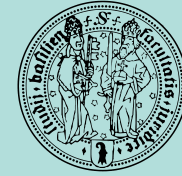




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Reasonable Work in social assistance legislation in Switzerland diversity and compatibility with international law?

Melanie Studer, MLaw, Lawyer, PhD candidate at the University of Basel, Chair for social private law

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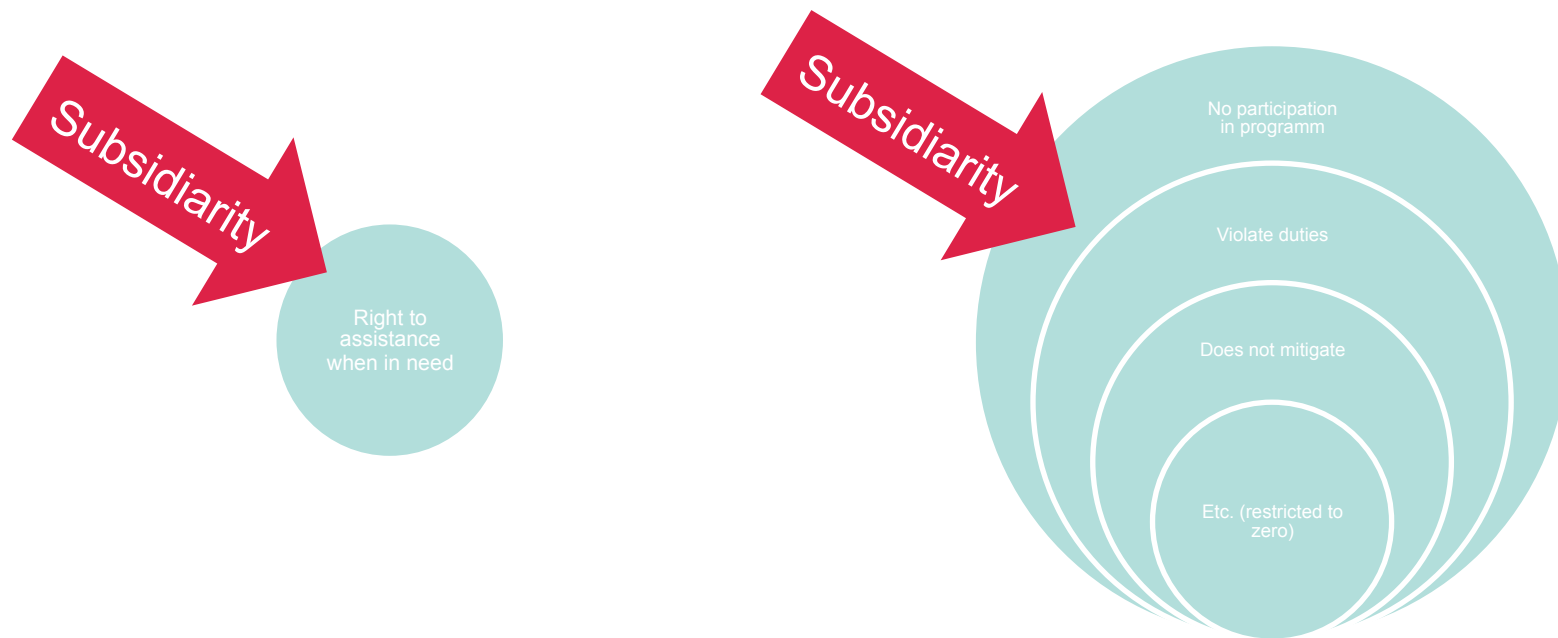
Constitutional and legislative framework

Right to assistance when in need (Art. 12 Cst.)

- Only the minimum indispensable for a decent existence
- **Subsidiarity** as an eligibility criterion: no benefits if i.e. reasonable work is rejected (one could care for themselves with reasonable work)
- Right cannot be restricted

Social Assistance (Art. 115 Cst. → **Cantonal**)

- Means for social (re-)integration
- Subsidiarity is an eligibility criterion
- Right can be restricted if **behavioral duties** (duty to mitigate damages) are violated
- Cantonal law. No federal guidelines. Guidelines from the SKOS – cantons are free to incorporate the guidelines.



Relevance of the notion reasonable work

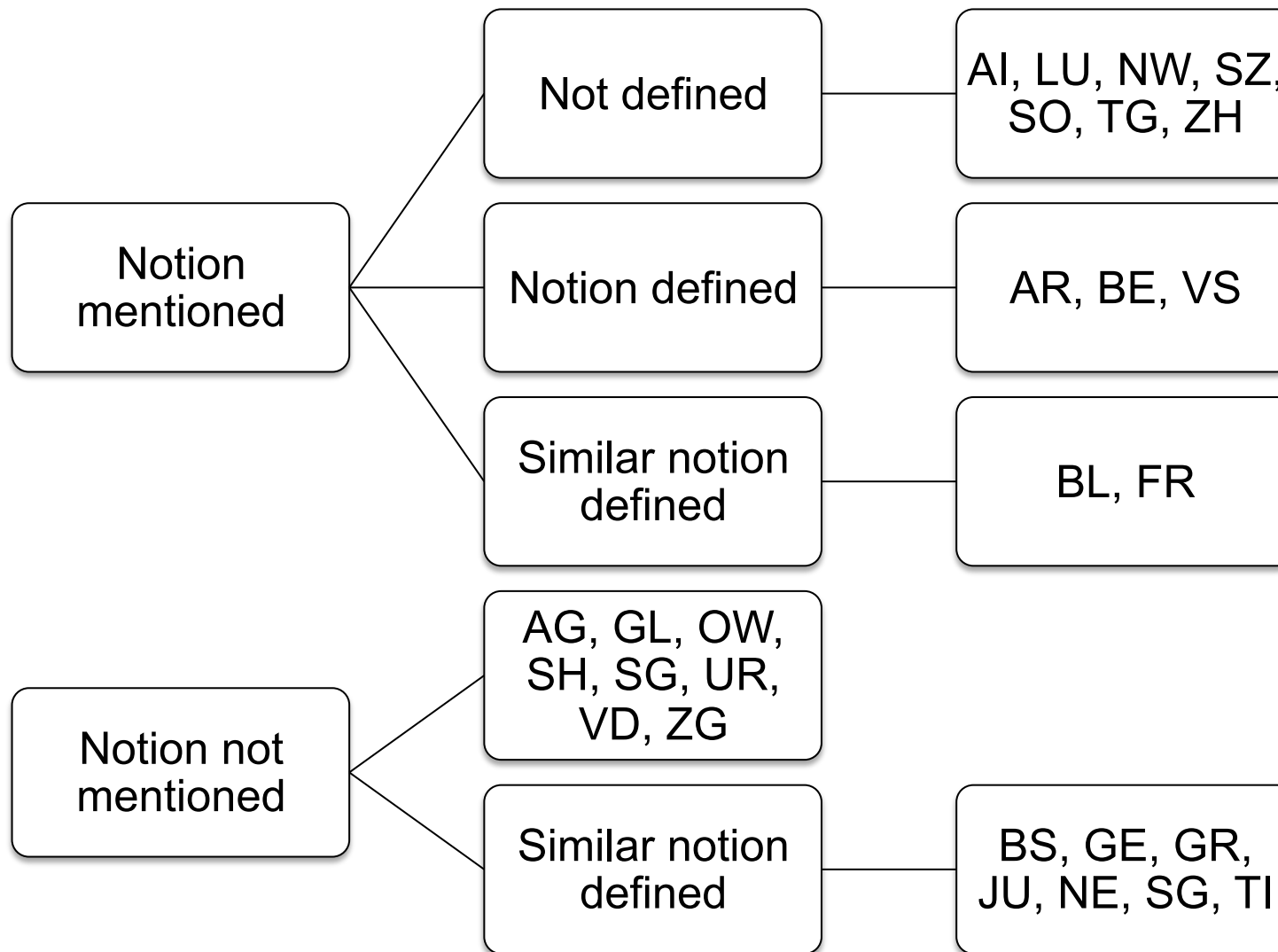
1) Whoever could take up reasonable work is considered not being in a situation of need and does not qualify for (any) welfare benefits. This also applies to welfare-to-work programs. (Principle of Subsidiarity = Eligibility criterion)

2) Whoever receives welfare benefits has duties to mitigate and collaborate:

- look for reasonable work
- accept reasonable work
- participate in reasonable welfare-to-work programs.

→ The refusal of reasonable work leads to sanctions (reduction in benefits) or the withdrawal of benefits (violation of principle of subsidiarity)

Overview: Prevalance of the notion



Examples

Bern (notion defined):

- Work is reasonable if it is appropriate to the age, health status, personal situation and capabilities
- A welfare-to-work program is per se reasonable unless there are health reasons or care tasks hindering the beneficiary to participate.

Basel-Land (similar notion defined)

- Two types of programs - different criteria?
- “Support program” enhance the employability
- “Occupation” enhance the capacity to cope with everyday life, serve the general public or organizations of public utility

Neuchâtel (similar concept)

- Integration agreements has to respect: personal and family situation, education, age and state of health and if possible the wishes of the beneficiary.

Defining criteria

Criteria	cantons mentioning it?	cantons expressly excluding it?
Age	BE, FR, NE, VS (SKOS)	BE (in welfare-to-work programs)
Health	BE, FR, NE, VS (SKOS)	
Personal (including family) situation	BE, NE, VS (SKOS)	
Former position or profession		BE, VS (SKOS)
Capabilities/Possibilities	BE, FR, GR, JU, SG	BE (in welfare-to-work programs)
Good cause/serious cause	BS, TI, GE	
Education	FR	
Generating income	VS (SKOS)	
Wishes of the welfare beneficiary	NE	
Chances to reintegrate / employability	BL (in certain welfare-to-work measures), JU (in welfare-to-work measures)	

Observations

- The notion is relevant in all 26 cantons. Only 12 cantons do set some limits for the interpretation, only 3 define it.
- No consideration for working conditions
- Many open and vague rules or absence of a definition
- No consideration for former position
- Only 2 cantons take into account the chances for reintegration, only 1 the wishes of the welfare-beneficiary, and only 1 the education
- The rules themselves offer little to no protection against being pushed in precarious work-relations and (further) social relegation

Reasonable Work according to the Case law of the Federal Supreme Court

Unreasonable:

- Degrading work
- Work is «unreasonable» when it cannot be expected due to health reasons
- Overstraining work (mainly understood in terms of intellectual capacity)
- family responsibilities can make work unreasonable

Reasonable:

- Welfare-to-work per se
- Unremunerated work is not unreasonable but if rejected, one is still eligible to assistance when in need.
- Work with (extremely) low remuneration
- Work, that does not fit the skillset
- Unknown tasks and salary
- Position outside former profession if out of work for a longer period
- Threat of a criminal penalty (suggested by the Court)

Not taken into account:

- working conditions
- Working hours
- Safety at the workplace
- Effectiveness of the programs / chances to be reintegrated (at least not seriously)

Forced and Compulsory Labour

Elements extracted from observations / cases:

- Punitive character of the work should be excluded
- Measure has to be provided for by law and **pursue a legitimate purpose**
- Work should not be degrading or dehumanizing
- **Conscientious objections** have to be considered
- Work should be **generally socially accepted**
- Loss of non-contributory benefits might be a penalty if excessively low wage –.
- Problematic: **excessively low wages**, lack of social security protection, lack of labour legislation protection
- Threat of **criminal penalty seems not compatible** with prohibition of forced labour

Freely chosen work

Based on observation / cases :

- **Perspective to reintegrate** in freely chosen occupation in the first labour market (temporary restriction of right to freely chosen work)
- **conditionality / reciprocity** of benefits is **not a sufficient** legitimate purpose
- Not respected by a scheme providing wages below half minimum wage, no social security, paid leave or employment contract.

Just and Favourable working conditions

Hypothesis: a definition of reasonable work in the meaning of the principle of subsidiarity (= someone is able to provide for themselves) should take into account the factors listed in article 7 ICESCR.

Especially: Remuneration that provides for a decent living, working hours, health and safety.

Not coherent to push welfare beneficiaries to precarious jobs not respecting article 7 ICESCR obligations.

Conclusion and open questions

- Neither the legislation nor the Federal Supreme Court seem to take into account all factors that are relevant according to international when assessing whether a certain program / position is reasonable (especially: chances to reintegrate and problematic: threat of criminal penalty)
- Does this indicate a need for better legislation? Or better appeals?
- What if cantonal laws violate positive obligations (art. 7 ICESCR)?
- How is the practice in the cantons? Do they rely on the definition of the SKOS-Guidelines? Are factors that are not actually in the legislation, taken into account by social workers?
- Are distinctions between reasonable work in terms of the principle of subsidiarity (eligibility criterion) and behavioral duties to be accepted and which distinctions should there be?



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Thank you
for your attention.