Are Welfare Beneficiaries in Workfare Programs Workers in the eyes of ILO Conventions and Human Rights?
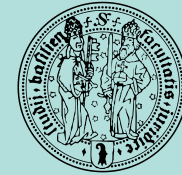
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1. Context of the research

- "Working under the conditions of social welfare: legal framework, prevalence and regulatory gaps" (prof. Kurt Pärli from the University of Basel)

- 3-year research program funded by the Swiss national science foundation

- https://thirdlabourmarket.ius.unibas.ch/en/

- Extensive field research about occupational programs in Switzerland: survey launched in April 2017 (led by political scientist PD Dr. Gesine Fuchs). All of the 26 cantons were asked to fill it in and provide supporting documents.

- First results came in mid-June 2017; we are expecting a full response rate by the end of July, 2017.

2. Relevance of the research question

- Almost no case-law, no scholarly work

- Access to the status of worker/employee for the welfare worker? With what legal and factual consequences?

- First results of the survey show a very diverse picture of occupational programs and welfare-to-work policies in Switzerland

- No single legal answer

  ➤ First impression: occupational programs were widely introduced in Western welfare policies... but they were not at all thought through, on a philosophical, practical, and legal level.

3. Welfare workers and workfare programs
a. Main characteristics of workfare programs

- Survey will inform on:

Density of regulation

Aims of programs

Type of programs

Link with sanctions within social welfare: type and characteristics of sanctions.
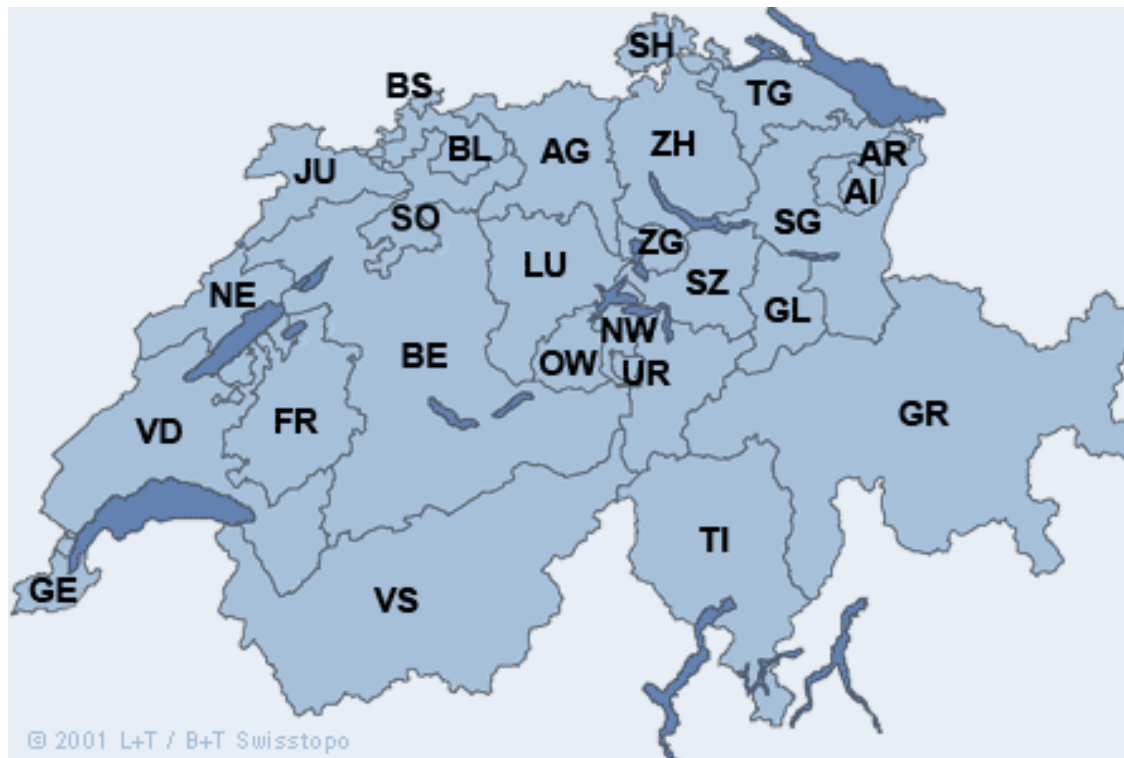
Organisation and management of the programs.

Evaluation of the programs

3. Welfare workers and workfare programs
   ## b. Two examples from the field in Switzerland

- Two very contrasting examples sampled from the first results of the survey:

3. Welfare workers and workfare programs
b. Two examples from the field in Switzerland

➢ Canton of Obwald: 37,460 inhabitants – about 18,522 workers

3. Welfare workers and workfare programs
b. Two examples from the field in Switzerland

➢ Canton of Neuchâtel: 178,434 inhabitants – about 102,000 workers

3. Welfare workers and workfare programs
b. Two examples from the field in Switzerland

- Density of regulation:

  ➢ Canton of Obwald: very thin (a couple of legal provisions) …

  ➢ … to very dense (from the Constitution all the way down to the "contractual" relations are regulated) (canton of Neuchâtel)

3. Welfare workers and workfare programs
   ## b. Two examples from the field in Switzerland

- Aims of the programs:

  ➢ When articulated in the law (canton of Neuchâtel):

  "The state elaborates occupational and training programs as well as internships and other actions which can help social welfare beneficiaries to retrieve or develop their work capacity and their social autonomy"

  ➢ When not: …? (canton of Obwald)

3. Welfare workers and workfare programs
b. Two examples from the field in Switzerland

- Types of programs (Neuchâtel):

    ➢ activities of public interest;
    ➢ work or internships within privately owned firms;
    ➢ training internships;
    ➢ programs aiming to help beneficiaries to retrieve or develop their capacity to work and their social autonomy;
    ➢ possibility to take into account particular projects submitted by the beneficiaries themselves
    ➢ Many more aspects of the program regulated in the "contract"

  - (Obwald: probability that welfare beneficiaries work as street sweepers, but no confirmation as of now)

4. The welfare worker and the scope of international labour law

- Most international labour law treaties and instruments do not offer a definition of their own scope

- Scope limited to „dependent work"

- „Dependent work" is not defined in these instruments

- Definition left to the States' discretion

- Mostly defined as **subordinated work** performed in exchange for **wages**.

4. The welfare worker and the scope of international labour law

- Workfare is definitely „dependent work"...

- ... twice as much as regular work!

  ➢ Dependance in regard to the welfare authority distributing welfare payments and threatening sanctions

  ➢ Dependance in regard to the „employer".

4. The welfare worker and the scope of international labour law

- Can (or should?) the particular context of welfare-to-work programs justify that regular labour law and social security rules do not apply to them?
- Programs designed for people who are not (anymore or not yet) able to work in the first labour market, which can be due to many different reasons, such as their social context, their lower performance, their greater need for a support frame.
  - ➢ Purpose of welfare-to-work programs
  - ➢ Higher / differents needs of the „worker"
  - ➢ Lower productivity
  - ➢ Contractual freedom

5. Do welfare workers benefit from the social protections of labour law? And should they?

- No definite answer at this stage of the research

- Use of the usual criteria only limited:

  ➢ Duration, intensity, stability of the relationship

  ➢ Avoid "trapping" the welfare beneficiary and defeating the initial purpose of the measure

  ➢ Taking into account the purpose of both labour law, and occupational programs

  ➢ "No rights without responsibilities"…

  ➢ …. no duties without rights?

5. Do welfare workers benefit from the social protections of labour law? And should they?

- Some of the question that remain open:

  ➢ How to analyse the legal effects of the "contract"?

  ➢ If there is an employment relationship, who is the employer?

  ➢ Is there / should there be a minimum protection for the welfare worker? Yes according to us:

    ✓ Anti-discrimination, legality, and proportionality

    ✓ Health and safety (including accident insurance)

    ✓ Minimum processual guarantees (Art. 6 ECHR)
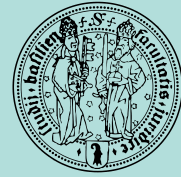
    ✓ Other?

5. Do welfare workers benefit from the social protections of labour law? And should they?

➢ Much needed clarification on a policy-making level: how to make sure that welfare-to-work programs are compatible with human rights and decent work standards?

➢ What about collective bargaining agreements?

➢ And the impact of welfare-to-work measures on competition?

➢ What about social security contributions and benefits?

Thank you!