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Faculty of Law

Lucerne University of
Applied Sciences and Arts

HOCHSCHULE
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Social Work



Working under the conditions of social welfare

Research Project Results

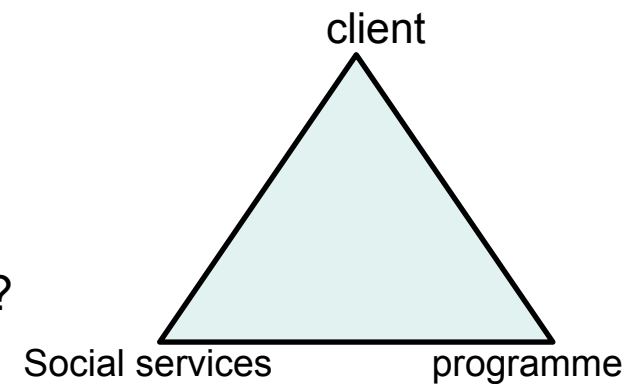
www.thirdlabourmarket.ch

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Socio Congress – Neuchâtel 2019

Content

- 1) Activation of social assistance beneficiaries – legal and political framework and regulatory gaps
- 2) Effects on social and fundamental rights
- 3) The triangular work relationship
 - Different designs of the work relationship
 - A case for the application of employment law?
- 4) Evaluations
- 5) Conclusion



Legal and political framework and regulatory gaps

- 1) No national legislation – only a fundamental right to assistance when in need
→ 26 cantonal legal and political frameworks
- 2) non binding guidelines of the SKOS aim at unification, but are under constant political pressure
- 3) Cantonal law often lacks coherence and is complex, thus low accessibility also for clients; many interactions to other fields of law
- 4) But all cantonal law incorporate an activation policy and know work-programmes and sanctions
- 5) Fundamental questions regarding work under social assistance are not regulated

Consequences of gaps and ambiguities

- High **vulnerability** of the „activated“; social assistance as last resort / last safety net: in case of sanctions or suspension the client has no resources left .
- **Ability and freedom to act** of the welfare beneficiary is limited.
- **No specific regulations for work programmes**, e.g. minimum standards. Administrative practice diverges, especially sanctions, in some cases in the same canton
- Problem **double subordination** relationship in the triangular relationship created by the programmes: state - client - programme organisation
- **Transparency is inadequate and (good) evaluations are rare.**

Programme types and Prevalance

Types

1. **Clarification** (structured analysis of the situation and the employability; recommendation for further steps to take)
2. **Job placement** in the first labour market
3. **Qualification** (improve the employability)
4. And **Participation-Programme** (maintain and improve current abilities and employability and stabilise the personal situation)

Survey among all cantons: in 22 cantons at least 3 of the 4 types of programmes exist

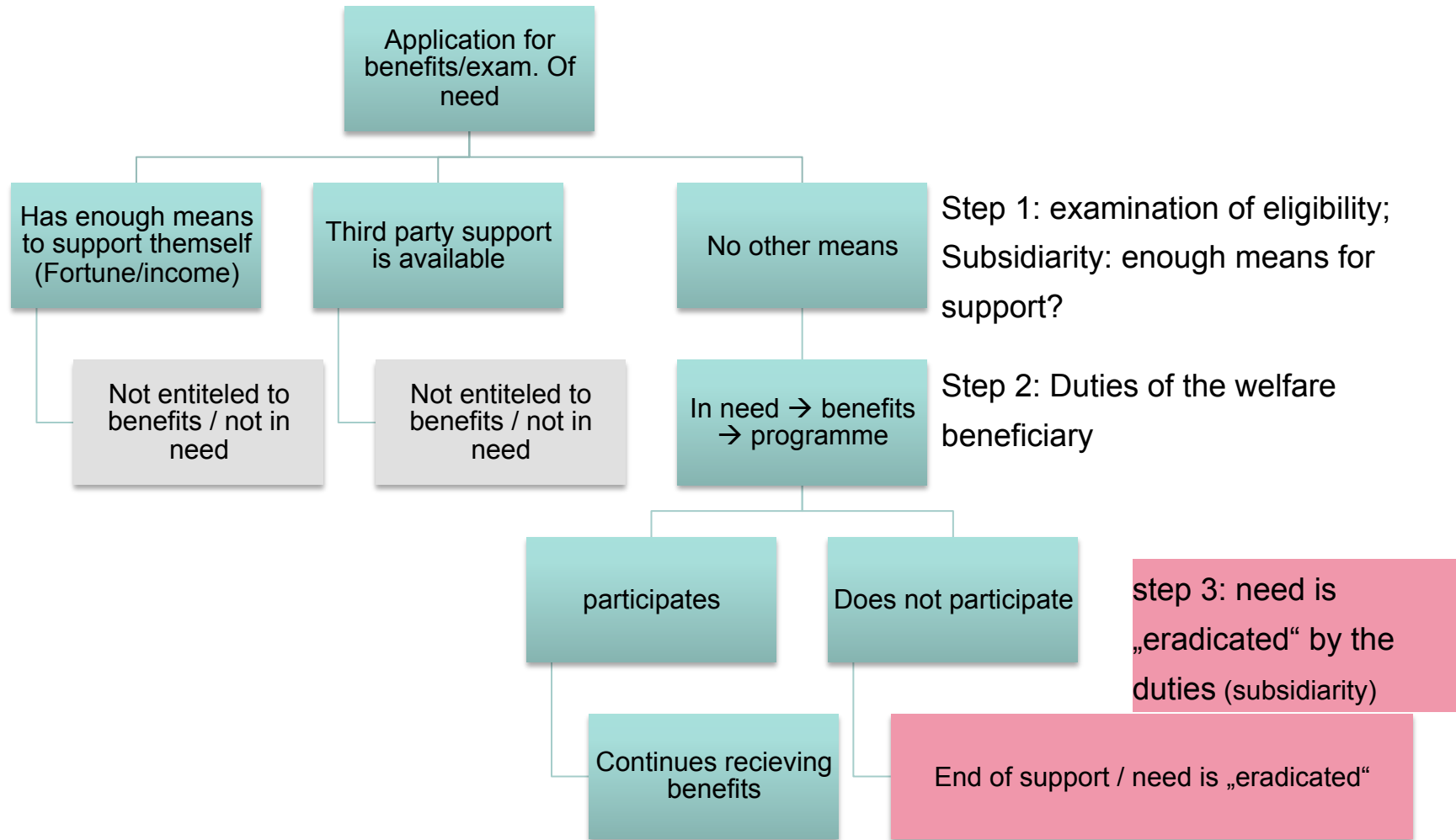
No consolidated data for actual participation rates (FSO data hint at considerably more participants in German speaking regions, more men and more Swiss citizens in the programmes).

Effects on social and fundamental rights

Current Federal Supreme Court case-law and cantonal practice

- Social assistance beneficiaries have the duty to accept reasonable work. A work **programme is reasonable work**
 - If the welfare beneficiary does not participate in this programme they lose the right to the benefits as they are no longer considered as being in a situation of need → „**eradicate**“ **the eligibility for the benefits**
 - The programme has to be actually and concretely available; the programme offers remuneration reaching at least a certain minimum (e.g. CHF 21/day).
- Abolish the right to social security, the right to social assistance and the right to assistance when in need (constitutionally granted) and replace it with a duty to work?

Principle of Subsidiarity current approach

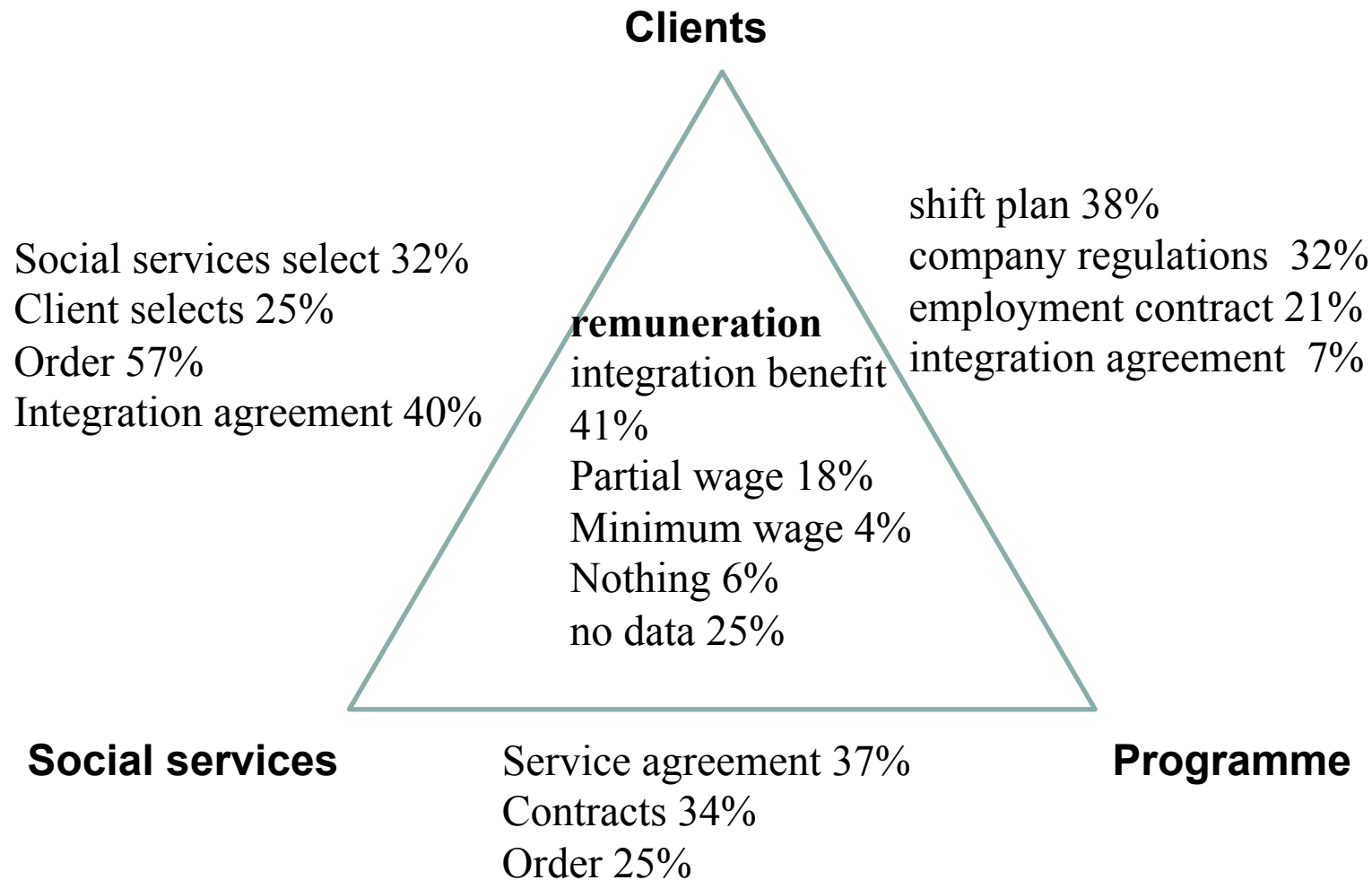


Conflicting fundamental and human rights

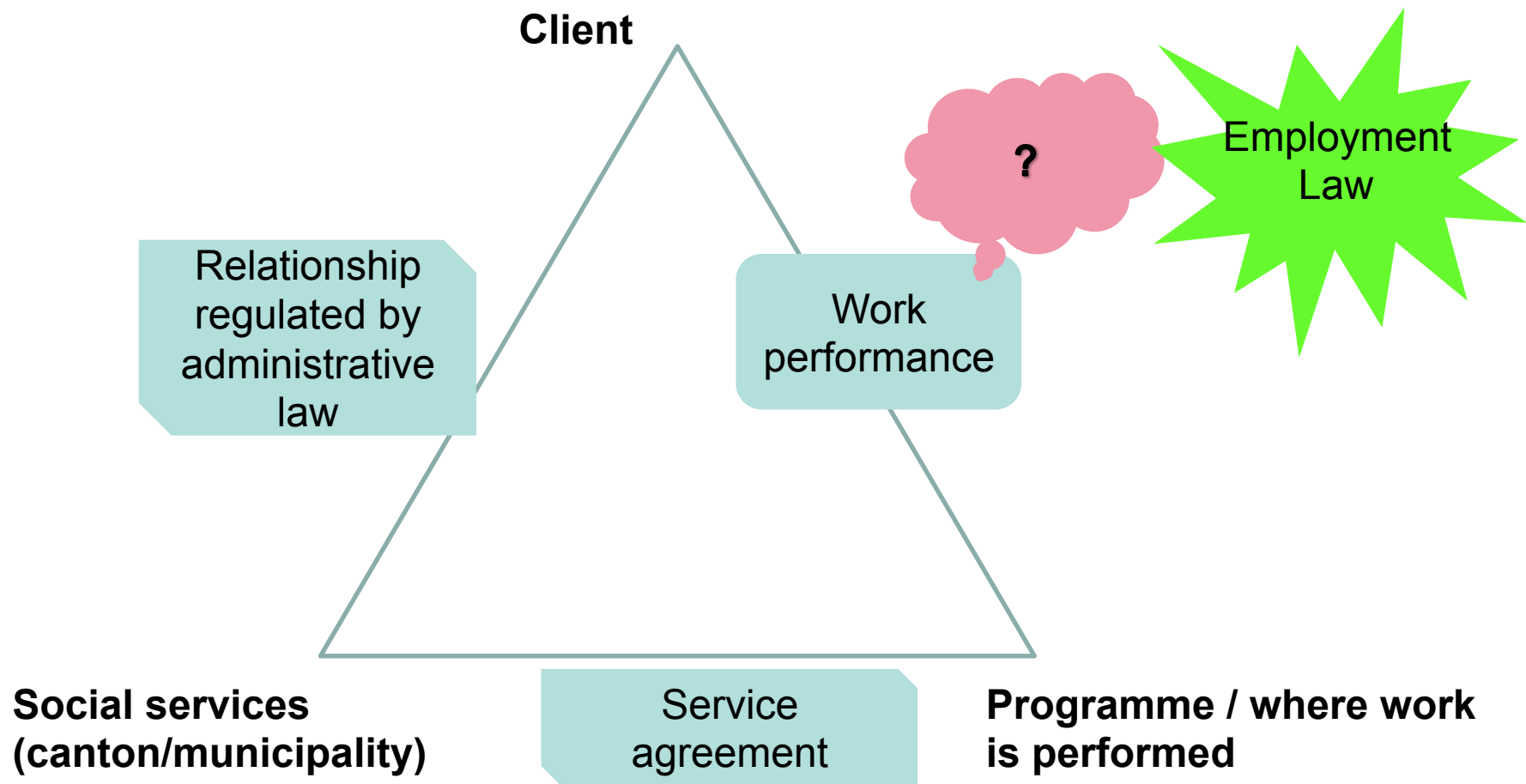
- Human Dignity (Art. 7 Cst.; Fundamental principle of social assistance)
 - Minimal protection for the individual's autonomy (intangibility formula; minimal freedom of disposition)
 - specific conception of a human being as a performing, economically independent and self-sufficient person is used to withdraw even the most basic benefits
 - However: also the ones not performing are part of the human kind and should be entitled to the most basic universal rights – this includes a right to minimal state benefits
- Prohibition of forced labour (Art. 4 ECHR)
 - The higher the negative consequences of rejecting a job, the more likely there is a conflict with the ban on forced labour.
 - An "exit option" from an employment relationship must always be offered; this cannot consist in an "unworthy begging existence " - a minimum of benefits must always be granted.

Relationships in the triangel

Source 68 programmes cantonal survey 2017



Basic Pattern of the work relationship



Why is it a case for employment law?

In almost any case:

- Work is performed
- The work has (often) an economic value
- the relationship is one of subordination (even double-subordination)

→ defining elements of an employment contract are united – no reason not to apply employment law

Consequences of this qualification:

- Health and Safety provision of labour law are applicable
- Employer has to protect the personality of the employee, protection against discrimination
- Right to holidays and leisure; paid sick leave.
- Right to a wage (→ social security...)

→ Vulnerability is decreased, as a clear(er) set of rules is applicable

→ Legal security is increased for all the parties involved

Programme evaluation

Evaluations are necessary for political governance

On programme level

Each programme needs a review of objectives, resources, output and impact on the target group.

On policy level

We need a comprehensive evaluation programme that can show which measures are effective, economically and legally appropriate for which persons under which circumstances.

Example: SECO research programme on unemployment insurance measures (Art. 59a AVIG)

Programme evaluation

Gold Standard

- Evaluations with control groups
- Comparisons of different kinds of programmes for same kind of problem

Challenges

- Municipal and cantonal heterogeneity
- Lack of a comprehensive database or extraordinary effort to create such a database

Impact of good evaluation

Possibility to launch an evidence based political debate about paradigms, goals and measures of work integration; possibility to effective and efficient governance.

Conclusion

We need minimal standards.

- Participation in a program must not be seen as a prerequisite for social assistance – only the situation of need is decisive.
- Affirm the existence of employment relationships
- Apply labour and employment law or analogous rules
- Better evaluations help develop minimal standards and guide policy making.



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Thank you
for your attention.