

## **H e a d n o t e s**

to the order of the First Senate of 23 July 2014

- 1 BvL 10/12 -

- 1 BvL 12/12 -

- 1 BvR 1691/13 -

- 1. In order to guarantee a dignified minimum existence (Article 1 section 1 of the Basic Law [*Grundgesetz* – GG] in conjunction with Article 20 section 1 of the Basic Law), the requirements of the Basic Law to effectively ensure a dignified minimum existence must ultimately be met, and the overall amount of benefits paid to ensure minimum existence must be fixed at a level that is justifiable in a way that stands up to scrutiny.**
- 2. The Constitution does not bar the legislature from retroactively removing, on the basis of the basket-of-goods model, individual items from the generally permissible statistical calculation of the benefits intended to secure the recipients' existence. However, the standard benefits securing the recipients' existence must either on an overall scale be calculated in such a way that underfunding can be compensated for internally or by saving up for certain expenses, or must be covered by additional rights to benefits.**

# FEDERAL CONSTITUTIONAL COURT

- 1 BvL 10/12 -

- 1 BvL 12/12 -

- 1 BvR 1691/13 -



## IN THE NAME OF THE PEOPLE

### In the proceedings

- I. on the constitutional review as to whether
  1. § 19 section 1 sentences 1 and 3, and section 3 sentence 1, § 20 sections 1, 4 and 5 of the Second Book of the Code of Social Law (SGB II) in the version of Article 2 of the Act on Determining Standard Needs and Amending the Second and Twelfth Book of the Code of Social Law (*Gesetz zur Ermittlung von Regelbedarfen und zur Änderung des Zweiten und Zwölften Buches Sozialgesetzbuch*) of 24 March 2011 (Federal Law Gazette (BGBl) I p. 453) in conjunction with § 28a of the Twelfth Book of the Code of Social Law (SGB XII) in the version of Article 3 of the Law of 24 March 2011 (BGBl I p. 453) and § 8 section 1 number 2 of the Act on Determining Standard Needs in Accordance with § 28 of the Twelfth Book of the Code of Social Law (*Gesetz zur Ermittlung der Regelbedarfe nach § 28 des Zwölften Buches Sozialgesetzbuch – RBEG*), promulgated as Article 1 of the Act on Determining Standard Needs and Amending the Second and Twelfth Book of the Code of Social Law of 24 March 2011 <BGBl I p. 453>) are compatible with Article 1 section 1 in conjunction with Article 20 section 1 GG – welfare state – and the fundamental right derived therefrom of the guarantee of a dignified minimum existence insofar as they set the standard needs relevant for calculating the amount of benefit necessary to ensure a minimum existence for adults eligible for benefits, who are in need of assistance and who are living together as married couples, at an amount of EUR 328 for the 2011 calendar year and for the 2012 calendar year, under the Regulation on Updating the Standard Needs Levels in Accordance with § 138 number 2 of the Twelfth Book of the Code of Social Law for the Year 2012 (*Verordnung zur Fortschreibung der Regelbedarfsstufen nach § 138 Nr. 2 des Zwölften Buches Sozialgesetzbuch für das Jahr 2012 – RBSFV 2012*) of 17 October 2011, at an amount of EUR 337,

2. § 19 section 1 sentences 1 and 3, and section 3 sentence 1, § 20 section 1, section 2 sentence 2 number 1, and section 5, and § 77 section 4 number 1 SGB II in conjunction with § 28a SGB XII and § 8 section 1 number 4, section 2 number 1 RBEG as well as RBSFV 2012 of 17 October 2011 (each respectively in the version referred to under 1.), are compatible with Article 1 section 1 in conjunction with Article 20 section 1 GG – social welfare state – and the fundamental right derived therefrom of the guarantee of a dignified minimum existence insofar as RBSFV 2012 of 17 October 2011 sets the standard needs necessary for calculating the amount of benefit for ensuring a minimum existence for adults eligible for benefits who are in need of assistance from their fifteenth to their eighteenth birthday at an amount of EUR 287 for the 2011 and 2012 calendar years.

- Order for suspension and referral by the Berlin Social Court of 25 April 2012 (S 55 AS 9238/12) -

**- 1 BvL 10/12 -,**

- II. on the constitutional review as to whether

§ 19 section 1 sentences 1 and 3, and section 3 sentence 1, § 20 section 1 and section 2 sentence 1 and section 5 of the Second Book of the Code of Social Law (SGB II) in the version of Article 2 of the Act on Determining Standard Needs and Amending the Second and Twelfth Books of the Code of Social Law of 24 March 2011 (Federal Law Gazette (BGBl) I p. 453) in conjunction with § 28a of the Twelfth Book of the Code of Social Law in the version of Article 3 of the Act of 24 March 2011 (BGBl I p. 453) and § 8 section 1 number 1 of the Act on Determining Standard Needs in Accordance with § 28 of the Twelfth Book of the Code of Social Law (RBEG), promulgated as Article 1 of the Act on Determining Standard Needs and Amending the Second and Twelfth Books of the Code of Social Law of 24 March 2011 (BGBl I p. 453), are compatible with Article 1 section 1 in conjunction with Article 20 section 1 GG and the fundamental right derived therefrom of the guarantee of a dignified minimum existence insofar as the standard needs necessary for calculating the amount of benefit for ensuring minimum existence for persons who are single or single parents or whose partners are minors are set at an amount of EUR 364 for the 2011 calendar year and, under the Regulation on Updating the Standard Needs Levels in Accordance with § 138 number 2 of the Twelfth Book of the Code of Social Law for the Year 2012 (RBSFV 2012) of 17 October 2011, at an amount of EUR 374.

- Order for suspension and referral by the Berlin Social Court of 25 April 2012 (S 55 AS 29349/11) -

**- 1 BvL 12/12 -,**

III. on the constitutional complaint

1. by Mr. A...,

2. by Ms. A...,

3. by the minor A...,  
represented by his parents by law,

- authorised representatives: KAUF Rechtsanwälte,  
Karlstrasse 3, 27749 Delmenhorst -

against a) the judgment of the Federal Social Court of 28 March 2013 - B 4 AS  
12/12 R -,

b) the judgment of the Oldenburg Social Court of 10 January 2012 - S 48  
AS 1136/11 -,

c) the appeal decision of the Delmenhorst Jobcenter of 24 June 2011 -  
617.b-26104BG0017453-W 597/11 -,

d) the decision by the Delmenhorst Jobcenter of 12 May 2011 -  
26104BG0017453 -

**- 1 BvR 1691/13 -**

The Federal Constitutional Court - First Senate -

With the participation of Justices

Vice-President Kirchhof,

Gaier,

Eichberger,

Schluckebier,

Masing,

Paulus,

Baer,

Britz

on 23 July 2014 held that:

1. **§ 20 section 2 sentences 1 and 2 number 1, section 4, and section 5, § 23 number 1, and § 77 section 4 numbers 1 and 2 of the Second Book of the Code of Social Law, each in the version of Article 2 of the Act on Determining Standard Needs and Amending the Second and Twelfth Book of the Code of Social Laws of 24 March 2011 (Federal Law Gazette I, page 453) and § 8 section 1 numbers 1, 2, 4 and 6, and section 2 numbers 1 and 3 of the Act on Determining Standard Needs (*Regelbedarfs-Ermittlungsgesetz*) in the version of Article 1 of the Act on Determining Standard Needs and Amending the Second and Twelfth Book of the Code of Social Law of 24 March 2011 (Federal Law Gazette I, page 453) each in conjunction with § 20 section 1 sentences 1 and 2 of the Second Book of the Code of Social Law in the version of Article 2 of the Act on Determining Standard Needs and Amending the Second and Twelfth Book of the Code of Social Laws of 24 March 2011 (Federal Law Gazette I, page 453) and § 28a of the Twelfth Book of the Code of Social Laws in the version of Article 3 of the Act on Determining Standard Needs and Amending the Second and Twelfth Book of the Code of Social Laws of 24 March 2011 (Federal Law Gazette I, page 453) and the annex to § 28 of the Twelfth Book of the Code of Social Law in the version of Article 3 number 42 of the Act on Determining Standard Needs and Amending the Second and Twelfth Books of the Code of Social Laws of 24 March 2011 (Federal Law Gazette I, page 453) and § 2 of the Regulation on Updating Standard Need Levels in Accordance with § 138 number 2 of the Twelfth Book of the Code of Social Law for the Year 2012 of 17 October 2011 (Federal Law Gazette I, page 2090) are compatible with Article 1 section 1 of the Basic Law in conjunction with the principle of the welfare state enshrined in Article 20 section 1 of the Basic Law.**
2. **The constitutional complaint is rejected.**

### **R e a s o n s :**

#### **A.**

The specific judicial review proceedings and the constitutional complaint concern the issue of whether the Act on Determining Standard Needs and Amending the Second and Twelfth Book of the Code of Social Law of 24 March 2011 meets the requirements derived from Art. 1 sec. 1 in conjunction with Art. 20 sec.1 GG for guaranteeing a dignified minimum existence. In particular, the proceedings concern the standard benefit paid for single persons and for cohabitating adults as well as for adolescents aged 15 to 18 and for children up to their 6th birthday.

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## I.

1. The Act on Determining Standard Needs of 24 March 2011 [...] entered into force with retroactive effect on 1 January 2011, subject to its Art. 14 sec. 2 and sec. 3. [...]

2. The right to a basic existence provided for in the Second Book of the Code of Social Law for persons seeking work is aimed at ending, or at least reducing, the need for assistance by means of “integration into work” [...] and aimed at providing for a person’s subsistence. [...] The benefits paid to secure subsistence [...] are intended to cover needs that are acknowledged by the legislature and secure minimum subsistence for a dignified existence.

a) § 19 SGB II sets out who may receive such benefits and which needs are fundamentally recognised. Benefits are paid to claimants who are able to work, between the age of fifteen and, usually, the end of the month in which they reach the age of 65, and who will not, in the foreseeable future, be unable to work for at least three hours a day under average employment conditions They must be in need of assistance and usually reside in Germany (§ 7 sec. 1 sentence 1 SGB II).

b) The legislature conceived the standard benefits to differentiate between various different needs. The point of departure is the right to benefits securing subsistence for standard needs (*Regelbedarf*) as defined in § 20 SGB II, as well as certain additional needs (§ 21 secs. 2 to 5 and § 23 nos. 2 to 4 SGB II), benefits to cover reasonable actual expenses for housing and heating (§ 19 sec. 1 sentence 3 SGB II), and a lump sum for decentral warm water (§ 21 sec. 7 SGB II). Additional benefits may be claimed to cover further special needs that are unavoidable, recurrent and not merely single instances (§ 21 sec. 6 SGB II). For non-recurring and unavoidable needs generally but in fact not adequately or not always covered by the standard benefits, a loan may be granted (§ 24 sec. 1 SGB II), which must be repaid from the month following its advancement at a monthly rate of 10 % of the relevant standard benefits (§ 42a sec. 2 sentence 1 SGB II). Those in need may also claim certain one-time expenses [...]. Lastly, since 2011, a separate need for education and social participation of children, adolescents and young adults has been recognised in § 28 SGB II.

3. The amount of standard benefits is determined in § 20 secs. 2 to 4 SGB II supplemented by § 23 no. 1 SGB II. Benefits are intended to secure a minimum level of physical and socio-cultural existence. [...]

a) Existential needs are supposed to be covered by a monthly lump sum [...]. The legislature proceeds from the assumption that the lump sum allows a claimant to make adjustments within this payment to cover various items of need that do not always occur or do not occur for all claimants [...].

b) The standard needs benefits take into account differences as to the age and living situations those in need. [...]

c) There are separate arrangements for benefits for education and participation in social and cultural life in the community [...]. The reimbursement of certain costs is

covered by benefits for schoolchildren, and there is a monthly budget of EUR 10 [...] for social and cultural activities for children and adolescents, which can be used for certain existing offerings [...]. In exceptional cases, other costs actually incurred by using such offerings can now, since August 2013, also be covered [...].

[...]

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4. In the challenged provisions, the legislature has redrawn the assessment of standard needs following the decision of the Federal Constitutional Court of 9 February 2010 (Decisions of the Federal Constitutional Court, *Entscheidungen des Bundesverfassungsgerichts* – BVerfGE 125, 175). Standard needs are no longer set by means of regulation, or in an ordinance [...], but [...] set by a law passed by Parliament. Standard needs are determined on the basis of data collected on the consumption expenditure of certain households, supplemented by special evaluation factors (a) to establish certain standard need levels (b). However, not all items of expenditure recorded in the income and consumption survey (*Einkommens- und Verbrauchsstichprobe*) are recognised as standard needs (c).

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a) Standard needs shall be determined in accordance with the level and development of net incomes, consumer behaviour and living expenses [...]. This is done on the basis of the [...] income and consumption survey. This survey collects data on the income and expenses, assets and debts of private households, the consumer goods they have and their living situation. [...].

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aa) The amount of standard benefit is based on the expenditure of certain “reference households” that are classified by income. The legislature distinguishes between one-person households and family households, defined as a couple with a child. [...] The legislature has decided not, as previously, to use as reference households the lower 20 % of one-person households classified by their income excepting those households receiving benefits, but the lower 15 %. In the family households, the legislature has likewise fixed the standard needs of adults based on this 15 %, while basing the standard needs of children and adolescents on the consumer expenses of the bottom 20 % of family households.

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bb) Certain households are not taken into account as reference households, namely households in which the only income within the reference period consisted of benefits [...]. However, households in which other additional income was available, mostly “supplement” income from part-time working, and households including students receiving benefits under the Federal Educational Assistance Act (*Bundesausbildungsförderungsgesetz*) [...], are included. Nor are households removed of persons who have formerly received unemployment support or unemployment benefit or households that are in need of benefits to secure their subsistence but have not claimed such benefits (“hidden poverty”).

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[...]

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b) Six levels of standard needs are determined on the basis of the consumer ex-

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penses of the reference households provided by the income and consumption survey. [...]	
aa) Standard needs level 1 for adult single persons or single parents in their own households is determined on the basis of the expenses of one-person households; standard needs level 2 for adults living together as a couple is calculated at 90 % and standard needs level 3 for adults who neither run their own households nor live as a couple at 80 % of standard needs level 1 [...]. Standard needs levels 4 to 6 for children and adolescents are calculated from the expenses of family households [...].	17
[...]	18
c) The level of standard benefits is also based on the legislature's decision to recognise as relevant not all but only certain expenses identified in the income and consumption survey.	19
aa) Only such expenses are deemed [...] relevant in terms of standard needs that facilitate a modest way of life such as is led by households with a small income, and that are neither covered by other sources nor subject to a nationwide subsidy. [...]	20
bb) Certain items in [...] the income and consumption survey are expressly excluded [...] from the calculation of standard needs or only partly taken into account.	21
(1) The standard needs for one-person households are determined on the basis of information provided by 1,678 households. [...] The total expenses [...] taken into account are EUR 361.81 (§ 5 RBEG).	22
(a) For the 2008 income and consumption survey, the consumption items alcohol, tobacco goods, dry cleaning, cut flowers, cash donations, court costs (fines), lawn mowers and the repair of hand-working appliances were excluded, while new items to be taken into account included maintenance and repair costs, purchase of computers, sports and camping articles, fees for courses and fees for personal identity cards.	23
(b) Other items have only partly been recognised by the legislature as relevant in terms of standard needs. [...]	24
[...]	25
(2) To determine what is needed to secure subsistence of children and adolescents, 523 households consisting of couples with children under the age of eighteen were taken into account, 237 for couples with children under the age of six, 184 for children between the ages of six and thirteen , and 115 households for children between the ages of 14 and 17 ( <i>Bundestag</i> document (BTDrucks) 17/3404, pp. 144, 149, 154, 159). Since the income and consumption survey records the total consumption expenses of these households, the calculation of the needs of children and adolescents was derived from these numbers on a standardised basis.	26
(a) Three age groups are distinguished in the calculation scheme [...].	27



(b) Household expenses are then allocated to children and adolescents using distribution schemes. [...]	28
[...]	29
5. To be able to cover current needs at any time by means of the standard benefits, the amount of these benefits is recalculated [...] following each new income and consumption survey, and new rates are set or, in the intervening years, updated on 1 January each year. [...].	30
a) [...] The relevant percentage is no longer, as under previous arrangements, tied to the current pension value under the statutory pension insurance scheme [...], but to the average national development of prices of goods and services that are relevant in terms of standard needs as well as to average national net wages and salaries [...]. These developments are shown in a mixed index 70 % of which is price development and 30 % of which is the development of wages and salaries [...], as, according to the legislative memorandum, the movement of prices secures the real value of the benefits providing for the minimum physical existence, while the movement of wages and salaries reflects the general level of prosperity. [...]	31-32
b) [...] Separate updates took place for 2011 and for 2012.	33
aa) [...] The following are the values of the Standard needs levels since 2011 (in EUR):	34
[...]	
bb) [...]	35
6. [...]	36

## II.

1. a) The case submitted for review by the Social Court in proceedings 1 BvL 10/12 is based on a complaint by married parents and their child, who received benefits under the Second Book of the Code of Social Law to secure their minimum existence for the period from January 2011 to June 2012. These benefits were based on monthly standard needs assessed for the parents for 2011 at EUR 328 each and for 2012 at EUR 337 each, and for the minor complainant, who was a student at a <i>Gymnasium</i> at the time, of EUR 287 in both years. In August 2011, the student also received EUR 70 for school necessities. The case was originally brought to receive higher benefits securing a minimum level of existence under the Second Book of the Code of Social Laws, taking account of higher standard needs.	37
b) [...] The Social Court considers that the legal provisions concerning standardised needs for adult male and female partners in a community of need ( <i>Bedarfsgemeinschaft</i> ) on the one hand, and on the other hand for adolescents aged 15 to 18 are incompatible with Art. 1 sec. 1 in conjunction with Art. 20 sec. 1 GG. [...]	38

[...]	39-41
2. a) The case submitted for review by the Social Court in proceedings 1 BvL 12/12 is based on a complaint by a single man born in 1961, who received unemployment benefit II from September 2011 to August 2012. The amount of benefit paid in 2011 for standard needs was EUR 364 per month and in 2012 EUR 374 per month. He sued for additional benefits for standard needs of a total of EUR 487 per month. [...]	42
b) The Social Court [...] considers the legal provisions submitted for review to be incompatible with Art. 1 sec. 1 in conjunction with Art. 20 Sec. 1 GG. [...]	43
3. a) The goal of the constitutional complaint in proceedings 1 BvR 1691/13 is to receive higher benefits to secure minimum existence under the Second Book of the Code of Social Law for the assessment period from May to October 2011. Complainant no. 3, who was born in 2009, received benefits on the basis of standard needs of EUR 215 per month, and complainants nos. 1 and 2 were each paid a monthly sum of EUR 328 . Their action against the decision of the responsible <i>Jobcenter</i> was unsuccessful before the Social Court; the Federal Social Court rejected the “leapfrog” appeal ( <i>Sprungrevision</i> ).	44
b) The social courts took the view that the amount of benefit was not so low as to violate the Constitution, and that there was therefore no objection to the way the standardised standard need was set for complainant no. 3. [...]	45
c) [...]	46

### III.

The Federal Government, the State Chancellery of Lower Saxony, the Federal Social Court, the Federation of German Trade Unions, the social welfare organisation <i>Sozialverband VdK Deutschland e.V.</i> , the national association of welfare organisations of the protestant church in Germany ( <i>Diakonie Deutschland – Evangelischer Bundesverband –</i> ), the German Caritas Federation, the association of German social courts ( <i>Deutscher Sozialgerichtstag e.V.</i> ), the German Association for Public and Private Welfare ( <i>Deutscher Verein für öffentliche und private Fürsorge e.V.</i> ), the Federal Association of Non-Statutory Welfare ( <i>Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege</i> ), the German Equality Welfare Association ( <i>Paritätischer Gesamtverband</i> ), the Alliance for Dignified Minimum Existence ( <i>Bündnis für ein menschenwürdiges Existenzminimum</i> ), the National Conference on Poverty, the plaintiffs and the defendant of the initial proceedings have submitted statements. With the exception of the Federal Government, the Federal Social Court and the defendant of the initial proceedings in the constitutional complaint, they all argue that the arrangements for determining the level of standard needs for 2011 and 2012 are unconstitutional.	47
[...]	48-68

## B.

1. The referred cases are admissible. [...] 69

The provisions to be reviewed determine the amount of benefits paid to cover standard needs in proceedings 1 BvL 10/12 for the period from January 2011 to June 2012, and in proceedings 1 BvL 12/12 for the period from September 2011 to August 2012. The success of the actions in the initial proceedings depends on whether these provisions are compatible with the Basic Law. 70

[...] 71

2. The constitutional complaint is admissible. [...] 72

## C.

[...] 73

### I.

1. Under its Art. 1 sec. 1 in conjunction with Art. 20 sec. 1, the Basic Law guarantees a fundamental right to a guarantee of a dignified minimum existence. Art. 1 sec. 1 GG establishes this right, and the principle of the welfare state in Art. 20 sec. 1 GG obliges the legislature to in fact secure a dignified minimum existence. This fundamental right is, in principle, not subject to the disposal of the legislature and must be put into effect by means of a legal claim to benefits; it must, however, be concretely shaped, and be regularly updated by the legislature. The legislature has to assess the benefits in light of the respective stage of development of the polity and of the current living conditions, taking into account the specific needs of the persons affected. The legislature has leeway in bringing about this state of affairs (cf. BVerfGE 125, 175 <222>; 132, 134 <159, para. 62>), but is also bound by obligations under international law (cf. BVerfGE 132, 134 <161 et seq., para. 68>). 74

a) The constitutionally-guaranteed right to benefits to guarantee a dignified minimum existence covers only the means absolutely necessary for securing both one's physical existence and a minimum of participation in social, cultural and political life (cf. BVerfGE 125, 175 <223>; 132, 134 <160, para. 64>). 75

b) In creating the structure of benefits for securing the dignified minimum existence, the legislature must take realistic and up-to-date account of the relevant needs of persons in need of assistance. It has leeway in determining the nature and amount of benefits to secure minimum subsistence as well as in its decision to assess actual conditions and in evaluating the material assistance needed. The decisive factor is that the legislature has to assess its decision in light of the specific needs of persons in need (cf. BVerfGE 125, 175 <224 and 225>; 132, 134 <160 and 161, para. 67>) and that benefits paid to meet the claim guaranteed as a fundamental right must be fixed at a level that is justifiable, subject to scrutiny of constitutional review (cf. BVerfGE 132, 134 <162, para. 69> with reference to BVerfGE 125, 175 <225>). 76

aa) The constitutional requirements for a methodically objective determination of benefits guaranteed as a fundamental right do not affect the procedures of the legislature but their results (BVerfGE 132, 134 <162 and 163, para. 70>). The fundamental right to a guarantee of a dignified minimum existence derived from Art. 1 sec. 1 in conjunction with Art. 20 sec. 1 GG entails no specific procedural obligations for the legislature; what is important is whether the amount of benefits paid to secure existence can be justified objectively by means of realistic and plausible calculations. Arts. 76 et seq. of the Basic Law set out rules for the legislative procedure that, *inter alia*, ensure transparency in the legislature's decisions; in doing so, parliamentary procedure, with its inherent function of publicity (cf. BVerfGE 119, 96 <128>), ensures that the necessary legislative decisions are made in public sittings (Art. 42 sec. 1 sentence 1 GG) and facilitates their discussion in the wider public sphere (cf. BVerfGE 70, 324 <355>; as distinct from the Federal Convention, as in BVerfG, judgment of the Second Senate of 10 June 2014 - 2 BvE 2/09 -, juris, para. 100). However, the Constitution does not stipulate what exactly has to be justified and calculated how and when in the legislative procedure, but leaves room for negotiations and for political compromise. Nor does the Basic Law oblige the legislature to make an optimal determination of the minimum level of existence by taking into account every conceivable factor; to do so is the task of politics (cf. BVerfGE 113, 167 <242>). Here, it is decisive that the requirements of the Basic Law to effectively ensure a dignified minimum existence are ultimately met. 77

bb) Nor does the Basic Law stipulate any particular method that might restrict the legislature's leeway to design its approach. The legislature has the freedom to choose the method to determine needs and calculate benefits to secure a dignified minimum existence within the scope of what is suitable and adequate (cf. BVerfGE 125, 175 <225>). The legislature's choice does however not alter the standards resulting from the fundamental right. This means that no method may be selected which ignores certain needs from the outset if such needs have already been otherwise recognised as necessary to secure a dignified existence (cf. BVerfGE 132, 134 <162 and 163, para. 71>). If different methods are used for certain groups, this must be objectively justifiable (cf. BVerfGE 125, 175 <225>). 78

cc) The outcome of an appropriate procedure to determine claims guaranteed as a fundamental right must be continually kept under review and updated (cf. BVerfGE 125, 175 <225>). 79

2. The legislature's leeway in determining the minimum level of subsistence is mirrored by a merely restrained review by the Federal Constitutional Court. The Basic Law itself does not stipulate a quantified claim with a definite amount (cf. BVerfGE 125, 175 <225 and 226>; 132, 134 <165, para. 78>). This means that the extent of the claim, with regard to the kinds of need and the means required to cover them, cannot be directly derived from the Constitution (cf. BVerfGE 91, 93 <111 and>). It is not the task of the Federal Constitutional Court to decide the amount of a right to benefits for securing the minimum existence must be; nor is it its task to review whether 80

the legislature has chosen the fairest, most adequate and most reasonable solution for fulfilling its duties (cf. BVerfGE 130, 263 <294> with further references). From a constitutional perspective, the crucial matter is to ensure that the amount of benefits to secure a dignified minimum existence does not fall below that minimum level and is fixed at a level that is justifiable, subject to constitutional review, as actually capable of supporting minimum needs.

a) Since the Basic Law itself does not stipulate any exact quantification of the claim to benefits, the substantive review of the amount of social benefits necessary to secure a dignified minimum existence is limited to examining whether these benefits are evidently inadequate (BVerfGE 125, 175 <225 and 226>; 132, 134 <165, para. 78>). Based on a comprehensive assessment (cf. BVerfGE 130, 263 <295>), this review looks at the amount of benefits as a whole and not at individual elements based on which this amount is calculated. Social benefits are only deemed to be evidently inadequate if it is obvious that they are in no way, in their totality, capable of ensuring that persons in need, living in Germany today, are assured of a life that can physically, socially and culturally be regarded as dignified.

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b) Beyond this review of evident circumstances (*Evidenzkontrolle*), the Federal Constitutional Court examines whether the resulting level of benefits can be justified at any given time on the basis of reliable figures and plausible calculation procedures. In doing so, the Federal Constitutional Court does not put itself with its own expertise in the place of the legislature, but merely reviews the legislative parameters set for calculating benefits which, while not precisely quantifiable under the Constitution, are guaranteed as a fundamental right. If these parameters can be justified in a way that is transparent and, from an objectively differentiated perspective, plausible, then they are consistent with Art. 1 sec. 1 in conjunction with Art. 20 sec. 1 GG (cf. BVerfGE 125, 175 <225 and 226>; 132, 134 <165 and 166, para. 79>; see above C I 1 b).

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aa) The legislative parameters set for calculating the level of benefits paid to secure existence must be objectively justifiable. Not even a political compromise may result in an outcome that cannot be justified on objective grounds; figures drawn from thin air and wild estimates do not satisfy the constitutional requirements (cf. BVerfGE 125, 175 <237 and 238>; 132, 134 <170 and 171, paras. 90 and 91.>).

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bb) The nature and amount of benefits must be explicable with a method by which the necessary facts are, in essence, fully and accurately determined, and by which the calculation stages involve transparent figures and stay within reasonable parameters within this procedure. Calculating the minimum subsistence level on the basis of a basket of necessary goods and services and subsequently determining and evaluating the prices to be paid for them is an admissible way to calculate the level of benefits, as is using consumer statistics (cf. BVerfGE 125, 175 <234 and 235>). If the legislature decides to use the statistical model, it must take precautions against the concomitant specific risk of underfunding current needs. The Constitution does not prevent the legislature from subsequently removing certain individual items from the

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statistics in a way similar to a basket-of-goods model. But if the legislature introduces elements into the calculation this way, it must ensure that the minimum level of existence is still in fact secured. Benefits must either be calculated so as to compensate any insufficient covering of certain items within the overall amount itself (cf. BVerfGE 125, 175 <238>), or enable the recipient of the benefit to put aside funds to cover varying needs (cf. BVerfGE 125, 175 <229>); or arrangements must be in place to ensure that a claim can be made to compensate for such insufficient covering of needs by other means.

cc) The legislature is in compliance with its duty to update benefit amounts to secure a dignified minimum existence if it regularly recalculates and updates them to take into account the development of the actual cost of covering existential needs (cf. BVerfGE 125, 175 <225>; 132, 134 <165 and 166, para. 79>). There must be a prompt reaction to changes in economic conditions, such as price increases or rises in consumption taxes, in order to ensure that current needs are covered (BVerfGE 132, 134 <163, para. 72>).

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## II.

By these standards, the provisions submitted for review for the period that is relevant for the decision still satisfy the requirements of Art. 1 sec. 1 in conjunction with Art. 20 sec. 1 GG, in the necessary comprehensive assessment. The legislature has secured, as a legal claim [...], the right to benefits to cover standard needs [...] to ensure a dignified minimum existence, as well as a review of the amount of these benefits. There is no indication that the benefits have been set at a level that is evidently inadequate (1). The rules for determining the level of benefits currently also satisfy the requirements for an objectively appropriate calculation; the legislature must, however, ensure, in accordance with the reasons of this decision, that discernible risks of underfunding of existential needs will not occur (2). The rules for updating standard needs are consistent with the Constitution (3). There is no violation of other fundamental rights (4).

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1. The purpose of the review of evident circumstances is purely to examine whether benefits are clearly insufficient for covering the amount that is overall necessary to secure existence and not, as a matter of principle, to look at individual items in the way they are calculated. Accordingly, the determination of benefits to ensure a dignified minimum existence under the challenged provisions does not prove to be evidently inadequate. There is no indication that the overall amount paid to cover standard needs that existential needs would clearly not be covered.

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The fact that the legislature has linked the updating of the level of benefits to the regularly calculated consumer prices index [...] and has not used a special index for household electricity that could have better reflected the unusually high price rises in the period relevant for the decision does also not mean that the legislature has clearly and evidently set the level of benefit too low. The ever-present possibility of reflecting more closely a rise in prices in its effect on the level of benefits meant to ensure a

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minimum existence does not render an update of the overall amount of benefits using the consumer prices index as evidently inadequate to cover standard needs. Nor has there been a constant rise in prices over decades with regard to household electricity that the legislature has failed to take into account (different from BVerfGE 132, 134 <166 et seq., paras. 82 et seq.>). At any rate, there is no indication that, for the period relevant for the decision, the rise in electricity prices was so extreme that the legislature should have compensated for it individually.

2. The legislature's determination of the amount of benefit paid to cover standard needs [...] satisfies the requirements for an assessment that is sufficiently transparent and that can be justified on the basis of reliable figures and plausible calculation procedures. The legislature has taken all relevant types of need into account; it has determined in an appropriate manner, that is, fully and accurately, the expenses to cover individual items of need, selecting a method that is in principle suitable and that is modified in individual cases with sufficient objective substantiation; and the legislature has determined the overall level of need on this basis (cf. BVerfGE 125, 175 <225>; 132, 134 <165, para. 79>; see C I 2 b above). There is no indication that the legislature has overlooked any types of needs that are relevant for ensuring a dignified minimum existence or that it failed to secure the benefits necessary to cover such needs in statutory claims (a). Even though the overall level of benefits to cover standard needs might merely meet a political objective, there is no objection to it from a constitutional point of view if it can be justified in a way that stands up to scrutiny as being fixed based on reliable data (b). To determine the level of benefits payable to cover standard needs, the legislature has used the statistical model, a method fundamentally suitable for assessing the benefits required to secure a dignified minimum existence (c). Starting from the income and consumption survey, the legislature uses suitable empirical data as the basis of its determination (d). Insofar as it deviates from the use of this set of data by removing or cutting certain items, there are no serious constitutional objections, based on the required overall assessment (e). The concomitant specific risks of underfunding must however be dealt with in the next update of the standard needs assessment (f). Otherwise, the constitutional objections raised against the level of standard needs for children and adolescents are without substance (g).

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a) The legislature has secured, in statutory law, the right to benefits to ensure a dignified minimum existence. There is no indication that it has overlooked any relevant types of need. The provisions submitted for review standardise a system of claims to benefits that, without being required by the Basic Law as the only possible one, generally has no substantial deficits. [...]

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b) The legislature is not in violation of its duty under the Constitution to create arrangements to secure a dignified minimum existence. The level of benefits paid to cover standard needs can, in an overall assessment, be justified on the basis of reliable data in a way that stands up to scrutiny. It is true that at EUR 364 level 1 of standard needs [...] as the amount of benefits determined for 2011 corresponds exactly to

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the amount that would have been yielded on the basis of the standard rate applicable for 2008, which would have been updated by the respective current pension value yielded [...] under the statutory pension insurance scheme [...]. Yet there can be no constitutional objection to such an outcome because it is transparent on the basis of credible figures, can be justified, in constitutional terms, according to reasonable evaluations, and is not unobjective nor based on figures pulled from thin air or on wild estimates (cf. BVerfGE 125, 175 <223, 237 and 238>; 132, 134 <170 and 171, para. 90 and 91; see above C I 2 b aa).

c) As a statistical model of calculation, the orientation to the income and consumption survey, which is stipulated in law, [...] is a procedure that is in principle suitable for determining realistically the benefits needed to secure a dignified minimum existence (cf. BVerfGE 125, 175 <232 et seq.>). The stipulation [...] that the level and development of net incomes, consumer behaviour and cost of living that is based on actual consumer expenditures and identified by the income and consumption survey for lower income groups should be taken into account in determining average nationwide levels of standard needs is not unobjective and can be justified in a way that stands up to scrutiny. There can be no fundamental constitutional objection to the legislature [...] using income as a reference for determining standard needs under the provisions submitted for review here if only the actual consumer expenditure of lower income groups is taken into consideration (see below d bb). This is part of the legislature's orientation towards the state of development of the community and existing conditions of life (cf. BVerfGE 125, 175 <222>); it connects those who receive benefits to those in gainful employment (cf. BVerfGE 125, 175 <234>; see also *Bundestag* printed papers (BTDrucks) 17/3404, p. 121 and 122.), but it does not in itself facilitate a situation in which benefits for securing the existence minimum fall below the minimum level required by the Constitution.

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However, the legislature has not used the statistically-determined expenditure behaviour as basis for its calculations unmodified. To establish statutory standard needs under the provisions submitted for review, the actual consumer expenditure of lower income groups as identified by the income and consumption survey is only the point of departure. To this are added special evaluations, calculations using individual distributions schedules as well as an assessment of whether the items of expenditure shown by consumer statistics are necessary for guaranteeing a dignified minimum existence. Any underfunding resulting from such modifications has to be taken into account (below f). It is imperative that, as a result, a dignified minimum existence be in fact secured (see C I 1 b aa above).

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d) The determination of standard needs is, in using the income and consumption survey, is generally based on appropriate empirical data (cf. BVerfGE 125, 175 <235>).

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aa) There is no requirement for the legislature to collect its own data for the calculation of every single benefit; instead, the legislature may opt to use existing data. Here,

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it is true that the income and consumption survey determines expenditure and not need; but in a society in which people do generally support themselves with products they produce themselves it is sufficiently plausible to conclude to need from consumption. As the income and consumption survey collects data on household items and consumer behaviour of private households by way of a voluntary random survey, this data is just as open to error as any other empirical collection of data, yet it depicts consumer behaviour of the population in a way that is statistically sufficiently reliable. The Federal Statistical Office (*Statistisches Bundesamt*) attempts to verify the voluntary entries in the household diaries of the respondent reference groups in a technically appropriate manner, and monitors the results by way of plausibility checks. There is also no objection to the fact that individual items from the income and consumption survey included in the calculation of standard needs are not backed by published figures. Certain data are not shown by the Federal Statistical Office with precise numbers for reasons of data privacy, which must be respected here as well. [...]

bb) There is no constitutional objection to the selection of reference households by the legislature in order to determine standard needs. 96

It is generally permissible for the legislature to decide whether to orient the level of benefits for standard needs to the consumer behaviour of the lower income groups as determined in the income and consumption survey. The legislature may assume that expenditure is increasingly made over and above what is necessary for a minimum existence in higher income groups (cf. BVerfGE 125, 175 <234>). 97

The Constitution does not oblige the legislature to orient its determination of the level of standard benefits to the lower 20 % of single person households stratified by net income, like it did with the 2003 income and consumption survey. The decision to use only the lower 15 % of households as the reference group with regard to the 2008 income and consumption survey [...] does not violate the Constitution. It is not for the Federal Constitutional Court to examine whether the choice of a different reference group would have been more appropriate. The decisive factor is that the choice of reference group is objectively justifiable. This is the case. [...] 98

The reference group is also broad enough to collect statistically reliable data (cf. BVerfGE 125, 175 <236>). Generally [...], the reference group must be large enough to provide a sufficiently large random sample for statistical purposes. Here, it was determined subject to the proportion of households removed from the survey (*Bundestag* printed paper 17/3404, p. 89; *Bundestag* printed paper 17/3982, p. 2). With 1,678 one-person households (*Bundestag* printed paper 17/3404, p. 139; *Bundestag* printed paper 17/3982, p. 1), it was sufficiently large. 99

cc) Similarly, there is no constitutional objection to the legislature using the standard needs assessed for one-person households, that is, standard needs level 1, as the basis for setting the value of the level of benefits for standard needs of such adults who live in a joint household with other adults who are also eligible for benefits, that 100

is, standard needs level 2 for two adults eligible for benefits living together as spouses or civil partners or in relationships of a similar character [...]. The Federal Constitutional Court has decided, regarding this question of communities of need, that the needs of a second adult may be defined as 80 % of the statistically determined needs of a single person (cf. BVerfGE 125, 175 <245>), since the collection of data from households is appropriate for determining actual need for such living situations as well. Accordingly, there is no objection to setting the standard needs of adults living together in a joint household at 90 % of the level [...] of basic needs for a person living alone.

dd) There are no serious constitutional objections to the calculation of standard needs benefits using the reference group of family households. The objection that these have not been properly determined is not justified. There is no indication that the size of the sample would not be large enough to statistically determine standard needs. The level of standard benefits paid to secure minimum existence can be viably justified even if not every value is shown numerically, regardless of any data privacy considerations (see C II 2 d aa above). The values of fields marked as neutral are taken into account in the total calculation [...], which means that that no deficits occur that are constitutionally relevant. 101

ee) The legislature has [...] removed such households from the calculation that would effectuate circular arguments in the assessment of needs to secure minimum existence (cf. BVerfGE 125, 175 <236>) because they are themselves in need of assistance. Minimum needs cannot viably be assessed on the basis of those very people who have to manage with as much or less financial means than they are entitled to in order to secure their existence. 102

(1) The data collection process does not allow to consider households whose net income is below the level of the benefits allocated in the Second Book of the Code of Social Law and the Twelfth Book of the Code of Social Law, including benefits for housing and heating, are removed from the calculation of the level of benefits to cover standard needs (cf. BVerfGE 125, 175 <236 and 237>). No households are taken into account in which persons live that are eligible for benefits, who in the survey period [lived on benefits and] who had no other income. As a result, 8.6 % of households, as opposed to 0.5 % in 2003, have been removed from the reference group [...]. 103

(2) The legislature has not removed those who have additional income besides benefits under the Second Book of the Code of Social Law or the Twelfth Book of the Code of Social Law, mostly as “supplement” income from gainful employment [...]. As this additional income is only partially taken into account in the assessment of a reduction of need [...] because of the associated deductions and permitted earnings allowances [...], the total income of these households is above the welfare assistance level covered by the Second Book of the Code of Social Law. However, these allowances themselves show that the additional money is needed in order to pursue gainful employment and is not automatically at a households’ disposal to secure exis- 104

tence. Since, however, these allowances are in fact above the level of social welfare assistance, the legislature is acting within the scope of its margin of appreciation by not removing these households from the determination of consumer expenditure [...].

(3) There is no constitutional objection to the calculation of the level of benefits to cover standard needs because the legislature has also taken into consideration in the reference group of one-person households those people who did not claim social benefits although they were entitled to them and therefore had to cover their expenses from other and possibly lesser means (cf. BVerfGE 125, 175 <236>). The legislature has complied with its obligation [...] to refine its needs assessment accordingly (cf. BVerfGE 125, 175 <236 and 237>) in its evaluation of the 2008 income and consumption survey. Scientific studies [...] stated that the number of households living in hidden poverty can only be estimated [...]. Even an educated estimate is shrouded in uncertainty, which is why the legislature is not compelled to base the determination of the level of social benefits on a calculation that is merely approximate (cf. BVerfGE 125, 175 <236 and 237 >). 105

(4) The Constitution did not require the legislature to remove all those households from the survey that received benefits under the Federal Educational Assistance Act. [...] There is no indication that the inclusion of these households distorts the level of standard needs by any relevant degree. 106

(5) The objection raised to the calculation of standard needs with the argument that people claiming benefits under the Asylum Seekers' Benefits Act were not removed as reference households is not tenable. In any event, asylum seekers living in communal accommodation are excluded, since only people running their own households [...] were included in the 2008 income and consumption survey. The Federal Statistical Office carried out a special evaluation of the 2008 income and consumption survey and found that the households taken into consideration with foreign women and men from non-EU countries had received no other payments from public funds [...]. This means that the legislature was justified in presuming that no households were included in the survey that received benefits under the Asylum Seekers' Benefits Act. 107

(6) It was permissible to include households with people who had previously received unemployment benefit or unemployment assistance in the calculation of standard needs. This does not result in a circular conclusion, because their net income was above the level of benefits under the Second and Twelfth Books of the Code of Social Law – at least at the time of the survey. 108

e) Insofar as the legislature deviates from orientation to the average consumer expenditure of part of the population under the statistical model, the level of standard needs can still be justified in a way that stands up to scrutiny for the period relevant for the decision when considered in the called-for overall assessment. The removal of certain items from the calculation of standard needs cannot be challenged in constitutional terms for using a characteristic of the basket-of-goods model, meaning that a mix of methods results. Such calculation does not necessarily violate the Constitu- 109

tion. However, the statistical model as a whole may not be amended to such an extent that the suitability of the model for determining the level of standard needs for securing existence is called into question. Insofar as it is necessary to review the findings obtained using the statistical model, for example because of developments that are clearly relevant to peoples' needs, the legislature may also ensure that existential needs are in fact covered by using the basket-of-goods method. Similarly, it may use considerations regarding certain items to adapt the consumer data from the income and consumption survey to determine needs. In the present case, there is no constitutional objection to the legislature's removal and reduction of items for the period that is relevant for the decision, since this is based on evaluations for which the legislature must take political responsibility but which are not determined in detail by the Constitution (see C I 2 b bb above).

aa) The fact that the needs of adults in family households are determined under the provisions being challenged at the level of the needs determined for one-person households can be objectively justified. No concrete claims to specific state benefits to support the parents' task of caring for and bringing up the child can be derived from the Constitution (cf. BVerfGE 130, 240 <252 et seq.> with further references). [...] It is true that care must be taken in the future to see that the total needs in family households are in fact covered, since calculating the needs of adults according to the needs in one-person households does not take into account that the needs of children and adolescents have been calculated with reference to adults for whom the calculation is now being based on different figures, resulting in the danger that fixed costs that are incurred jointly in larger households will not be covered [...]. However, there is no indication at present that family-specific needs have been clearly ignored. Here, too, it is not the task of the Federal Constitutional Court to examine whether the best of all conceivable methods of calculation for the family has been chosen; it carries out its examination of compatibility with the Basic Law only to find whether constitutional standards are being satisfied by a calculation that is adequate and stands up to scrutiny.

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bb) In principle, the determination of existential needs with regard to costs arising for household electricity satisfies constitutional requirements. In view of exceptional price increases for such an important item of expenditure, however, the legislature is obliged to review and, if necessary, modify not only the index for updating standard needs (see C I 2 b cc above) but also the underlying rules for determining need with regard to household electricity. There is, however, no reason to believe that the level of the total lump sum for standard needs in the proceedings submitted for review is no longer consistent with the Constitution for going below the minimum level guaranteed under the Basic Law.

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Different from the determination of standard needs in a special evaluation of the 2003 income and consumption survey, no merely "random" deductions have been made for electricity required for heating (BVerfGE 125, 175 <237 and 238>). Need with regard to household electricity is calculated on the basis of a special evaluation

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that removes the cost of electricity for heating from the collected data. [...] The fact that 7.4 % of the households taking part in the survey do not list expenditure for electricity [...] does not call into question the securing of a dignified minimum existence as a whole. Such expenditure is neither hypothetically allocated to the households giving no information nor was it ensured by means of questioning, a counter sample according to the basket-of-goods model or by any other method that the values here are not distorted in an unobjective way. It is within the legislature's leeway to decide how the consumption information of these households is included in any realistic calculation of standard needs for securing existence; that they must be included, however, is unquestionable.

cc) The decision of the legislature not to recognise expenditure on motor vehicles, alcohol and tobacco goods, cut flowers and house plants, cafeteria meals, dry cleaning, job interviews and examination fees as relevant in terms of standard needs does not meet with serious constitutional objections. These decisions are within the scope of the legislature's leeway to design its approach. The reasoning provided in the draft bill put forward at the time by the parliamentary groups of the then-governing parties [...] is transparent and not unobjective. Where it is clear that such decisions pose a danger of underfunding, the legislature must act to balance them out (see f below).

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In particular, the decision by the legislature that a motor vehicle should not be considered necessary for existence in terms of securing standard subsistence is justified; however, the necessarily increasing expenses incurred by those in need of assistance for public transport must be taken into consideration (cf. BVerfGE 125, 175 <240>). Mobility is important not only in socio-cultural terms, in order to facilitate participation, but it may also be necessary to secure the needs of everyday life for those who live outside core locations with corresponding infrastructure. In the future, the legislature will have to ensure, with regard to the cost of living, that existential mobility needs can in fact be covered. (see f below).

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f) The statistical calculation of standard needs oriented to consumer expenditure of one part of the population calculated on the basis of a survey involves the risk that the cost of individual necessary goods may in fact not be covered by the total sum fixed for covering standard needs. This is especially the case if, as happened here, individual items are subsequently removed as in a basket-of-goods-model, from the total sum of the determined consumer expenditure. If the legislature is ever aware of existential needs not being met, it must react to ensure that current needs are covered (cf. BVerfGE 132, 134 <163, para. 72>; see C I 1 b cc above). Within the scope of its leeway to design its approach, the legislature may however decide whether this compensation should be provided by means of additional claims to benefits in addition to the standard benefits (aa). It may also stipulate internal compensation within existing lump sum benefits, but must then ensure that the requisite financial leeway exists (bb). From a constitutional perspective, it is only imperative that needs to secure subsistence be in fact covered overall.

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aa) The legislature may react to a risk of underfunding by means of awarding additional claims (see C I 1 above) to grants. If existential needs fail to be covered on the basis of the standard needs as calculated in the present case, the social courts must interpret the law in conformity with the Constitution [...]. If applicable law cannot be interpreted in such a way, the legislature must create a legal claim to a grant in addition to the standard benefits. Persons in need may only be required to resort to loans for procurement of certain items, which mandatorily involve a reduction in welfare benefit [...], if the standard benefits are set at a level high enough to permit repayment. 116

bb) In principle, the legislature may require persons in need to compensate for underfunding internally (cf. BVerfGE 125, 175 <238>) if a need not included in the standard needs arises but temporarily or if a need is considerably more costly than the statistical average sum paid to cover it. However, persons in need may not be generally required to compensate internally with sums intended to cover minimum socio-cultural needs. In addition, the lump sum must be set at a level high enough to permit savings. 117

(1) Persons in need of assistance cannot generally be required to compensate internally by using benefits intended to cover socio-cultural needs [...], because the need for social and cultural contacts is part of the dignified minimum existence guaranteed as a fundamental right. Nor are the benefits included in the lump sum to cover standard needs freely disposable as a pool from which to balance other areas, as these needs must likewise be covered as part of securing minimum existence (cf. BVerfGE 125, 175 <223 and 224>; 132, 134 <161, para. 64 and 65 >; see C I 1 a above). 118

(2) There is in principle no constitutional objection to the rule [...] that persons in need of assistance must in their own responsibility balance out and make savings from the benefits they receive to cover their needs. Such a model is consistent with the Basic Law if the amount of benefits paid as a lump sum to cover monthly standard needs is high enough to permit putting part of it aside to cover needs that occur irregularly or are more costly. There has been no indication in the present case that there is any underfunding that might endanger existence. However, the legislature must ensure in the future that, in total, needs necessary for existence are covered (see D I below). This requires that the standard needs are set at a level high enough to allow for compensation. 119

The method used in the present case to calculate standard needs presents, as one example, the danger of underfunding consumer goods that are vitally necessary but last long and are purchased at intervals of several years, with a very large difference between average statistical value and purchase price. Here, merely an amount of less than EUR 3 has been allocated for the purchase of refrigerators, freezers, washing machines, dryers, dishwashers and ironing machines [...]. Similarly, underfunding can occur if health needs such as spectacles or contact lenses can neither be covered within the scope of the standard benefits nor be otherwise secured (cf. BVerfGE 125, 175 <252 et seq.>). 120

Under the challenged provisions, however, monthly lump sum benefit payments are calculated in such a way that not all consumer expenditure recorded in the income and consumption survey for the reference households belonging to the lower income groups is recognised as necessary to secure the existence minimum. Instead, for single persons the legislature takes into account EUR 132 less, thus in total just 72 %, and for children, depending on their age group, between EUR 69 and EUR 76 less and thus 75 % and 78 % respectively [...]. While not recognising certain items of consumption as needs can be justified (see C II 2 e above), the legislature's removals of such a scale reach the very limit of what is constitutionally required to secure minimum existence. If the legislature requires persons in need to balance internally, to make savings or even to take a loan to cover existential needs, it must ensure that this is in fact possible by providing the financial means or ensure that needs be covered otherwise. 121

g) There are no fundamental constitutional objections to the way standard needs of levels 4 and 6 are fixed. As nobody involved in the initial proceedings falls within the 7 to 14 age group (standard needs level 5), this group is not subject to review in the present case. 122

aa) The objections to classification into age groups for determining the standard needs of children and adolescents are not justified. By distinguishing three age groups, the legislature has taken reasonable account of the phases of child development and oriented its classification to robust scientific and practical findings (see A I 4 c bb 2 a above). There were no urgent constitutional reasons to again change the differentiation of age groups which already applied previously, since standard needs are now no longer set arbitrarily for "small adults" (cf. BVerfGE 125, 175 <246>). 123

bb) There is no constitutional objection to determining the standard needs for securing the existence of children and adolescents by way of a distribution scheme (cf. BVerfGE 125, 175 <249 and 250.>). Since no data is collected on their expenses in detail, the legislature uses distribution schemes to allocate expenses of family households mathematically to the adults and the child or adolescent [...]. These distribution schemes have been worked out on behalf of the competent ministry, determined in model calculations by the Federal Statistical Office and confirmed in a scientific study by the Ruhr University of Bochum, about which the Federal Government gave a report to the *Bundestag* [...]; they have thus been established in a way that in itself stands up to scrutiny. 124

cc) The objections to the specific levels of average expenses for children and adolescents determined in this way do not necessarily mean that the provisions submitted for review currently violate the Constitution. Needs may have to be secured interpreting statutory law in conformity with the Constitution if needs are not covered by other means. The legislature is obliged here, too, to take any serious doubts as to the covering of needs into account (see C II 2 f above). 125

(1) There is no objection to the level of standard needs set in level 6 for children enti- 126

tled to benefit up to their 6th birthday [...], subject to the overall assessment required by the Constitution. The necessary livelihood of children also includes their special needs, namely those occasioned by virtue of their development and growth (BVerfGE 125, 175 <228>). But the Federal Constitutional Court does not examine whether, as in a basket-of-goods model, the legislature has based each individual item of statistically determined need on an amount that secures existence, but merely whether, in an overall assessment and without any evident failure to cover the minimum level of existence, needs have been determined based on a calculation that stands up to scrutiny (see C I 2 b above). That is the case.

(a) Children in standard needs level 6 are not precluded from receiving benefits for education and social participation. Children who attend a daycare centre can receive support for excursions and a midday meal [...];[...] apart from kindergartens, such centres, whatever they be named, include all establishments for the care of children in the pre-school age group [...]. In addition, children in this age group are eligible for benefits under § 28 sec. 7 SGB II, which are compatible with the Constitution (see C II 2 g cc 3 below). 127

(b) In the statistical calculation of a regularly paid lump sum for children, the legislature may furthermore take into consideration that needs change with age, and may expect that money that is paid from birth but is not needed during certain periods should be put aside in order to cover future needs. The amount allowed for consumer goods for body care for a child up to six years of age is, at EUR 2.19 per month, indeed very small. It can, for instance, pay for just a few days' nappies. The amount of EUR 7.02 for shoes is also small, and is EUR 2.58 less than the sum allowed for children aged 6 to 14 [...]. However, the overall assessment does not currently show that internal compensation, for example by means of putting money aside, would not be possible. 128

(2) In the overall assessment required by the Constitution there is currently no objection to the level of standard needs determined for level 4 for adolescents from the ages 15 to 18 [...]. It is true that the deductions for consumer expenses for alcohol and tobacco by families with children do seem too high because of indications that there is a decline in adolescents' consumption [...]; the legislature can, however, take this into account in its next regular review of the level of standard needs. 129

(3) There is no constitutional objection to the decision by the legislature to regard the costs identified in the income and consumption survey for out-of-school lessons and hobby courses with a value of EUR 3.58 as not relevant in terms of standard needs. This decision can be justified in a way that is able to bear scrutiny, for the legislature has covered needs for taking part in social, political and cultural life since 1 January 2011 (cf. BVerfGE 125, 175 <223>; 132, 134 <160, para. 64>) separately in the so-called "education package" (*Bildungspaket*) [...]. The Constitution does not forbid this (cf. BVerfGE 125, 175 <237>). These expenses thus continue to be part of the needs to secure existence, which the legislature is required to cover [...], and are 130



granted even if recipients are not entitled to standard benefits.

(a) It is true that the scope of the education package is tight, because § 28 sec. 7 sentence 1 SGB II allocates only the sum of EUR 10 per month for participation. Yet at least for children under six years of age, this sum [...] has not been randomly estimated but identified and calculated based on the income and consumption survey [...]. The fact that the level of the education package for adolescents aged 15 to 18 is likewise limited to EUR 10 is justified [...] because additional consumer expenditure for hobbies, toys, attending sports and cultural events, for consumer goods for education, entertainment and recreation, as well as borrowing fees for sports articles and books are taken into consideration in the calculation of standard needs. 131

(b) However, in the education package, offerings of education and social, political and cultural participation must really be accessible for persons in need of assistance without further costs being incurred. At least since 1 August 2013, such further actual expenditure is taken into account under § 28 sec. 7 sentence 2 SGB II. While it is true that the provision is a discretionary rule and that the reasoning aims primarily at financing the necessary equipment [...], the provision is nevertheless open to interpretation in conformity with the Constitution; this means that the social courts are able to ensure that a claim (see C I 1 above) exists for travel expenses incurred in the context of such offerings. 132

(c) There is no constitutional objection to the legislature having stipulated certain purposes for which these benefits [...] may be used. It facilitates participation in sport, play, culture and social contacts [...], in lessons in artistic subjects such as music lessons and similar guided activities in cultural education [...] and in recreational activities [...]. This takes sufficient account of individual liberty in that it caters to the varying interests and preferences of children and adolescents. 133

(d) It is also within the legislature's leeway to provide benefits for education and participation [...] in the form of vouchers to pay for existing municipal offerings (cf. BVerfGE 125, 175 <224>; 132, 134 <161, para. 67>). The challenged provisions provide beneficiaries with claims to use existing offerings, thus removing the financial obstacles that could stand in the way of integration of children and adolescents into society or even prevent such integration [...]; yet there is no right to extended offerings. Providing benefits by means of vouchers would only have to be objectionable on constitutional grounds if there were no offerings for which the vouchers could be used. 134

(4) Nor are there any serious constitutional objections to the decision by the legislature to separately cover consumer expenditure for children and adolescents incurred for the purchase of writing material, drawing material and the like in the basic school package (*Schulbasispaket*) [...]. These arrangements [...] stipulate an allowance of EUR 70 on 1 August and EUR 30 on 1 February of each year, in addition to the standard needs determined for personal school supplies for schoolchildren. The legislature's intention [...] was to emphasise the permeability of the German educational system and bring some relaxation into the tense financial situation at the beginning of 135

each school semester [...]. Even though the legislative materials simply refer to experience showing that EUR 100 can enable even children from families in need to be well equipped at the beginning of the school year [...], underfunding is at least not evident. The amount of EUR 100 per annum is not substantially below the average expenditure determined for this need [...] on the basis of the income and consumption survey. Nor has plaintiff no. 3 in the initial proceedings for 1 BvL 10/12 submitted that he is unable to cover his school requirements in the first half of the school year with the EUR 70.

3. The requirements for updating the levels of standard needs in the years in which no reassessment [...] is undertaken do not, unlike the previous arrangements (cf. BVerfGE 125, 175 <242 and 243>), deviate unreasonably from the structural principles of the chosen method of determination. In principle, the legislature is, by means of having enacted the challenged provisions, complying with its obligation to react to changes in economic conditions such as price rises or increases in consumer taxes, by ensuring that current needs are covered (cf. BVerfGE 125, 175 <225>; 132, 134 <163, para. 72>). 136

a) Extrapolating on the basis of price developments in the items of expenditure from which consumption relevant in terms of standard needs is constituted is just as compatible with the Constitution (cf. BVerfGE 125, 175 <244>) as a mixed index taking into account not just the development of prices but also that of wages and salaries. The legislature has given sound reasons why [this is done]. Greater weight must however be given to price developments [...] for it is precisely their real value which needs to be secured by benefits for covering minimum physical subsistence [...]. The lesser consideration of the development of wages and salaries shall take account of the state of development and conditions of life (cf. BVerfGE 125, 175 <222>) and to a certain degree follow the development of affluence in society (cf. BVerfGE 125, 175 <242 and 243> [...]). It is true that the development of wages is not in itself an adequate measure for updating the level of benefits to secure a dignified minimum existence; again, however, it is decisive that as a result, a dignified minimum existence is in fact secured (see C I 1 b aa; C II 2 c above). 137

b) The legislature has acted within its leeway by making the deviating arrangements for updating benefits per 1 January 2011. [...] 138

c) Delaying the updating of benefits by six months in each case is within the bounds of what is reasonable. It is true that the first update to be oriented to annual periods [...] did not take place until 1 January 2013, which is why there is a six-month gap between the end of the most recent comparison period and the date of the update, meaning that price rises during that period have not been taken into account. This delay of six months can, however, be explained by the amount of time it necessarily takes for determining the rate of change, including for the process of issuing the regulation required for the update [...]. The update in the next year also makes up for the development of prices in the missing period. 139

4. The challenged provisions do not violate any other fundamental rights. From a constitutional perspective, the only decisive factor is that the minimum level of subsistence in accordance with Art. 1 sec. 1 in conjunction with Art. 20 sec. 1 GG is sufficiently covered for everyone in need of assistance; therefore, there is no need to resort to other fundamental rights (cf. BVerfGE 125, 175 <227>). In particular, there are clearly objective reasons justifying the inequality of treatment arising from the differing assessment of the standard needs of one-person and family households (see C II 2 e aa above). 140

#### D.

##### I.

1. The standard needs that guarantee a dignified minimum existence can always be determined only approximately. Such determination must be based on data about complex living conditions, and such data provides only limited information as to what is required to secure minimum existence. According to the required overall assessment, the benefits to secure a dignified minimum existence must be based on assumptions, data and calculation that stand up to scrutiny; however, objections regarding individual items in the calculations have no direct effect upon their evaluation in a constitutional review. This does not mean, however, that the legislature may simply ignore serious objections pointing to actual risks of underfunding and continue to update on the same basis; rather, when carrying out the periodic reassessment of standard needs, it is required to deal with objections that have arisen in the meantime and correct any inadequate steps in the calculations. 141

2. On this basis, there are no objections to the challenged provisions. The arrangements for the level of benefits to cover standard needs, including their updating [...], are consistent with Art. 1 sec. 1 GG in conjunction with the principle of the social welfare state in Art. 20 sec. 1 GG. 142

##### II.

1. Should significant doubt exist as to existential needs actually being covered, the legislature, when reassessing standard needs on the basis of the 2013 income and consumption survey the evaluation of which has not yet been completed, must however ensure that the level of the lump sum benefit to cover standard needs is assessed in a way that bears scrutiny. It is within its leeway to undertake suitable subsequent collections of data if necessary, to raise benefits on the basis of an index of its own, or to prevent underfunding by other means. 143

a) Should a clear and significant discrepancy become apparent between the actual development of prices and the development of prices of goods relevant to cover standard needs, which is taken into account for updating standard need levels, the legislature must react promptly. This reaction must also take account of the development of prices for household electricity (see C II 2 e bb above). If sudden and extreme price 144

rises pose a risk to the ability to cover minimum subsistence needs, the legislature may not wait until the next regular update of standard need levels.

b) The legislature must ensure that the minimum level of mobility needs necessary for existence can actually be covered (see C II 2 e cc above). 145

c) The legislature must refine the distribution schedule if significant changes become apparent [...] that clearly render unrealistic the allocation of consumer expenditure in family households [...] using the distribution schedule hitherto in use (see C II 2 g cc 2 above). 146

d) The legislature must ensure that the model it chooses permits that any underfunding, arising because of the statistically determined monthly lump sum modified by subsequent reductions, be covered by internal compensation or by putting aside savings (see C II 2 f bb 2 above). It is within the legislature's leeway to create sufficiently large financial leeway for such measures, or to provide for an independent benefit claim for a grant in addition to standard benefits for existential needs that can clearly not be covered from the lump sum, or, where public services are involved, to provide relief from or deferment of such costs. 147

2. Benefits provided in the form of vouchers must be usable without incurring extra expense. The newly-created statutory arrangements must be interpreted as a legal claim with regard to the reimbursement of travel expenses [...] (see C II 2 g cc 3 b above). 148

### III.

Beyond the provisions expressly challenged here, the decision concerning the determination and level of benefits to cover standard needs also affects their later versions and successor provisions (cf. BVerfGE 125, 175 <256 and 257>). 149

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**Bundesverfassungsgericht, Beschluss des Ersten Senats vom 23. Juli 2014 -  
1 BvL 10/12, 1 BvR 1691/13, 1 BvL 12/12**

**Zitiervorschlag** BVerfG, Beschluss des Ersten Senats vom 23. Juli 2014 - 1 BvL 10/12,  
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