiletries.<sup>13</sup> It is mentioned that “often the card just doesn’t work at the check-out, which is humiliating for the asylum seekers and they feel ashamed and stigmatized by using the card”.<sup>14</sup> Furthermore, the card can lead to hostile attitudes from staff working at the stores due to the fact that the card is “labeling” them as asylum seekers leading to a feeling of isolation and anxiety.<sup>15</sup>

Another problem, which the Azure card is posing on especially children of asylum seekers, is the limitation on what can be bought with the card. There were cases, where children of asylum seekers had to start school without having a uniform, due to the fact that the card is not allowing the purchase of clothes.<sup>16</sup>

Therefore, one can say, that although in general all of the compared countries provide asylum seekers with the same amount of financial support, if one takes a closer look at the details, the costs and provisions that are encompassed in this financial allowance provided, there are major differences.

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<sup>11</sup> R v The Secretary of State for the Home Department (2014). EWHC 1033.

<sup>12</sup> Ibid.

<sup>13</sup> British Red Cross & Boaz Trust (2013). *A Decade of Destitution: Time to Make a Change*.

<sup>14</sup> Personal communication ( UK3 ),2014.

<sup>15</sup> Ibid.

<sup>16</sup> Personal communication ( UK4 ), 2015.

### 1.2. Access to accommodation

Besides financial benefits, asylum seekers are entitled to being provided with accommodation in all of the compared countries. When it comes to the regulation and supervision of the accommodation that is provided to asylum seekers, the countries take different approaches. In the Netherlands, the main authority, which is created and instructed by the Dutch government and that is responsible for the provision of reception conditions to asylum seekers, is the Central Organ for the Reception of Asylum Seekers (COA). In this respect COA is in charge of everything involving the reception process, from providing accommodation up to providing health care in the accommodation center.<sup>17</sup>

In contrast to this rather centralized approach of regulating reception conditions in the Netherlands, Germany and the United Kingdom have chosen a more decentralized approach. Hence, although there are uniform national regulations in place in both Germany and the United Kingdom, the responsibilities of transposing those regulations into reality have been transferred to the regional level.<sup>18</sup> In this respect, in Germany the accommodation of asylum seekers falls into the competencies of the different *Länder* and municipalities, while in the United Kingdom the local authorities are responsible for the provision of reception conditions to asylum seekers. In return, this decentralized measure of accommodating asylum seekers can lead to regional differences in the level and quality of the chosen housing options for asylum seekers, depending on what approach the different local governments have chosen to take.

In the initial period, all asylum seekers in the United Kingdom, the Netherlands and Germany are accommodated in initial reception and accommodation centers, where the first stages of the asylum application process are started and handled and where the asylum seekers are receiving initial support and advice on the asylum procedures and their new life in the respective countries. The time that asylum seekers are hosted in their initial accommodation is often limited to a few weeks in all of the three countries, and after that asylum seekers are dispersed within the country. One commonality amongst the three countries which can be noted is the fact that the initial accommodation centers are located in rather remote areas, which make it difficult for asylum seekers to integrate themselves into the society and

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<sup>17</sup> Wet Centraal Opvang Orgaan, 1994.

<sup>18</sup> Mueller, A. (2013). The Organisation of Reception Facilities for Asylum Seekers in Germany. Federal Office for Migration and Refugees.

participate in recreational and educational activities that take place outside the centers.<sup>19</sup> The decision of creating those initial accommodation centers in remote areas, that are mostly far away from the city or town center, has, especially in Germany, led to drastic responses and consequences, where several incidents, in which asylum seekers started a hunger strike in order to protest against their accommodation, became public in 2013.<sup>20</sup>

Once the reception period in the initial accommodation centers is over, asylum seekers are moved to different follow-up accommodation facilities. In the Netherlands, asylum seekers will be transferred to a local centre for asylum seekers that is operated by the COA, until they receive housing in the Netherlands. In Germany, the local governments have the sovereignty to organize the follow-up distribution and accommodation of asylum seekers; hence the housing could be in the form of collective accommodation facilities, where larger groups of asylum seekers are housed centrally; or in the form of local accommodation facilities, where asylum seekers are placed in individual flats or houses.

Since the local governments have the authority to decide on the nature of how they provide reception conditions, they can also assign the responsibility of creating and managing those accommodation facilities to private organizations and companies. This approach is also taken by the United Kingdom, where the Home Office remains to be the legal responsible unit for providing accommodation to asylum seekers, however it has assigned the responsibility for the provision and management of accommodation facilities to private companies.<sup>21</sup>

That this privatization of certain parts of the asylum process and the provision of reception conditions can lead to difficulties and inadequate reception conditions can be witnessed in both the United Kingdom and Germany. As an example, in the United Kingdom, where the Home Office cooperates with private housing providers in the provision of reception conditions, normally contracts are in place, in which it is stated that the housing and accommodation should be in a good condition. Nevertheless there is evidence of slow and inadequate repairs and insanitary circumstances. In addition to this, financial pressures to acquire large quantities of cheap accommodation as fast as possible in order to comply with the provisions set out in the COMPASS contract, have led to difficulties in the compensation

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<sup>19</sup> Dutch Council for Refugees and Defence for Children. (2012). *Gezinslocaties voor uitgeprocedeerde gezinnen schadelijk en nutteloos*; AIDA (2013). *National Country Report Germany*; AIDA (2014). *Country Report: The United Kingdom*.

<sup>21</sup> Immigration, Asylum and Nationality Act, 1999.



of desolate maintenance capacities.<sup>22</sup> Furthermore it was reported, that there were problems of pest infestations, the lack of hot water or heating, broken doors and windows, the lack of basic amenities and the lack of a clean environment.<sup>23</sup>

A similar problem with the high degree of the privatization of the housing of asylum seekers can also be observed in Germany. In several follow-up accommodation facilities overcrowding and inhuman hygienic standards have been witnessed.<sup>24</sup>

In a specific case “around 5-8 people lived in one room, mostly equipped with three-bed bunk beds with only one shower and toilet per floor. Often, some of these facilities were not working and it took up to several weeks for the facility manager to repair them”.<sup>25</sup> Furthermore, there was no social support or contact persons available in this facility, which was leading to the fact that many asylum seekers living there “felt left alone and isolated”.<sup>26</sup>

This lack of adequate assistance and support available in the housing facilities is in theory against the EU Reception Conditions Directive, which points out that family members, legal advisers and NGOs should be given the opportunity to access the accommodation facilities. However, due to the fact, that the management of these facilities in many municipalities in Germany has mostly been transferred by the local authorities to private companies, they can introduce house rules restricting the access of third parties to the accommodation facilities. In this respect, in several privately managed facilities, volunteers that were openly criticizing the management and were pointing out the shortcomings and deficits in these facilities, were banned from accessing the facilities and threatened with the police if they would violate the house rules again. In the United Kingdom, where a majority of the housing is managed by private facility companies too, there is at least sufficient access and support available in the initial accommodation centers, however an adequate support and assistance by third parties is more difficult in the follow-up accommodation due to the fact, that asylum seekers are dispersed around different housing options.<sup>27</sup> In contrast to the United Kingdom and Germany, the access of third parties to the accommodation facilities in the Netherlands works

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<sup>22</sup> National Audit Office (2014). *COMPASS contracts for the provision of accommodation for asylum seekers*.

<sup>23</sup> Personal communication (UK5,2015).

<sup>24</sup> Personal communication (G2,2014); personal communication (G5,2014)

<sup>25</sup> Personal communication (G5, 2014).

<sup>26</sup> Ibid.

<sup>27</sup> Personal communication (UK3, 2015).

without major problems. There seems to be a good cooperation between COA and the relevant NGOs; and “COA is open for recommendations and advice by the NGOs and volunteers in order to maintain and improve the situation in the accommodation facilities”.<sup>28</sup>

### ***Concluding remarks***

After analyzing and comparing the level of reception conditions asylum seekers receive in Germany, the Netherlands and the United Kingdom, the question is in how far the EU is actually fulfilling its obligations, especially when it comes to commitment to human rights.

First of all, one could argue that the Member States of the European Union realized that in the present global environment and the emerging global risks, states inevitably are tied together by various links, making it simply impossible for single states to act completely independent from other global political actors<sup>29</sup> and leading to the creation of a “community of fate”, where collective solutions are required.<sup>30</sup>

Hence, the creation of the Common European Asylum System could be seen as a proof of the awareness of the interconnectedness of different political communities. However, although the EU Member States agreed upon the creation of the CEAS and set up common minimum standards for the provision of reception conditions to asylum seekers, it can still not be guaranteed that asylum seekers receive similar and adequate reception conditions; there are still various flaws and discrepancies when it comes to the implementation of EU regulations into national legislation. The main reason for that is the broad definition of the minimum standards of reception conditions, which leaves a broad scope to the Member States in determining what they deem to be the most appropriate standards and procedures in the provision of reception conditions to asylum seekers in their country.

Another reason for the rather broad definitions of adequate reception conditions is the fact, that EU Member States-although they are willing on the one hand to cooperate on the issues of asylum, refugees and the provision of reception conditions- are reluctant to give up a certain degree of their sovereignty and competencies to the European Union in these fields.

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<sup>28</sup> Personal communication (NL1, 2015).

<sup>29</sup> Held, D. (2010) *Cosmopolitanism: Ideals, Realities and Deficits*. Cambridge: Polity Press.

<sup>30</sup> Beck, U. (2002) 'The Cosmopolitan Society and its' Enemies', *Theory, Culture & Society* Vol. 19, Issue 1-2: p.17-44.

So one can say, that in theory the individual Member States of the European Union, but also the EU as an institution itself, are strongly committed to the compliance with various international and national human and fundamental rights provisions, however difficulties and flaws arise in the actual transposition and implementation of those measures.

As an example, according to Article 1 of the Charter of Fundamental Rights, “human dignity is inviolable. It must be respected and protected”.<sup>31</sup>

The German Basic Constitutional Law adds that human dignity must be secured by all public authority and it is the obligation of the state to support people who are unable to live a life above the existential minimum. In Germany the lowest social support available is the welfare support, hence it is considered as the existential minimum to live a life in dignity. However until the judgement by the Federal Constitutional Court in 2012, asylum seekers were receiving benefits that were significantly lower than the welfare support. Although the German government was obliged by the Court to change this provision, it is important to point out, that Germany has violated the commitment to the protection of human dignity for a long period until the judgement.

As a concluding remark, the comparative analysis in this paper of the provided reception conditions to asylum seekers has pointed out different flaws in the CEAS itself and the implementation of the system into the various national approaches to the provision of reception conditions to asylum seekers. One could argue, that that initial steps towards collective solutions in the field of reception conditions have been made by the Member States of the European Union, however there is still room for improvement and the “*Common European Asylum System can only function if everyone plays by the rules*”.<sup>32</sup>

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<sup>31</sup> European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02.

<sup>32</sup> Frans Timmermans (2015). “More Responsibility in managing the refugee crisis: European Commission adopts 40 infringement decisions to make European Asylum System work”. Press release European Commission.