



Universität  
Basel

Juristische  
Fakultät



# THE RIGHT TO FOOD IN BASEL-CITY

Eyholzer Carine, Huber Nathalie, Arber John

Human Rights Clinic at the Faculty of Law of the University of Basel  
in collaboration with FIAN Switzerland for the Right to Food

Supervisor: Dr. iur. Elena Pribytkova



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## Introduction

Since the right to food and freedom from hunger are essential for the very existence of a person, they are among the most important human rights.<sup>1</sup> The right to food is inextricably linked to other human rights, especially to the components of the right to a decent standard of living such as the rights to water, sanitation, health etc. Therefore a failure to secure the right to food can negatively affect the realisation of other human rights.

Despite the significance of the right to food and the fact that its interconnection with other fundamental rights is recognised internationally, the lack of food continues to be the source of widespread suffering, and thus one of the most pressing problems for states, especially developing ones.

But what about the realisation of the right to food in a developed country like Switzerland? A report from 2010 showed that there are still some difficulties concerning the full realisation of the right to adequate food in a wealthy city like Geneva.<sup>2</sup> More particularly, these difficulties relate to guarantees of secure and dignified access to food by vulnerable groups and individuals. Additionally, food is often used as an adjustment variable (“variable d’ajustement”<sup>3</sup>). Indeed, this is a common problem for developed urban areas: in order to satisfy other important needs, vulnerable people save on food, thereby inevitably reducing its quantity and/or especially its quality. This should not be acceptable in developed states and thus the latter should take all necessary measures to prevent it.

The canton Basel-City has the most developed social assistance system in Switzerland.<sup>4</sup> But is this social assistance provided to the most vulnerable groups and individuals enough to ensure their full enjoyment of the right to adequate food?

The fundamental purpose of this work is, therefore, to explore the realisation of the right to food in Basel-City, and thus to provide answers to several intrinsically linked questions:

- Are all key aspects of the right to adequate food secured in Basel-City?
- What are the mechanisms for ensuring the right to food?

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<sup>1</sup> A deeper analysis of the relation of the right to food with other fundamental human rights see *infra* Part. I, A.

<sup>2</sup> Rapport Genève.

<sup>3</sup> See, for example: RAPPORT GENÈVE, p. 25.

<sup>4</sup> According to the OFS, between 2005 and 2008, Basel-City was the canton that spent the most money for social assistance in comparison with other Swiss cantons. See: OFS, p. 6.

- Is cantonal social support enough for granting secure and dignified access to adequate food to everyone?
- Which social groups have limited access to the right to adequate food?
- What are the reasons for these limitations?
- What assistance is provided to the most vulnerable social groups in Basel-City?

In order to answer these questions and reach the fundamental goal of this report, the research will start with a theoretical analysis of the content and key aspects of the right to food and move on to a practical in-depth study of particular issues concerning the realisation of the right to food in Basel-City. The research uses a variety of methods. A comparative study of the legal doctrine was made in order to determine core criteria for adequacy and on this basis to elaborate interview questions. By evaluating the realisation of the right to food in Basel-City, federal and cantonal statistics on social assistance recipients as well as interviews with charitable organisations and different vulnerable groups and individuals were involved.

Thus, the first section of this report will concentrate on the significance of the right to food (Part. I, A); its recognition in international instruments (Part. I, B); its definition (Part. I, C); obligations of states corresponding to the right to food (Part. I, D); and, finally, justiciability of the right to food (see Part. I, E).

In the second part, the legal guarantees of the right to food in Switzerland and particularly in Basel-City will be explored. For this purpose, after a general introduction to the protection of the right to food in Switzerland (see Part. II, A), the report will examine the social assistance provided on federal (see Part. II, B) and cantonal levels (Part. II, C), with an emphasis on social support for vulnerable groups, including those with exceptional status (Part. II, D). Additionally, the scope of the social assistance, in particular, the absolute minimum (Part. II, E) and the social minimum (Part. II, F) will be defined.

On the bases of the collected data concerning poverty and social assistance cases, special features of the realisation of the right to food in Basel-City will be examined (see Part. III, A.) in order to determine vulnerable groups in Basel-City and the special care provided for those groups (see Part. III, B.).

Finally, this report will propose recommendations to solve the observed problems surrounding the realisation of the right to food in Basel-City (Part. IV).

## Part I. The Right to Adequate Food as a Human Right

### A. Significance of the Right to Food

As Abdoulaye SOMA claims,

*“every life is precarious when only one right misses: it is the right to food”.*<sup>5</sup>

Indeed, the right to food appears to be the main component of the right to a decent standard of living, and as one of the main conditions for health and well-being;<sup>6</sup> thus, the right to food is considered to be one of the most important, after the right to life, human rights.<sup>7</sup>

In 1948, the Universal Declaration of Human Rights recognised the right to food as a fundamental socio-economic right, which is inherent to human dignity.<sup>8</sup> Yet, according to some researchers, practitioners and even official positions of certain states,<sup>9</sup> social, economic and cultural rights belonging to the second generation of human rights are protected by international law to a lesser extent than the rights of the first generation. That is why socio-economic rights in these countries are considered to be “programmatic rights” and non-justiciable rights.<sup>10</sup> As Christophe Golay rightly states, these traditional arguments against the justiciability of the right to food are out-dated and cannot be followed anymore.<sup>11</sup>

The food crisis, instability, and insecurity were at their peak in the 1970s, which induced the international community to give special attention to food problems. This situation seems to

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<sup>5</sup> SOMA 2014, p. 770.

<sup>6</sup> DECAUX, p. 317-318. See also General Comment No. 12, para. 4.

<sup>7</sup> SOMA 2014, p. 770.

<sup>8</sup> SOMA 2010, p. 2 n 6.

<sup>9</sup> Some states, such as the USA or Switzerland, officially recognise only civil and political rights as “human rights”, but not socio-economic rights because of their vagueness. See: *Ibid*, p. 204.

<sup>10</sup> According to Samantha Besson, some states want to limit their obligation and consequently assert that there is a difference between the two Covenants regarding the normative force of rights and obligations they guarantee. She considers this approach to be too drastic. BESSON, p. 146.

<sup>11</sup> GOLAY 2009, p. 9 ff.

be far away, and we could thus think that today, forty-five years later, that the right to food is fully realised throughout the world, especially in developed countries.<sup>12</sup>

In fact, according to the FAO, today, 795 million people are undernourished in the world.<sup>13</sup> Consequently, hunger kills more than AIDS, malaria, and tuberculosis grouped together. Additionally, poverty affects more than 2,2 billion of people.<sup>14</sup> As will be shown (see Part I, D, 2 (3), c and Part II, G, 1), poverty and hunger are closely linked, especially when food serves as an adjustment variable, i.e. when low budget families or individuals are limited in their enjoyment of the right to adequate food through the necessity to fulfil other basic needs.

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<sup>12</sup> For more information about this crisis and the development made at the international level see: SOMA 2010, p. 1 N 1.

<sup>13</sup> It is 47 million less than in 2013, which was 12% of the population. See: UNDP, p. 3. It is also 167 million people less for the last ten years, and 216 million less than in 1990-1992. See: FAO Food report 2015, p. 17.

<sup>14</sup> UNDP, p. 3.



## B. Recognition of the Right to Food in International Human Rights Instruments

The first international instrument to recognise the right to food was the Universal Declaration of Human Rights (UDHR) of the 10<sup>th</sup> December 1948:

### **Article 25 UDHR**

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Adopted as a resolution of the General Assembly of the United Nations, it has only a declaratory effect. This recognition (which can be seen from a certain point of view as a deficiency, since this is just a declaration) was, in fact, a huge progress. It was the first step which led states to promote step-by-step international Conventions and thus subjected states to obligations corresponding to the right to food.

The form of Article 25 of the Universal Declaration of Human Rights is largely reflected, however, in a more binding way,<sup>15</sup> in Article 11 of the Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR recognises the right to food as a component of the right to an adequate standard of living and the necessity to “*take appropriate steps to ensure the realisation of this right [...]*”. Moreover, the ICESCR emphasises the core component of the right to food as “*the fundamental right of everyone to be free from hunger*” and consequently the necessity for the states “*to take the measures [...] needed*”:

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<sup>15</sup> DECAUX, p. 318 ; SOMA 2014, p. 770.

#### Article 11 ICESCR

(1) The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.

(2) The States Parties to the present Covenant, recognising the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

- To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources;
- Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Because the right to food is defined both quite comprehensively and in detail,<sup>16</sup> it is clear that the states parties recognise the special significance of this right, with the aim of this provision having a normative force that is directly applicable. In spite of that, there are still many states which do not recognise the right to food expressed in the ICESCR, as a self-executing right and thus do not recognise the direct effect of the ICESCR. Switzerland belongs to the states that interpret the right to food provision more as an aim of the state's policy but not as a directly applicable norm.

In Article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women, there are some specific provisions for women and children regarding the right to food, which concern, in particular, adequate nutrition during pregnancy and breastfeeding.

Moreover, Article 24 of the Convention on the Rights of the Child, which incorporates the right to health, refers to the need to combat disease and malnutrition, “[...] *through the provision of adequate nutritious food and clean drinking water [...]*”.

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<sup>16</sup> As Emmanuel Decaux asserts in his book, it is rare that the ICESCR goes into so much detail. It is made in order to emphasise international cooperation evoking an equitable redistribution in the north-south scale, in addition to long-term reforms, which we today call “sustainable development”. See: DECAUX, p. 318.

## C. Definition of the Right to Food

### 1. Approaches to the Definition of the Right to Food

In order to formulate the criteria of evaluation of the right to adequate food (See Part I, C, 2.), let us focus on its definition. The right to food was not explicitly defined by the UDHR, neither by the ICESCR; the aim of these tools was more to recognise this human right than to define it, so that, as others human rights, it could evolve in years. Various scholars and practitioners have consequently examined and detailed the aspect of adequacy belonging to the right to food.

For instance, Eide Asbjorn focused on adequacy, when he asserted in 1989 that

*“the right to food provides an opportunity to examine some of the challenges in greater depth. Food is a basic need for all human being. Everyone requires access to food which is (a) sufficient, balanced and safe to satisfy nutritional requirements, (b) culturally acceptable, and (c) accessible in a manner which does not destroy one’s dignity as human beings”.*<sup>17</sup>

Thus, according to him, adequate food is realised when the food is sufficient, balanced, safe, culturally acceptable and accessible.

The CESCR General Comment No. 12 concerning the right to food stated that

*“the right to adequate food is realised when every man, woman, and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins, and other specific nutrients.”*<sup>18</sup>

Moreover, the report specifies that the *“meaning of ‘adequacy’ is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions”*.<sup>19</sup>

The criteria of physical and economical access are also detailed in Fact Sheet No. 34:

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<sup>17</sup> ASBJORN 1989, §51-52.

<sup>18</sup> General Comment No. 12, para. 6; another definition is the one made by Jean Ziegler, previous Special Rapporteur of the UN on the right to food. See, for example: SOMA 2010, p. 30.

<sup>19</sup> General Comment No. 12, para. 7.

- **Economic accessibility** is expressed as the demand that food must be affordable. Persons should be able to pay for balanced food “without compromising on any other basic needs, such as school fees, medicines or rent”. The affordability of food can, for example, “be guaranteed by ensuring that the minimum wage or social security benefit is sufficient to meet the cost of nutritious food and other basic needs”.<sup>20</sup>
- **Physical accessibility** means that access to food should be guaranteed to everyone, in particular to “the physically vulnerable people, such as children, the sick, people with disabilities or aged persons, for whom it may be difficult to go out to get food”.<sup>21</sup>

The definition of CESCR General Comment No. 12 remains vague concerning some points, as, for example, acceptability. Fact Sheet No. 34 provides an explanation of this term:

*[Acceptability]<sup>22</sup> “means that the food must satisfy dietary needs, taking into account the individual’s age, living conditions, health, occupation, sex, etc. For example, if children’s food does not contain the nutrients necessary for their physical and mental development, it is not [acceptable]. Food that is energy-dense and low-nutrient, which can contribute to obesity and other illnesses, could be another example of [inacceptable] food. Food should be safe for human consumption and free from adverse substances, such as contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs. Adequate food should also be culturally acceptable. For example, aid containing food that is religious or cultural taboo for the recipients or inconsistent with their eating habits would not be culturally acceptable.”<sup>23</sup>*

Jean Ziegler provided a more comprehensive definition when he was the special Rapporteur on the right to food from 2000 and 2008.<sup>24</sup>

*“the right to food is the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to*

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<sup>20</sup> Fact Sheet No. 34, p. 2-3.

<sup>21</sup> Ibid., p. 3.

<sup>22</sup> Fact Sheet No. 34 defines the criteria for adequate food as availability, accessibility and adequacy. The use of *adequacy* (as a criteria) for defining *adequacy* of the food (as a general notion) is an inappropriate tautology and may lead to confusions. This is why this term has been replaced by the acceptability.

<sup>23</sup> Ibid., p. 3.

<sup>24</sup> OHCHR Food.

*which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear.”*

**ZIEGLER’S Aspects of the Right to Adequate Food:**

- Accessible food.
  - ⇔ Regular.
  - ⇔ Durable / permanent.
  - ⇔ Unrestricted.
- Quantitatively and qualitatively adequate food => acceptable food.
  - ⇔ Corresponding to the cultural traditions of the people to which the consumer belongs.
- Quantitatively and qualitatively sufficient food => available food.

According to the Office of the High Commissioner for Human Rights and the Food and Agriculture Organization of the United Nations report, the availability of food requires, firstly, that, mainly in rural areas, it should be available from the natural resources, or through the production of food (such as fishing, hunting, gathering or cultivating); and, secondly, that, mainly in urban areas, people can buy it in markets and shops.<sup>25</sup> The latter aspect of availability is obviously more relevant for this research focusing on the right to food in Basel-City, which is an urban area. In urban areas, most people get their food by purchasing it.

Soma adds that theoretically, the condition of food availability is generally fulfilled in big geographical places, such as the world or the continent. But behind this impression of abundance hide some regional inequalities of small geographical areas, such as villages or regions with small rainfall or productive capacity.<sup>26</sup> Indeed, world food production has reached such a level that it can afford to sufficiently feed twice the population of the planet, but some areas still struggle with unavailability of food.

## 2. Criteria of Adequacy

Consequently, to be fully realised, the right to adequate food requires that it is (1) available, (2) accessible and (3) acceptable. These criteria can be summarised in the following way:

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<sup>25</sup> Fact Sheet No. 34, p. 2.

<sup>26</sup> SOMA 2010, p. 41.

### **Aspects of the Right to Adequate Food:**

General criteria: Should not be interpreted in a narrow or restrictive sense  
Determined by prevailing social, economic, cultural, climatic, ecological and other conditions

#### The food should be **acceptable**;

- Food should be balanced.
- Food should be safe for human consumption.
- Food should be free from adverse substances, such as contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs.
- Food should be culturally and religiously acceptable for the consumer.
- Food should satisfy dietary needs, taking into account the individual's age, living conditions, health, occupation, sex, etc.

#### The food or means for its procurements should be **accessible**;

- The access to the food should be regular.
- The access to food should be permanent/durable.
- The access should be unrestricted; there should be no discrimination.  
The access should thus be *physically guaranteed*.  
↳ The food should be accessible to all, including physically vulnerable people.  
The access should be *economically guaranteed*.  
↳ The individuals should be able to afford food for an adequate diet without compromising on any other basic needs.
  - o Importance to have a job for buying food in developed countries
    - ⇔ There should be some help for people that do not have a job, to get some food.
- The access should not negatively affect one's dignity as human being.

#### The food must be **available**;

- It should be possible to buy food at markets.

These criteria were selected to produce questions used in order to evaluate the realisation of the right to food in Basel-City.<sup>27</sup> Moreover, it is important to point out that, according to international law, the right to food has two components: the right to adequate food, as just defined, and the right to be free from hunger. The right to be free from hunger is considered "as a norm of international customary law, which is binding on all states, regardless of whether they have ratified specific treaties".<sup>28</sup>

<sup>27</sup> See Annex, Interview questions, p.53.

<sup>28</sup> Fact Sheet No. 34, p. 9.

## D. Obligations of the State Corresponding to the Right to Food

The International Covenant on Economic, Social and Cultural Rights implies general obligations and specific obligations corresponding to basic socio-economic rights.

### 1. General Obligations

General obligations are those that do not directly correspond to specific individual human rights, but concern more the spirit or the behaviour that all states should adopt in order to ensure the full realisation of basic socio-economic rights.<sup>29</sup> First of all, states have the immediate general obligation to take steps in pursuit of the recognised right (art. 2, para. 1 ICESCR). Consequently, they must, within a relatively short period of time after the Covenant's entry into force for the states concerned, take all measures and use all appropriate means to ensure the full exercise of the rights provided.<sup>30</sup> They have, thus, the responsibility for implementing adjustments that they consider to be indispensable for the enjoyment of economic, social and cultural rights on their territories. Another general obligation is the interdiction of discrimination regarding all rights ensured by the Covenant (art. 2, para. 2 ICESCR). Discrimination should be prohibited both through legislative measures and policies, which *“prevent that discrimination abolished by law is allowed to persist in practice”*.<sup>31</sup> This means that any restrictions on access to food, or on the means of its procurement, on the grounds of physical characteristics (sex, race, colour, age etc.) or social characteristics (language, religion, political opinion, social origin etc.) of a person, constitute violations of the right to food. Last but not the least, states have the general obligation of cooperation: those states that are in a position to offer assistance are held accountable for actions or the failure to act, which breach this obligation.

General obligations contain also the obligation to guarantee a minimum core specified for every right in the ICESCR.<sup>32</sup> Regarding the right to adequate food, states parties have the core obligation to secure the fundamental right to be free from hunger, irrespective of the state's development or available resources.<sup>33</sup> Consequently, when a state does fail to ensure the satisfaction of, at the very least, the minimum subsistence level required protecting freedom from hunger, it violates the Covenant.

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<sup>29</sup> BESSON, p. 137.

<sup>30</sup> SOMA 2010, p. 85 ff.

<sup>31</sup> GOLAY 2009, p. 15.

<sup>32</sup> For a detailed analysis of the guaranteed minimum subsistence level, see: SOMA 2010, p. 87 ff.

<sup>33</sup> GOLAY 2009, p. 16.

## 2. Specific Obligations

Specific obligations are the legal obligations of the states, which derive from each human right.<sup>34</sup> These specific obligations are usually divided into three categories: (1) the obligation to respect, (2) the obligation to protect<sup>35</sup> and (3) the obligation to fulfil.<sup>36</sup>

(1) According to the obligation to respect, any action or measure aiming to prevent access to adequate food is forbidden. Consequently, states cannot suspend their legislations or policies that secure access to food, unless it is fully justified.<sup>37</sup> Thus, a violation of the obligation to respect would occur, for example, when a state's government cancels social security provisions without making sure that alternative guarantees exist for vulnerable people.<sup>38</sup>

(2) According to the obligation to protect, the state should take measures required to ensure that third persons do not deprive people of their access to adequate food.<sup>39</sup> States should also take legislative measures to protect the population against indirect barriers to access to a healthy food. Those measures could be, for example, to limit advertising promotions for unhealthy food (especially for the children), or to support and encourage healthier feeding patterns of the population.<sup>40</sup> For vulnerable people, we could, therefore, imagine a distribution of food in the form of vouchers for shops without alcohol, instead of distributing cash.

(3) The obligation to fulfil incorporates multiple sub-levels: an obligation to facilitate, an obligation to provide, and an obligation to promote.<sup>41</sup>

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<sup>34</sup> See: BESSON, p. 137-138.

<sup>35</sup> According to the ECHR, the obligation to protect exists when two conditions are met: firstly, the state should and could know that a subject represents a danger for the rights of others, and secondly, this state should have the material opportunity to interfere. See, for example, *Osman v. United Kingdom*, 28 October 1998, ECHR, Rec. 1998-VIII, par. 116.

<sup>36</sup> These three types of obligations are substantially identical to those formulated by SHUE: the obligation to avoid depriving, the obligation to protect from the deprivation and the obligation to help. See: SHUE, p. 18 ff.

<sup>37</sup> Fact Sheet No. 34, p. 18. According to the principles of proportionality and necessity, these measures should, firstly, be based on legal instruments aiming at a fundamental interest of society which is overriding the right to food or equivalent to it; and, secondly, not exceed what is necessary in order to attain this aim. For a detailed analysis of the justification of these measures see: Soma 2010, p. 235 ff.

<sup>38</sup> DONATI / VIDAR, p. 56.

<sup>39</sup> General Comment No. 12, para. 15.

<sup>40</sup> Fact Sheet No. 34, p. 18.

<sup>41</sup> This latter obligation is not mentioned in the CESCR General Comment No. 12, but is described in the CESCR General Comment No. 14. According to some scholars, it is a deficiency of Comment No. 12, because each human right also imposes the obligation to promote. See in particular: SEPÚLVEDA Magdalena, *The Nature of the*



a. The obligation to fulfil (facilitate) means “the state must proactively engage in activities intended to strengthen people’s access to and utilisation of resources and means to ensure their livelihood, including food security.”<sup>42</sup> The state should, inter alia, inform the population about their rights regarding accessing (adequate) food.<sup>43</sup>

b. Moreover, “whenever an individual or group is unable, for reasons beyond their control” – for example, victims of natural disaster –, “to enjoy the right to adequate food by the means at their disposal, states have the obligation to fulfil (provide) that right directly”.<sup>44</sup>

c. Finally, the obligation to fulfil (promote) the right to food requires states to undertake actions that create, maintain and restore the access to adequate food for the population. The state should thus encourage the recognition of factors favouring access to adequate food, e.g. research and provision of information. It is particularly important since the realisation of the right to adequate food is intrinsically linked to other factors, especially in developed countries. Fact Sheet No. 34, elaborated by the Office of the High Commissioner for Human rights and the FAO, outlines perfectly the multi-dependency of access to food in urban areas. *“Gainful employment, including self-employment, is <...> very important. If jobs are hard to come by or their wages are pitiful so they cannot afford food and other basic needs, such as health care, education and housing, their enjoyment of the right to food can be undermined as they have no other means of getting food. For the self-employed, discrimination in access to economic resources, such as microcredit, or access to marketplaces may also negatively affect their access to food. If food is too expensive or their income too low, they may compromise on the quality and the quantity of food they eat, for example opting for cheaper but less nutritious or unsafe food. In such cases, they do not enjoy the right to food because the food they eat is inadequate. The malfunctioning of social security programmes or other safety nets or their total absence further undermines the enjoyment of the right to food when people lose the means to provide for themselves. As in rural areas, the fact that people living in poverty in urban areas cannot afford food is often linked to social exclusion, e.g., exclusion from education and training opportunities, from access to information, from decision-making in public affairs and from access to justice.”*<sup>45</sup>

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Obligations under the International Covenant on Economic, Social and Cultural Rights, Antwerpen, Oxford, New York: Intersentia, 2003, p. 208 ff.

<sup>42</sup> General Comment No. 12, para. 15.

<sup>43</sup> Fact Sheet No. 34, p. 18-19.

<sup>44</sup> DONATI / VIDAR, p. 57.

<sup>45</sup> Fact Sheet No. 34, p. 11.

The state should also guarantee that people involved in the process of assisting vulnerable or marginalised groups in their access to adequate food (i.e. staff of social assistance departments) are informed on criteria of an adequate food (especially that adequate food should be culturally and religiously acceptable).<sup>46</sup> Moreover, the state should control that it meets its obligations in the dissemination of the appropriate information relating to healthy lifestyles and nutrition, and should support people in making informed choices about their food.

When any of these obligations are not discharged by the state, and, as a consequence, one or more individuals are hungry, there is a violation of the right to food that the state must rectify, alone or with the help of other members of international community.<sup>47</sup>

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<sup>46</sup> See the box *Aspect of the right to adequate food*, p. 10.

<sup>47</sup> SOMA 2010, p. 101-102.

## E. Justiciability of the Right to Food

Justiciability of the right to food has always been a controversial question. There are contemporary scholars and practitioners who consider the right to food, as other socio-economic rights, to be not justiciable.<sup>48</sup> This report proceeds from the assumption that the access to justice in order to protect the right to food should be provided on both, regional and international level.

Many regional and national courts have recognised that economic, social and cultural rights are of the same nature as political and civil rights. Therefore, basic socio-economic rights should be enforceable on various levels. In spite of political decisions of some states, it should be recognised that justiciability belongs to the very essence of human rights. The practice in many constitutional systems confirms this position.<sup>49</sup> It should be underlined that an analysis of judicial protection of the right to food on regional or national level is out of the scope of this report.<sup>50</sup>

The justiciability of the right to food in Switzerland is linked with the right to a “minimum level of subsistence”, which was recognised as an implicit constitutional right first by the Swiss Federal Court (which is the highest court in Switzerland),<sup>51</sup> and then included in the Swiss Constitution (art. 12 Fed. Cst.). In the case BGE 121 I 367, the Court considered that the plaintiffs, three stateless people who were in Switzerland without any food or money, had the right to enjoy at least basic human needs, such as food, clothing, and housing. In this sense, the right to food (as expressed in the Swiss Federal Court’s decision) can be the foundation for a justiciable claim for social assistance from the state.<sup>52</sup>

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<sup>48</sup> See, for example, ERGEC Rusen, *Introduction générale*, in Ergec Rusen (under dir.), *Les droits économiques, sociaux et culturels dans la constitution*, actes du colloque tenu à l’Université libre de Bruxelles les 21 et 22 décembre 1994, Bruxelles (Bruylant), 1995, quoted in SOMA, p. 203 and 204.

<sup>49</sup> SOMA 2010, p. 208 n. 965.

<sup>50</sup> Regarding to these themes, see, in particular: DUTTA Gargi, *Justiciability of Right to Food*, in *International Journal of Scientific and Research Publications*, Volume 5, Issue 1, January 2015.

<sup>51</sup> BGE 121 I 367, p. 371, 373.

<sup>52</sup> LANGFORD Malcolm, *Right to Food in International Law: Obligation of States and the FAO*, LLM Thesis, Florence, 1 October 2001, quoted in FAO Rome, p. 122.

## Part II. Legal Guarantees of the Right to Food in Switzerland and Basel-City

### A. The Right to Food in Switzerland

#### 1. Introduction

*“The right to food is the right of every person to get access at any moment to sufficient, adequate and culturally acceptable food.”<sup>53</sup>*

As seen previously, over 800 million people suffer worldwide from a lack of proper nutrition.<sup>54</sup> The main reasons for this high number are the unequal distribution of adequate food and the lack of access to it.<sup>55</sup> An economic approach emphasises that access to food is dependent on the income resulting from some form of employment, social transfers and self-production when access to land or other production methods are given.<sup>56</sup> In this sense, the right to food is inevitably linked to the right to work and the right to social security that are guaranteed by Art. 6 and 9 of the ICESCR.<sup>57</sup> Therefore, in order to analyse how the right to food is realised in Switzerland and especially in Basel-City, a closer look must be taken at the federal and cantonal system of social security.

#### 2. The Right to an Adequate Standard of Living in Switzerland

It is widely recognised that a democratic State must take strong actions against poverty and support those in need in order to fulfil their right to an adequate standard of living as defined in Art. 25 of the UDHR, Art. 11 of the ICESCR and in other core human rights instruments.<sup>58</sup> Though Switzerland has ratified the ICESCR, the right to an adequate standard of living, including the right to food, recognised in the Art. 11 of the ICESCR, is not justiciable in Switzerland due to the non-recognition of the direct applicability of the Covenant by the Swiss Federal Court.<sup>59</sup>

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<sup>53</sup> DE SCHUTTER, p. 3.

<sup>54</sup> BUNDESAMT FÜR LANDWIRTSCHAFT BWL; FAO Food report 2015, p. 17.

<sup>55</sup> BUNDESAMT FÜR LANDWIRTSCHAFT BWL.

<sup>56</sup> DE SCHUTTER, p. 3; BUNDESAMT FÜR LANDWIRTSCHAFT BWL.

<sup>57</sup> DE SCHUTTER, p. 3.

<sup>58</sup> CRC, Art. 24, 27; ICEDAW, Art. 14; CRPD, Art. 28; ESC, Art. 4, 13; EU CFR, Art. 34.: Fed. Cst. Art. 54.

<sup>59</sup> GOLAY, p. 47; BROGNIART, p. 7.

The Swiss Federal Supreme Court remedied this lack of protection by providing a justiciable right to a subsistence minimum in 1995.<sup>60</sup> Following that, Art. 12 of the Federal Constitution of Swiss Confederation stipulates:

*“Persons in need and unable to provide for themselves have the right to assistance and care, and to the financial means required for a decent standard of living.”*

In this sense, there is a constitutionally guaranteed claim-right to an absolute minimum in Switzerland, which includes food, clothing, housing and health care indispensable for a dignified existence of a person.<sup>61</sup> Art. 89 and 115 of the Federal Supreme Court Law recognise the right to submit a complaint in front of the Court when the fundamental rights of a person are violated. It must be said that the complaint only applies for individual remedies and not for collective actions or public interest. A person must be a direct victim of the violation and the complaint should be in their personal interest.<sup>62</sup>

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<sup>60</sup> HUG, p. 152; See: BGE 121 I 367.

<sup>61</sup> HUG, p. 99; CARITAS, Hilfe in Notlagen; Informationsplattform humanrights.ch.

<sup>62</sup> GOLAY, p. 49.

## B. Social Security on the Federal Level

The economic system in Switzerland is based in the first line on the assumption that a person themselves is responsible for providing enough financial resources for a decent existence.<sup>63</sup> When their own activity is not enough for economic and social integration, social insurances and social services apply.<sup>64</sup> Public assistance is the last resort to ensure the subsistence minimum necessary for leading a dignified life.<sup>65</sup> Only after using up all other means such as own resources, unemployment allowances, pensions or support through close relatives, can public assistance be demanded.<sup>66</sup> This principle is commonly called the subsidiarity of the public assistance.<sup>67</sup>

The assistance provided in accordance with Art. 12 of the Federal Constitution of the Swiss Confederation is oriented to the subsistence minimum.<sup>68</sup> This minimum must be seen as a protection from a degrading existence and a degrading begging-existence.<sup>69</sup> As mentioned before, the right to food is seen as a part of a subsistence minimum and includes freedom from hunger but also by qualitatively and quantitatively adequate food (see Part I, D, 2.). It is not only physiological functions that must be upheld in order to protect a person in need from health risks, but also normal daily physical and mental activities should be guaranteed.<sup>70</sup> Also, the food must be acceptable, varied and adapted to different medicinal and religious requirements (see Part I, C, 2.).<sup>71</sup>

Art. 115 of the Federal Constitution of the Swiss Confederation delegates the competence of providing social assistance to the cantons.<sup>72</sup> Cantonal social security laws differ from each other, but all are adapted to the Guidelines of the Swiss Conference for Social Security (SKOS).<sup>73</sup> The SKOS Guidelines aren't binding but it is highly recommended to make them obligatory by including them in the cantonal and communal jurisdiction and legislation.<sup>74</sup> The Guidelines outline guarantees of social security and calculate the subsistence minimum. It

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<sup>63</sup> HUG, p. 336.

<sup>64</sup> Ibid, p. 337; PILLER, p. 159, WIZENT, p. 290.

<sup>65</sup> Ibid.

<sup>66</sup> SOZIALHILFE Anspruchsvoraussetzungen.

<sup>67</sup> HUG, p. 337; HÄNZI, p. 44, 114.

<sup>68</sup> HUG, p. 153.

<sup>69</sup> Ibid. p. 155; MÜLLER/SCHEFER, p. 770.

<sup>70</sup> Ibid. p. 158; MÜLLER/SCHEFER, p. 775.

<sup>71</sup> Ibid.

<sup>72</sup> PILLER, p. 159; HÄNZI, p. 56.

<sup>73</sup> Ibid. p. 160; HÄNZI, p. 171; HUG, p. 269.

<sup>74</sup> SKOS guidelines, A. I.

does not only include physical survival but also social existence and full participation in society, as well.<sup>75</sup> In other words, the goals of social assistance are to secure the existence of vulnerable persons, to promote their economic and personal independence and to ensure their integration into society.<sup>76</sup> Following the SKOS Guidelines A. 3-1, material help is subdivided into the following categories:

The *absolute minimum*, which secures an existence in human dignity and presupposes, therefore, the coverage of basic needs.

The *basic material security*, which consists in guarantees of housing, primary medical care and basic means of subsistence.

The *social minimum*, which includes, in addition to the basic material security, necessary situation-related benefits.

The *material motivation*, which is aimed at stimulating individuals to make efforts for their professional and social integration.

In addition to financial support, personal help is also provided in the form of advice, motivation, encouragement, structuring everyday life and intermediation services.<sup>77</sup>

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<sup>75</sup> SKOS Guidelines, A. 1-1.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid., A. 3-2.

### C. The System of Social Security in Basel-City

Cantons in Switzerland have the competence to determinate the recipients and scope of public assistance based on the SKOS Guidelines.<sup>78</sup> The canton of Basel-City enshrines in its Constitution the fundamental right to assistance when in need in Art. 11 lit. t. The right to means for existence, care, accommodation and help to self-help necessary for those in need because of their age, health or economic and social situation is recognized in Art. 14 lit. b. The social security law of Basel-City is aimed at supporting people in need and providing them with assistance and material help (Art. 2 Abs. 1 SHG). Through integrating the SKOS Guidelines into cantonal legislation, not only is the absolute minimum provided in Basel but also the social minimum.<sup>79</sup>

*Social assistance encourages the possibilities to self-help aiming at the social and professional integration.*

In order to get assistance from the canton, the financial situation of a person claiming assistance must be examined. Own resources including unemployment allowances, pensions, support from close relatives, revenue, and fortune must be used up until the following rates that mark the limits to which social assistance can be obtained:<sup>80</sup>

Single person:	CHF 4,000
Married couple:	CHF 8,000
Every under-age child:	CHF 2,000
But maximally per family:	CHF 10,000

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<sup>78</sup> Art. 7 para. 3 SHG; SOZIALHILFE Rechtsgrundlagen.

<sup>79</sup> Art. 7 SHG.

<sup>80</sup> SHG Art. 3, 5 para. 2; Unterstützungsrichtlinien 4. 3; SOZIALHILFE Anspruchsvoraussetzungen.



## D. Exceptions

The Swiss system of social security ensures a financial and personal support for those in need living in Switzerland. This support is provided by the canton of residence of a person.<sup>81</sup> It means that a person must be a resident of the canton Basel-City in order to receive cantonal social assistance there. Therefore, some groups and individuals that are not residents of Basel-City are excluded from the cantonal social assistance.

### 1. Non-assisted Persons

Students and postgraduate students studying at Swiss universities, universities of applied sciences and federal institutes of technology are not supported by the social assistance system of Basel-City. It means that neither regular public assistance nor emergency assistance is granted for them. It is only in some exceptional cases that an emergency assistance can be provided for a short time, particularly at the initial stage of education, when a scholarship decision is pending, or shortly before graduating.<sup>82</sup>

Persons attending advanced training courses, internships or similar courses cannot demand social assistance and emergency assistance either.<sup>83</sup>

### 2. Persons in Receipt of Emergency Assistance

The SKOS-Guidelines and the Unterstützungsrichtlinien rates are not applicable to asylum-seekers and those in need without a residence permit hosted in Basel-City on behalf of the federal government.<sup>84</sup> As regards to persons with an on-going asylum procedure, for which it is not certain that a permanent stay in Switzerland will occur, social assistance is provided only to the sum of CHF 18.50 PPP.<sup>85</sup>

For asylum seekers entering Switzerland, the administrative procedure of admission can take a long time and meanwhile desperation can take the place of hope.<sup>86</sup> Indeed, two main groups of refugees should be distinguished, who are granted two different statuses and treated differently in Switzerland: asylum-seekers (N permit) and recognised refugees (B permit).

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<sup>81</sup> Art. 1 and 4 ZUG.

<sup>82</sup> Unterstützungsrichtlinien 3.2.2.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid. 3.1; Art 26a AsyLA.

<sup>85</sup> Unterstützungsrichtlinien Anhang: 1.

<sup>86</sup> Interview with "Gassenküche".

### 3. Asylum Seekers (N Permit)

Asylum-seekers arriving in Switzerland and submitting an asylum application get an N permit during the time of the procedure. The application is made in one of the procedure and registration centres for asylum seekers (Alstätten, Basel, Chiasso, Kreuzlingen and Vallorbe). An N permit attests that the holder has the right to stay temporarily in Switzerland during the procedure period, but this is not a residence right.<sup>87</sup> Foreigners possessing an N permit and having an asylum application pending are under the jurisdiction of the assigned canton and receive support from it. As long as a person stays in a procedure and registration centre, or in an integration centre for a refugees group, support is given by the Confederation (art. 80 para. 2 AsyIA). When an asylum seeker needs emergency aid outside of the assigned canton, this help is to be given by the canton where the person is currently located.<sup>88</sup> According to the AsyIA, for asylum seekers and persons in need of protection who do not hold a residence permit, “the level of support is less than that given to the local population”. Social benefits and emergency aid should “wherever possible be provided in the form of non-cash benefits” (Art. 82 para. 3-4 AsyIA).

### 4. Refugee Status (B Permit)

If a person asking for asylum qualifies for refugee status and if there is no exclusion reason, asylum is given (art. 40 AsyIA). This means that a person is officially recognised as a refugee, and receives a B permit.

As mentioned (see Part II, C.), the cantons are responsible for granting social assistance to persons with refugee status (art. 115 Fed. Cst.; art. 80 AsyIA). Consequently, it is cantonal law that determines the scope and method of payment of social assistance. The 1951 Refugee Convention implies that people with refugee status have the right to receive the same treatment with respect to public relief and social assistance as the native population (art. 23). Furthermore, particular needs of refugees should be taken into consideration according to the Swiss federal law. An example of these particular needs could be their professional and social integration.

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<sup>87</sup> SKOS, « Soutien des personnes dans le domaine de l’asile et des réfugiés (sans citoyennes et citoyens CE/AELE et autres personnes ressortissantes d’Etats tiers) », p. 3

<sup>88</sup> Ibid. p. 4.

Persons subject to removal orders, for which a departure deadline has been fixed or which enforcement is suspended, are not entitled to social assistance, but they have the right to emergency aid, according to art. 12 of the Federal Constitution of the Swiss Confederation (art. 82 para. 1-2 AsylA). They also enjoy the right to emergency aid if they are in a transit period because it is not possible or acceptable to send them back to their native country or country of origin for different personal, economic or social reasons, for example, if they would have to expect inhuman treatment in their native country or country of origin.<sup>89</sup> In these cases, the time of receiving emergency aid is set individually.<sup>90</sup>

The right to emergency aid is guaranteed to the following groups ineligible to receive social assistance from Basel-City.<sup>91</sup>

- persons without a residence arrangement,
- persons whose asylum has been rejected or cancelled,
- persons with a residence arrangement in another canton,
- travellers in transit,
- persons with a short-term residence permit,
- economically inactive persons with a residence permit,
- persons from third countries with a permit as self-employed

Emergency aid is generally provided weekly and in kind, for example, in the form of accommodation in civil protection shelters and three meals a day.<sup>92</sup> Additionally, emergency aid can be provided in the form of an emergency overnight accommodation voucher and 12 CHF PPP or 10 CHF PPP and accommodation in special organisations. Emergency health care should be covered as well.

#### E. The Absolute Minimum

The analysis of legislature shows that the realisation of the right to food in Basel-City has to be secured on two levels: in the framework of the absolute minimum and social minimum guarantees.

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<sup>89</sup> SKOS Asyl, p. 6; Art. 5 para. 1 AsylA.

<sup>90</sup> Art. 44 AsylA; Art. 83-84 FNA.

<sup>91</sup> Unterstützungsrichtlinien 3.2.1; Art. 27 AsylA.

<sup>92</sup> Art. 82 para. 3 AsylA; SOZIALHILFE Nothilfe Asyl.

First and foremost, the absolute minimum must be provided. The basic material security includes guarantees of basic means of subsistence, primary health care, and housing costs.<sup>93</sup> A 15 % sanction shortage can occur when an assisted person does not comply with the conditions imposed or violates legal obligations.<sup>94</sup> The basic material security minus the 15 % shortage results in the absolute minimum that a person must receive in order to live in human dignity. These absolute minimum guarantees cannot be compromised.<sup>95</sup> The equivalence scale for basic living costs per person is rated digressively.

<i>Monthly Rate</i>		
Household size	Monthly rate in CHF	Per Person
1 Person	986	986
2 Persons	1509	755
3 Persons	1834	611
4 Persons	2110	528
5 Persons	2386	477
6 Persons	2662	444
7 Persons	2938	420
Each additional Person		+276

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<sup>93</sup> SKOS Guidelines, A. 6-3.

<sup>94</sup> Ibid. A. 8-3.

<sup>95</sup> Ibid. A. 6-1.

<i>Daily Rate</i>		
Household size	Daily rate in CHF	per Person
1 Person	32.40	32.40
2 Persons	49.60	24.80
3 Persons	60.30	20.10
4 Persons	69.40	17.40
5 Persons	78.40	15.70
6 Persons	87.50	14.60
7 Persons	96.60	13.80
Each additional Person		+9.10

The period of support is generally set for a month and contains the financial help necessary to cover basic living costs.<sup>96</sup> According to the SKOS Guidelines, basic living costs amount 986 CHF per month.<sup>97</sup>

<i>986 CHF per month cover:</i>
<ul style="list-style-type: none"> <li>• Food, beverages and tobacco products.</li> <li>• Clothing and shoes.</li> <li>• Energy consumption without living costs (electricity, gas etc.).</li> <li>• Home economics (cleaning products, disposal bags etc.).</li> <li>• Small household goods.</li> <li>• Health care without deductibles and franchises (self-purchased drugs etc.).</li> <li>• Transport costs (public transportation etc.).</li> <li>• Communication (telephone, postal services etc.).</li> <li>• Entertainment and education (radio/TV, sport, newspaper, books, scholar costs etc.).</li> <li>• Body care (toilet requisites, hairdresser etc.).</li> <li>• Personal equipment (writing material etc.).</li> <li>• Outside taken drinks.</li> <li>• Others (small gifts, association contributions etc.).</li> </ul>

<sup>96</sup> Art. 7 para. 1 SHG; Unterstützungsrichtlinien, 10.1.

<sup>97</sup> SKOS Guidelines, B.2–1.

## F. Social Assistance Provided by Charitable Organisations

In addition to guarantees of the absolute minimum provided by the canton, there are other ways of receiving social help in Basel-City. Caritas beider Basel publishes a list with hundreds of addresses in the region of Basel dedicated to assisting persons in financial need, i.e. to provide material assistance mainly.<sup>98</sup> A short presentation of the principal associations will follow with a focus on those, which specialise in assisting the enjoyment of the right to food in Basel-City.

“**Die Gassenküche**” (soup kitchen) is an organisation, which offers food to anyone in need, regardless of the reasons. Being open daily in the morning and in the evening, it provides a free breakfast and a menu in the evening, which costs 3 CHF. On Sundays, a brunch is offered for free. 140 to 160 people visit the association per day.<sup>99</sup> It buys food through sponsors and looks to have differentiated menus every day. The association is financed by private sponsors such as the “Kirche Beider Basel” and the “Christoph Merian Stiftung” (CSM). The canton Basel-City finances a limited deficit guarantee.<sup>100</sup> The main goals of the “Gassenküche” are, in addition to providing adequate food to marginalised groups, to offer them a location to socialise and to make contacts. Since living in poverty often means exclusion from society, many people interviewed mentioned their intention to meet people when they come to the “Gassenküche”.<sup>101</sup>

*“I don’t come here for the food but for the people.”*

The association “**Stiftung Sucht**” provides a location where homeless and socially marginalised people meet and benefit from different services, such as showers, washing facilities, clothes exchange, and even job opportunities. A lunch is served for 3 CHF and soup, bread, fruits, water and tee are free. The remuneration for food is important, as in this case, a personal decision as to what people will do with the money they have received is respected and the feeling of paternalism is excluded.<sup>102</sup>

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<sup>98</sup> Caritas Stiftungsverzeichnis; Caritas Anlaufstellen.

<sup>99</sup> Gassenküche, unser Angebot.

<sup>100</sup> Interview with „Gassenküche“. Link to official information (homepage).

<sup>101</sup> Interview with a visitor from the „Gassenküche“.

<sup>102</sup> Interview with Stiftung Sucht, the 6<sup>th</sup> of December 2015.

*“It is a part of human dignity to make their own decisions and to say if they want to spend their money on a six pack of beer or on a lunch in the Tageshaus.”*

About 33 portions are served daily and no one has to leave the location feeling hungry. The kitchen is experienced in providing and distributing food equally for everyone. The association gets 2/3 of support from the canton Basel-City and from private sponsors.<sup>103</sup>

**“Treffpunkt Glaibasel”** is an association in *Klein Basel*. Open daily it offers an uncomplicated location for those in need and welcomes over 50 people a day. A lunch with soup and salad is served for 5 CHF.<sup>104</sup>

**“Soup and Chill”** offers soup, bread, fruits and juices for free every evening from 17:00 to 21:00. Every two months a cultural brunch is organised by the 3/KLANG, a socio-cultural project.<sup>105</sup> In order to save financial resources for the tough months of the winter, “Soup and Chill” had to close their soup kitchen in the weekends of the summer 2014 because the canton Basel-City refused to extend its sponsoring.<sup>106</sup>

In this sense, the absolute minimum is guaranteed on a cantonal level through integrating these guarantees into the Constitution and legislature of Basel-City and creating cantonal mechanisms of social assistance as well as through diverse private associations that provide an access to food for those in need. According to obligations to respect, protect and fulfil the right to food, it is required that the state takes actions to secure access to adequate food of the population. That is why it is a duty of Switzerland and Basel-City to promote (including through financial support) these associations.<sup>107</sup> If it occurs that the associations would have to close due to a diminution of the budget through fewer donations from private actors, a lack of the state and cantonal support would mean that their obligations corresponding to the right to food are not fulfilled.

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<sup>103</sup> Ibid.

<sup>104</sup> Treffpunkt Glaibasel.

<sup>105</sup> 3Klang; Soup and Chill.

<sup>106</sup> Tageswoche.

<sup>107</sup> See Part I, D, 2.

## G. The Social Minimum

The social minimum guarantees include, along with the basic material security, situation related benefits.<sup>108</sup> These benefits are linked to the economic, family and health situation of a person and are oriented to integrate people socially and economically.<sup>109</sup> They are based on the prosperity level of the population and on the individual situation of a person.<sup>110</sup> Art. 10 SHG enunciates to provide social minimum guarantees in cash. The social minimum is not clearly demarcated from the absolute minimum; there is an indistinct line between those two concepts.<sup>111</sup> In fact, the basic means of subsistence play a big role by defining the social minimum.<sup>112</sup>

As shown above, according to the SKOS Guidelines, basic living costs amount to 986 CHF a month per person. It was relevant for the report to analyse whether this amount allows a person to reach the social minimum in order to be integrated economically and socially into a present-day community.

On the basis of the Swiss Federal Office for Statistic's Household Budget Survey (Haushaltsbudgeterhebung - HABE), the SKOS decided what belongs to basic needs and elaborated in details the basket of basic goods for 2009-2011. In the food section of the basket, all essential foodstuffs, and beverages, even tobacco products, necessary for the absolute minimum are included.<sup>113</sup>

But there are different problems regarding the social integration of a person. For example, eating in restaurants, cafes, bars, self-service and take away places are not included.<sup>114</sup> Neither are meals in canteens and diners occurring by private invitations.<sup>115</sup> This means that a person receiving social assistance can only get food in order to consume it at home and there are no possibilities to go outside to have a meal with family, friends or colleagues, i.e. to take part in social life.

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<sup>108</sup> SKOS Guidelines, A. 3-1; art. 7 para. 1 SHG.

<sup>109</sup> SKOS Guidelines, C. 1-1.

<sup>110</sup> SKOS Grundlagenpapier, p. 10.

<sup>111</sup> Ibid. p. 8.

<sup>112</sup> Ibid. p. 6.

<sup>113</sup> SKOS Grundbedarf, Anhang 2.

<sup>114</sup> Ibid. Anhang 2, 5311.01, 5312.01.

<sup>115</sup> Ibid.



There is also a problem when food becomes an adjustment variable, which is the case when low budget families or individuals limit their full realisation of the right to adequate food in order to fulfil other needs.<sup>116</sup> When cantonal social assistance is not enough to satisfy different cultural and social needs, the quality of food is often neglected for the sake of these needs, such as payment for a new mattress, duvet cover, and pillows, which is not included in the SKOS basket.<sup>117</sup> Additionally, refrigerators, dishwashers, cooking stoves and grills are not included in the basic needs defined by the SKOS.<sup>118</sup> These lacunas can complicate enormously the living situation of a family if there are no possibilities of storing the food and cooking at home. In this context, it is necessary to conclude that essential prerequisites of the social minimum, which should enable an economic and social integration of a person, are not met.

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<sup>116</sup> Interview with „Gassenküche“.

<sup>117</sup> SKOS Grundbedarf, Anhang 2, 5820.01.

<sup>118</sup> Ibid. Anhang 2, 5831.01, 5831.02.

### Part III. Realisation of the Right to Food in Basel-City

After analysing the system of social assistance in Switzerland and Basel-City, it is clear that every person in need and unable to support themselves should receive assistance in order to live a life in human dignity. It presupposes not only the essential minimum of physiological survival such as food, clothing, housing and health care but also a social minimum, which includes economic and social integration of a person in the society.

In 2012, 7.7 % of the Swiss population was living under the minimum threshold, which was determined as 2,200 CHF per person per month and 4,050 CHF for a two-person household with two children.<sup>119</sup> In 2015, the SKOS guidelines defined the minimum resources to 2,600 CHF per person in a month and to 4,900 CHF for a two-person household with two children.<sup>120</sup> The absolute minimum is calculated on the basis of average housing costs, average healthcare costs and average basic living costs.<sup>121</sup>

#### ***Minimum Threshold for One Person in 2015***

- 1,160 CHF average housing costs + 412 CHF average health care costs + 968 CHF basic living costs = 2,600 CHF.

Living under the minimum threshold means to be in a situation of poverty. There are about 590,000 persons that have difficulties in realising their right to food in Switzerland.

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<sup>119</sup> Statistik Schweiz.

<sup>120</sup> SKOS Armutsgrenze, p. 4.

<sup>121</sup> Ibid. p. 4.

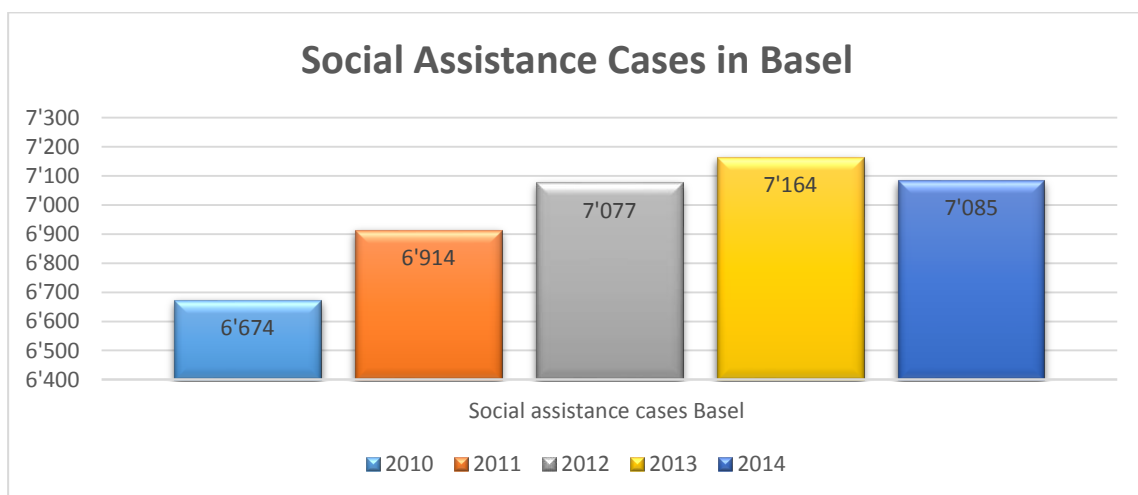
## A. Poverty in Basel-City

In order to analyse how the right to food is realised in Basel, it is relevant to determine which groups of persons have problems with exercising their right to food. According to the data collected in 2006, 14.4 % of households in Basel were affected by poverty.<sup>122</sup> Since that time, there have not been any statistics concerning poverty in Basel. Therefore, one has to rely on the statistics of the social assistance cases in Basel-City, which provide numbers until 2014 and focus on the most numerous groups that are at risk of poverty and receiving social assistance.

In Basel-City, 7,085 persons received social assistance in 2014.<sup>123</sup> The last analysis of the situation of poverty in Basel and the numbers of the social assistance cases was made in the Armutsbericht and dates from 2010. In the last five years, a modest increase in the cases has occurred (see diagram 1). This phenomenon is linked to the improvement of the social assistance system, in the way that more persons have been supported. This has been pointed out in the interview with the Gassenküche, which works closely with the social assistance department of Basel-City.<sup>124</sup>

“The better a social assistance system gets and the better support people receive, the more persons will use this opportunity”.<sup>125</sup>

Diagram 1



<sup>122</sup> Armutsbericht, p. 59.

<sup>123</sup> SOZIALBERICHTERSTATTUNG, S. 88.

<sup>124</sup> Interview with the „Gassenküche“.

<sup>125</sup> Ibid.

It is important to note that subjects of social assistance differ in nationality: 4.3 % are Swiss women, who received social assistance in Basel-City (see diagram 2) in comparison to 10.2 % who are foreign women (see diagram 3)<sup>126</sup>. For the male gender, 6.1 % are of Swiss origin and 10.6% of foreign origin.<sup>127</sup> This difference is linked to the fact that educational and language level of foreigners is often not sufficient for having a job in Basel-City and can lead to integration problems.<sup>128</sup>

Diagram 2

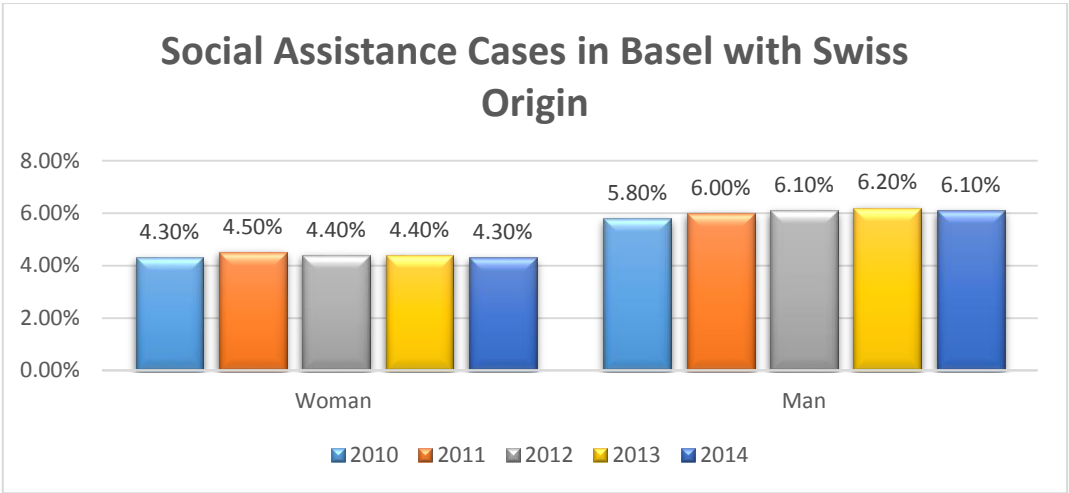
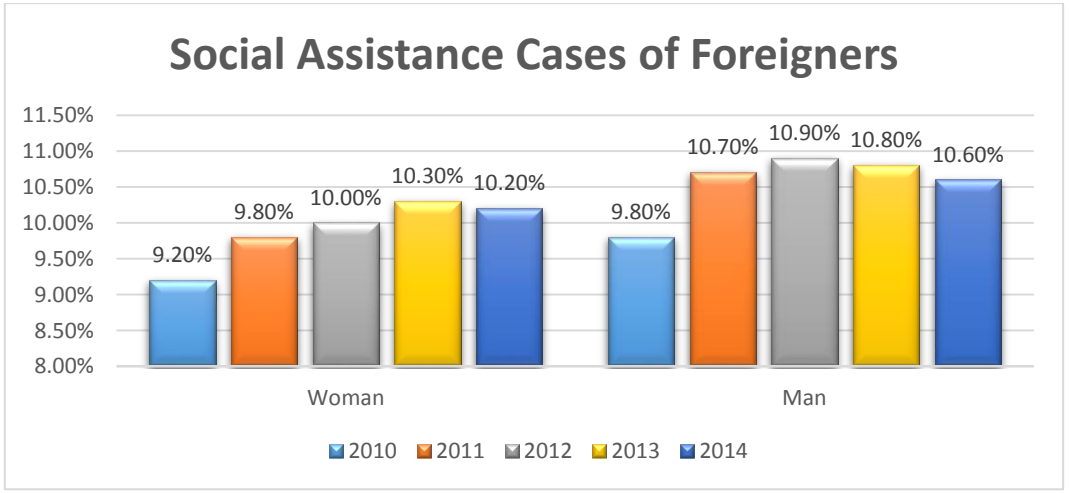


Diagram 3



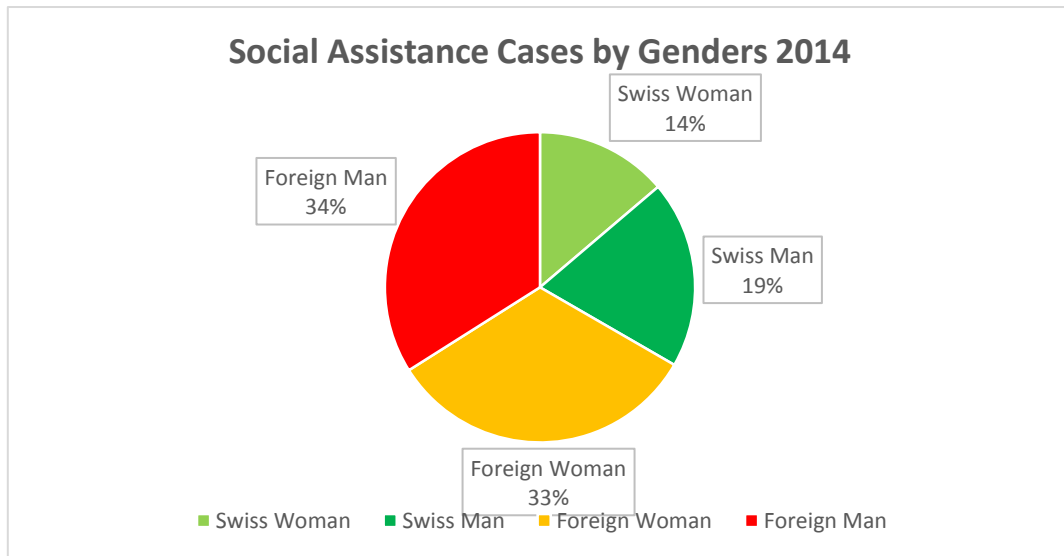
The diagram 4 summarises the statistics of social assistance recipients by gender and nationality in Basel-City in 2014.

<sup>126</sup> SOZIALBERICHTERSTATTUNG, p. 89.

<sup>127</sup> Ibid. p. 89.

<sup>128</sup> Armutsbericht, p. 80.

Diagram 4

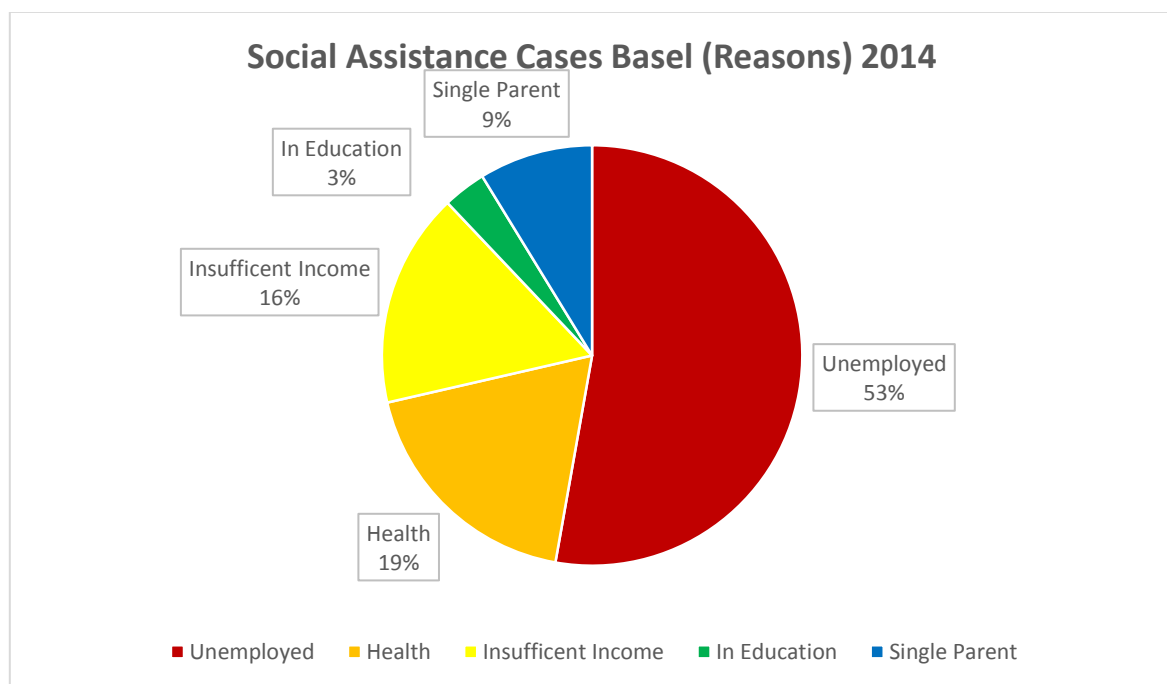


## B. Vulnerable Groups in Basel-City

Probably the most important distinction between recipients of social assistance can be made on the basis of the reasons for receiving social assistance. These reasons were used in this report as criteria for defining vulnerable groups in Basel-City.

In 2014, 53% of the social assistance cases in Basel were related to unemployment, 19% to health problems, 16% to insufficient income, 9% were single parents and 3% was linked to education (see diagram 5).<sup>129</sup>

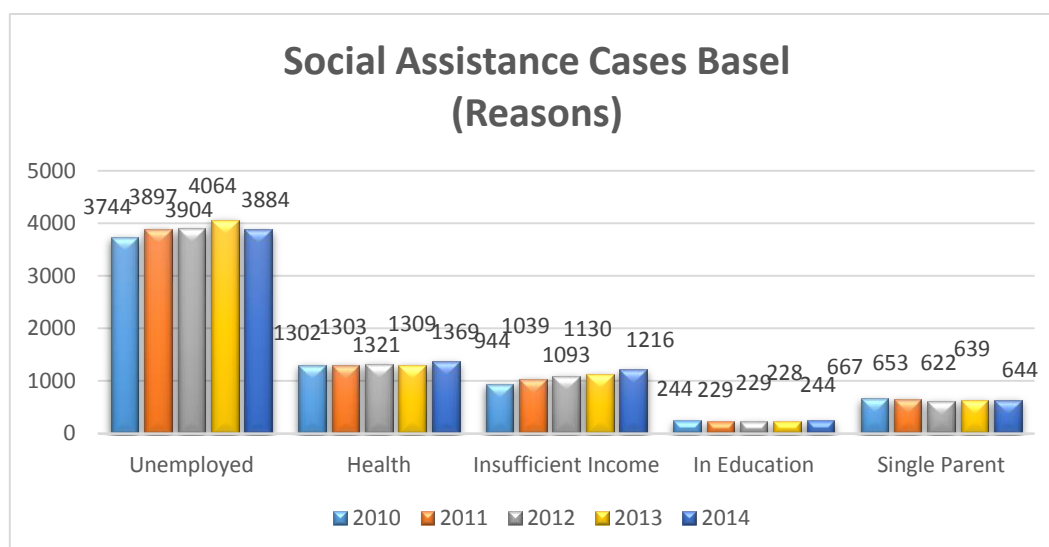
*Diagram 5*



The diagram 6 demonstrates the difference between vulnerable social groups in Basel-City from 2010 to 2014.

<sup>129</sup> SOZIALBERICHTERSTATTUNG, p. 88.

Diagram 6



### 1. Unemployment

As seen previously, the right to food is closely linked to the right to work, as sufficient income is necessary for enjoying a decent social minimum and, therefore, for purchasing adequate food. In August 2015, the unemployment rate in Basel was quoted at 3.7 %, which means that 3,458 persons are registered as unemployed.<sup>130</sup>

It is teenagers and young adults (from 15 to 24 years) who are especially affected by unemployment as the highest numbers relate to this category of social assistance recipients: 4.3 % of the young people were registered at the Regionales Arbeitsvermittlungszentrum (RAV) in 2014.<sup>131</sup> Often, the problem of parents' integration leads to a lack of support and advice for their children in matters concerning education.<sup>132</sup> Sometimes, poverty is transmitted from one generation to another to another within the family as a representative of the association Stiftung Sucht mentioned:

*"An inheritance of poverty from parents to children is something common."*

Young women with a migrant background are also often hindered to access adequate education and it is not rare that they have children at a very young stage of their lives and have to raise them on their own.<sup>133</sup> A lack of education is considered to be the main reason

<sup>130</sup> Dossier Basel, p. 6.

<sup>131</sup> SOZIALBERICHTERSTATTUNG, p. 28.

<sup>132</sup> Armutsbericht, p. 83.

<sup>133</sup> SKOS Ausbildung, p. 3.

for unemployment and the need for social assistance.<sup>134</sup> This is a serious problem as, at this stage, reintegration into the labour market is very difficult and a lot of young adults become dependent on social assistance.<sup>135</sup> This situation contradicts the very goals of the SKOS Guidelines. One principle of social assistance should be the help to self-help.<sup>136</sup> It is an unwanted effect of social assistance to trap people into poverty.

It is necessary to mention that Basel had a big renewal in the labour market: from 1995 to 2008, almost 13,800 workplaces in the industrial sector and 4,400 workplaces in the retail trade sector were abolished.<sup>137</sup> This is a serious problem for people with no high qualifications, as they cannot find any job accepting a low educational level.<sup>138</sup>

When unemployed persons are not able to be economically active for a long period of time, they do not have access to social security benefits.<sup>139</sup> An unemployed person has the right to social assistance when they are not entitled to receive a daily allowance, which replaces 80% of their income from the unemployment insurance fund.<sup>140</sup> In this respect, social assistance is the last step in a process that has been going wrong for a long time. Social support should be orientated towards reintegration into the labour market through providing access to further education, which will allow people to find a job with an income sufficient to lead a decent life.<sup>141</sup> In this sense, facilitated access to education programmes would be an important improvement to the unemployment situation.<sup>142</sup>

Thus, the right to food of an unemployed person can be threatened by a lack of adequate social assistance. Unemployment due to a low educational level can trap a person into poverty. Poverty itself is a threat to the right to food since a person cannot afford to satisfy their basic needs including food.

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<sup>134</sup> Armutsbericht, p. 80.

<sup>135</sup> SKOS Ausbildung, p. 2.

<sup>136</sup> SKOS Guidelines, A. 4 -1.

<sup>137</sup> Armutsbericht, p. 136.

<sup>138</sup> Ibid. p. 149.

<sup>139</sup> SKOS Ausbildung, p. 6.

<sup>140</sup> RAV.

<sup>141</sup> SKOS Ausbildung, p. 6.

<sup>142</sup> Armutsbericht, p. 203.



## 2. Health Problems

A frequent reason for requiring social assistance is linked to the health situation of a person.<sup>143</sup> Accidents, chronic diseases, and physical complaints often disorganise a lifestyle conducted so far by raising enormous and unexpected costs.<sup>144</sup> A person may not have enough savings to cover operation costs or may have to change their work in order to adapt to the new situation, which often leads to a lower income. Health problems often complicate already difficult situations and push a person to the edge of poverty.

The long procedure of getting health insurance is often the reason that a certain period of time is not covered by health insurance and using social assistance is the only solution to fill the lack of financial resources. This also happens when insurances do not cover some health costs, such as glasses and long-time care.<sup>145</sup>

Another common reason for falling into poverty and the need for social assistance is related to psychological problems.<sup>146</sup> Frequently, difficult living situations underlie mental health problems and the latter, in their turn, again underpin poverty.<sup>147</sup> As seen from the Interview of the “Gassenküche”, many mentally troubled persons are left on their own and use the services of charitable organisations.

*“We’ve seen a big augmentation of mentally troubled persons visiting our location daily. This is to trace back to the lack of effectiveness while handling mentally disturbed persons.”*

In fact, the Psychiatriegesetz of Basel-City allows hospitalising a person in need of urgent treatment or care (Art. 6, para. 1). An effective intervention of public forces in difficult cases is, however, not permitted. As “Stiftung Sucht” explains:

*“In some cases, we have to call the police because a visitor with mental problems threatens third parties or even themselves. But the police force doesn’t take it seriously because there is no real threat. It would first be necessary to commit a serious breach of public order before intervening and hospitalising a person for treatment or care reasons.”*

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<sup>143</sup> Armutsbericht, p. 102.

<sup>144</sup> Ibid., p. 102.

<sup>145</sup> Ibid., p. 102.

<sup>146</sup> Ibid., p. 104.

<sup>147</sup> Ibid., p. 104.

It is problematic to find a balance between freedom of a person and security of third parties and of a person themselves. It is impossible to enjoy secure and dignified access to food if people are under the threat while visiting a charitable organisation.

In conclusion, social assistance is filling the gap between the moment when health insurances covers all medical costs and the moment when a person finds themselves without any support. But there are still situations where social assistance is not enough to cover basic needs, especially when there are debts to cover. Also, when health insurance does not cover some medical costs or payments are suspended as a sanction for not paying health insurance contributions, a person should use their own financial resources, which leads to them becoming dependent on social assistance.<sup>148</sup>

### 3. Working Poor

The common expression “working poor” means a group of employed people who, despite of having jobs, are unable to get enough income to preserve them from poverty.<sup>149</sup>

#### ***Characteristics of “working poor” situations***

- Persons with no professional skills or with low skills;
- Persons raising their children by themselves (single parents)
- Self-employed without employees;
- Part-time employed or persons with flexible conditions of employment.

The common problem with this vulnerable group is a low and/or irregular income that does not provide enough space for savings. In this context, every unexpected situation, such as the loss of a job, health issues or other difficult living situations will destabilise the financial situation of a person. They will be pushed to use up their previously saved resources. This leads into a circle of lacking resources that can lead a household into poverty. For single

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<sup>148</sup> Armutsbericht, p. 73.

<sup>149</sup> HUG, p. 44.

parents<sup>150</sup>, the problem is related to the educational level and impossibility to combine their work schedules with the one of their children.<sup>151</sup>

The problem of being in a poverty situation is that financial resources available for food are often used as an adjustment variable.<sup>152</sup> Often single parents in poverty prefer purchasing “luxury” goods, such as branded clothes, in order to hide their poverty.<sup>153</sup> As the Armutsbericht reports, it is common for parents to buy branded jeans for their children in order to protect them from negative reactions in school.<sup>154</sup> Cheaper food, such as carbonates, will be then preferred to balanced food, such as vegetables and fruits, which are more expensive.

The implementation of a minimum income in Switzerland is in the spotlight of contemporary discussions. Since securing access to a minimum income would provide much better social protection than relying on a social assistance system, its guarantees are very important for progress in the fight against poverty.<sup>155</sup>

#### 4. Homelessness

There is no actual research that brings up the latest numbers of homeless people in Basel-City. The association Schwarzer Peter<sup>156</sup> offers an opportunity to register in order to have an address in Basel-City for people without a fixed place of residence AND living at their family’s or friend’s places or on the streets. In 2014, over 500 people who had no fixed residential location where registered at the association, Schwarzer Peter.<sup>157</sup>

There are different factors that can make the search for a living place difficult in Basel-City. As the Armutsbericht concluded, homelessness is often caused by psychological problems, diseases, alcohol and drugs use and also by difficult personal situations, such as conflicts with partners or parents, separation or divorce, the death of a family member or a friend.<sup>158</sup>

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<sup>150</sup> Statistik Schweiz Definitionen: “A single parent’s household is a private household, in which the family core consists of one parent and one (or more) child, regardless of their age”. <http://www.bfs.admin.ch/bfs/portal/de/index/themen/20/11/def.html>

<sup>151</sup> Armutsbericht, p. 142.

<sup>152</sup> Ibid. p. 74; see Part II.

<sup>153</sup> Ibid. p. 74.

<sup>154</sup> Ibid. p. 74.

<sup>155</sup> HUG, p. 513.

<sup>156</sup> Schwarzer Peter; Schwarzer Peter is an association that offers help to persons in need and living on the street and is focused on providing information, emergency aid, consultancy and accompaniment.

<sup>157</sup> Tageswoche.

<sup>158</sup> Armutsbericht, p. 129.

A big contemporary problem is the restricted labour market for elder persons. When a person reaches their 50's and falls out of the labour market, it may start the chain reaction of losing their job, losing their partner, falling into alcoholism and often losing a place of residence. A person may end up on the street because their pension insurance is not sufficient for leading a decent life.<sup>159</sup> As the interview with "Stiftung Sucht" shows, being homeless can actually affect everyone in unfavourable conditions.<sup>160</sup>

*"A stroke of fate can affect everyone, most of the time it is a chain of unexpected and heavy elements falling over one's head and sometimes, any prospect of getting back in place is lost and a person ends up unemployed or even on the street."*

A lot of homeless people are confronted with alcohol and drug addictions, which makes it even more difficult for them to escape from the hard times of living on the street.<sup>161</sup> But in some cases, a homeless person makes a personal choice to live on the street as seen from the interview with Stiftung Sucht.

*"There are some persons that made it their personal choice to live on the street, so they can be free, free from the system."*

Also, psychological problems, such as persecutory delusions, can be the reason for which a person is "forced" to live on the streets as shown in the interview with Stiftung Sucht.

*"A person that has a persecutory delusion, cannot be forced to live in an apartment provided from the state, as they would have the feeling that the government is persecuting them and wants to kill them."*

Probably the biggest problem for homeless people is the lack of apartments in Basel-City. Most of the houses that could be used to locate homeless people in are getting converted into luxury apartments.<sup>162</sup> The association Schwarzer Peter has, nevertheless, started a petition to allow the use of empty houses in Basel-City.<sup>163</sup>

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<sup>159</sup> Interview with Gassenküche.

<sup>160</sup> Interview with Stiftung Sucht.

<sup>161</sup> Armutsbericht, p. 130.

<sup>162</sup> Interview with Gassenküche.

<sup>163</sup> Schwarzer Peter.

An obstacle to the realisation of the right to food of homeless people is the lack of financial resources. They do not have a dignified access to food, as the financial support from social assistance is often not enough to purchase foodstuffs in retail stores. Food is provided by the charitable organisations of Basel-city, but many people are ashamed of appearing at these places.<sup>164</sup>

*“A single mother would not specially come to eat at the “Gassenküche” as there are mostly homeless people there. This shows the marginalisation and stigmatisation of this vulnerable group.”*

Effectively, the main problem discovered in this report is not the lack of access to the right to food itself but that it is both cause and effect of the social marginalisation. In fact, no one has to be hungry in Basel, but society’s attitude to homeless people and those living under the poverty line, in general, violates their human dignity.<sup>165</sup>

*“No one has to suffer from hunger in Basel; the problem is not the quantity and access to food, it is more the social integration of the marginal groups.”*

## 5. Foreigners

It should be mentioned that, in fact, all discussed vulnerable groups so far include both Swiss and foreign nationals. Nevertheless, a special legislation addresses foreign nationals with a residence permit for Switzerland. Since the deportation initiative of foreigners with a criminal record entered into force on 28<sup>th</sup> December 2010, foreigners who commit a crime mentioned in the new Art. 121 Fed. Cst. (para. 3 – 6) will lose their right of residence.

**Art. 121 Legislation on foreign nationals and asylum (para. 3):**

Irrespective of their status under the law on foreign nationals, foreign nationals shall lose their right of residence and all other legal rights to remain in Switzerland if they:

- a. are convicted with legally binding effect of an offence of intentional homicide, rape or any other serious sexual offence, any other violent offence such as robbery, the offences of trafficking human beings or drugs, or a burglary offence; or
- b. have improperly claimed social insurance or social assistance benefits.

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<sup>164</sup> Interview with Gassenküche.

<sup>165</sup> Interview with the Stiftung Sucht and Gassenküche.

In this sense, there is a big threat for foreign nationals to lose their residence permit if they commit a crime mentioned above. If foreign nationals improperly claim social assistance benefits, they will lose their right of residence in Switzerland. This explains the fear of some foreign nationals to claim their right to social assistance.<sup>166</sup>

*“I prefer to be on the sure side and not to ask for social assistance  
because I am afraid to lose my right to stay here if I do.”*

In this context, there are clearly some difficulties concerning the realisation of the right to food for foreign nationals. The fear of being deported hinders them to claim their right to social assistance and, thereby, prevents them from exercising the right to adequate food.

Also, many foreign nationals lack adequate education (or their education is not recognised in Switzerland), which often leads to their unemployment. In its turn, this means that foreign nationals do not have sufficient disposable income for enjoying adequate access to food.<sup>167</sup>

## 6. Asylum Seekers

For asylum seekers entering Switzerland, the administrative procedure of admission can take long time and meanwhile, desperation can take place instead of hope.<sup>168</sup> Consequently, in situations of insecurity, strong support should be provided.

The social assistance department of Basel-City provides a place of residence for asylum seekers and covers the rent.

### ***Places provided for the asylum seekers in the Basel-City canton***

- Migration Centre, a hall of residence with 120 places where asylum seekers get social advices;
- WUMA can host 15 underage asylum seekers;
- Vulnerable care with 55 places for asylum seekers with psychological problems;
- Assisted living (living in one of the social assistance owned houses);
- Civil shelter is necessary in emergency situations when too many asylum seekers are arriving at the same time.

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<sup>166</sup> Interview with visitors of the Gassenküche.

<sup>167</sup> See Part. II, H, 1.

<sup>168</sup> Interview with Gassenküche.

Additionally, there are many different places where asylum seekers and refugees can get food, such as, for example, the procedure and registration centre's canteen, where they can cook their own food.

Some asylum seekers also visit various charitable organisations supported by Basel-city, such as "Gassenküche" or "Soup and Chill", in order to get cheap food using the financial aid provided for them (10 or 12 CHF PPP).<sup>169</sup>

There are different problems, however, concerning the situation of the asylum seekers. Many asylum seekers, firstly, have language difficulties while entering Switzerland.<sup>170</sup> It is much more difficult to integrate for a person, which cannot speak German at all. Also, when guests with different religious and cultural outlooks meet each other in one of those associations mentioned above, it can lead to conflicts between them. This is one of the reasons why the "Tageshaus für Obdachlose" does not allow asylum seekers to enter their location.<sup>171</sup>

Charitable organisations do not necessarily have the required financial support to take adequate security measures necessary to ensure a peaceful daily coming together.

Another problem concerning the status of the asylum seekers is linked to the claim of emergency aid. According to Art. 5 of the FNA,<sup>172</sup> if an asylum seeker enters Swiss territory unlawfully, a criminal sanction will be imposed.<sup>173</sup> This is, in many cases, the reason why an asylum seeker does not claim emergency aid, as it means to register at the centre for procedure and registration and sanctions and/or deportation will be applied.<sup>174</sup>

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<sup>169</sup> Interview with Gassenküche.

<sup>170</sup> Ibid.

<sup>171</sup> Interview with Stiftung Sucht.

<sup>172</sup> Foreign nationals who wish to enter Switzerland: a. must have a recognised identity document for crossing the border and a visa, if required; b. must have the required financial means for the period of stay; c. must not pose a threat to public security and order or to Switzerland's international relations; and d. must not be subject to a measure banning them from entry.

<sup>173</sup> Art. 115 para. 1 FNA.

<sup>174</sup> Art. 80 para. 2 AsyIA; Art. 115 para. a FNA; Armutsbericht, p. 164.

## Part IV. Problems and Recommendations

### 1. Realisation of the Right to Adequate Food

The research revealed that the biggest problem concerning the realisation of the right to food in Basel-City relates to its adequacy. As previously seen, adequacy has the three following aspects: accessibility, availability, and acceptability (see Part I, B 2). According to this research, the criterion of availability of the right to adequate food appears to be satisfied. Since Basel-City is an urban area, all people can easily get food by purchasing it. Additionally, free food is provided by various charitable organisations to those who are unable to pay for it. However, the acceptability and accessibility of the right to food are not fully satisfied.

Acceptability has different aspects. For example, food should be nutritionally balanced, safe for human consumption, as well as culturally and religiously acceptable for the consumer. Food should satisfy the dietary needs of individuals, taking into account their age, living conditions, health, occupation or sex. Moreover, food should be free from adverse substances, such as contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs (see Part I, C 1).

The criterion of accessibility means that the access to food should be regular, durable, and unrestricted. There should be no discrimination of any kind by ensuring the right to food, including discrimination on the basis of the social and economic state of a person. Finally, the dignity of human beings should not be violated through securing the right to food (see Part I, C 1).

In order to give recommendations and whilst keeping these criteria in mind, this chapter will focus, firstly, on problems regarding the realisation of the right to food, and then on some issues related to other socio-economic rights but interrelated with the right to adequate food.

#### *a) Acceptability*

As this reports shows in Part I C 1, acceptable food should represent a balanced diet. In order to ensure healthy and balanced nutrition, charitable organisations in Basel-City aspire to incorporate different fruits and vegetables. The problem in this regard is that most charitable organisations in Basel-City receive food from Schweizer Tafel, an organisation that



collects food in retail stores for free. In fact, stores are not allowed to sell products after their sell-by-date and give them to Schweizer Tafel for redistribution instead of throwing it away. It would be recommended, therefore, to develop cooperation with local farmers in order to provide charitable organisations in Basel-City with seasonal offers.

Another concern regarding the acceptability of food, as appeared from the research, is religious habits. For example, Muslim customers do not consume pork meat due to their religious persuasion. Nevertheless, charitable organisations in Basel-City often purchase pork meat for them, as it is the cheapest and, thus, the most affordable meat. On request, charitable organisations in Basel-City could offer persons with special dietary requirement larger portions of a side dish or an equivalent vegetarian menu.

Likewise, it is also difficult for charitable organisations in Basel-City to cater for those with food restrictions. These organisations cannot provide access to adequate food, which satisfies personal dietary needs for people that are lactose intolerant or diabetic. It appears from the interviews that some people hold the view that cooking specially for those with health issues requires too much effort. Nevertheless, in a developed country like Switzerland, all aspects of the right to adequate food could and should be realised.

In this respect, it would make sense to create a special organisation in Basel-City, which offers food for people with dietary restrictions. Another suggestion is that charitable organisations in Basel-City create a list of those with specific dietary requirements. If these people go to the same organisation every day, their needs are known beforehand.

#### *b) Accessibility*

Charitable organisations providing food for poor people in Basel-City are either partly financed by the state or not funded at all (see Part II, E). Due to this fact, some of these charitable organisations may be at risk of closing due to the lack of funding. The latter will negatively affect persons in need with no resources to buy food. Therefore, it is the duty of Basel-City to support these charitable organisations as part of its obligation to take actions in order to secure access to adequate food (see Part I, D 2).

People in receipt of social assistance, often spend their money on products other than food, for example, fancy clothing so that they can appear in public without shame. This correlates with the fact that they spend less money on food than is necessary (see Part

II, F). To avoid vulnerable people buying products which are much less important than food, they could receive part of their benefits in the form of vouchers for purchasing food in local supermarkets. Our research, however, especially the interviews, suggests that the bureaucratic costs would be too large. All of the main supermarket brands would have to be part of this voucher project. The clear risks of this strategy consist in the fact that supermarkets are able to change the vouchers back into cash or that they could allow the vouchers to be used for purchasing alcohol or tobacco products, therefore defeating the object. Perhaps the vouchers could restrict purchasing alcohol or tobacco products. The Social Assistance Department of Basel-City could allocate a certain amount of money on credit cards for paying in supermarkets. It should be also possible to block payments for tobacco and alcohol products on the card.

## 2. Social Integration Problems and the Right to Food

The research has revealed several problems concerning social integration of those in poverty, which are linked to the realisation of the right to adequate food. As shown, vulnerable people enjoy secure access to the absolute minimum but not to the social minimum. Though nobody dies from starvation in Basel-City, society's attitude towards those living under the minimum threshold and their low integration chances violate the human dignity of these people (see Part II, E and F).

The realisation of the right to adequate food is negatively affected through troubles vulnerable people have in integrating into society. According to this research, social assistance is sufficient only for cooking and consuming food at home. It's nearly impossible for recipients of social assistance to go out for dinner and eat at a restaurant or in a cafe, or even go out for a drink with friends that nowadays represent an important part of social life (Part II, F). Therefore, it would be necessary to increase the amount of social assistance which a person receives, according to the SKOS guidelines. Or at least, those in poverty could be provided with vouchers for restaurants, cafes, and canteens where vulnerable people can go with their colleagues, friends, and family. Charitable organisations in Basel-City which serve food for poor people, are currently the places where they go to meet each other.

Another problem concerning the integration of vulnerable groups and individuals relates to the realisation of their rights to education and to work. As mentioned in Part III B 1,

unemployed people often lack sufficient education. This problem can be caused by the lack of parents' support for their children whilst they are still at school. Bad education makes it hard to find a good job since many positions are intended for highly qualified professionals (see Part III, B 1). Those with a poor education have lower chances of finding a job, which puts them in need of social assistance. Similarly, people aged 50 or over experience hardship in finding a job (see Part III, B 4). To avoid the downward spiral of bad education, it is necessary to provide school children with special help. For example, older children at school could look after younger ones and help them with their homework, acting as additional mentors. It is important to promote the integration of children from the very beginning of their school life. By having someone who takes them to sport events or just spends time with them, vulnerable children will feel that they are a part of society despite their unfortunate circumstances.

In addition, the state should provide more jobs for low-skill workers and support companies that employ low-educated people, for example, on the till in a supermarket. If people are more able to work, then they have less need for social assistance, which means they can afford to purchase adequate food by themselves.

Due to the lack of affordable apartments, some people have to live on the street. Affordable houses, which could be used by homeless people, are replaced by luxury apartments (see Part III, B 4). As regards to this, the state should provide more affordable apartments, for example, through regulating which houses should retain low-price apartments. By moving from the street to low-priced housing, people will have more money left for buying food and cooking at home (see Part III, B 4).

The working poor often have an insufficient or insecure income (see para III, B 3). If something unexpected happens, such as an accident or a heavy illness, they often have to use all their savings. They lack money for purchasing adequate food because they should pay for multiple operations or long-term care. That is why they buy cheap unhealthy food instead of balanced healthy food they cannot afford. Legal guarantees of a minimum income could solve this problem and allow vulnerable people to make savings. This would help them to get by in tough times, for example, during family emergencies, unemployment or health problems.

## Part V. Conclusion

This report was aimed at answering several questions regarding the implementation of the right to food in Basel-City:

- Are all key aspects of the right to adequate food secured in Basel-City?
- What are the mechanisms for ensuring the right to food?
- Is cantonal social support enough for granting secure and dignified access to adequate food for everyone?
- Which social groups have limited access to the right to adequate food?
- What are the reasons for these limitations?
- What assistance is provided to the most vulnerable social groups in Basel-City?

Most of them were answered; some others need additional research, mainly because of the lack of necessary information and statistics.

Indeed, as shown in the report, in addition to guarantees of employment, the most important mechanisms of ensuring the right to food in Basel-City is the social security system, and precisely, the social assistance system. As demonstrated, the social assistance system guaranteed through the legislation of the canton Basel-City (which invested more in social assistance than any other canton in Switzerland),<sup>175</sup> corresponds to the SKOS Guidelines. Additionally, social assistance to the most vulnerable groups and individuals is provided through a good functioning system of charitable organisations. The report emphasises that social assistance guarantees are an obligation of the state and not of private associations and, therefore, should not depend on benevolence of private actors. In this respect, an improvement in the cantonal subventions to charitable associations is necessary.

The report demonstrated that social support provided in Basel-City is nevertheless not enough to allow everyone to reach a social minimum and not sufficient for a developed country such as Switzerland. Most vulnerable groups such as unemployed persons, persons with health problems, the working poor, homeless people, foreigners, and asylum seekers experience difficulties with social integration.

While examining the criteria for the adequate realisation of the right to food – accessibility, availability and acceptability of food – the research shows that food is available in Basel-City.

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<sup>175</sup> See Introduction, p. 12.

But regarding the accessibility and acceptability of food, there are still problems that must be solved in Basel-City. One of the most important suggestions is to ensure dignified access to food and, more specifically, to guarantee that vulnerable persons can access food without being marginalised from society. Another suggestion is that access to food should be economically guaranteed, which means that a person should be able to afford adequate food without compromising any other basic needs.

As there are no statistics concerning the numbers of homeless persons in Basel-City, it was impossible to define the extent of the problem of homelessness, but it was still important to mention the problems of homeless people, as it is one of the most vulnerable social groups. Appropriate statistics should be made available in order to enable a better analysis of the situation of homelessness in Basel-City and its changes.

Also, the lack of statistics on cases concerning cantonal refusals to provide social assistance for applicants did not allow us to gain an idea of the real numbers concerning poverty in Basel-City. There is a general understanding that persons in need living in Basel-City can access the previously mentioned charitable associations. But this does not permit achieving proper information on hidden poverty in the city and measures to alleviate it.

Additionally, there is no data on what portion of social assistance benefits its recipients spend on food. This prevented a deeper examination on the affordability of food in Basel-City.

Finally, the realisation of the right to food of persons in receipt of emergency assistance could be reflected through an analysis of their enjoyment of the right to emergency aid. Current massive changes in policies towards refugees make research on the implementation of the right to food for asylum seekers extremely difficult.

## Annex

### Interview questions:

1. Which population group is most affected by poverty in Basel-City?
2. To which places can the vulnerable people go to get cheap food?
3. Are vulnerable people sufficiently informed about these places?
4. In your opinion, how could the problem of poverty be combatted best?
5. What obstacles do you face in everyday life: both legal and social?
6. Are there people who would rather take no help?
7. Are there enough places where vulnerable people can consult?
8. Does everyone in Basel-City have the same access to food?
9. Is the assistance a person can get permanent?
10. Is the food they obtain balanced?
11. Is the food safe for human consumption and free from adverse substances?
12. During food allocation, is the religious and cultural acceptability of the food guaranteed?
13. Does the food satisfy special dietary needs?
14. The SKOS Guidelines have calculated a basic amount of social assistance. Is there space for changing this amount from case to case?
15. Would it be better to distribute food vouchers? What is the reason that there are no food vouchers?