H e a d n o t e s

to the Judgment of the First Senate of 5 November 2019

– 1 BvL 7/16 –

1. **The essential constitutional requirements for the design of basic welfare benefits follow from the fundamental right to the guarantee of an existential minimum in accordance with human dignity (Art. 1(1) in conjunction with Art. 20(1) of the Basic Law). It is a coherent guarantee of both a person's physical and sociocultural existence. Human dignity, which forms the basis of this right, is afforded every person; it cannot be lost even on grounds of supposedly "undignified" behaviour. However, the Basic Law does not preclude the legislature from making basic welfare benefits subject to the principle of last resort, so that benefits are only provided if someone cannot support themselves by their own means first, and is truly in need.**

2. **The legislature may impose reasonable obligations to cooperate for overcoming their own need upon persons who are fit to work but unable to ensure their living themselves and therefore claim state benefits. The legislature may also choose to enforce such proportionate obligations by means of sanctions that must also be proportionate.**

3. **If someone fails to meet their cooperation obligations for overcoming their own need, and has no important reason to do so, and the legislature decides to impose sanctions by temporarily withholding benefits, it places an extraordinary burden on those affected. Such sanctions are subject to strict proportionality requirements. The legislature's usually broad margin of appreciation, regarding the suitability, necessity and appropriateness of the legislative framework shaping the social state, is limited. Any prognostic assessment of the effects of such sanctions must be sufficiently reliable; the longer the provisions have been in force and the better the legislature can thus assess their effects, the less such a sanctions regime may be based on mere assumptions. Furthermore, sanctioned persons must be able to halt a reduction of basic welfare benefits by way of their own behaviour; it must be reasonably their responsibility to create the conditions for the benefits to be restored even after a reduction has taken effect.**

FEDERAL CONSTITUTIONAL COURT

– 1 BvL 7/16 –

Pronounced
on 5 November 2019
Langendörfer
Tarifbeschäftigte
as Registrar
of the Court Registry

IN THE NAME OF THE PEOPLE

**In the proceedings
for constitutional review of**

whether

1. §31a in conjunction with §§ 31 and 31b of the Second Book of the Code of Social Law (*Zweites Buch Sozialgesetzbuch*) in the consolidated version of 13 May 2011 (Federal Law Gazette I, *Bundesgesetzblatt* I page 850, 2094), effective 1 April 2011, is compatible with Article 1(1) of the Basic Law (*Grundgesetz*) in conjunction with Article 20(1) of the Basic Law – the principle of the social state – and with the fundamental right to the guarantee of an existential minimum in accordance with human dignity that derives from it, to the extent that "unemployment benefits II" (*Arbeitslosengeld II*) which are provided to ensure a sociocultural existential minimum, are reduced, because of a breach of obligations, by 30% or 60% in relation to the basic rate a person who is fit to work is entitled to or are completely suspended because of further consecutive breaches;

2. §31a in conjunction with §§ 31 and 31b of the Second Book of the Code of Social Law in the consolidated version of 13 May 2011 (Federal Law Gazette I page 850, 2094), effective 1 April 2011, are compatible with Article 2(2) first sentence of the Basic Law to the extent that sanctions violate the right to life and physical integrity where they endanger the life or impair the health of those sanctioned;

3. §31a in conjunction with §§ 31 and 31b of the Second Book of the Code of Social Law in the consolidated version of 13 May 2011 (Federal Law Gazette I page 850, 2094), effective 1 April 2011, is compatible with Article 12 of the Basic Law to the extent that sanctions violate occupational freedom

– Order of Suspension and Referral from the Gotha Social Court (*Sozialgericht*) of 2 August 2016 (S 15 AS 5157/14) –

the Federal Constitutional Court – First Senate –

with the participation of Justices

Vice-President Harbarth,

Masing,

Paulus,

Baer,

Britz,

Ott,

Christ,

Radtke

held on the basis of the oral hearing of 15 January 2019:

Judgment:

1. **§ 31a(1) first, second and third sentence of the Second Book of the Code of Social Law […] in the aforementioned version is incompatible with Article 1(1) of the Basic Law in conjunction with the principle of the social state under Article 20(1) of the Basic Law for cases governed by § 31(1) of the Second Book of the Code of Social Law to the extent that the amount of the benefit reduction in the event of repeated breaches of an obligation under § 31(1) of the Second Book of the Code of Social Law exceeds 30% of the relevant basic rate, to the extent that the imposition of a sanction pursuant to § 31a(1) first to third sentence of the Second Book of the Code of Social Law is mandatory, even in cases of extreme hardship, and to the extent that § 31b(1) third sentence of the Second Book of the Code of Social Law imposes a rigid duration of three months for all benefit reductions regardless of whether those sanctioned have met their obligation to cooperate or are willing to do so.**

2. **Until the legislature has enacted new provisions, § 31a(1) first, second and third sentence and § 31b(1) third sentence continue to apply in cases governed by § 31(1) of the Second Book of the Code of Social Law subject to the following transitional framework:**

a. **In cases governed by § 31(1) of the Second Book of the Code of Social Law, § 31a(1) first sentence of the Second Book of the Code of Social Law is to be applied subject to the condition that the benefit reduction imposed for a breach of obligations […] is not mandatory where this would result in extreme hardship in the given case, in consideration of all relevant circumstances. In particular, the benefit reduction can be waived where, according to the assessment of the authority providing the benefits, the purposes of the law can only be achieved if there is no sanction.**

b. **In cases governed by § 31(1) of the Second Book of the Code of Social Law, § 31a(1) second and third sentence of the Second Book of the Code of Social Law is to be applied subject to the condition that benefit reductions imposed for repeated breaches of obligations must not exceed 30% of the relevant basic rate. A benefit reduction can be waived where this would result in extreme hardship in a given case, in consideration of all relevant circumstances. In particular, the benefit reduction can be waived where, according to the assessment of the authority providing the benefits, the purposes of the law can only be achieved if there is no sanction.**

c. **In cases governed by § 31(1) of the Second Book of the Code of Social Law, § 31b(1) third sentence of the Second Book of the Code of Social Law is to be applied subject to the following condition: If those sanctioned meet their obligation to cooperate or if they seriously and firmly declare their willingness to cooperate once the sanction is imposed, the competent authority can restore the full benefit from that date onwards, in consideration of all circumstances of the given case. At most, the reduction may then not last longer than one more month.**

R e a s o n s :

A.

These specific judicial review proceedings (*konkrete Normenkontrolle*) by referral concern the question whether the reduction of basic welfare benefits pursuant to § 31a(1), § 31b of the Second Book of the Code of Social Law (*Sozialgesetzbuch Zweites Buch* – SGB II) – entitled “Basic Social Assistance for Jobseekers” (*Grundsicherung für Arbeitssuchende*) – imposed for breaches of the cooperation obligations set out in § 31(1) SGB II upon benefit recipients aged 25 and older who are fit to work is compatible with the Basic Law (*Grundgesetz* – GG). 1

[*Excerpt from Press Release No. 74/2019 of 5 November 2019*]

Pursuant to § 31(1) SGB II, recipients of "unemployment benefits II" (*Arbeitslosengeld II*) who are fit to work are in breach of their obligations if, despite having been informed of the legal consequences, and without an important reason, they do not comply with their job integration agreement, refuse to take up or continue a reasonable (*zumutbar*) job, traineeship, work opportunity or subsidised employment, behave in a way that prevents such an opportunity from arising or do not show up for, discontinue or prompt the discontinuation of a reasonable job integration measure. Pursuant to § 31a SGB II, the legal consequence of such breaches of recipients' obligations is, initially, the reduction of their "unemployment benefits II" by 30% in relation to the respective basic rate (*Regelbedarf*) of a person entitled to benefits who is fit to work. In case of a second breach within a year, benefits are reduced by 60% in relation to the basic rate. In case of any further consecutive breach, unemployment benefits are completely suspended. Pursuant to § 31b SGB II, benefits are reduced for a three-month period.

The plaintiff in the initial proceedings, who is a trained warehouse clerk, was proposed an employer by the competent job centre; the plaintiff told the employer that he was not interested in the proposed warehouse job, but that he would want to apply for a sales position instead. The job centre thus initially sanctioned the plaintiff with a 30% reduction of his benefits. When the plaintiff later did not use a training and placement voucher for a practical trial in a sales job, the job centre imposed a sanction reducing his benefits by 60%. After an unsuccessful objections process, the plaintiff brought an action before the Social Court (*Sozialgericht*). The Social Court suspended the proceedings and, by way of specific judicial review proceedings, referred to the Federal Constitutional Court the question whether § 31a in conjunction with § 31 and § 31b SGB II were compatible with the Basic Law.

[*End of excerpt*]

I.

Since 1 January 2005, the Second Book of the Code of Social Law has governed basic welfare benefits provided under basic social assistance law for persons fit to work and their dependents living in the same household (*Bedarfsgemeinschaft*); these benefits cover the financial needs that the legislature has recognised as required for ensuring a living in accordance with human dignity. Such benefits are granted based on the principle of "support and demand" ("*Fördern und Fordern*") enshrined in §§ 1 and 2 SGB II, which results in certain obligations to cooperate on the part of benefit recipients who are fit to work, breaches of which entail sanctions in the form of benefit reductions. 2

The provisions under review here were adopted in 2006 and revised with effect from 1 April 2011 […]. Now, § 31(1) SGB II lays out the constituent elements of a breach of the obligations to cooperate, which are under review here, § 31a SGB II contains 3

the legal consequences – i.e. benefit reductions – and § 31b SGB II sets out when and for how long these reductions take effect.

1. Behavioural obligations that were subject to sanctions were already laid down in social law in the Weimar Republic, during the Nazi regime and under the Federal Republic of Germany's Social Assistance Act (*Bundessozialhilfegesetz* – BSHG). At first, they were directed against "work aversion", and later allowed for arbitrary prosecution under the Nazi regime. However, the legislative provisions that continued to apply after 1945 and until the Second Book of the Code of Social Law was enacted were interpreted restrictively by the courts. 4

a) § 19 of the *Reich* Ordinance on the Duty to Provide Welfare (*Reichsverordnung über die Fürsorgepflicht)* of 13 February 1924 (*Reich* Law Gazette, *Reichsgesetzblatt* – RGBl I p. 100) provided for the possibility of imposing an obligation to do community service; § 20 of the ordinance provided that anyone who was fit to work but who, as a result of a "moral fault", made use of public welfare or subjected dependents to such welfare by persistently refusing to work or by evading the obligation to pay maintenance was to be confined in an institution. 5

§ 5 of the *Reich* Principles on the Conditions, Type and Extent of Public Welfare (*Reichsgrundsätze über Voraussetzung, Art und Maß der öffentlichen Fürsorge*) of 4 December 1924 (RGBl I pp. 765 and 766) apply the principle of last resort (*Nachranggrundsatz*) to benefits. According to that provision, persons were only considered to be in need of support if "they cannot provide for the necessary cost of living for themselves and their dependents by their own means, or can only do so insufficiently, and do not receive assistance by others, in particular by family members". Pursuant to § 13 of the *Reich* Principles, in cases of "work aversion" or "clearly uneconomic conduct", the conditions of need "must be assessed in the strictest possible manner, and the type and extent of welfare must be limited to an amount that is indispensable for survival". The same applied if persons in need "persistently failed to comply" with legitimate orders issued by the competent authorities". 6

On the basis of §§ 19, 20 of the *Reich* Ordinance and § 13 of the *Reich* Principles, several municipalities from 1933 onwards implemented detention in existing workhouses or in special "closed welfare camps" for "work averse persons", which were later turned into concentration camps ([…]). 7

b) The law as it stood after the enactment of the Ordinance to Simplify Welfare Law (*Verordnung zur Vereinfachung des Fürsorgerechts*) of 7 October 1939 (RGBl I p. 2002), and the *Reich* Ordinance, which had been amended several times, as well as the *Reich* Principles remained in effect until the Federal Social Assistance Act (BSHG; Federal Law Gazette I, *Bundesgesetzblatt* I – BGBl I 1961 p. 815) entered into force. Until 1974, the Federal Social Assistance Act continued to use the concept of "work aversion" in §§ 25, 26 […]; pursuant to § 25(1) first sentence BSHG, persons who refused to take up reasonable work were not entitled to assistance. The Third Act Amending the Social Assistance Act (*Drittes Gesetz zur Änderung des Sozialhil-* 8

fegesetzes) of 25 March 1974 […] governed “exclusion from the entitlement to assistance and restriction of assistance” and repealed § 26 BSHG, which provided for confinement in work institutions in case of “persistent” refusal to take up reasonable work. From 1 August 1996, § 25(1) second sentence BSHG set out that in such cases, benefits should be reduced by an initial 25% in relation to the relevant basic rate. From the outset, the Federal Social Assistance Act made it possible to restrict assistance to what was “indispensable” if someone deliberately reduced their assets to obtain benefits, or continued their uneconomic conduct despite having been instructed not to do so; benefits could also be reduced if someone, without important reasons, was responsible for terminating an employment relationship or refused to take part in or discontinued a training scheme.

[…] 9

c) […] 10

2. The legislature fundamentally reformed basic social assistance law with the Fourth Act on Modern Labour Market Services (*Gesetz für moderne Dienstleistungen am Arbeitsmarkt*) of 24 December 2003 (BGBl I p. 2954), widely known as “the Hartz IV Act”, effective 1 January 2005. According to §§ 1, 2 SGB II, the first part of the law now places the focus on the “principle of support and demand” (*Fordern und Fördern*, cf. *Bundestag* document, *Bundestagsdrucksache* – BTDrucks 15/1516 of 5 September 2003). When enacting §§ 31, 31a, 31b SGB II – the provisions under review here – the legislature created obligations to cooperate with the aim of getting benefit recipients into employment; these obligations are enforced through mandatory sanctions reducing or completely suspending benefits for a rigidly defined period of time. The sanctions have been tightened since the law entered into force. 11

[…] 12-13

3. In the version relevant for the initial proceedings, effective 1 April 2012 (Act to Improve Chances of Integration into the Labour Market – *Gesetz zur Verbesserung der Eingliederungschancen am Arbeitsmarkt* of 20 December 2011, BGBl p. 2854), with a mere editorial change in 2016 [(…)], § 31(1) SGB II reads as follows: 14

§ 31 Breach of obligations

(1) [1]Benefit recipients who are fit to work are in breach of their obligations if, despite having been informed or aware of the legal consequences, they

1. refuse to comply with the obligations set out in their job integration agreement or the substitute administrative act pursuant to § 15(1) sixth sentence, in particular the obligation to demonstrate that they are making a sufficient effort,

2. refuse to take up or continue a reasonable job, traineeship, work opportunity pursuant to § 16d or subsidised employment pursuant

to § 16e, or behave in a way that prevents such an opportunity from arising,

3. do not show up for, discontinue or prompt the discontinuation of a reasonable job integration measure.

[2]This does not apply if benefit recipients who are fit to work provide an important reason for their behaviour.

(2) (…)

15 The relevant provisions in §§ 31a, 31 b SGB II in the version applicable to the initial proceedings, which is the amended version of the Second Book of the Code of Social Law of 13 May 2011 (BGBl I p. 850), read as follows:

§ 31a Legal consequences of breaches of obligations

(1) [1]In case of a breach of obligations pursuant to § 31, "unemployment benefits II" are initially reduced by 30% in relation to the basic rate of a person entitled to benefits who is fit to work. [2]In case of a second breach of obligations pursuant to § 31, "unemployment benefits II" are reduced by 60% in relation to the basic rate of a person entitled to benefits who is fit to work. [3]In case of any further consecutive breach of obligations pursuant to § 31, "unemployment benefits II" are completely suspended. [4]A consecutive breach of obligations can only be found if a reduction has already been imposed previously. [5]It does not amount to a consecutive breach if more than a year has passed since the start of the previous reduction period. [6]If a benefit recipient who is fit to work subsequently declares their willingness to meet their obligations, the competent authority can, from that date onwards, limit the reduction of benefits pursuant to the third sentence of this provision to 60% of the relevant basic rate under § 20. […]

16 4. […] The provisions under review apply the principle of last resort to benefits (see a below) and set out certain behavioural obligations (see b below), the breach of which is subject to sanctions imposing a tiered scheme of benefit reductions (see c below).

17 a) The legislature decided that under the basic social assistance scheme, just as under previous legislation (see para. 6 above), state benefits are provided to persons fit to work and their dependents living in the same household as a last resort. […] These persons can claim basic welfare benefits in the form of "unemployment benefits II" under § 19(3) first sentence SGB II only if and to the extent that they cannot ensure a living themselves.

18 b) The principle of last resort and the concept of "demand and support" entail an active obligation to cooperate in order to receive income again.

aa) […] 19-22

bb) According to the wording of § 31(1) first sentence nos. 2 and 3 SGB II, […] only reasonable (*zumutbare*) cooperation may be required. With regard to the obligation to cooperate to achieve integration into the labour market (§ 31(1) no. 1 SGB II), § 10 SGB II sets out what constitutes such reasonable cooperation. […] 23

[…] 24

cc) Pursuant to § 31(1) second sentence SGB II, it does not amount to a breach of cooperation obligations if benefit recipients who are fit to work demonstrate an "important reason" for their behaviour. […] 25

dd) Before a breach of cooperation obligations under § 31(1) first sentence SGB II can be found, affected persons must have been informed of the legal consequences of a breach or they must already be aware of them. […] 26

c) If, despite having been informed of the legal consequences or having already been aware of them, and without an important reason, benefit recipients do not meet a reasonable obligation to cooperate under § 31(1) SGB II, a sanction must be imposed, pursuant to § 31a(1) SGB II, by reducing "unemployment benefits II" or even completely suspending them. […] 27

The legislature seeks to enforce the cooperation set out in § 31 SGB II by way of the sanctions laid out in §§ 31a, b SGB II (cf. BTDrucks 15/1516, p. 47). […] 28

aa) The reduction pursuant to § 31a(1) SGB II sanctioning failure to meet a cooperation obligation relates to "unemployment benefits II". Under § 19(1) third sentence SGB II, "unemployment benefits II" include the basic rate (§ 20 SGB II), payments for additional needs (§ 21 SGB II) as well as actual and necessary housing and heating expenses (§ 22 SGB II), which benefit recipients who are fit to work receive to ensure a living pursuant to § 19(1) first sentence SGB II; benefits in kind and non-cash benefits as well as advances, allowances and loans can be provided for particular needs. 29

In principle, the basic rate under § 20 SGB II is a fixed amount determined by the legislature. Under Art. 1(1) in conjunction with Art. 20(1) GG, the legislature has a duty to realistically and at any time guarantee a living in accordance with human dignity if persons cannot do so themselves (for a general overview BVerfGE 125, 175 <224 and 225>; 132, 134 <160 and 161 para. 67>; 142, 353 <370 para. 38>; cf. also BTDrucks 17/6833, p. 2). Under § 20(1) SGB II, which is relevant here, the basic rate comprises in particular food, clothing, personal hygiene products, household goods, domestic energy excluding heating, needs of daily life and, within reasonable limits, social and cultural needs to participate in community life. The amount paid varies based on the age and life circumstances of recipients. In the period relevant for the initial proceedings, the monthly amount paid to single benefit recipients over 25 was EUR 391. 30

bb) The benefit reductions to enforce cooperation obligations under § 31(1) SGB II 31

are tiered as set out in § 31a SGB II; for benefit recipients over 25 years of age, their duration is rigidly defined, as set out in § 31b(1) third sentence SGB II […].

[…] 32

(1) If persons over 25 who are fit to work and in need of support violate one of the obligations to cooperate listed in § 31(1) SGB II, their claim to "unemployment benefits II" is reduced by 30% in relation to the relevant basic rate pursuant to § 31a(1) first sentence SGB II as a mandatory consequence of this violation. 33

[…] 34-35

(2) In case of a second breach of an obligation to cooperate under § 31 SGB II within a year of the reduction becoming effective (§ 31a(1) fifth sentence SGB II), benefits are reduced by 60%, in relation to the basic rate pursuant to § 31a(1) second sentence SGB II; then, they receive only 40% of the relevant basic rate. 36

(3) In case of another repeated breach within a year (§ 31a(1) fifth sentence SGB II), "unemployment benefits II" are completely withheld from benefit recipients, pursuant to § 31a(1) third sentence SGB II. According to § 19(1) third sentence SGB II, this sanction comprises the entire basic rate as well as payments for housing and heating expenses, and any additional payments for pregnant women (§ 21(2) SGB II), single parents (§ 21(3) SGB II), persons with disabilities who are fit to work (§ 21(4) SGB II), expensive dietary requirements (§ 21(5) SGB II), decentralised hot water generation (§ 21(7) SGB II) and for cases of hardship (§ 21(6) SGB II). Thus, those affected do not receive any cash benefits while their benefits are withheld. 37

[…] 38

In cases where the entire "unemployment benefits II" are withheld, insurance coverage for statutory health insurance (Fifth Book of the Code of Social Law – SGB V) is terminated. Typically, back-up statutory insurance takes over […], or, if the conditions are met, it is possible to take out health insurance on a voluntary basis […] or under family insurance […]. Affected persons must generally pay the contributions […] themselves. […] While they are entitled to receive any treatment provided by statutory health insurance if the need arises […], they incur debt in respect of social security contributions […]. 39

cc) The legislature has set out a rigid three-month duration of benefit reductions in § 31b(1) third sentence SGB II, imposed upon benefit recipients over 25 for the breach of an obligation to cooperate. By contrast, the duration of benefit reductions imposed upon recipients under 25 can be shortened to six weeks, pursuant to § 31b(1) fourth sentence SGB II; however, there is no such possibility in respect of recipients over 25 […]. Unlike in § 67 of the First Book of the Code of Social Law (*Sozialgesetzbuch Erstes Buch* – SGB I) and § 1a(5) second sentence of the Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz* – AsylbLG), it is also not possible to restore the benefit retrospectively if the cooperation obligation is met at a later 40

date.

dd) Beyond that, the legislature has set out accompanying arrangements for benefit reductions of 60% and higher, imposed for violations of cooperation obligations under § 31(1) SGB II; under certain conditions, these allow for the provision of other payments, supplementary benefits or loans. 41

[…] 42

In case of further consecutive breaches, single persons run the risk of becoming homeless, since, in the absence of an entitlement to housing costs, their landlord may give notice […]. 43

[…] 44-49

ee) Before benefits paid under the basic social assistance scheme can be reduced to enforce reasonable cooperation obligations, certain procedural rules must be observed, in particular to ensure that those affected can avert sanctions. 50

[…] 51-54

ff) […] 55

5. EU law is not relevant to the sanctions under review here […]. These proceedings do not concern social security coordination in the European Union, given that the case at hand does not affect cross-border matters. 56

II.

While the legislature did provide, in § 55 SGB II, that the effects of benefits paid to facilitate integration into the labour market and of benefits paid to ensure a living must be studied regularly and in a timely manner, no such comprehensive study exists on the effects of sanctions [at issue here] […]. Studies and statements submitted in the course of these proceedings paint a disparate picture, particularly in respect of the effects of cooperation obligations and sanctions, often without being based on any robust data. 57

1. In practice, the imposition of sanctions generally seems to be handled inconsistently [with references to empirical studies]. Extensive studies conclude that whether benefit reductions are actually imposed depends to a great extent on the job centre involved: the rate of sanctions imposed varies by age, qualifications, gender and life circumstances as well as in relation to the labour market [with references to empirical studies]. 58

2. The reasons for breaches of cooperation obligations under § 31(1) SGB II are diverse, ranging from the unwillingness or inability to meet cooperation obligations to the subjective or objective impossibility of meeting them; there is no detailed knowledge as to how often which reasons are relevant. The studies indicate that cooperation obligations can often not be met because they conflict with life circumstances; 59

there are skill gaps, but no lack of personal responsibility or of willingness to work; in addition, there are communication failures between benefit recipients and the authorities […]. It was explained during the oral hearing that unrealistic expectations and the impression of arbitrary decisions on the part of the competent authority also played a part in this; in addition, it was pointed out repeatedly that the benefit reductions at issue here particularly affect persons under psychological duress […].

3. The statements submitted in these proceedings in response to specific questions and the oral hearing have shown that there is currently no unequivocal empirical data that shows the effects of the sanctions under §§ 31a, 31b SGB II, differentiating between the respective amount of the benefit reduction. […] 60

a) The current state of research is inconclusive, in particular regarding methods, representativeness and validity, and results. […] 61

b) Nonetheless, there are several studies concluding that benefit reductions have positive effects. A purely quantitative study concludes that benefit reductions slightly increase the likelihood of benefit recipients taking up work ([…]). Another study concludes that a sanction increases the likelihood of benefit recipients taking up regular employment by more than 50% ([…]). The Federal Employment Agency's Institute for Employment Research (*Institut für Arbeitsmarkt- und Berufsforschung*) considers that there is a certain amount of empirical evidence that sanctions imposed in relation to basic welfare benefits can counteract disincentives and bring about the intended employment effects ([…]) There are also indications suggesting that the threat of severe sanctions can deter persons from breaching their cooperation obligations; according to such studies, it must be assumed that in a system without sanctions, people would behave differently, in particular demanding higher wages and seeking work with less intensity ([…]). 62

According to another statement submitted in the context of a hearing on parliamentary motions by the parliamentary groups *Die Linke* […] and *Bündnis 90/Die Grünen* […], research on sanctions concludes that they have positive effects on the labour market, in particular resulting in a faster transition to employment. The statement posits that benefit reductions can provide the right incentives and bring about changes in behaviour. However, to prevent extreme hardship, severe consequences of benefit reductions, such as the loss of one's home, should be avoided, the scale of the reduction should to a greater extent be contingent on the type of breach, and the effect of sanctions for repeated breaches of obligations within one year should be ensured by longer sanctions, rather than by an increased reduction ([…]). 63

c) Next to these findings, there are mixed findings, establishing a positive correlation between sanctions and job search for under 25-year-olds, whereas no such substantial positive correlation between sanctions and a willingness to cooperate, by a more intense job search, could be found for older benefit recipients […]. 64

d) Several studies find that sanctions have negative effects on affected persons. 65

These include social withdrawal, isolation, homelessness, severe psychosomatic disorders and crime to access alternative sources of income. According to the studies, particular problems are the risk of petty crime, clandestine work or debt, benefit recipients breaking off contact with the job centre, mistakes in the case of persons with mental impairments, and sanctions affecting dependents ([…]). A study […] undertaken by Apel/Engels in 2013 also concludes that sanctions compound psychological problems, lead to social withdrawal [...] and that affected persons risk falling into debt because rent and electricity, among other things, are no longer paid regularly […]. For persons over 25, sanctions tend to have a negative rather than a positive effect on their job search […]. Negative side effects can in any case not be ruled out […].

Specialists are particularly critical of 100% sanctions imposed for repeated major breaches of obligations, which not only suspend the standard benefit payment, but also payments for rent and heating ([…]). […] 66

e) In addition, there are several reports that discretion is in practice being applied, though not provided for by law, in cases where a sanction required under applicable law makes no sense since it achieves the opposite of what is actually intended […]. 67

III.

[…] 68-87

IV.

The Federal Ministry of Labour and Social Affairs on behalf of the Federal Government, the Federal Social Court (*Bundessozialgericht*), the Free State of Thuringia, the Federal Employment Agency (*Bundesagentur für Arbeit*), the Association of German Counties (*Deutscher Landkreistag*), the Association of German Cities (*Deutscher Städtetag*), the Confederation of German Employers' Associations (*Bundesvereinigung Deutscher Arbeitgeberverbände*), the German Lawyers' Association (*Deutscher Anwaltverein*), the Association of German Social Courts (*Deutscher Sozialgerichtstag*), the German Trade Union Confederation (*Deutscher Gewerkschaftsbund*), *Caritas* Germany (*Deutscher Caritasverband*), *Diakonie* Germany, the Non-Denominational Welfare Association (*Paritätischer Gesamtverband*), the German Association for Public and Private Welfare (*Deutscher Verein für öffentliche und private Fürsorge*), the Association *Tacheles e.V.*, the *Sozialverband Deutschland* and the *Sozialverband VdK* submitted substantive statements in this case. 88

[…] 89-97

V.

At the oral hearing on 15 January 2019, the Federal Constitutional Court heard the Federal Government, the representative of the plaintiff in the initial proceedings, the Federal Employment Agency, the Association of German Counties, the Association of German Cities, the Confederation of German Employers' Associations, *Caritas* 98

Germany, the German Trade Union Confederation, the Association *Tacheles* e.V., *Diakonie* Germany, the Association of German Social Courts, the Non-Denominational Welfare Association, the German Lawyers' Association, the German Association for Public and Private Welfare and the Federal Employment Agency's Institute for Employment Research.

[…] 99-104

B.

The Social Court's referral for judicial review […] is admissible (see I below). The referred question is to be extended to § 31a(1) third sentence and the cases governed by § 31(1) first sentence no. 3 SGB II (see II below). 105

I.

The order of the Social Court satisfies the requirements under § 80(2) first sentence of the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz* – BVerfGG), in that it sets out in which respects the referred questions are decisive for its proceedings (cf. Decisions of the Federal Constitutional Court, *Entscheidungen des Bundesverfassungsgerichts* – BVerfGE 105, 61 <67>; 127, 335 <355>; 133, 1 <10 and 11 para. 35>). 106

[…] 107-112

II.

The referred question must be extended (cf. in this regard, BVerfGE 139, 285 <297 para. 38> with further references). […] 113

The referral does not concern the rules […] regarding sanctions imposed pursuant to § 31(2) SGB II for uneconomic conduct, or in relation to a period of ineligibility, or for failure to report to the job centre pursuant to § 32 SGB II. Also, a higher burden on affected persons that may arise where other benefit reductions coincide with the sanctions under review here is not at issue in these proceedings. The proceedings also do not raise questions regarding the sanctions regime in respect of benefit recipients under 25 […]. The question whether these provisions are compatible with the Basic Law would require a separate assessment under constitutional law, which the initial proceedings do not call for, given that the ordinary courts did not appraise this aspect of the factual and legal situation. 114

By contrast, there are reasons to include the sanctions imposed in cases governed by § 31(1) first sentence no. 3 SGB II in this review – which concern similar obligations of cooperation – to ensure a consistent review of the provisions referred to this Court. Also, the sanctions under § 31a(1) third sentence SGB II are similar to the sanctions […] that are directly decisive for the initial proceedings, which is why this provision is also to be included in the review. 115

C.

In principle, the legislature's decision in § 31a(1) SGB II to reduce or completely withhold cash benefits covering vital needs as set out in § 31b SGB II to enforce cooperation obligations under § 31(1) SGB II is compatible with the requirements deriving from the Basic Law. However, in their specific design, the provisions do not satisfy the strict proportionality requirements applicable in this case. 116

I.

The essential requirements the legislature must satisfy regarding the design of benefits under basic social assistance law follow from the fundamental rights guarantee of an existential minimum in accordance with human dignity deriving from Art. 1(1) in conjunction with Art. 20(1) GG. It is a coherent guarantee of a person's physical and a sociocultural existence (see 1 a below). The legislature may decide to provide basic welfare benefits only subject to need (see 1 b below). In this regard, it has latitude in its design (see 1 c below). It is also permissible under the Basic Law to provide state benefits to ensure a living in accordance with human dignity only as a last resort, and thus tie them to cooperation obligations which aim at overcoming need, provided the obligations are proportionate in relation to this aim (see 2 below). The legislature is not barred from creating instruments to enforce such cooperation obligations; these, too, must satisfy the proportionality requirements. Where, as in the case of the provisions referred for review here, the legislature opts for benefit reductions as the instrument to enforce obligations, and thus decides to directly create sanctions in the realm of an existential minimum in accordance with human dignity, these proportionality requirements are particularly strict (see 3 below). In addition, in designing the sanctions, the legislature must take into consideration other fundamental rights if their scope of protection is affected (see 4 below). 117

1. The provisions under review here that design basic social assistance law must satisfy the requirements deriving from the fundamental rights guarantee of an existential minimum in accordance with human dignity. A fundamental right to the guarantee of an existential minimum in accordance with human dignity is enshrined in the Basic Law by way of Art. 1(1) in conjunction with Art. 20(1) GG. Art. 1(1) GG guarantees this right; the principle of the social state of Art. 20(1) GG gives the legislature the mandate to actually ensure an existential minimum in accordance with human dignity. In principle, the fundamental right is inalienable and must be honoured in the form of a right obligating the state to take positive measures (*Leistungsanspruch*), but it requires that the legislature specify and continuously update it, basing the amount of benefits to be provided on the respective level of development of society and general living conditions in view of the specific needs of recipients. The legislature has latitude in its design. In using this latitude, it must also take into account its obligations under international law (BVerfGE 142, 353 <369 and 370 para. 36> with further references). 118

a) The constitutional right obligating the state to guarantee an existential minimum 119

in accordance with human dignity covers the means absolutely necessary to ensure, in a coherent guarantee, both one's physical existence and a minimum of participation in social, cultural and political life (cf. BVerfGE 125, 175 <223>; 132, 134 <172 para. 94>; 137, 34 <72 para. 75>; 142, 353 <370 para. 37>). Given that this guarantee is enshrined in Art. 1(1) GG, the legislature, the executive and the judiciary (Art. 1(3) GG) must not reduce the individual to their mere physical existence; rather, in addition to one's physical existence, human dignity also guarantees social participation as a member of society. It would run counter to the principle of inviolable human dignity, which must not be relativised, if the minimum amount granted was below the amount that the legislature laid down as the minimum; notably, the guarantee under Art. 1(1) in conjunction with Art. 20(1) GG cannot be split into a "core" of physical existence and a marginal area of social existence. The legislature may also not use the amounts provided for sociocultural needs in the general calculation of benefits under basic social assistance law either in order to offset them internally or to justify benefit reductions, because the physical and sociocultural existence are protected in one coherent guarantee by Art. 1(1) in conjunction with Art. 20(1) GG (cf. BVerfGE 137, 34 <91 para. 117> with further references).

b) Where a person lacks the financial means necessary to be able to live in accordance with human dignity and that person cannot obtain such means through paid employment, their own assets or payments by others, it falls to the state, in the context of its mandate to protect human dignity and to give shape to the social state, to ensure that the financial means necessary for such a life in accordance with human dignity are available (cf. BVerfGE 40, 121 <133 and 134>; 125, 175 <222>; established case-law). Every person is afforded human dignity, which forms the basis for this right; it is in principle inalienable (cf. BVerfGE 45, 187 <229>) and even supposedly "undignified" behaviour does not result in the forfeiture of human dignity (cf. BVerfGE 87, 209 <228>). It cannot even be denied to persons guilty of serious misconduct (cf. BVerfGE 64, 261 <284>; 72, 105 <115>). The principle of the social state requires that the state provide protection and assistance also to persons whose personal or social development is impeded due to personal weakness or fault, incapacity or social disadvantage (cf. BVerfGE 35, 202 <236>). This duty to guarantee an existential minimum may not be relativised, even in order to achieve other aims (cf. BVerfGE 132, 134 <173 para. 95>). 120

c) The legislature has a certain latitude in setting out the type and amount of benefits provided for ensuring an existential minimum in accordance with human dignity (cf. BVerfGE 125, 175 <222, 224 and 225>; 132, 134 <159 *et seq*. paras. 62, 67>; 137, 34 <72 *et seq*. paras. 74, 76, 78>; 142, 353 <370 para. 38>). It has discretion in assessing actual circumstances and in appraising necessary needs, yet it must base its decision on the specific needs of benefit recipients (BVerfGE 142, 353 <370 para. 38> with further references). The fact that the legislature has broader latitude in assessing actual circumstances in sociocultural terms than in assessing needs to ensure physical existence reflects the higher rate of change in sociocultural conditions 121

(cf. BVerfGE 125, 175 <225>; 132, 134 <161 para. 67>); however, this does not relativise the unitary protection to be afforded both these aspects of human dignity. The requirements arising from the Basic Law to ensure that affected persons can actually live in accordance with human dignity must ultimately be met (BVerfGE 142, 353 <371 para. 38> with further references).

The latitude on the part of the legislature in assessing the existential minimum is reflected in restraint on the part of the Federal Constitutional Court when exercising judicial review (BVerfGE 125, 175 <225>; 137, 34 <74 para. 80>). It is not for the Federal Constitutional Court to decide the amount of benefits required to ensure an existential minimum; it is also not for the Court to assess whether the legislature has chosen the most equitable, appropriate and reasonable solution to perform its duties. The Basic Law does not impose an obligation on the legislature to make an ideal determination of the existential minimum that takes into account all possible factors; rather, it is a matter for politics to work out (cf. BVerfGE 137, 34 <73 and 74 para. 77>). Under constitutional law, what matters is that benefits must not fall below an absolute limit – the existential minimum in accordance with human dignity – and that the overall amount of benefits can be justified on tenable grounds (BVerfGE 137, 34 <74 and 75 para. 80> with further references). For the rest, too, the design of basic welfare benefits must satisfy constitutional requirements. 122

2. It is true that the Basic Law does not contain any fundamental duties for citizens. Human dignity in particular is guaranteed regardless of character traits, social status and accomplishments (cf. BVerfGE 87, 209 <228>); it does not have to be acquired, but is intrinsic to every person. Human dignity is not subject to the condition that persons must be able to independently support themselves; rather, creating the conditions for leading an independent life is part of the state's mandate of protection following from Art. 1(1) second sentence GG. However, the Basic Law does not preclude the legislature from tying basic welfare benefits designed to ensure an existential minimum in accordance with human dignity to the principle of last resort, according to which such benefits are only provided if persons cannot support themselves by their own means first (cf. BVerfGE 125, 175 <222>; 142, 353 <371 para. 39>; cf. also BVerfGE 120, 125 <154 *et seq*.>). 123

a) Even a social state under the rule of law is reliant on public means designated for supporting persons in need only being claimed in cases of true need (BVerfGE 142, 353 <371 para. 39>). This serves to protect the state's limited financial resources, which ensures future scope for taking action, especially to realise the fundamental national objective of the social state. 124

In deciding to provide benefits in accordance with the principle of last resort, the legislature gives shape to the principle of the social state under Art. 20(1) GG. While this fundamental national objective directly binds all state organs, its realisation requires a high degree of specification, primarily on the part of the legislature (cf. BVerfGE 65, 182 <193>; 71, 66 <80>). In the context of its broad margin of assessment 125

and latitude, the legislature must decide in what way and by what means the fundamental national objective of the social state should be pursued (cf. BVerfGE 59, 231 <263>; 82, 60 <80>). This latitude is limited by the duty to ensure an existential minimum in accordance with human dignity for every person (cf. BVerfGE 125, 175 <222>). The legislature does not fail to fulfil this duty if it only grants state aid on condition that affected persons cannot help themselves. Thus, the legislature may pursue a subsidiarity approach, under which existing possibilities to provide for oneself take precedence over public welfare.

b) The legislature may give effect to the principle of last resort by imposing an obligation to first use one's available means from income, assets or payments by others before claiming benefits (cf. BVerfGE 142, 353 <371 para. 39>). Additionally, the Basic Law also does not bar the legislature from requiring that recipients of state benefits actively participate in overcoming their own need or prevent need in the first place. 126

By contrast, fostering the development of one's personality cannot be considered a legitimate aim of such cooperation obligations. Such paternalism is alien to the Basic Law. The state organs do not hold any "sovereignty of reason" (*Vernunfthoheit*) vis-à-vis the holders of fundamental rights (cf. BVerfGE 142, 313 <339 para. 74> with further references); rather, the Basic Law calls for respect of the autonomous self-determination of the individual (cf. BVerfGE 142, 313 <344 para. 86>), without, however, simply leaving helpless people to their own devices (cf. BVerfGE 142, 313 <338 and 339 para. 73>). Art. 1(1) GG protects human dignity, the way humans understand themselves as individuals and become aware of themselves (BVerfGE 49, 286 <298>). This rules out cooperation obligations imposed by the state that involve patronising affected persons or attempting to "better" them (cf. BVerfGE 128, 282 <308>; […]). 127

c) Irrespective of the sanctions they entail, obligations to cooperate restrict the freedom of action of affected persons and must therefore be justifiable under constitutional law. Where the legislature establishes obligations to cooperate in order to pursue the legitimate aim of making persons prevent or overcome their own need, in particular through paid employment, these obligations must satisfy the requirements of proportionality in line with this aim; thus, they must be suitable, necessary and reasonable for achieving that aim. 128

3. Where obligations to cooperate are proportionate as such, the legislature is also entitled to ensure that they are enforceable. 129

a) Nothing in the Basic Law precludes legislative decisions providing more than merely positive incentives and simple duties. In case persons, without an important reason, do not meet a reasonable cooperation obligation of which they are aware, the legislature may establish intrusive sanctions in order to enforce their obligation to cooperate in overcoming their own need; in doing so, the legislature takes into consideration the personal responsibility of affected persons, given that they must bear the consequences of their actions to the extent that they are aware of them, as laid 130

down in the law.

However, where sanctions reducing basic welfare benefits are imposed in response to the breach of a cooperation obligation, sanctioned persons lack the necessary means to cover the needs necessary for living in accordance with human dignity. Even so, a benefit reduction can be compatible with the constitutional guarantee of a living in accordance with human dignity. It can be compatible with the requirements deriving from Art. 1(1) in conjunction with Art. 20(1) GG provided that the reduction does not serve to repressively punish misconduct, but to make affected persons meet their cooperation obligations, which precisely aim to prevent or overcome existential need. In that case, the aim of the benefit reduction and the obligation it is meant to enforce is to make affected persons cover their vital needs themselves in the longer term, rather than requiring state aid. To that extent, the legislature may link state benefits ensuring an existential minimum to the demand that affected persons support themselves and be able to do so. 131

b) Yet strict proportionality requirements apply here. This is because the reduction of basic welfare benefits to enforce cooperation obligations is in clear conflict with the duty of the state to ensure an existential minimum deriving from Art. 1(1) in conjunction with Art. 20(1) GG. While their benefits are reduced, recipients do not get what they need to cover their vital needs, nor are they able to directly support themselves. The legislature deprives sanctioned persons of the minimum it must ensure under Art. 1(1) in conjunction with Art. 20(1) GG; it suspends benefits to which these persons are entitled as guaranteed by fundamental rights, thus imposing extraordinary burdens. 132

Such benefit reductions are only proportionate if the burdens imposed on affected persons are in proper proportion to the legitimate aim that is actually to be achieved, which is that the affected persons overcome their need and thus are able to ensure a living in accordance with human dignity themselves, specifically through paid employment. Whether such reductions are reasonable primarily depends on whether the benefit reduction, in consideration of its suitability for achieving this purpose and as the least restrictive suitable means, is in adequate proportion to the burden imposed on affected persons. In particular, this requires that sanctioned persons actually be able to halt a reduction in state benefits and, through their own reasonable behaviour, be able to regain the basic welfare benefits. Thus, the requirements under Art. 1(1) in conjunction with Art. 20(1) GG are only satisfied if the benefits necessary to cover the entirety of the basic needs of recipients are at least available and if the recipients are in a position to take responsibility themselves for fulfilling the reasonable conditions for the benefits to be restored after a reduction has taken effect. 133

c) In this context, the legislature’s usually broad margin of appreciation is limited. It is true that the legislature usually has a broad margin with regard to projecting the effects of measures it chooses, also in comparison with other, less intrusive measures, and it can choose measures even if their prospects of success are low. Yet its 134

margin of appreciation is narrower in the context of basic welfare benefits. The legislature must choose and design its concept on the basis of an assessment that is tenable under constitutional law; to the extent that it uses prognoses on actual developments and particularly on the effects of its provisions, these must be sufficiently reliable (cf. BVerfGE 88, 203 <262>). The longer the provisions on benefit reductions have been in force and the better the legislature can thus assess their effects, the less permissible it is for the legislature to base the sanctions regime solely on plausible assumptions regarding its effects. The longer the provisions have been in force, the more compelling the findings must be to prove that the sanctions are suitable, necessary and appropriate (on the legislature's diminishing prerogative of assessment: BVerfGE 143, 216 <245 para. 71>).

4. Other fundamental rights requirements must only be taken into consideration where their scope of protection is affected (cf. BVerfGE 142, 353 <371 para. 39>). In this regard, sanctions imposed to enforce cooperation obligations aimed at enabling affected persons to support themselves must take into account, for instance, the protection of the family under Art. 6 GG, of occupational freedom under Art. 12(1) GG and of health under Art. 2(2) GG. 135

II.

On their face, the provisions under review here appear compatible with the Basic Law. The legislature may impose the obligations set out in § 31(1) SGB II on benefit recipients who are fit to work in order to make them, in a reasonable manner, actively participate in overcoming their own need (see 1 below). In the absence of an important reason for non-compliance pursuant to § 31(1) second sentence SGB II, the legislature may also decide to enforce the obligations set out in § 31(1) SGB II by imposing sanctions pursuant to § 31a and § 31b SGB II, which temporarily reduce the benefits in relation to the relevant basic rate within the meaning of § 20 SGB II (see 2 below). However, given the limited evidence available on the effects of such sanctions, the statutory design of the benefit reductions does not satisfy the strict proportionality requirements in various respects. 136

While the legislature does pursue a legitimate aim with § 31a(1) first, second and third sentence in conjunction with § 31b SGB II (see 2 a below), other proportionality requirements are not fully satisfied (see 2 b below). Based on current findings, a benefit reduction of 30% in relation to the relevant basic rate pursuant to § 31a(1) first sentence SGB II is not in itself objectionable. However, in its current design, the mandatory requirement to reduce basic welfare benefits even in cases of extreme hardship pursuant to § 31a(1) first sentence SGB II and the rigid duration of the sanction regardless of whether affected persons cooperate pursuant to § 31b(1) third sentence SGB II do not satisfy the strict proportionality requirements (see 2 b aa below). Moreover, the legislature is, in principle, entitled to decide that renewed sanctions are to be imposed in case of repeated breaches of obligations, as set out in § 31a(1) second sentence SGB II. However, based on current findings, a reduction of this 137

scale is certainly not reasonable. The same also holds true in respect of the mandatory and rigid design (see 2 b bb below). Nor do current findings in any way constitutionally justify the complete suspension of “unemployment benefits II”, pursuant to § 31a(1) third sentence SGB II (see 2 b cc below).

1. The legislature’s decision to impose obligations to cooperate on adults fit to work pursuant to § 31(1) SGB II that are reasonable under § 10 SGB II in order to overcome or prevent their need is compatible with the Basic Law. 138

a) In setting out the sanctions regime for breaches of cooperation obligations in the referred provisions, the legislature is pursuing […] legitimate aims. The state is entitled to require […] true need before providing basic welfare benefits (cf. BVerfGE 125, 175 <222>; 142, 353 <371 para. 39>; see para. 123 above). 139

The obligations to cooperate set out in § 31(1) SGB II comply with the principle of last resort (see para. 123 *et seq*. above); they specify the statutory principle of demand (*Fordern*) set out in § 2(1) first sentence SGB II, according to which persons in need who are fit to work must exhaust all possibilities to end or reduce their need (cf. BTDrucks 15/1516, p. 60). This also serves the legitimate aim of protecting public means (see para. 124 above). 140

The design of the obligations to cooperate in § 31(1) SGB II is not objectionable under constitutional law. […] In particular, such obligations are not objectionable where they are directly aimed at requiring affected persons to generate their own income. This also applies to obligations that, when met, do not directly generate income, but that indirectly relate to integration into the labour market and thus the overcoming of need. It was repeatedly stated in the oral hearing that persons who have been unemployed for a longer period, have dropped out of school, do not have professional qualifications or face multiple placement obstacles can often not directly be placed with an employer […]. This justifies obligations that […] indirectly contribute to reintegration into the labour market in the long term. […] By contrast, cooperation obligations that are unsuitable from the outset for getting people back into employment at least indirectly would be unconstitutional; cooperation obligations also must not be abused in practice to patronise, control or better affected persons ([…]; regarding the requirements arising from Art. 1(1) GG see para. 127 above). 141

b) The cooperation obligations set out in § 31(1) SGB II are suitable under constitutional law for achieving the legitimate aim of getting people back into employment. It is true that it was stated in the oral hearing that cooperation obligations pursuant to § 31(1) SGB II only result in a relatively small number of affected persons getting (back) into long-term regular employment, even when taking into account the obligations’ long-term and indirect effects […]. Yet this also seems to be due to the fact that oftentimes the persons involved face fundamental and multiple obstacles to employment. Others apparently often return to regular employment, also assisted by the [insurance-based] benefits temporarily provided under the Third Book of the Code of Social Law (*Sozialgesetzbuch Drittes Buch* – SGB III), before the “unemployment 142

benefits II scheme" under the Second Book of the Code of Social Law even becomes applicable.

Where a cooperation obligation is, from the outset, unsuitable for achieving its aim due to the particular circumstances of a given case, this must be compensated for in the context of the assessment, required under § 31(1) second sentence SGB II, to establish whether an "important reason" for the lack of cooperation exists. Under constitutional law, it must be ensured that persons in need are given the opportunity to explain any special circumstances, such as family or health problems or discrimination in their previous workplace, which have objectively prevented the required cooperation or could prevent it in the future. As shown during the oral hearing, persons in need are often unable to do so in cases where only a written statement is submitted prior to the finding of a breach of obligations. Therefore, if there are indications of such special circumstances, affected persons must be given the possibility of presenting their personal situation not only in writing, but also at a hearing – which, in practice, to date is rare […]. 143

Ultimately, it is clear that the cooperation obligations pursuant to § 31(1) SGB II at least contribute to facilitating integration into the labour market even for persons with great difficulties. This is sufficient for considering the cooperation obligations as such […] suitable under constitutional law. If, by contrast, it was ascertainable that the imposition of obligations regularly resulted in a complete break-off of contact with the job centre, and thus led to people "leaving the system" as described in the empirical studies and statements (see paras. 65 and 66 above), they would not be suitable for achieving legitimate aims and would be incompatible with the Constitution. However, it is not ascertainable that this is the case. […] 144

c) With § 31(1) SGB II, the legislature does not exceed its margin of appreciation in respect of necessity. It is not apparent that less intrusive duties to cooperate or positive incentives would have the same effect as the cooperation obligations set out in this provision. 145

d) The design of the cooperation obligations in § 31(1) SGB II satisfies the requirement of reasonableness (*Zumutbarkeit*) deriving from the principle of proportionality. 146

aa) In § 10 SGB II, the legislature made the cooperation obligations statutorily subject to reasonableness […]. This satisfies constitutional requirements. 147

bb) The legislature does not exceed its latitude on the grounds that it did not provide for occupational protection ensuring that affected persons would only be obliged to take a job corresponding to their training (*Berufsschutz*) – unlike in employment promotion law [based on social security contributions under SGB III] […]. Social security law and basic social assistance law are structurally different to an extent that justifies this unequal arrangement. Also, Art. 12(1) GG does not give rise to a right to a specific job or unchanged remuneration. 148

Therefore, the provision on reasonable work in § 10(2) SGB II that must always be 149

observed in the context of § 31(1) SGB II is also met where a job is deemed reasonable even if it is different from jobs undertaken so far (no. 1), is a job of lower value (no. 2), more cumbersome (nos. 3 and 4), or is not in the desired line of work, but is better paid (no. 5). Furthermore, a cooperation obligation is ruled out pursuant to § 10(1) no. 2 SGB II if it would make the exercise of the previous occupation considerably more difficult because the previous occupation places special physical requirements on workers; this ultimately serves to protect occupational freedom under Art. 12(1) GG.

cc) There is no indication that any of the obligations to cooperate set out in § 31(1) SGB II violate the constitutional prohibition of forced labour enshrined in Art. 12(2) GG, as put forward by the referring court. Similarly, Art. 12(1) GG does not preclude an obligation to cooperate to overcome one's own need through employment that does not correspond to one's chosen occupation. 150

The relevant international treaty law – Art. 4(2) of the European Convention on Human Rights (ECHR), ILO Convention No. 29 of 28 June 1930 and Arts. 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (ICCPR) – also does not raise any concerns, given that no needlessly arduous, let alone harassing work may be required (regarding this cf. BVerfGE 74, 102 <121> with reference to the case-law of the then European Commission on Human Rights; subsequently ECtHR, *Van der Mussele v. Belgium*, Judgment of 23 November 1983, No. 8919/80, Europäische Grundrechte-Zeitschrift – EuGRZ 1985, p. 477 <481 and 482>). 151

dd) In its general provisions on reasonable work, which also apply to the obligations to cooperate, the legislature also took into account the protection of the family through fundamental rights (Art. 6 GG). § 10(1) nos. 3 and 4 SGB II provides that the cooperation obligations under social law must not jeopardise the raising of children, depending on their age and care situation, nor care for family members. This satisfies constitutional requirements. 152

2. The legislature's decision to not only establish, under basic social assistance law, reasonable obligations to cooperate to overcome need and, specifically, to get benefit recipients back into employment, but also to enforce these obligations through sanctions set out in §§ 31a, 31b SGB II, is, in principle, not objectionable under constitutional law because the legislature hereby pursues a legitimate aim (see a below). However, the current design of the sanctions set out in §§ 31a, 31b SGB II does not satisfy the strict constitutional requirements that apply in this case (see b below). 153

a) In imposing sanctions as set out in § 31a(1), § 31b SGB II to enforce cooperation obligations pursuant to § 31(1) SGB II, the legislature pursues a legitimate aim. 154

aa) In enacting §§ 31a, 31b SGB II, the legislature decided to not only establish support measures in the form of incentives rewarding the taking up of employment to overcome need, but also demand cooperation to overcome one's need, subject to sanctions (cf. BTDrucks 15/1516, p. 47). In this respect, §§ 31a, 31b SGB II in con- 155

junction with § 31(1) SGB II adhere to the legislative choice to enshrine the principle of support and demand, which is fundamental to the current system of basic social assistance and justified in view of the need for financial feasibility (see paras. 2, 124 above) […]. Thus, just like the obligations themselves, the sanctions imposed to enforce cooperation obligations pursue a legitimate aim.

bb) By contrast, the sanctions regime under review here cannot be justified from the outset by referring to the aim of reacting to reduced needs, which would be a legitimate aim as such. The […] benefit reductions are not based on needs. Rather, they are conceived as general sanctions designed to react to breaches of obligations, with the first breach resulting in a clearly tangible sanction and subsequent breaches increasing the severity of the sanctions. A reduction […] invariably leads to a lack of correspondence between the actual amount paid to a person in need and the amount needed to guarantee a unitary existential minimum in accordance with human dignity, comprising both physical and sociocultural needs. 156

cc) The benefit reductions laid down in § 31a(1) SGB II can also not be justified by claiming that only benefits for social participation are being withheld and that a “core” [for physical existence] is still provided. It follows from the fundamental right to inviolable human dignity enshrined in Art. 1(1) GG that the positive right, guaranteed in conjunction with Art. 20(1) GG, obligating the legislature to guarantee an existential minimum in accordance with human dignity, as a coherent guarantee, (cf. BVerfGE 125, 175 <223>; 132, 134 <172 para. 94>) also covers the means to guarantee a minimum of participation in social, cultural and political life (cf. BVerfGE 125, 175 <223>; 132, 134 <160 para. 64>; 137, 34 <72 para. 75>; 142, 353 <370 para. 37>). For this reason alone, the amounts that the legislature designated generally for social participation in the overall budget are just as inalienable (cf. BVerfGE 137, 34 <91 para. 117>; see para. 119 above) as the amounts provided for other needs. 157

b) However, the statutory provisions under review here are not proportionate in all respects. Currently, only the benefit reduction of 30% pursuant to § 31a(1) first sentence SGB II can be justified by sufficiently compelling reasons on the basis of plausible assumptions. For the rest, the design of the benefit reductions does not satisfy constitutional requirements (see aa below). While the legislature is free to impose renewed sanctions if reasonable cooperation obligations are repeatedly breached, the reduction in basic welfare benefits of 60% in relation to the basic rate pursuant to § 31a(1) second sentence SGB II is ultimately unreasonable (see bb below). Likewise, the complete suspension of basic welfare benefits pursuant to § 31a(1) third sentence SGB II is not compatible with constitutional requirements (see cc below). 158

aa) As regards its scale, a benefit reduction of 30% in relation to the relevant basic rate pursuant to § 31a(1) first sentence SGB II is not objectionable under constitutional law. It is true that the burden this sanction entails is already extraordinary (see 1 below), and the proportionality requirements are correspondingly strict. Yet the legislature can base this sanction on plausible assumptions regarding its suitability (see 159

2 below), and it can assume that less restrictive means would not be equally effective (see 3 below). Nonetheless, a benefit reduction of 30% in relation to the relevant basic rate is only reasonable if the sanction can be waived in cases of extreme hardship and if its three-month duration is not rigid without any possibility of lifting the sanction when the affected person cooperates (see 4 below).

(1) In enacting § 31a(1) first sentence SGB II, the legislature decided to impose a heavy burden on affected persons. […] 160

The reduction may also affect third parties. […] 161

It must also be taken into account that benefits for additional needs pursuant to § 21 SGB II and for housing and heating continue to be provided following the first breach, unlike in cases of the complete suspension of “unemployment benefits II” pursuant to § 31a(1) third sentence SGB II. […] 162

Moreover, the legislature has by now taken measures to prevent a 30% benefit reduction coinciding with other reductions in the basic rate […]. 163

(2) In constitutional terms, a benefit reduction of 30% in relation to the relevant basic rate as set out in § 31a(1) first sentence SGB II in the case of a breach of obligations pursuant to § 31(1) SGB II is, in principle, not unsuitable from the outset for promoting the desired effect of cooperation in overcoming one’s own need and in integrating into the labour market under basic social assistance law (see a below). However, a mandatory sanction does not allow for the waiving of the sanction even if it is evidently unsuitable for achieving its purpose (see b below). The rigid three-month duration of the benefit reduction without any possibility of lifting the sanction if the affected person cooperates pursuant to § 31b(1) third sentence SGB II may result in sanctions being maintained even though they cannot – or can no longer – achieve their purpose in a specific case (see c below). This, however, does not stand in the way of the framework being generally suitable. 164

(a) The constitutional requirements regarding suitability do not stand in the way of the legislature’s […] decision. 165

(aa) The legislature has a prerogative of assessment for appraising the suitability of a statutory provision. Under constitutional law, it is in principle sufficient that there is a possibility of the provision achieving its purpose (cf. BVerfGE 63, 88 <115>; 67, 157 <175>; 96, 10 <23>; 146, 164 <202 para. 101>; established case-law). […] However, that margin of assessment is limited in the case at hand because benefit reductions used to achieve legitimate purposes affect the existential minimum, which is protected by fundamental rights (see para. 134 above). § 31a(1) first sentence SGB II suspends those benefits that must be granted to persons in need under Art. 1(1) in conjunction with Art. 20(1) GG in order to ensure that they can live in accordance with human dignity. 166

(bb) Based on current findings […], it is doubtful whether benefit reductions actually 167

do achieve, to a large extent, the purpose of making affected persons meet the obligations set out in § 31(1) SGB II and of making them ultimately look for and find work again. […] The sanction imposed for a breach of a cooperation obligation cannot have a greater effect than the cooperation obligation in itself. In addition, the sanction's direct impact on behaviour is uncertain. There is no differentiated data showing whether and to what extent the benefit reductions set out in § 31a SGB II have the effect of making affected persons meet their obligations under § 31(1) SGB II. However, data finding negative effects of benefit reductions is available (see paras. 65 and 66 above for greater detail).

(cc) Nonetheless, it is within the legislature's scope of discretion to decide that the sanction in § 31a(1) first sentence SGB II – a 30% reduction in relation to the basic rate applicable to persons who violated a cooperation obligation as set out in § 31(1) SGB II – is suitable for achieving its aim. 168

(α) The legislature can base this decision on research according to which the probability that persons who are subject to an initial benefit reduction in this limited amount will take up employment is, at least in principle, increased […]. 169

(β) The legislature may also assume that the benefit reductions have an *ex ante* effect. […] 170

(γ) Moreover, the legislature has made arrangements to strengthen the link between the cooperation obligation to support oneself on the one hand and the benefit reduction to enforce this obligation on the other. 171

Obligations pursuant to § 31(1) in conjunction with § 10 SGB II must be reasonable for affected persons (see para. 23 above). In addition, under § 15(1) and (3) SGB II, obligations laid down in a job integration agreement pursuant to § 31(1) first sentence no. 1 SGB II must be determined on the basis of the individual abilities and life circumstances of benefit recipients and must regularly be reviewed as to their continued suitability (cf. *Entscheidungen des Bundessozialgerichts*, Decisions of the Federal Social Court – BSGE 121, 261 <265 para. 18>; 121, 268 <273 para. 18>). 172

[…] 173

Likewise, the special procedural safeguards that apply with regard to these sanctions help achieve their purpose. […] 174

(dd) Ultimately, it cannot be found that § 31a(1) first sentence SGB II is not generally suitable for achieving its aim. The decision to design social law in this manner is based on a prognosis appraising a large number of cases, with sanctions intended to primarily have an *ex ante* effect in order to, from the outset, make persons in all kinds of situations cooperate to overcome their own need. In view of the other safeguards provided for […], this is a sufficiently compelling reason for sanctions of 30% in relation to the relevant basic rate as set out in § 31a(1) first sentence SGB II. 175

(b) However, § 31a(1) first sentence SGB II, which provides for a mandatory 30% 176

reduction in case of a breach of obligations, does not allow for the reduction to be waived if, according to the assessment of the competent authority, it is evidently unsuitable from the outset for achieving its aim. The current framework makes it impossible, when deciding on sanctions, to react to individual constellations and to accommodate the different life circumstances that were so poignantly described in the proceedings at hand. […] In particular persons with multiple placement obstacles, who are often under psychological duress […], may actually be in a position to cooperate, yet must, as the law currently stands, be sanctioned with benefit reductions if they fail to do so, even where it may […] be apparent that such reductions cannot produce the desired enforcement and integration effects, either not at that time, not any more, or not at all. To this effect, it was stated that the competent authorities, contrary to the law, refrain from imposing a sanction on the grounds that it does not appear appropriate, yet they do not want to refrain from imposing a cooperation obligation in order to achieve the purpose of the law. Moreover, they do not want to lose contact with affected persons, as this is important for their integration into the labour market […].

The deliberately (cf. BTDrucks 15/1516, p. 61) rigid duration of the reduction set out in § 31b(1) third sentence SGB II, too, prevents the authorities from only imposing sanctions that are suitable in the specific case. It compels the competent authorities to always withhold benefits ensuring an existential minimum in accordance with human dignity for a three-month period. This applies regardless of whether sanctioned persons subsequently meet their obligation or seriously and firmly declare their willingness to do so, so that it can be assumed their declaration on wanting to cooperate in the future is credible. In such cases, the sanctions have already achieved their purpose; they then no longer serve to enforce this cooperation. Rather, the rigid continuation of the sanctions can even undermine the incentive to cooperate before the end of the sanction period, given that the reduction will not be lifted in any case. In addition, rigid sanctions entail the risk that sanctioned persons break off all contact with the job centre, which runs counter to their purpose […]. 177

(3) With respect to the necessity of the sanctions set out in § 31a(1) first sentence SGB II, it appears doubtful with regard to individual cases whether such sanctions are the least restrictive among equally effective means for achieving the aims pursued. However, this does not stand in the way of [a finding of] general necessity in terms of constitutional law. 178

[…] 179

(a) The legislature's assessment that sanctions are necessary to enforce cooperation obligations and its decision to reduce benefits by 30% are still within its margin of appreciation. […] It appears plausible that a reduction on this scale resulting in a heavy burden on sanctioned persons may prompt them to meet their obligations, and that a lower sanction or positive incentives would not be equally effective. 180

(b) Yet this scenario, too, at least raises considerable concerns regarding the 181

mandatory imposition of the sanction without taking into account the individual case (see para. 176 above) and regarding its rigid duration without taking into account the cooperation of sanctioned persons (see para. 177 above). […]

(4) Thus, while § 31a(1) first sentence SGB II does satisfy the stringent requirements of proportionality in the strict sense with regard to the amount of the reduction (see a below), the specific design with a mandatory requirement to impose sanctions, without exception (see b below) and without the possibility of shortening their duration in case of cooperation does not (see c below). 182

(a) Proportionality in its strict sense requires that the limits of what is reasonable be observed in an overall balancing of the heaviness of the burden on the one hand, and the weight and urgency of the reasons invoked to justify it on the other (established case-law; cf., e.g., BVerfGE 51, 193 <208>; 83, 1 <19>; 141, 82 <100 and 101 para. 53>). In this regard, too, the legislature has a margin of appreciation and discretion – albeit within certain limits. At least in the context of social law, it is not for the Federal Constitutional Court to carry out assessments depending on several factors; rather, such decisions are incumbent upon the legislature (see para. 122 above). The legislature can decide that legitimate cooperation obligations be enforced through temporary 30% benefit reductions, despite the heavy burden on affected persons, in view of at least plausible assumptions regarding the effects of clearly tangible sanctions. […] 183

(b) However, a mandatory reduction of benefits pursuant to § 31a(1) first sentence SGB II in case of a breach of obligations without any further assessment is unreasonable. The provision does not ensure that the competent authorities can refrain from imposing reductions in the exceptional cases where they cause extreme hardship, in particular where they ultimately appear untenable. It does not constitute an exceptional constellation if affected persons simply refuse to actively participate in overcoming their need, and thus knowingly tolerate state benefits being withheld. The legislature must instead provide for exceptional cases, where, in principle, affected persons are able to comply with their obligation to cooperate but sanctions reducing benefits nevertheless appear unreasonable in the specific circumstances of the individual case […]. While the legislature is free to put in place a clear sanctions regime sending the clear message that cooperation obligations will be enforced, it must also provide for obviously exceptional cases. 184

The legislature has several possibilities for ensuring that a sanction is reasonable in the specific case. It can leave sanctions to the discretion of the competent authorities, which can then refrain from imposing sanctions if these are clearly unsuitable. […] It can also ensure that sanctions are reasonable by statutorily providing for cases of extreme hardship in which the authorities may refrain from imposing unreasonable sanctions. 185

(c) Based on the overall balancing required in the context of proportionality, it is also unreasonable that […] sanctions […] must always be imposed for a rigid duration of 186

three months and cannot be lifted earlier regardless of whether they have achieved their actual aim of cooperation. It is true that a reduction period of three months as such is not objectionable […]. However, the rigid duration of the benefit reduction exceeds the limits of the legislature's latitude in cases where the cooperation obligation, which the sanction serves to enforce, is met before the end of the three-month period. Since the legislature must tie the suspension of basic welfare benefits imposed for refusal of reasonable cooperation without an important reason to the personal responsibility of those affected (see para. 130 above), reducing benefits is only reasonable, upon overall assessment, if the sanction generally ends as soon as the affected person cooperates. The benefits necessary to cover the entirety of the basic needs of recipients must in principle be available and recipients must be in a position to fulfil the conditions for the benefits to be restored. If affected persons fulfil the requirements set by the legislature […], it is unreasonable, upon overall assessment, to reduce benefits upon which these persons depend for ensuring an existential minimum in accordance with human dignity. Where cooperation is objectively no longer possible, yet the sanctioned person seriously and firmly declares their willingness to cooperate, benefits must be granted again within a reasonable time period.

187 The legislature may assume that the preventive impact on behaviour is greater in respect of a rigid reduction with a longer duration than of a reduction that can be lifted when obligations are met. However, its usually broad margin of appreciation is limited here given that by reducing basic welfare benefits, the legislature imposes onerous burdens in the domain protected by Art. 1(1) in conjunction with Art. 20(1) GG without there being any corresponding change in the existential needs of those affected […]. Therefore, the sanctions set out in § 31a(1) first sentence SGB II are only reasonable under constitutional law, subject to the strict proportionality requirements that apply here, if their duration is linked to the cooperation of sanctioned persons and thus to their personal responsibility.

188 The legislature is not unfamiliar with requirements to at least attenuate sanctions if they have achieved their aim. […]

189 bb) The benefit reduction of 60% in relation to the relevant basic rate pursuant to § 31a(1) second sentence SGB II governing cases of a second consecutive breach of an obligation to cooperate pursuant to § 31(1) SGB II is, in its current design, not compatible with the Basic Law, notably due to a lack of compelling findings on whether a sanction of this scale is suitable and necessary. Constitutional law does not preclude imposing renewed sanctions in cases where cooperation obligations are repeatedly breached and this is the only way to enforce them. However, in view of the extraordinary burden of such sanctions, § 31a(1) second sentence SGB II does not satisfy the strict proportionality requirements, given that it is, at the least, unreasonable.

190 (1) The reduction of 60% in relation to the basic rate set out in § 31a(1) second sentence SGB II, which is twice the reduction rate of the first sanction, entails heavy bur-

dens on affected persons. […] The burdens to which it gives rise seriously encroach upon the existential minimum guaranteed by fundamental rights.

[…] 191

(2) Based on the evidence at hand, […] there are serious concerns regarding the suitability of the sanction set out in § 31a(1) second sentence SGB II. 192

a) The legislature's decision […] is not based […] on compelling evidence; it is not shown that the desired outcomes are actually achieved and that negative effects are avoided. […] If there were compelling evidence that such sanctions are suitable, the legislature would, by way of exception, be entitled to enact particularly severe sanctions for repeated breaches of obligations. Yet in view of the heavy burden imposed on affected persons, the general assumption that such benefit reductions will achieve their purposes is not sufficient to establish that this severe sanction imposed as the standard response is suitable for achieving legitimate aims. 193

In addition, the evidence at hand shows that sanctions […], in many cases, also have negative effects, which run counter to the legislature's aims […]. 194

(b) The possibility of receiving supplementary benefits set out in § 31a(3) first sentence SGB II does not alleviate the doubts as to suitability […]. 195

[…] 196-197

(c) Furthermore, this provision, too, gives rise to the doubts set out above regarding the mandatory imposition of sanctions in clearly unsuitable cases (see para. 176 above) and regarding the rigid duration regardless of whether affected persons cooperate (see para. 177 above). 198

(3) In view of the extraordinary burden imposed on affected persons when benefits are reduced by 60% in relation to the basic rate, it is at least very doubtful that repeated breaches of obligations could not be counteracted effectively by less restrictive means. Such less restrictive means could be a second sanction with a lower reduction rate, if necessary for a longer duration, because research suggests that a reduction of 60% in relation to the basic rate does not make the sanctions more effective […]. 199

(4) In its current design, § 31a(1) second sentence SGB II cannot be constitutionally justified upon an overall balancing of the heavy burden it entails on the one hand, and the aim of enforcing cooperation obligations and potential integration into the labour market on the other, given the lack of compelling evidence regarding the suitability and necessity of a reduction in benefits on this scale. […] 200

cc) Based on current findings, the complete suspension of "unemployment benefits II", pursuant to § 31a(1) third sentence SGB II, is not compatible with the constitutional requirements […]. 201

(1) Pursuant to § 31a(1) third sentence SGB II, the entire "unemployment benefits 202

II" are suspended in case of a third breach of obligations as set out in § 31 SGB II. This does not simply mean that payments covering basic needs are suspended. In addition, according to the definition in § 19(1) third sentence SGB II, payments for additional needs (§ 21 SGB II) and for housing and heating (§ 22 SGB II) are also withheld. While it is possible to apply for benefits in kind and non-cash benefits pursuant to § 31a(3) SGB II, the payment of these benefits is discretionary in case of persons living alone and currently limited in practice […].

The job centre can provide a loan to sanctioned persons for rent payments pursuant to § 22(8) SGB II, but this provision only affords limited protection against the loss of one's home given that it only applies once a landlord has already given notice. […] 203

If "unemployment benefits II" are no longer provided, contributions to statutory health and long-term care insurance are also no longer made […]. 204

(2) In fact, there is no compelling evidence suggesting that a complete suspension of basic welfare benefits is suitable for promoting the aims of cooperation in overcoming one's own need and of benefit recipients ultimately taking up employment. There are serious concerns regarding the sanction's suitability in particular given that affected persons may lose their home. 205

[…] In the proceedings at hand, it was specifically emphasised that sanctions often have counterproductive effects […]. Such effects can in particular be assumed if affected persons are at risk of losing their home or, in the longer term, of getting caught in a debt trap […]. […] In that case, the sanction even deprives affected persons of their chance to stand on their own two feet again. […] In addition, there is the risk that sanctions, rather than motivating affected persons to meet their cooperation obligations, prompt them to break off all contact with the job centre […]. […] In the oral hearing, the Federal Employment Agency confirmed that 100% sanctions often proved to be counterproductive […]. 206

(3) There are also serious concerns with regard to the necessity of such severe sanctions […]. In principle, the legislature has a margin of appreciation, which is narrow here, given that the sanction involves heavy burdens in the domain of an existential minimum in accordance with human dignity, which is protected by fundamental rights […]. This margin has been exceeded in this case because it was not proven in any way that a complete suspension of basic welfare benefits is necessary to achieve the aims pursued and that a lesser reduction of benefits, an extension of the period of reduced benefits or even a partial transition from cash payments to benefits in kind and non-cash benefits might not be as effective, or might be even more effective, because it does not have the negative effects of 100% sanctions. The same applies in respect of the requirement to mandatorily impose such severe sanctions without exception (see paras. 176, 184 and 185 above) and even more so in respect of the requirement pursuant to § 31b(1) third sentence SGB II, according to which the complete suspension of benefits is subject to a rigid duration of three months even if sanctioned persons cooperate (see paras. 176, 186 *et seq*. above). 207

(4) Upon an overall balancing, it already follows from the shortcomings in respect of suitability and the doubts in respect of the necessity of such intrusive sanctions to enforce cooperation obligations that the complete suspension of all benefits pursuant to § 31a(1) third sentence SGB II – even with the limited possibilities of receiving supplementary benefits pursuant to § 31a(3) SGB II –, given its scale alone, is not compatible with the strict proportionality requirements. These considerations notwithstanding, the legislature must ensure that even if “unemployment benefits II” are suspended, those affected retain the chance of receiving basic welfare benefits if they meet reasonable cooperation obligations or, where this is not possible, they seriously and firmly declare their willingness to cooperate. 208

The situation is different if and as long as persons entitled to benefits can ensure a life in accordance with human dignity themselves by taking up a reasonable job offer (§ 31(1) first sentence no. 2 SGB II) that actually and directly generates income. In this case, their situation is in principle comparable to that of persons who are not in need of support because they have their own income and assets and can reasonably be expected to use these. If benefit recipients deliberately refuse to take up such employment that secures an existential minimum and is reasonable within the meaning of § 10 SGB II, without providing important reasons pursuant to § 31(1) second sentence SGB II, even though they had the possibility of discussing their personal situation and any specific aspects that might prevent them from taking up the job in the process, the complete suspension of benefits may be justified. 209

D.

The provisions under review in these proceedings violate Art. 1(1) in conjunction with Art. 20(1) GG. § 31a(1) first, second, and third sentence, § 31b(1) third sentence SGB II are incompatible with the Basic Law in cases governed by § 31(1) SGB; yet until the legislature has enacted new provisions, they continue to apply subject to the conditions set out in this judgment. 210

I.

[…] 211

2. Pursuant to § 82(1) in conjunction with § 78 first sentence BVerfGG, the Federal Constitutional Court declares a law generally void if it comes to the conclusion that it is incompatible with the Basic Law. A mere declaration of incompatibility with the Basic Law is usually sufficient in cases where the legislature has different options to remedy a violation of the Constitution (BVerfGE 149, 222 <290 para. 151>; established case-law). 212

Such is the case here. Specifically, the legislature could refrain from establishing sanctions in the form of benefit reductions, it could set out a transition from cash payments to benefits in kind and non-cash benefits or enact provisions that, in case of a breach of cooperation obligations, set out lesser reductions than the ones provided for under current law, or different reduction rates depending on which duties to coop- 213

erate were breached. The legislature also has different options in respect of preventing the extreme hardship that can arise from mandatory sanctions. Also, it could provide for different durations of the sanctions depending on the duties to cooperate involved or on whether there is cooperation before the end of the sanction period and willingness to cooperate in the future. Therefore, the provisions are not declared void, but rather incompatible with the Basic Law.

3. Based on current findings, a benefit reduction of 30% in relation to the relevant basic rate pursuant to § 31a(1) first sentence SGB II in case of a breach of an obligation pursuant to § 31(1) SGB II is not in itself objectionable under constitutional law. 214

§ 31a(1) second and third sentence SGB II is, based on current findings, unconstitutional to the extent that benefit reductions exceed 30% following a recipient's repeated breach, and any further consecutive breach, of obligations to cooperate within the previous year. In this respect, the provision is declared incompatible with the Basic Law. 215

4. § 31a(1) first, second and third sentence SGB II is unconstitutional and incompatible with the Basic Law to the extent that it requires a mandatory reduction in the basic rate following a breach of obligations, even in cases of extreme hardship, and to the extent that "unemployment benefits II" must be completely suspended even in such cases. 216

5. § 31b(1) third sentence SGB II is unconstitutional and incompatible with the Basic Law to the extent that it sets out a rigid duration of three months for all benefit reductions under review here. 217

II.

1. § 31a(1) first, second and third sentence and § 31b SGB II continue to apply in cases governed by § 31(1) SGB II subject to the restrictions set out in the operative part of the judgment. The transitional framework for § 31b(1) third sentence SGB II follows the arrangement set out in § 31a(1) sixth sentence SGB II. 218

2. Art. 1(1) in conjunction with Art. 20(1) GG does not impose an obligation on the legislature to retroactively establish benefits without any reductions pursuant to § 31a SGB II. 219

a) Administrative acts that have become final remain subject to § 40(3) SGB II, a special arrangement deviating from the general provision of § 44(1) first sentence of the Tenth Book of the Code of Social Law (SGB X). 220

b) Decisions regarding benefit reductions pursuant to § 31a(1) first sentence SGB II that have not become final but were determined before the pronouncement of the judgment remain effective. 221

c) Decisions regarding benefit reductions pursuant to § 31a(1) second and third sentence SGB II that were not final at the time of the pronouncement of the judgment 222

must be annulled to the extent that reductions exceed 30% of the relevant basic rate.

3. Furthermore, the unconstitutionality of the provisions, in the context of decisions on costs in proceedings brought by benefit recipients, must be adequately taken into account in their favour, where the statutory provisions allow for it (cf. BVerfGE 125, 175 <259>; 132, 134 <178 and 179 para. 111 *et seq*.>). 223

III.

The legislature must enact new provisions setting out whether and how breaches of obligations pursuant to § 31(1) SGB II are to be sanctioned. It is within its discretion to decide whether it wants to continue to provide for benefit reductions to enforce co-operation obligations and to differentiate the amounts of such reductions. 224

E.

As regards its outcome, the decision is unanimous. 225

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Baer Britz Ott

Christ Radtke

Bundesverfassungsgericht, Urteil des Ersten Senats vom 5. November 2019 - 1 BvL 7/16

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