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Welfare to Work practices – a threat for human rights Swiss perspective

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Federalist framework

Social assistance → Cantonal → 26 Laws with their executing regulations

Federal Constitution:

- emphasis on personal responsibility and subsidiarity of state support (Art. 6, Art. 12 and Art. 41 Cst.)
- WTW is compatible with these core values

Coordination between the 26 cantonal laws:

- (non-binding) SKOS-Guidelines, providing an activation policy framework.
- WTW as part of the Subsidiarity of benefits, and as part of a reciprocal exchange (mutually beneficial process)

Cantonal laws:

- no shared justification for WTW measures;
- Unanimity :
 - provision on sanctions → WTW as a reinforcement of the legal duty to work
 - Extension of the availability for work condition

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

“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**.”

- Limited to what is indispensable for a decent human existence (food, shelter, clothing, basic medical aid)
- Necessary condition in order to exercise other fundamental rights
- No restrictions possible

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

Subsidiarity is an **eligibility criterion** for the benefits of Art. 12 Cst.

- 1) Who earns an income covering their expenses is able to provide for themselves and not eligible for benefits.
 - 2) Subsidiarity implies certain duties
 - a) Reasonable self- help
 - b) Accept any reasonable work offer
 - 3) Accepting a WTW position falls under the principle of subsidiarity if:
 - a) Program is actually and concretely available and if factual and legal possibility to accept the position
 - b) Program offers a remuneration amounting to the benefits (can be as little as CHF 21/Day)
- Not eligible for benefits if such an offer is rejected / prescribed self-responsibility as a precondition for human dignity and solidarity

WTW and fundamental Rights

How to assess the pressure exercised on job seekers to accept WTW measures as a condition for being helped in a human rights framework?

- Benefits are necessary in order to exercise other human rights
- Denial of benefits can amount to a violation of positive obligations under Art. 2, 3 or 8 ECHR
- WTW placements bring possible infringements of negative obligations (personal freedom, freely chosen work etc.)
- Human rights conscious interpretation taking into account the positive and negative obligations is needed (holistic or integrative approach)
- One possibility: apply concept of *de facto infringements* of human rights

WTW and Freely Chosen Work / Forced Labour

| Criteria established by E. Dermine | | Application in CH? |
|--|--|---|
| <i>Quality of work in the programme</i> | Working conditions Level of remuneration | ? (not an issue for the Court) Insufficient |
| <i>Capability for voice guaranteed to social assistance recipients</i> | Criteria for assigning participants to work (personal preference, qualifications, transportation, abilities,...) | Health, Child Care duties (not preference not to work) ! → CRPD: individual needs and strength; reasonable accommodation |
| <i>Exit options secured to the participants</i> | Right to means of subsistence during the sanction | No (loss of eligibility) |
| <i>Time to train and to look after a regular job</i> | Duration of the work programme Number of working hours | ? (not of interest to the court) ? (not assessed, practice varies) |
| <i>Goals and effects of the programme</i> | Positive impact of the programme on the participants' chances to find a regular employment | Generalising view despite inconclusive studies |

Conclusion

- WTW seems compatible with the Constitutional core value of self-responsibility priming over solidarity
- Right to assistance when in need and thus human dignity has been penetrated by activation due to the construction of subsidiarity as a eligibility criterion → straining solidarity → deprivation of minimum subsistence rights, undermining right to social security
- Lack of an adequate theoretical framework to assess (possible) human rights violations by WTW measures
- No comprehensive assessment by the Federal Supreme Court → limited understanding of fundamental freedoms and social rights
- The “cause” of this is a restrictive interpretation of article 12 Cst., a right designed for the protection of human dignity and other fundamental rights.
- Need for a coherent approach which aims at providing decent work conditions for everyone, including WTW-participants → rebalancing duties betw. State and individual (cf. also CRPD)



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Thank you

comments and questions are welcome!

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