WORK-FOR-BENEFIT SCHEMES UNLAWFUL AS FORCED OR COMPULSORY LABOUR, CONTRARY TO ECHR ARTICLE 4

1. Submitted, the implementation of a work-for-benefit scheme is a violation of the right not to be subjected to forced or compulsory labour. "Forced or compulsory labour" is defined in the ILO Forced Labour Convention 1930 as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".

2. Work-for-benefit is exacted under the menace of benefit sanction, which falls within the autonomous Convention definition of "criminal charge" in that it has a manifestly deterrent purpose, with indication of a penal purpose.[1] The House of Lords in ***Secretary of State for the Home Department v MB*** **[2008] 1 All ER 673** reviewed the case law as distinguishing between measures merely preventative in purpose and those which "have a more punitive, retributive or deterrent object" (per Lord Bingham [19] to [24]).

3. If C refuses a direction to participate in a work scheme save on the condition that he charges his stipulated rate and that there is a contract for services, he will almost certainly be sanctioned. Submitted, such direction and sanction would be unlawful, because it would purport to suppress his capacity to contract and to take the benefit thereof, in violation of Protocol 1 Article 1 of the ECHR (right to peaceful enjoyment of possessions), further without statutory authorisation. It would also violate Article 4 of the ECHR by forcing him to work outside the limits of his consent.

4. Even if it were held that C offered himself voluntarily, the fact that he gave his prior consent to participation in work-for-benefit was held in ***Van der Mussele v Belgium*** **(1983) 6 EHRR 163** to be inconclusive. It was held at paragraph 40 that, in the case of prior consent, there must be a "considerable and unreasonable imbalance between the aim pursued (entry to the legal profession) and the obligations accepted as a condition of achieving that aim for there to be forced labour. The burden must be so excessive or disproportionate to the advantages attached to the future exercise of the profession that the service cannot be treated as having been voluntarily accepted. (at paragraph 37).

5. Further to #4 the ECtHR took account of the fact that:

   (a) the required service was not unconnected with the profession in question (particular employment test);

   (b) in return for unpaid service the person received certain advantages, including the exclusive right of audience in court (privilege test);

   (c) the work contributed to professional training (training test);

   (d) the requirement related to the delivery of a Convention right of others to free legal assistance (rights of others test);

   (e) the service was similar to the "normal civic obligation" exception (Article 4(3)(d)) (civic obligation test);

1 DWP Research Report No 313, *A review of the JSA sanctions regime: Summary research findings,* 2006) http://research.dwp.gov.uk/asd/asd5/report_abstracts/rr_abstracts/rra_313.asp

(f) the burden imposed (involving unpaid work) was not such as to leave the person without sufficient time for paid work (hours test).

6. It was held in ***Talmon v Netherlands*** **(1977) ECtHR** that Article 4 does not stand in the way of a requirement that an unemployed person take suitable employment. The case involved a claimant who lost on the merits having insisted that he was willing to work only as an independent scientist and social critic and was on grounds of conscience unwilling to take any other work.

7. A work-for-benefit scheme does not comply with Article 4 because it does not meet all - in particular it meets none - of the criteria in #5:
8. 

(a) there is in the terms of participation no indication of a promise or cause of legitimate expectation of regular employment on completion of service;

(b) the stated aim of the scheme is merely to restore competitive parity on the labour market which C is likely to have lost in consequence of long-term unemployment, and does not include the aim of procuring access to a privileged occupation;

(c) there is no element of training of any kind, let alone any with recognised credentials;

(d) the work does not involve the delivery of a Convention right to others;

(e) the service is, for reasons stated in #9, not similar to a normal civic obligation;

(f) the service is exacted on a full-time basis to the exclusion of any significant time to seek or undertake paid work, and for a duration far in excess of what is necessary to effect labour market rehabilitation.

9. Further to #7(e) work-for-benefit arrangements are not similar to a civic obligation. The terms on which service is exacted are consistent with the condition of servility, but not with the freedoms, property rights and public service expectations (eg. military or jury service) characteristic of citizenship.[2] They derogate from the right of a free man to work for a wage or a fee under a contract of service or for services and to draw the benefit of the contract, namely his living from work he freely chooses or accepts (International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 6).

10. Submitted, the premiss of work-for-benefit is that it is legitimate to exact labour services in consideration for benefits paid during such service or a previous period of unemployment. This premiss is misconceived. Save that Strasbourg jurisprudence assimilates social security benefits to private property, international human rights law otherwise knows social security and social insurance to be the object of a right, but not as a commodity which must be paid for except by taxes and social insurance contributions.[3] (Cf. ICESCR Article 9; ECHR Protocol 1 Article 1 paragraph 3). It follows that the only way to exact tribute from a person consistently with respect for the status of citizenship is to engage the person under a regular contract and then lawfully to impose taxes on his remuneration.

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2 Cf. Aristotle, *The Politics,* Book I Chapters 4-7; Book III Chapter 5

3 *R (on the application of RJM) (FC) (Appellant) v Secretary of State for Work and Pensions* [2008] UKHL 63; *Stec & Ors v United Kingdom* (App. Nos: 65731/01 & 65900/01), Decision on Admissibility 06-07-2005 (ECtHR)

11. Submitted, even if the obligation of work-for-benefit were "civic" in nature, it is not "normal". A "normal" civic obligation is one which is designed to fall equitably upon everyone within the general class of citizens by reason of citizenship without more. Alternatively, in may on principle be designed to fall equitably upon everyone within a sub-class of citizens by reason of citizenship together with some legal or factual position of privilege, dominance or eminence.

12. Further to #11, work-for-benefit schemes are not designed to affect all citizens generally, neither are they addressed to a privileged class. On the contrary, they are addressed to a sub-class of citizens who are disadvantaged by reason of long-term unemployment and who by definition have already become victims of a violation of their right to work, in that the United Kingdom has failed to perform international obligations arising from the ICESCR.

13. Further to #6 it is submitted that ***Talmon*** is distinguishable and can be disapplied because the claimant in that case had put restrictions on his availability for work which are, in any circumstances, fanciful. Employment is not "suitable" if its terms and conditions derogate from the ICESCR, in particular Article 7.

14. In so far as the public interest is opposable to any of the rights asserted in this submission, it was held in ***de Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing*** **[1999] 1 AC 69, 80,** the Privy Council, drawing on South African, Canadian and Zimbabwean authority, defined the questions generally to be asked in deciding whether a measure is proportionate:

> "whether: (i) the legislative objective is sufficiently important to justify limiting a fundamental right; (ii) the measures designed to meet the legislative objective are rationally connected to it; and (iii) the means used to impair the right or freedom are no more than is necessary to accomplish the objective."

By a recent modification of the "De Freitas" principle, public authorities must strike a fair balance between the rights of the individual and the interests of the community, taking care to assess the severity and consequences of a measure. **(*Huang v Secretary of State for the Home Department* [2007] UKHL 11 at [19]).**