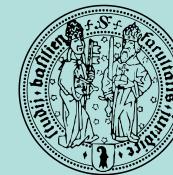


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# **Reasonable Work in social assistance legislation in Switzerland diversity and compatibility with international law?**

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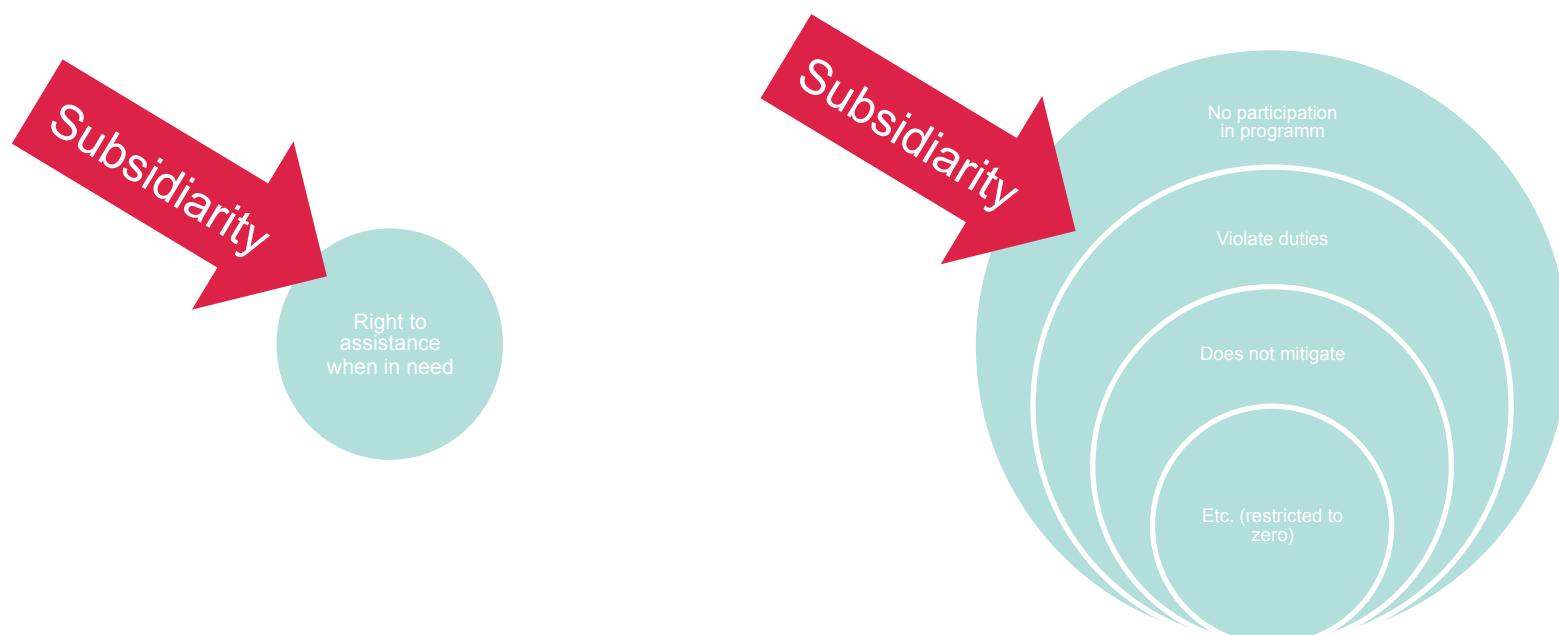
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# Constitutional and legislative framework

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

- Only the minimum indispensable for a decent existence
- **Subsidiarity** as a 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)

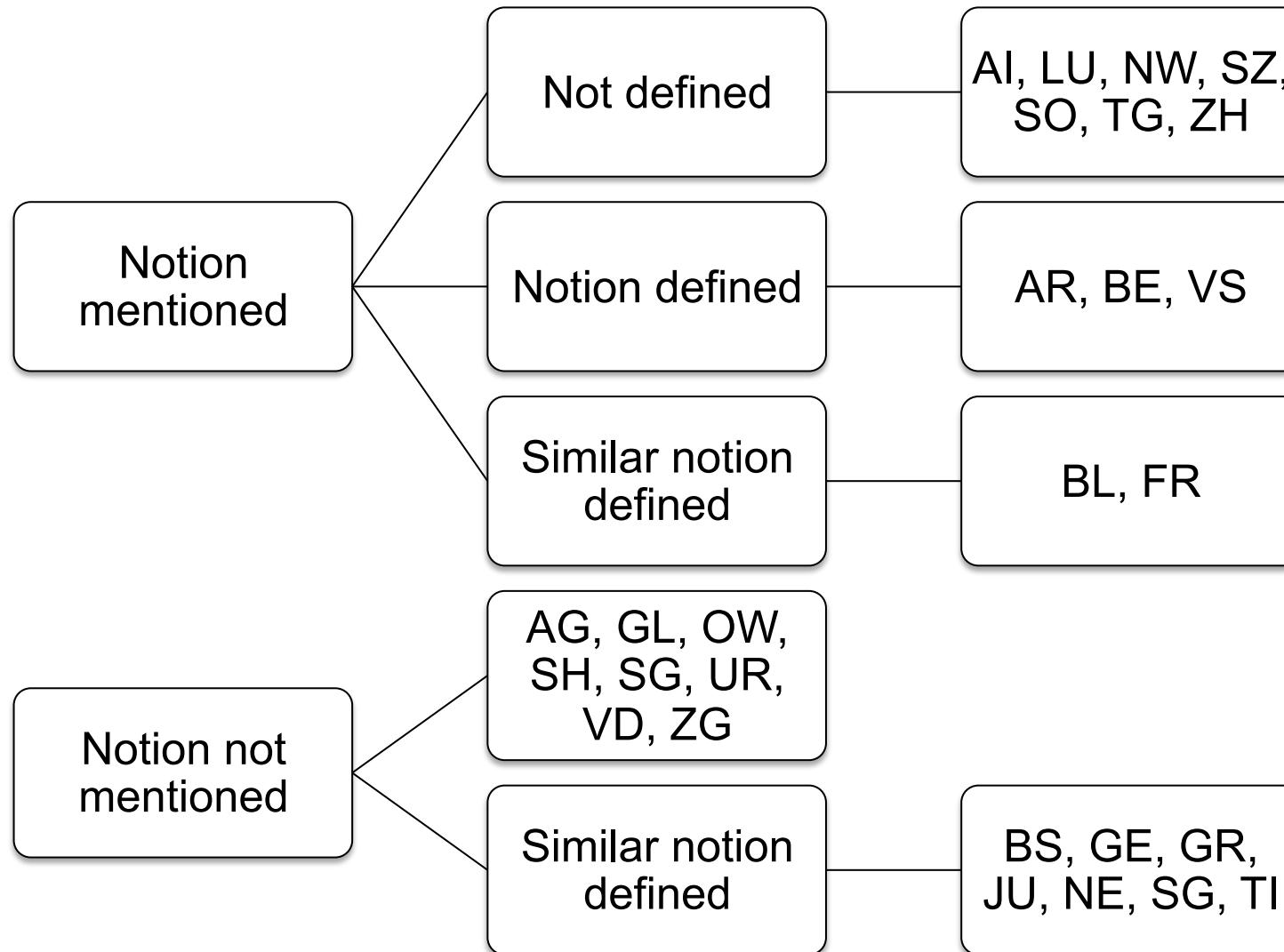
- Means for social (re-)integration
- Subsidiarity is an eligibility criterion
- Right can be restricted if **behavioral duties** (duty to mitigate damages) are violated
- Cantonal law. No federal guidelines. Guidelines from the SKOS – cantons are free to incorporate the guidelines.

# 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 expressively 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.

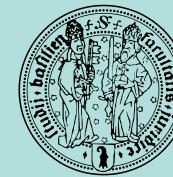
# Conclusion and open questions

- 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.**