

# Does The New Hungarian Public Work Program Constitute Forced Labor? – Fragments to the Human Rights Protection in the European Union

SARA HUNGLER<sup>1</sup>

*Eötvös Loránd University Doctoral School of Law and Political Sciences*

*“People don’t eat in a long run,  
they eat every day”<sup>2</sup>*

## Introduction

When we talk about our national labor law and its interaction with EU legislation, the problem of forced or compulsory work is usually not the first topic coming to our minds for two reasons. First, in 2012 we hardly think that it could be an issue in any of the member states as we are all part of a family of democratic countries, where general duty to work imposed by states that carries a punitive sanction either has never been an issue or has been long forgotten. Furthermore, the European Union, being ever so committed to the universal values of human rights, had itself been taking a rather secondary role when it comes to their actual protection. Despite the above reservations, in this article I try to bring these two points in question together by introducing Hungary’s current public work program and the concerns it has raised. At first I would describe the characteristics of the Hungarian public work program, marking its questionable points. The second part is dedicated to issues of forced or compulsory labor in general, leading to the next unit, which elaborates the approach of the European Committee of Social Rights. Then I analyze the approach of the European Union regarding human rights. Finally I compare the general findings with the specificity of the Hungarian project, in a hope that I can come to some valid conclusions at the end.

## 1. The Hungarian Public Work Program

In 2011, as a part of the 2011–2015 Convergence Program, the government made drastic amendments in the public law program, triggering the attention of the European Commission. Questions inquisitive about whether the new program violates the prohibition of forced or compulsory work were posed by

<sup>1</sup>The author is a Ph.D. candidate of Eotvos Lorand University of Sciences, Faculty of Law and Political Sciences, Department of Labor and Social Law. I am most grateful to Professors Csilla Kollonay-Lehoczky and Beata Nacsa as well as to Laszlo Bass and Zoltan Lukacs for their enormous help and insightful comments.

<sup>2</sup>Attributed to Harry Hopkins, Head of the Works Progress Administration which was responsible for the implementation of many of the New Deal programs during the Great Depression in the USA.

civil society actors too. To understand the differences of the new scheme from the previous programs, it is important to catch a glimpse of the history of public work programs.

### 1.1. *The Past*

The origins of the public work program in Hungary go back to the 1940s. The first government-initiated program, organized by the People and Family Protection Fund (ONCSA), was aiming to help families engaged in agricultural activities in the rural Hungary. However, it was eventually became a tool in the government's hand to execute its policy of ethnic and racial discrimination<sup>3</sup>. After WWII, during the communist power, work (possibly within the collective property) was a legal duty, sanctioned by criminal and administrative sanctions. Unemployment started to become a problem with the starting emergence of the market economy in the late 1980s. To reintegrate to the labor market those, who lost their job "through not their own fault", the government launched a "work program for public benefit" in 1987. The first public work program in its contemporary meaning began in 1996 to tackle long-term unemployment. This program went under major reforms in 2000, when the regular social benefits first became conditional to the participation in the public work scheme. In 2006 the program was renamed to "Integration Program"; the change in the name was triggered by the new conditions related to a more intensive cooperation desired from the participants. The scheme was again amended in 2007 and in 2008, when in 2009 a new program, *'Road to Work'* was launched, targeting low educated persons suffering from long-term unemployment.

The program introduced a new scheme in finances, namely a substantial increase of the budget available for public work programs managed by local governments. Those who drawn regular social benefits but were capable of working were redirected to the new scheme and when no suitable public work was available for them, they were entitled to a so called 'availability allowance', equal to the minimum amount of old-age pension (HUF 28.500 or EUR 97 per month). Those, who were not willing to take up the work offered, were excluded from the social benefit scheme. Hundreds of pages of researches<sup>4</sup> have shown the inefficacy of *'Road to Work'* after scrutinizing its effect on the long-term unemployment figures. Most of the studies marked that *'Road to Work'* did not introduce significant novelty compared to the former schemes, therefore it was as ineffective as the previous ones. However, due to its financing it would have been too costly to be sustainable. One particular study suggests that the number and reasons of dropouts signalizes most the low level of effi-

<sup>3</sup> Szikra, Dorottya A szociálpolitika másik arca. Fajvédelem és produktív szociálpolitika az 1940-es évek Magyarorszáján. [The Other Face of Social Policy. Racism and Productive Social Policy in the 1940s' in Hungary.] In Századvég, Új folyam, 48/2008. 2. pp 35–77., 2008.

<sup>4</sup> Couple of hundreds could be found in the dedicated issues of Munkaerőpiaci tükör, 2010. Kézelkép: a válság munkapiaci hatásai. Budapest, MTA KTI, 2010, Edt. Kézdi Gábor, and Esély, 2010/1.

ciency of the program.<sup>5</sup> Hence, the mere fact that the new government wanted to make amends would not have been a great surprise. The major elements of changes were as follows.

### *1.2. The Present*

Disregarding the often changing titles of the benefits, from the Committee's approach the Hungarian system looks as follows. In case of unemployment, there are basically three types of allowances available: the job-seekers allowance, the employment supplement<sup>6</sup> allowance and the pre-retirement allowance<sup>7</sup>. It is important to note that while the wage-substituting benefit and employment substituting benefit are obviously social aids and not unemployment benefits, the new amendments deny their social character.

The job-seekers allowance is an income-replacement benefit whereas the entitlement is based on previous contribution to the unemployment insurance scheme for at least 360 days in 3 consecutive years. The duration of payment depends on the length of contribution but cannot be longer than 90 days (before the amendments, it was 270 day altogether). The amount paid for the beneficiary is dependent on the length of contribution to the insurance fund.

Only those workers are entitled to claim such benefit to whom the Public Employment Agency cannot offer suitable employment. The definition of suitable employment is given in Article 25(2) b-e) of Act No. IV of 1991. According to the law, the offered job shall be accepted when the job-seeker is i) fit to work in the light of his/her health conditions, ii) the foreseeable wage or salary reaches the amount of the job-seeking allowance, or if the amount of the job-seeking allowance is smaller than the statutory minimum wage, it reaches the amount of the statutory minimum wage, iii) the duration of the daily commutation between the workplace and the place of residence by means of public transport does not exceed three hours, or two hours in the case of women raising children under the age of 10 or single men raising children under the age of 10, and iv) the job-seeker is engaged in a labor relation.

It is important to note that Article 25 Para. 2 a) which stated that an unemployed person could refuse the job offered in the initial period without losing the benefit if it did not correspond to the level of qualification of the job-seeker, or any other school qualification that has been offered by the governmental employment body and can be attained with the use of the training opportunity for the given level of qualifications, or it does not correspond to the level of

<sup>5</sup> Judit Csoba: *The Old and New Systems of Public Employment (On the way in the "Ways to Work" Program)*; Esely 2010/1.

<sup>6</sup> Previously called job-seeker aid and later on wage supplement benefit.

<sup>7</sup> Pre-retirement allowance will not be discussed this time.

qualification relating to the job that was last occupied for at least six months was abolished by the amending law.<sup>8</sup>

To be entitled for the employment supplement allowance, the unemployed person shall register to the public work program. Only those can be registered to the system who are willing to undertake the duty of cooperation with the Public Employment Agency. The registered workers are either offered a job within the program, or, when no job is available, are entitled for the employment supplement benefit. Refusal of the job without losing the benefits is possible only on the basis of one's health condition or of overly burdensome commuting time.<sup>9</sup>

Moreover, employment supplement benefit is paid only to individuals who can certify at least 30 days of employment each year (participation in a public work scheme, seasonal work performed in the framework of simplified employment or work performed in any other form like voluntary work).

If the unemployed person refuses to take up a 'suitable employment', quits the job or the employer terminates the employment with an immediate effect<sup>10</sup>, the payment of the employment supplement benefit may be suspended for 36 months. "may be suspended until the pre-conditions for entitlement are newly completed. "

Also it shall be noted that Act No. IV of 1991 under Act III of 1993 on social administration and social assistance, further requirements may be described by municipal decrees like keeping the direct residential environment in order<sup>11</sup>. Those who fail to meet the criteria set forth in the municipal decree, will also lose eligibility for the employment supplement benefit for a month.

The amount of the job-seekers allowance is dependent on the contribution base of the previous 4 four calendar quarters, while the statutory minimal wage for public work is regulated by Government Decree 170/2011 (VIII. 24.), stating that the minimal wage for full time public work is HUF 71,800 gross per month (equals to about HUF 48,000 net, which is around EUR 146) for unskilled work and it is HUF 92,000 gross per month (EUR 313) for jobs requires at least secondary education. The amount of employment supplement benefit is HUF 22,800 (EUR 77,6) per month. It is important to see that the employment supplement benefit's amount is significantly lower than the statutory minimal wage of HUF 93,000.<sup>12</sup>

The amount of social benefits one can apply for is now maximized. With other words, the regular social benefit and the employment supplement benefit

<sup>8</sup> Act No. CLXXI of 2010, Article 105 e), not in force since Jan. 1, 2011.

<sup>9</sup> Act No. IV of 1991, Article 54 Paras 10–10c.

<sup>10</sup> Act. No. III of 1993, Article 36 Para 2.

<sup>11</sup> This authorization rises concerns about its conformity with human rights such as dignity or equality. For more on this see the statement of Eotvos Karoly Institution (only in Hungarian: <http://www.ekint.org/ekint.news.page?nodeid=461>; retrieved on 10 May, 2012)

<sup>12</sup> As of Jan 1, 2012.

(FHT) together cannot be higher than the amount close to the minimal wage<sup>13</sup>, but it is not calculated per capita but per family. Job-seekers' allowance and employment supplement benefit may only be combined with family allowance and only one person per family is eligible to participate in the public work program (e.g. draw either wage for the work performed or the employment supplement benefit in case there is no job offered)<sup>14</sup>.

## 2. About the Prohibition of Forced or Compulsory Work

The prohibition of forced and compulsory labor is governed by numerous international treaties, including the European Convention of Human Rights (ECHR), the EU Charter and the European Social Charter, the Revised European Social Charter, and there is now wide recognition that both are prohibited under customary international law.<sup>15</sup> One approach has been to formulate it in a more extensive way as prohibition to perform forced or compulsory labor, followed by a list of exceptions. Article 8(3) of the Covenant on Civil and Political Rights (ICCPR), Article 4(2) of the ECHR and Article 5(2) of the EU Charter follow this structure, stating equivocally that “no one shall be required to perform forced or compulsory labor”. Other instruments have preferred to resort to a concisely expressed idea of ‘free choice or acceptance of work or occupation’. Article 6(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides: “State Parties to the present Convention recognize the right to work which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts” and Article 1(1) of the European Social Charter provides that “everyone shall have the opportunity to earn his living in an occupation freely entered upon.” The latter approach has a wider scope and in addition to the prohibition of forced labor it also entails other practices that make up the freedom of work.<sup>16</sup>

In spite of the wide range of coverage, the prohibition of forced or compulsory work is one of the least cited articles of the human rights instruments. States have almost never been found violating solely Article 4 of the ECHR<sup>17</sup>, and even together with other provisions, like Art 14, very little case law can be found<sup>18</sup>. Considering the common wordings of the articles it seems that in the light of the historical background, the drafters found it highly unlikely that any democratic state would go against such prohibition. The definition of

<sup>13</sup>The actual amount is calculated in a rather difficult way, multiplying the rate of allocated consumption of a family and the minimal wage by 0.9; calculations show that actual amount received is close to the minimal wage, currently HUF 93,000 or EUR 315.

<sup>14</sup>Article 33 Para 5 of Act No. III of 1993.

<sup>15</sup>Jacobs, White: The European Convention on Human Rights; Clarendon Press, Oxford, 1996 ISBN 0-19-825820-8; p. 70.

<sup>16</sup>Economic, Social and Cultural rights, A Textbook- Edt. Eide, Krause, Rosas: E, Martinus Nijhof Publishers 1995, ISBN: 0-7923-3277-6; p. 177.

<sup>17</sup>As of today, the only case was *Siliadin v. France* where the Court found solely Article 4 to be violated.

<sup>18</sup>As of Jan 19, 2012, the alleged violation of Article 4 (2) was brought up in 8 cases, and only in 3 cases (*Siliadin v. France*; *Zarb Adani v. Malta*; *Rantsev v. Cyprus and Russia*) the ECJ's judgement was affirmative.

forced or compulsory labor used in ECHR, the EU Charter and ICCPR is taken over from the Convention No. 29 of the ILO of 1930, subsequently supplemented by another ILO Convention, the Abolition of Forced Labor Convention of 1957. According to the ILO definition, forced or compulsory labor is considered to be “all work or service which is extracted from any person under the menace of penalty and for which the said person has not offered himself voluntarily.”

This definition is based on two equally important elements: a work or a service to be performed, and a threat of a penalty and involuntariness. The ILO Committee has explained the meaning of work or service by excluding compulsory education and vocational training, given it does not entail burdensome amount of practical work.

Regarding the menace of penalty, the Committees standpoint is that it should be construed broadly, not restricting to forms of penal sanctions but including a loss of rights or privileges, such as a promotion, transfer, access to new employment, housing, etc.<sup>19</sup>

Considerable attention has been devoted to this element, particularly over whether psychological coercion or economic compulsion might amount to a penalty within the meaning of the Forced Labor Convention. The ILO supervisory bodies have recognized that psychological coercion might amount to the menace of a penalty, but have been hesitant to accept the argument that a general situation of economic constraint that keeps a worker on a job is equivalent to the menace of any penalty.<sup>20</sup> Instead, the Committee has pointed out that the employer or State is “not accountable for all external constraints or indirect coercion existing in practice [thus] the need to work in order to earn one’s living could become relevant only in conjunction with other factors for which they are answerable”<sup>21</sup>. With regard to the element of voluntary offer, the Committee excludes all agreements concluded under threat or deceit and fraud are involved in the original work offer. Since a worker’s right to free choice of employment is inalienable, a worker must always be free to choose to leave his or her work. With other words, the question here consists of two parts: whether the consent to work was in fact freely given, and whether the worker retains the ability to revoke his or her consent.

### **3. The Activity of the European Committee of Social Rights and the European Social Charter**

Due to its obviously inherent connection to social rights, questions regarding the lawfulness of such allocation of unemployment benefits often find their way to the European Committee of Social Rights. The European Committee of Social Rights, supervises the conformity of the situation in Party States with their undertakings under the European Social Charter, or the Revised Charter.

<sup>19</sup> Abolition of forced labour, General Survey of 1979, op. cit., at para. 21; see also Eradication of forced labour, General Survey of 2007, at para. 37.

<sup>20</sup> See ILO, Report of the Committee set up to examine the Article 24 representation concerning Portugal, 1985, para. 97.

<sup>21</sup> ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), International Labour Conference, 90th Session, Geneva, 2002, p. 98.

After its revision in 1996, the European Social Charter (ESC) became a cornerstone of the European human rights model. The ESC is the counterpart of the ECHR in the field of economic and social rights, it covers a broad range of rights related to housing, health, education, employment, social protection and nondiscrimination. As a part of the supervisory system, the Committee of Social Rights, composed of fifteen independent experts elected by the Committee of Ministers and assisted by an observer from the ILO, examines the reports submitted by the States party to the Charter and makes a legal assessment of states observance of their obligations.

Article 1(2) of the European Social Charter guarantees the protection against forced labor, as it was described above, by a concisely expressed concept of ‘free choice or acceptance of work or occupation’ together with other practices that make up the freedom of work. Hence, the issue of loss of employment benefits for refusal to take up employment has soon become the center of interest of the Committee.<sup>22</sup> During the XV–1 supervision cycle the Committee carried out in some cases examinations of measures taken by certain governments to support employment and reduce spending on employment benefits. It found that the use of such measures which could have a significant effect on the right to earn one’s living in an occupation freely entered upon, was becoming increasingly frequent. In conclusions 2002 it decided to examine this matter systematically for all states, also in the framework of Article 1(2).<sup>23</sup>

With regard to the conditions for the payment of unemployment benefits, the Committee requires the following criteria to be met. The conditions – including any obligations – shall be assessed under the right to social security provided by Article 12. However, when the constraint is particularly heavy it may lead to an issue of conformity with Article 1(2). In its screening process the Committee asks whether to the right to unemployment benefit is conditional on the acceptance of employment or training. If so, it asks i) what sanctions apply in case of refusal of employment or training, ii) if refusal on the basis that the employment does not correspond to the persons’ occupational qualifications is considered, iii) for what duration employment may be refused on the basis that it does not correspond to occupational qualification and iv) if there is a right of appeal.

In the reports, the Committee often recalls that Article 12(1) of the Charter requires that social security benefits are adequate, which means that, when they are income-replacement benefits, their level should be fixed such as to stand in reasonable proportion to the previous income and it should never fall below the poverty threshold defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

<sup>22</sup> European Social Charter (revised): European Committee of Social Rights: Conclusions XVI–1; Council of European Publishing.

<sup>23</sup> European Social Charter (revised): European Committee of Social Rights: Conclusions 2004 – vol. 2.; Council of European Publishing.

#### 4. How Does the European Union Protect Human Rights?

After the long silence of the foundation treaties of the Community on human rights, the enactment of the Treaty of Lisbon, with its range of significant human rights provisions enables the European Union to become a faithful human rights actor. The EU Charter of Fundamental Rights (EU Charter), now equal in legal value to treaties, sets out in a single text, for the first time in the European Union's history, the whole range of civil, political, economic and social rights of European citizens and all persons resident in the EU. This brings the EU Charter to the level of primary law, also be applied in the Member States as part of their national legislation.

The EU Charter and the strong commitment to accede the European Convention on Human Rights (ECHR) stand in contrast of the former policy of delegating human rights to the Council of Europe. However that policy has made the Council of Europe a powerful political entity to protect human rights, now "Europe has come to occupy a privileged place as the poster child for human rights progress"<sup>24</sup>. The respect for general principles of law, including fundamental rights as recognized in the constitutions of the member states and under the ECHR was characterizing the Community treaties. The Treaty on European Union (TEU) Article 6(3) explicitly mentions the ECHR, and the European Court of Justice (ECJ) treats the ECHR as a source of "special significance" for EU human rights law, while the European Court of Human Rights (ECtHR) exercise quasi-jurisdiction over EU acts in certain circumstances. However a possibility of a conflict between the ECtHR and ECJ remains, as the ECJ technically is not bound by the decisions of the ECtHR.

By making the Charter of Fundamental Rights legally binding, it is now indeed confirmed that the member states accepted that the Community would take on the new role of protecting and promoting human rights. Ingolf Pernice even argues that the "Charter ... may even serve as a model for modern instruments designed to protect fundamental rights worldwide."<sup>25</sup> These changes are expected to enlarge to scope both of the Court of Justice and the Court of First Instance, not only in the number of human rights cases, but also in the range of subject matters of the claims.<sup>26</sup>

On the other hand, there is Article 51 of the EU Charter in the last chapter, stating first that its provisions "are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law", then that the EU Charter 'does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.' The logical interpretation that flows from Article 51(1) is that Member States must observe the

<sup>24</sup> Grainne de Burca: The Road Not Taken: The European Union as a Global Human Rights Actor; *The American Journal of International Law*, Vol. 105:649, 2011.

<sup>25</sup> The Treaty of Lisbon and Fundamental Rights, in: *The Lisbon Treaty: EU Constitutionalism without A Constitutional Treaty?* 235, 252 (Stefan Griller & Jacques Ziller Edt., 2008), quoted by de Burca, *supra*.

<sup>26</sup> De Burca, *supra*.



rights provided for by the EU Charter when they implement EU law, and outside of this area, they may observe them to the extent that their national system enables them to do so. Whereas Article 51(2) makes the term of *equal in legal value* rather ambiguous.

These controversial elements of the EU Charter show that the EU's human rights policy has significant difference between its external and internal focus. The sharp contrast between the eloquent statements regarding the EU commitment to protect human rights worldwide as a goal to the unwillingness to declare human rights protection as a general objective of EU policies<sup>27</sup> is obvious.

Pursuant to Grainne de Burca, the development of the European Union human rights system in recent years is a dialectical tension, rather than a unidirectional progress, which must be seen as a manifest in the complex interaction between “mobilizing actors” seeking to strengthen the institutions for human rights protection, including supranational actors like the European Commission and Court of Justice<sup>28</sup>. It remains to be seen whether the tension generated by the imbalance between the internal and external policies leads to gradual expansion of internal EU human rights policies or to a defensive reaction resulting in further limitations in development of such policies.

## **5. Compliance of the Hungarian Public Work Program with Human Rights Principles**

In the following section elements of the public work program which could raise concerns will be collected.

### *5.1. Amount of social benefit*

Already in Conclusions XIX–2<sup>29</sup> the European Committee of Social Rights noted that the rate of the (back-then) job-seeker aid stand below the at-risk poverty threshold<sup>30</sup> even when defined as 40% of the equivalised income estimated at EUR 131 (EUR 164 as 50%) by the Eurostat in 2007, therefore it is not in conformity with the Article 12(1) of the Charter.

### *5.2. Suitable job*

In the report on the Eradication of Forced Labor, the ILO Committee has considered that connecting the entitlement for benefits to the performance of work would not *in itself* constitute forced or compulsory labor.<sup>31</sup> However, con-

<sup>27</sup> De Burca, *supra*.

<sup>28</sup> *Ibid*.

<sup>29</sup> Conclusions XIX–2, Hungary, p. 70.

<sup>30</sup> According to the data of the Hungarian Central Statistical Agency, the amount of minimum of subsistence value calculated per household with one adult of active age is HUF 78,736 or EUR 265, which increases by 65% with each child.

<sup>31</sup> International Labor Conference, 96<sup>th</sup> Session, 2007 Report III (Part 1B) p. 70, emphasis is in the original.

cerning the notions of “availability for work” and “suitable employment” of Article 20 of the Social Security (Minimum Standards) Convention, 1952 (No. 102), if the work required to be performed is not “suitable employment”, it would constitute a form of forced labor<sup>32, 33</sup>.

Regarding the European Social Charter, as it was discussed above, the Committee also emphasizes the importance of suitable employment and if the jobseeker cannot refuse to take up employment on the ground that it does not correspond to their occupational qualification, the non-compliance with Article 1(2) of the Charter is stated<sup>34</sup>.

### *5.3. Freedom of Choice and Menace of Penalty*

The ILO admits that the nature of forced labor has changed, it excludes situations which involved allegation of eligibility for benefits being linked to compulsory acceptance of low-paying unsuitable jobs, where the compulsion stemmed from a scarcity of suitable jobs arising from general economic constraints from the scope of the convention<sup>35, 36</sup>.

With regard to the penalty, the interpretation is clearer. As it was noted before, the ILO Committees standpoint is that it should be construed broadly, not restricting to forms of penal sanctions but including a loss of rights or privileges, such as a promotion, transfer, access to new employment, housing, etc.<sup>37</sup> Considerable attention has been devoted to this element, particularly over whether psychological coercion or economic compulsion might amount to a penalty<sup>38</sup>. The ILO supervisory bodies have also recognized that psychological coercion might amount to the menace of a penalty. Regarding the eligibility for unemployment benefits, the Committee of Social Rights regularly monitors the sanction applied in case of refusal of employment under the ESC.

Even though many of the elements related to forced or compulsory labor are yet to be crystallized by the various human rights bodies, to determine whether a situation can be labeled as forced labor or not, it is not necessary to look at the nature of the activity involved, or even at whether this activity is legal or illegal under national law. Instead, a situation of forced labor is deter-

<sup>32</sup> Ibid.

<sup>33</sup> Hungary has not yet ratified Convention No. 102.

<sup>34</sup> Conclusions XIX-2, Italy.

<sup>35</sup> Forced Labour and Human Trafficking; Casebook of Court Decisions

ISBN 978-92-2-122177-7;978-92-2-122178-4 (web pdf), International Labour Office, 2009.

<sup>36</sup> In the Talmon-case, the back-than European Commission of Human Rights found that the mere lapse of unemployment assistance when a person refuses to accept work not corresponding to his or her qualification does not, on the other hand, represent a violation, although a hint that the intensity of the involuntariness and the degree of the sanction shall be examined. The Iversen-case left the question open whether contractual relationships could constitute forced or compulsory labor.

<sup>37</sup> Abolition of forced labour, General Survey of 1979, op. cit., at para. 21; see also Eradication of forced labour, General Survey of 2007, at para. 37.

<sup>38</sup> See ILO, Report of the Committee set up to examine the Article 24 representation concerning Portugal, 1985, para. 97.

mined by the nature of the relationship between a person and an employer. A system that forces the unemployed even by indirect coercion to choose between exploitation or abject poverty raises much concern<sup>39</sup>.

#### *5.4. Regulations in Municipal Decrees*

As it was shown above, the local governments have wide scope of regulatory power, not only in granting or withdrawing the benefits but even in setting up local rules in their municipal decrees like keeping the direct residential environment in order, which could be used as eligibility criteria for employment supplement benefit. Therefore the obligations and sanctions to be imposed upon the individual are to be established in a tailor-made way, the authority has the right to decide who deserves it who does not. In this way social assistance has once again become a matter of unilateral, discretionary judgments of the authorities involved<sup>40</sup>, leading to the possibility of disproportionate sanctions and discrimination<sup>41</sup>.

### **6. Conclusion**

In this article I provided an analysis of the Hungarian public law programs, including its history. However my main focus was the most recent scheme which raises many concerns regarding its compliance to the general prohibition of forced and compulsory labor.

I argued that although there are no black lines to follow due to the very little relevant case-law of the various human rights courts, the unanimously acknowledged human rights values could be referred to determine what constitutes forced or compulsory labor regarding public work schemes of the twenty-first century. I also pointed out that one of the focal points nowadays is to decide whether the right to unemployment benefit could be conditional on the acceptance of employment, which has been in the focus of the Committee of Social Rights for many years. I listed up the major international instruments which have included rules on the prohibition of forced labor in their provisions, banning a work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

I demonstrated that the European Union also includes the above prohibition in its flagship human rights document, the Charter of Fundamental Rights of

<sup>39</sup> As the European Court of Human Rights contented in the Siliadin-case: [sight] should not be lost of the Convention's special features or of the fact that it is a living instrument which must be interpreted in the light of present-day conditions, and that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.

<sup>40</sup> Prof. dr. G.J. Vonk: Hunger as a policy instrument? Some reflections on workfare and forced labor; 2008. <http://www.docstoc.com/docs/29276394/Hunger-as-a-policy-instrument> (2012. 01. 27.)

<sup>41</sup> How would, for example, the mayor of Edelény, who claimed that Roma mothers take medication to bring mentally disabled children into the world in order to receive a higher amount of social allowance decide?

the European Union; and argued that the Lisbon Treaty started a brand new chapter in the EU's approach to human rights protection. On the other hand, I also brought up the issue of ambivalence between the internal and external human rights policies of the EU and how much the EU's credibility as an international human rights actor undermines its aspiration to exercise global normative leadership is endangered by such uncertainty.

Eventually, my conclusion is that human rights are universal and indivisible, regardless of the legal force of their acknowledgment. If the European Union truly committed to place the individual at the heart of its activities by creating an area of freedom, security and justice, as it is stated in the Preamble of the EU Charter, it shall take measure to create a serious internal human rights mechanism. As "enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations."