

## **Job Guarantee and the Right to Work: The Missing Piece or Missing the Point?**

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### **INTRODUCTION:**

As early as 1840, Louis Blanc, who centred his political theory on the newly articulated right to work,<sup>1</sup> denounced the injustice of unemployment and its connection to poverty.<sup>2</sup> He argued that to fulfil this right, the state must provide work for all able-bodied individuals unable to find employment on their own.<sup>3</sup>

Currently, the right to work is included in most human rights regimes, beginning with its inclusion under Art.17 of the Universal Declaration on Human Rights in 1948.<sup>4</sup> Nevertheless, the right to work is subject to extensive criticism from commentators as ‘*frosting without the cake*’<sup>5</sup>. Unemployment remains a global challenge, with the ILO estimating in 2023 around 473 million people actively seeking employment.<sup>6</sup> This harrowing data is difficult to reconcile with the fact that the right to work is consistently listed within most human rights regimes. If work is meant to be an individual fundamental entitlement, then individuals should not be subjected to involuntary unemployment.

In a manner echoing Blanc's original proposition that individuals who cannot find employment should be simply given work,<sup>7</sup> Job Guarantee programmes, consisting of ‘*permanent... program[m]es that suppl[y] voluntary employment opportunities on demand for all who are*

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<sup>1</sup> The expression ‘right to work’ [droit au travail] was formulated in: Charles Fourier, Treatise on Domestic-Agricultural Association (1822 cf. Angelika Nussberger, ‘Work, Right to, International Protection’ in Max Planck Encyclopedia of Public International Law (MPEPIL, 2007).

<sup>2</sup> Louis Blanc, The Organisation of Labour (1st edn, 1840, tr Marie Paula Dickoré, 1910); Pablo Scotto, ‘Thinking the Future of Work through the History of Right to Work Claims’ (2020) 46(8) Philosophy & Social Criticism 942.

<sup>3</sup> Louis Blanc, ‘Le Droit au Travail’ (3<sup>rd</sup> Edition, *Le Socialisme*, 1849).

<sup>4</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) art 23.

<sup>5</sup> James Nickel, ‘Giving up on the Human Right to Work?’ in Virginia Mantouvalou (ed), *The Right to Work: Legal and Philosophical Perspectives* (Hart Publishing, 2014) 145.

<sup>6</sup> International Labour Organization, *World Employment and Social Outlook: Trends 2023* (Geneva, 2023) 138, appendix C.

<sup>7</sup> Hugh Chisholm, ‘National Workshops’ in *Encyclopaedia Britannica* vol 19 (11th edn, Cambridge University Press 1911) 272–273.

*ready and willing to work*’,<sup>8</sup> are currently being promoted as a tool to reduce unemployment,<sup>9</sup> on the basis that work constitutes a fundamental good for the attainment of individual self-respect and dignity.<sup>10</sup> This has been argued to potentially lead to the realisation of the right to work or even to its final transformation into an enforceable individual right.<sup>11</sup>

While the right to work is within academic consensus accompanied by qualitative requirements for the work itself,<sup>12</sup> such requisites do not directly fall within the scope of the analysis within this article, which will instead primarily consider the normative framework pertaining to individual rights to access work.

The implementation of Job Guarantee is not merely a utopic discussion, as such programmes are being adopted and implemented in both modest and ambitious scales in multiple countries.<sup>13</sup> Successful permanent programmes already exist in multiple European countries. Ireland's Community Employment scheme has been active since 1994, benefiting over twenty thousand participants through part-time community work.<sup>14</sup> In France, Zero Long-Term Unemployment Zones (TZCLD) provide employment opportunities to long-term unemployed residents via local authorities.<sup>15</sup> Similarly, Greece's *Kinofelis* programme supports long-term unemployed individuals through work offered by local authorities.<sup>16</sup> The use of extensive public employment programmes such as Job Guarantee as a tool to curb unemployment is

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<sup>8</sup> Pavlina R Tcherneva, ‘The Job Guarantee: Design, Jobs, and Implementation’ (2018) Working Paper No 902, Levy Economics Institute of Bard College 1, 1.

<sup>9</sup> see Ilker Aslan, ‘Employer of Last Resort as a New “New Deal”: A Few Thoughts on Turkey’ (2021) 16(2) *American Review of Political Economy* 1, 3–4.

<sup>10</sup> Hyman Minsky, ‘May Day 1986’ (1986) Hyman P. Minsky Archive 138 [https://digitalcommons.bard.edu/hm\\_archive/138](https://digitalcommons.bard.edu/hm_archive/138) accessed 19 September 2024.

<sup>11</sup> UNGA, ‘The Employment Guarantee as a Tool in the Fight Against Poverty: Report of the Special Rapporteur on Extreme Poverty and Human Rights, Olivier De Schutter’ (2023) A/HRC/53/33.) [2].

<sup>12</sup> Hugh Collins, ‘Is there a Human Right to Work?’ in Virginia Mantouvalou (ed), *The Right to Work: Legal and Philosophical Perspectives* (Hart Publishing, 2014); Philip Harvey, ‘Benchmarking the Right to Work’ in Shareen Hertel and Lanse Minkler (eds), *Economic Rights: Conceptual, Measurement, and Policy Issues* (CUP, 2009) 115, 123; Virginia Mantouvalou, ‘The Right to Non-Exploitative Work’ in Virginia Mantouvalou (ed), *The Right to Work: Legal and Philosophical Perspectives* (Hart Publishing, 2014).

<sup>13</sup> E.g. Austria: Maximilian Kasy and Lukas Lehner, ‘Employing the Unemployed of Marienthal: Evaluation of a Guaranteed Job Program’ (2022) Institute for New Economic Thinking at the Oxford Martin School, Working Paper No 2022-29, 20; Greece: International Labour Organization, ‘The Right to Work Now: Lessons from Kinofelis: The Greek Public Employment Programme’ (19 March 2018) 2.

<sup>14</sup> Department of Social Protection, ‘Community Employment Programme’ (12 August 2019) <https://www.gov.ie/en/service/412714-community-employment-programme/> accessed 19 March 2025.

<sup>15</sup> TZCLD, ‘Les Départements et le projet Territoires zéro chômeur de longue durée’ (April 2022) <https://www.tzcl.fr/wp-content/uploads/2022/04/2Note-Departements-TZCLD-MAJ-27.04.22.pdf> accessed 19 March 2025.

<sup>16</sup> International Labour Organization (ILO), ‘The Right to Work Now - Lessons from Kinofelis: the Greek public employment programme’ (19 March 2018) [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/documents/publication/wcms\\_622168.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_622168.pdf) accessed 19 March 2025.

becoming more established amongst both commentators and policy makers,<sup>17</sup> through justifications based on both the promise of increasing labour market participation, which would in turn help stabilise national economies, as well as on the right to work. It is important to assess the claim of the alignment of Job Guarantee with the right to work and understand what characteristics these programmes ought to have if they are to fulfil this role, especially since such programmes may sit at the intersection of realising a fundamental human right and shaping economic policy. While ensuring that the implementation of socio-economic rights, such as the right to work, is consistent with economic considerations is inevitable, these programmes must also adhere to human rights principles and their respective normative frameworks.

This paper will assess the claim that such programmes may constitute a key tool for the fulfilment of the right to work by analysing the normative framework of state obligations derived from the right and identifying the place that Job Guarantee may occupy. The framework will be derived from the right to work under both the International Covenant on Economic Social and Cultural Rights (ICESCR)<sup>18</sup> and the European Social Charter (ESC).<sup>19</sup> Part A of this paper will identify the normative framework established by the right to work under the two instruments with a view to discuss the essential components of the framework and ultimately evaluate the essence of the right itself. Part B will then outline the key components of Job Guarantee programmes as they are currently being promoted and discuss their alignment with the core norms established under the right to work. Finally, Part C will discuss the limitations in the ability of Job Guarantee programmes to fulfil the right to work. This paper will note the potential positive impact of Job Guarantee in deepening the protection individuals have against unemployment. However, the paper will also note that the effectiveness of Job Guarantee programmes in fulfilling the right to work hinges on deeper, more fundamental questions about the nature of the right itself. These include whether work should be protected solely as an instrumental good, valued for the remuneration it provides, or as an intrinsic good, valuable in because of the intangible benefits it bestows on individuals. Furthermore, the discussion on the role of Job Guarantee programmes in realizing the right to

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<sup>17</sup> See Tcherneva, (n 8).

<sup>18</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

<sup>19</sup> European Social Charter (adopted 18 October 1961, entered into force 26 February 1965) ETS 35.

work will lead to some deeper unresolved questions about socio-economic rights in general such as whether market mechanisms can be legitimately involved in the fulfilment of rights.

## **PART A: THE RIGHT TO WORK AND ITS NORMATIVE FRAMEWORK**

### **A.1: The instruments:**

The ICESCR is the central instrument within the United Nations international human rights framework dedicated to socio-economic rights. The Covenant has been ratified by 172 states<sup>20</sup> and is currently the widest applicable international legal instrument pertaining exclusively to socio-economic rights. The Committee of Economic Social and Cultural Rights (CESCR) applies and interprets the ICESCR through a review procedure based on individual state submissions or through General Comments, which are in essence highly persuasive interpretations of individual provisions of the Covenant.<sup>21</sup> So far, the CESCR has produced a single general comment, General Comment no. 18,<sup>22</sup> on Art.6, i.e. the right to work.

The ESC is the socio-economic counterpart to the more notorious European Convention on Human Rights.<sup>23</sup> The ESC has a much more limited geographical scope of application than the ICESCR, as it only applies to the 47 states within the Council of Europe.<sup>24</sup> It is the oldest socio-economic rights instrument currently in force and its main interpretative body, the European Committee on Social Rights (ECSR) has developed substantively the doctrine pertaining to Art.1 i.e. the right to work. Similar to the CESCR, the ECSR also mostly operates through a

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<sup>20</sup> United Nations Treaty Collection, 'Status as at 20 March 2025: International Covenant on Economic, Social and Cultural Rights' (UNTC) [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtldsg\\_no=IV-3&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtldsg_no=IV-3&chapter=4&clang=en) accessed 20 March 2025.

<sup>21</sup> Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on Its Development* (Clarendon Press, 1998) 91; Philip Alston, 'Assessing the Strengths and Weaknesses of the European Social Charter's Supervisory Mechanism' in Gráinne de Búrca and Bruno de Witte (eds), *Social Rights in Europe* (OUP, 2005) 45.

<sup>22</sup> Committee on Economic, Social and Cultural Rights (CESCR), 'The Right to Work: General Comment No 18' (2005) E/C.12/GC/18.

<sup>23</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

<sup>24</sup> The first version of the ESC entered into force in 1965, while the revised version entered into force in 1999. The original allowed states to ratify individual provisions, while the revised instrument could only be ratified in its entirety. Article 1 did not change substantively, and between the two instruments, it is ratified by all member states of the Council of Europe.

system of periodic review based on state submissions,<sup>25</sup> to which it has also added a collective complaint procedure<sup>26</sup> in which certain applicants, such as representative trade unions and non-governmental organisations holding specific competences, may present complaints to the ECSR, which may determine state compliance with ESC provisions and recommend amendments to relevant legislation and policy.

## A.2: The Right to Work under the ICESCR and the ESC:

As mentioned above both instruments protect the right to work.

Art.6 ICESCR protects: *‘the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts’* which is to be fulfilled through *‘technical and vocational guidance and training programmes’* and *‘policies and techniques to achieve steady economic, social and cultural development and full and productive employment’*. The CESCR has substantiated the content of state obligations established under Art.6, through requirements of *availability* – pertaining to active labour market policies such as vocational training and guidance; *accessibility* which refers to the equal distribution of work opportunities; and *acceptability* which concerns the integration of fair working conditions to the right to work.<sup>27</sup> Clearly, the right to work under the ICESCR is a highly complex international legal provision which encompasses a multitude of individual elements and legal standards

The right to work under the ESC is not dissimilar. In fact, Art.1 of the ESC imposes on signatory states the duty to *‘protect effectively the right of the worker to earn his living in an occupation freely entered upon’* through *‘the maintenance of as high and stable a level of employment[...] with a view to the attainment of full employment’* through the provision of *‘free employment services for all workers’* and *‘vocational guidance, training and rehabilitation’*. The ESCR has constructed a complex framework of norms to determine state compliance with

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<sup>25</sup> Protocol amending the European Social Charter (1991) ETS 142; David Harris and John Darcy, *The European Social Charter* (Transnational Publishers, 2001) 306–374.

<sup>26</sup> Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (entered into force 9 November 1995) ETS 158; Holly Cullen, ‘The Collective Complaint System of the European Social Charter: Interpretative Methods of the European Committee on Social Rights’ (2009) 9(1) *Human Rights Law Review* 61.

<sup>27</sup> CESCR, ‘General Comment No 18’ [12].

Art.1. This includes the institution of a prohibition of forced labour,<sup>28</sup> the protection of workers' right to privacy,<sup>29</sup> and the duty to establish a legal framework on non-discrimination.<sup>30</sup>

This paper does not submit that the two instruments impose identical obligations on signatory states, but rather that they share a set of core norms pertaining to the right to work. O'Cinneide has identified "*clear similarities and overlaps*"<sup>31</sup> between the normative content of the two provisions, resulting from a "*shared understanding of the conceptual basis of the right to work*" among the respective interpretative bodies.<sup>32</sup> This may be due to a number of factors, starting from the clear similarities in the text of the two respective provisions pertaining to the right to work. Both centre on the individual right to '*pursue and engage with a freely chosen occupation*' to be fulfilled through active labour market policies such as employment services and vocational guidance and training as well as the pursuance of '*full employment*'. Further to the textual similarities in the texts, the respective interpretative bodies have also been providing similar interpretations, emphasizing the 'qualitative' and 'quantitative' elements of the right to work,<sup>33</sup> i.e. the presence of sufficient work opportunities and the acceptability of the work itself. Both regimes also give emphasis to the need for signatory states to adopt active labour market policies, such as vocational training, to support individual access to employment. Finally, the similarities in the normative core of the right to work in the ICESCR and the ESC may also be attributed to the frequent reliance made in relation to both instruments on relevant standards from the International Labour Organisation (ILO). The ILO is the most specialised organisation in the protection of workers at a supranational level, having produced almost 200 conventions in the century in which it has been operative.<sup>34</sup> Both the CESC and the ESCR have consistently relied on multiple ILO conventions, including in relation to the right to work.<sup>35</sup> The most influential ILO conventions in relation to the rights individuals have when

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<sup>28</sup> European Committee of Social Rights (ECSR), *Conclusions 2020: Albania*.

<sup>29</sup> ECSR, *Conclusions 2012, Statement of Interpretation on Article 152*.

<sup>30</sup> ECSR, *Syndicat national des professions du tourisme v France*, Complaint No 6/1999, decision on the merits (10 October 2000) [24].

<sup>31</sup> Colm O'Cinneide, 'The Right to Work in International Human Rights Law' in Virginia Mantouvalou (ed), *The Right to Work: Legal and Philosophical Perspectives* (Hart Publishing, 2014) 121.

<sup>32</sup> Ibid.

<sup>33</sup> CESC, 'General Comment No 18' [1]; ESC Art.2, 3; Philip Harvey (n 12) 124.

<sup>34</sup> Sandrine Kott, 'ILO: Social Justice in the Global World' in Christophe Gironde and Gilles Carbonnier (eds), *The ILO @100: Addressing the Past and Future of Work and Social Protection* (Brill Nijhoff 2019); Gerry Rodgers, Eddy Lee, Lee Swepston and Jasmien Van Daele, *The International Labour Organization and the Quest for Social Justice 1919–2009* (Cornell University Press 2009).

<sup>35</sup> CESC, 'General Comment No 18' [11], [12], [40]; ECSR, *Conclusions 2020: Albania*; ECSR, *Conclusions 2013: Albania*.

accessing work include the Employment Policy Convention No.122,<sup>36</sup> Non-Discrimination Convention No.111<sup>37</sup> and the Termination of Employment Convention No.158.<sup>38</sup>

### A.3: Why is work a right?

While the right to work may not be as emblematic as the right to life or the prohibition of torture, it holds undeniable significance in most people's lives. For most individuals, work is a central aspect of daily existence, consuming a substantial portion of their life. The harm of long-term unemployment is self-evident, not only in terms of individual disadvantage due to financial deprivation and lost opportunities for social interaction and personal fulfilment, but also for states, which face reduced tax revenue and losses in Gross Domestic Product (GDP) due to high unemployment rates.<sup>39</sup> This issue is difficult to quantify, as unemployment statistics may exclude individuals who have stopped seeking work, those underemployed in terms of hours or pay, or those trapped in precarious jobs due to a lack of 'decent work' opportunities.<sup>40</sup> Nonetheless, the consensus remains that unemployment is a persistent problem, with global rates remaining at five percent throughout 2023 and early 2024.<sup>41</sup> Therefore, it is essential that human rights frameworks designed to safeguard fundamental rights recognise and address the importance of work.

The justification for safeguarding work as the object of a fundamental human right remains somewhat contested. Traditionally, as evident from the texts of both legal instruments, the right to work has been framed as a means for individuals to '*earn a living*', positioning work as an instrumental good necessary for achieving financial independence. This framing is particularly significant in a market-based economy, where earnings from work are the primary means for

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<sup>36</sup> International Labour Organization (ILO), *Convention C122, Employment Policy Convention, 1964 (No 122)* (Adopted 9 July 1964, 48th ILC session, Geneva).

<sup>37</sup> ILO, *Convention C111, Discrimination (Employment and Occupation) Convention, 1958 (No 111)* (Adopted 25 June 1958, 42nd ILC session, Geneva).

<sup>38</sup> ILO, *Convention C158, Termination of Employment Convention, 1982 (No 158)* (Adopted 22 June 1982, 68th ILC session, Geneva).

<sup>39</sup> Martin Feldstein, 'The Private and Social Costs of Unemployment' (1978) 68(2) *American Economic Review* 155.

<sup>40</sup> David Card, 'Origins of the Unemployment Rate: The Lasting Legacy of Measurement without Theory' (Working Paper, UC Berkeley and NBER, February 2011); Hie Joo Ahn and James D Hamilton, 'Measuring Labor-Force Participation and the Incidence and Duration of Unemployment' (2022) 44 *Review of Economic Dynamics* 1.

<sup>41</sup> International Labour Organization (ILO), *World Employment and Social Outlook Trends 2024* (ILO 2024) 11, 21.

individuals to access other socio-economic rights enshrined in both these instruments,<sup>42</sup> like the right to an adequate standard of living<sup>43</sup> or the right to housing.<sup>44</sup> The positioning of the right to work as the first substantive provision in both the ICESCR and the ESC highlights its attributed instrumental value. However, in recent years, the rationale for protecting the right to work has evolved. Work has been increasingly understood as essential for the achievement of more intangible benefits, such as the establishment and maintenance of one's own reputation and the creation of interpersonal relationships,<sup>45</sup> or as a key tool for individual self-development.<sup>46</sup> The expansion of the perceived value of work has resulted in the understanding of work as an intrinsic good and an output of human dignity. As of now, both of such rationales are to some extent included within the relevant instruments and interpretative documents pertaining to the right to work.

#### A.4: Content of the right to work

It is possible to divide the shared core norms pertaining to the right to work into two main categories. The first one pertains to the obligation on states to remove obstacles from individual ability to seek and engage in a freely chosen occupation. Such obstacles include forced labour,<sup>47</sup> discrimination<sup>48</sup> and unfair dismissal.<sup>49</sup> Next, the shared normative core within both regimes includes the obligation to provide services such as vocational guidance and training as well as the duty to pursue a policy of 'full employment'. Neither of these obligations pertain to the direct provision of work opportunity to individuals, but rather, as will be explored more in-depth below, they compel states to create an environment that promotes individual ability to access a position of their choosing. In this sense, such obligations are lightly distinct from the traditional 'positive obligations' within socio-economic rights, which are often centred on

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<sup>42</sup> Craven, *International Covenant on Economic, Social and Cultural Rights* (n 21).194.

<sup>43</sup> UDHR Art.25; ICESCR Art.11; ESC Art.30.

<sup>44</sup> UDHR Art 25; ICESCR Art 11(1); ESC Art 31.

<sup>45</sup> *Niemetz v Germany*, App no 13710/88 (ECtHR, 16 December 1992) [29]; *Sidabras and Džausas v Lithuania*, App nos 55480/00 and 59330/00 (ECtHR, 27 October 2004) [48].

<sup>46</sup> Nickel (n 5) 141.

<sup>47</sup> ECSR, *Conclusions 2020: Albania*; ECSR, CESCR, 'General Comment No 18' [4].

<sup>48</sup> ECSR, *Conclusions I* (1969), *Statement of Interpretation on Article 1§2*; *Conclusions XVI-1* (2002), *Statement of Interpretation on Article 1§2*; CESCR, 'General Comment No 18' [12].

<sup>49</sup> CESCR, 'General Comment No 18' [11]; ESC Art 24; ECSR, *Conclusions 2006*, *Statement of Interpretation on Article 1§2*.



direct provision,<sup>50</sup> like those traditionally established under to the right to health<sup>51</sup> or the right to education.<sup>52</sup> Instead the ‘positive obligations’ under the right to work have been dubbed as ‘programmatic’<sup>53</sup> and consist of ‘*lead[ing] to the adoption of programmes for the taking of measures intended to result in conditions under which what the rights promise can be enjoyed*’.<sup>54</sup> In this sense the two programmatic obligations under the right to work promote its fulfilment in a highly indirect way, with significant reliance on individual action.

#### A.4(a): Prohibition of forced labour

The first core norm under the right to work within both the ICESCR and the ESC is the prohibition of forced labour. This is not explicitly included within the text of either provision but was construed as an inherent element of the right to work by both the CESCR and ESCR. This inclusion is unsurprising given that forced labour practices are clearly a heinous affront to the core principles that individuals have a right to pursue a freely chosen occupation. Consequently, the prohibition of forced labour is consistently included within human rights instruments, not only within socio-economic rights but also including those pertaining to civil and political rights,<sup>55</sup> and constitutes a peremptory norm of international law.<sup>56</sup> The most influential definition of forced labour is the one under ILO Convention no.29, according to which forced labour consist of ‘*work exacted from any person under the menace of penalty for*

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<sup>50</sup>Simon Deakin, ‘Article 1: The Right to Work’ in Niklas Bruun, Klaus Lörcher, Isabelle Schömann, and Stefan Clauwaert (eds), *The European Social Charter and the Employment Relation* (Bloomsbury, 2019) 150.

<sup>51</sup> CESCR, ‘The Right to the Highest Attainable Standards of Health: General Comment No 14’ (2000) E/C.12/2000/4.

<sup>52</sup> CESCR, ‘The Right to Education: General Comment No 13’ (1999) E/C.12/1999/10 [6].

<sup>53</sup> Diamond Ashiagbor, ‘The Right to Work’ in Gráinne de Búrca and Bruno de Witte (eds), *Social Rights in Europe* (OUP, 2005) 259.

<sup>54</sup> EW Vierdag, ‘The Legal Nature of the Rights Granted by the International Covenant on Economic, Social and Cultural Rights’ (1978) 9 *Netherlands Yearbook of International Law* 69, 83.

<sup>55</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 8; ECHR Art 4.

<sup>56</sup> Niklas Bruun and Joanna Unterschutz, ‘Article 5: Prohibition of Slavery and Forced Labour’ in Filip Dorsemont, Klaus Lörcher, Stefan Clauwaert, and Mélanie Schmitt (eds), *The Charter of Fundamental Rights of the European Union and the Employment Relation* (Hart, 2019) 210.

*which they have not offered themselves voluntarily*'.<sup>57</sup> Such definition was adopted in relation to both Art.1(2) ESC<sup>58</sup> and Art.6 ICESCR.<sup>59</sup>

The definition of forced labour under the ESC and ICESCR has been interpreted broadly, extending beyond traditionally recognised forms such as debt bondage and slavery. It also encompasses less conventional contexts that may not immediately evoke the concept of forced labour, such as prison work,<sup>60</sup> military service,<sup>61</sup> and certain welfare schemes. The connection between welfare and forced labour is particularly relevant in any discussion on Job Guarantee as it illuminates some potential ways in which Job Guarantee schemes may run afoul of the prohibition. The ECSR in particular has adopted a very strict stance on welfare conditionality, i.e. welfare schemes in which individuals are compelled to undertake given work opportunities under the menace of losing benefit.<sup>62</sup> According to the ECSR, such schemes would be in contravention of Art.1(2) ESC if the positions undertaken by the affected individuals falls short of a lengthy list of criteria provided by the Committee. These include general characteristics such as compliance with statutory minimum wage or equivalent general or sectorial norm<sup>63</sup> or compliance with health and safety rules.<sup>64</sup> Additionally, the positions undertaken would also be considered in contravention of Art.1(2) ESC if they require qualifications or skills inferior to those held by the affected individuals, if the salary is below the individuals' previous salary, if they are incompatible with the individuals' mental or physical abilities or if they are located at an unreasonable distance from the affected individuals' homes.<sup>65</sup> The ECSR is yet to clarify whether the latter set of criteria are meant to act as indicators of sheer suitability of the position or if the implication is that if individuals have undertaken positions which do not meet the criteria, then those were not voluntarily undertaken. Either way, the strict scrutiny which the ECSR applies on welfare policy affecting individual choice of work is strong evidence of the centrality of occupational freedom within the right to work.

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<sup>57</sup> International Labour Organization (ILO), *Convention C029 Forced Labour Convention, 1930 (No 29)* (Adopted 28 June 1930, 14th ILC session, Geneva) art 2(1).

<sup>58</sup> ECSR, *Conclusions 2020: Albania*.

<sup>59</sup> CESCR, 'General Comment No 18' [9].

<sup>60</sup> ECSR, *Conclusions 2012, Statement of Interpretation on Article 1§2*.

<sup>61</sup> ECSR, *European Organisation of Military Associations and Trade Unions (EUROMIL) v Ireland*, Complaint No 164/2018, Decision on the Merits (21 October 2020).

<sup>62</sup> Virginia Mantouvalou, *Structural Injustice and Workers' Rights* (OUP, 2023) 72.

<sup>63</sup> ECSR, *Conclusions 2012, Statement of Interpretation on Article 1§2*.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid

Conversely, the CESCR, has not substantively addressed the potential connection between forced labour and welfare conditionality schemes.<sup>66</sup> So far, the CESCR has maintained that welfare conditionality schemes may be contravention of Art.6 if they undermine labour protections, but it is yet to invoke their potential incompatibility with the prohibition of forced labour.<sup>67</sup> This still strengthens the principle that states should not, through policy, compel individuals to accept unsuitable positions, affirming that work should be pursued with the greatest possible freedom.<sup>68</sup> This is clearly not meant to address the reality that most people must work to earn a living. Nor is the broad interpretation of voluntary work by both bodies intended to determine whether the right to work is actually a *duty*,<sup>69</sup> much less engage with the Marxist view that all labour within a capitalist system is inherently exploitative.<sup>70</sup> However, these legal instruments emphasize that individuals should have as much autonomy as possible in determining the profession or kind of work they would like to pursue.

#### A.4(b): Prohibition of discrimination

Next, the right to work within both the ICESCR and ESC respectively is accompanied by a prohibition of discrimination. The prohibition of discrimination is a universal provision within most human rights instruments<sup>71</sup> and promotes a central fundamental principle of human rights, namely, equality of treatment. It is self-evident that unfair discriminatory conducts from employers or from states constitute clear affronts to both the principle of equal treatment and an unjust limitation of the right of affected individuals to ‘seek and engage in a freely chosen occupation’.<sup>72</sup>

The prohibition of discrimination is included under Art.2(2) ICESCR, which applies transversally in relation to all provisions contained within the Covenant. Under the ESC, the prohibition of discrimination was initially derived from Article 1(2), which obliges states ‘to

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<sup>66</sup> Human Rights Committee, *Faure v Australia*, CCPR/C/85/D/1036/2001 (31 October 2005) [4.7]; *Faure v Australia* (Individual Opinion by Committee member Ms Ruth Wedgwood); Sarah Joseph, ‘UN Covenants and Labour Rights’ in Colin Fenwick and Tonia Novitz (eds), *Human Rights at Work* (Hart, 2010) 353.

<sup>67</sup> CESCR, ‘Concluding Observations: Canada’, E/C.12/1993/5 (10 June 1993) [30].

<sup>68</sup> Hugh Collins, ‘Is There a Human Right to Work’ (n 12) 21–22.

<sup>69</sup> Amir Paz-Fuchs, ‘The Right to Work and the Duty to Work’ in Virginia Mantouvalou (ed), *The Right to Work* (Hart Publishing, 2014).

<sup>70</sup> Collins (n 12) 33–34 for a discussion in relation to the right to work.

<sup>71</sup> See ESC Art.1(2), Art.E; ICESCR Art.2; ICCPR Art.2; ECHR Art.14.

<sup>72</sup> See ILO, *Convention C111*

*protect effectively the right of the worker to earn his living*' This protection is seen as crucial for ensuring the '*effective enjoyment of the right to work*'.<sup>73</sup> Both legal frameworks prohibit discrimination based on membership in specific groups, with common categories including gender, race, sexual orientation, age, and disability. However, both frameworks have also acknowledged other groupings, such as part-time employment status, as grounds for protection.<sup>74</sup>

The prohibition of discrimination in access to work involves two key components. First, it addresses both direct and indirect<sup>75</sup> discriminatory practices during recruitment.<sup>76</sup> This includes actions by employers, such as refusing to hire individuals based on their membership in a particular group, or subjecting them to discriminatory vetting processes, like requiring pregnancy tests for female candidates.<sup>77</sup> The imposition of additional administrative requirements on protected groups, like mandating that women obtain written permission from their husbands to work, may also violate this prohibition.<sup>78</sup> The rule further extends to the obligation to make work environments more accessible for vulnerable groups, e.g. by providing facilities for individuals with disabilities.<sup>79</sup>

Secondly, the prohibition of discrimination extends to the fair distribution of employment opportunities, particularly for traditionally disadvantaged groups.<sup>80</sup> This obligation may be violated when such groups experience disproportionately high rates of unemployment<sup>81</sup> or are overrepresented in the informal economy<sup>82</sup> or part-time work.<sup>83</sup> The CESCR has

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<sup>73</sup> ECSR, *Conclusions I* (1969), *Statement of Interpretation on Article 1§2*; ECSR, *Conclusions XVI-1* (2002), *Statement of Interpretation on Article 1§2*; *Syndicat national des professions du tourisme v France*, Complaint No 6/1999, decision on the merits of 10 October 2000, §24.

<sup>74</sup> ECSR, *Conclusions 2008*, Albania.

<sup>75</sup> ECSR, *Conclusions XVIII-1* (2006), Austria.

<sup>76</sup> Narrow exceptions may be allowed for inherent job requirements: CESCR, *Revised Guidelines regarding the Form and Content of Reports to be Submitted by States Parties under Articles 16 and 17 of the ICESCR*, UN ESCOR, Supp No 3, E/1991/23 (1991), Annex IV, 88, 91; ECSR, *Conclusions XVI-1* (2003), Iceland.

<sup>77</sup> CESCR, *Concluding Observations: Poland*, E/C.12/1/Add.26 (16 June 1998) [14].

<sup>78</sup> CESCR, *Concluding Observations: Zaire*, E/C.12/1988/SR.17 (1988) [3].

<sup>79</sup> CESCR, *Concluding Observations: France*, E/C.12/FRA/CO/3 (9 June 2008) [38].

<sup>80</sup> CESCR, *General Comment no 20: Non-discrimination in Economic, Social and Cultural Rights* (2009) E/C.12/GC/20 [31]. ECSR, *Conclusions 2020*, Azerbaijan; ECSR, *Conclusions 2020*, Lithuania; CESCR, *Concluding Observations: Ireland*, E/C.12/IRL/CO/4 (20 March 2024) [26]; CESCR, *Concluding Observations: Romania*, E/C.12/ROU/CO/6 [25].

<sup>81</sup> CESCR, *Concluding Observations: Israel*, E/C.12/1/Add.27 (4 December 1998) [15]: the Committee criticised the 72 % unemployment rate for disabled persons.

<sup>82</sup> CESCR, *Concluding Observations: Nicaragua*, E/C.12/NIC/CO/4 (28 November 2008) [14].

<sup>83</sup> CESCR, *Concluding Observations: Netherlands*, E/C.12/1/Add.25 (16 June 1998) [12].

recommended that states take proactive measures,<sup>84</sup> such as offering incentives to employers, to improve employment rates among marginalized groups and ensure equal access to meaningful job opportunities.<sup>85</sup>

Nevertheless, the normative development of this second component of the prohibition of discrimination remains in its early stages within both regimes. The inequitable distribution of work opportunities is difficult for states to address in a competition-based labour market, except through targeted measures that reduce unemployment among protected groups, as part of the obligations to pursue ‘full employment’ discussed below,<sup>86</sup> and the general non-discrimination framework that protects individual workers in recruitment. Furthermore, monitoring often relies on national mechanisms, such as gathering demographic data on employment rates. However, these monitoring mechanisms can be costly and may therefore be inadequate or entirely absent. Moreover, when deficiencies are identified, they may arise from factors beyond the state's control or be more appropriately addressed by national authorities rather than supranational bodies.

#### A.4(c): Prohibition of unfair dismissal

According to both instruments, individuals should enjoy a minimum level of protection against unfair and unjustified dismissal. This inclusion is clearly an important prerequisite for the effective enjoyment of the right to ‘seek and enjoy a freely chosen occupation’, as it safeguards individuals from unnecessary exposure to the risk of losing their income and other intangible benefits of work and also provides a minimum layer of protection against unemployment.

The prohibition of unfair dismissal is explicitly protected under Art.24 of the ESC. Conversely, Art.6 of ICESCR does not explicitly include standards referring to termination of employment relation, but rather these were construed by the CESCR in General Comment no.18, according to which Art.6 encompasses the right ‘*not to be deprived of work unfairly*’.<sup>87</sup>

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<sup>84</sup> ECSR, *Confederazione Generale Italiana del Lavoro (CGIL) v Italy*, Complaint No 91/2013, decision on the merits of 12 October 2015 [237].

<sup>85</sup> CESCR, *Concluding Observations: China (including Hong Kong and Macao)*, E/C.12/Add.107 (13 May 2005) [121].

<sup>86</sup> ECSR, *Conclusions 2020: Azerbaijan*; *Conclusions 2020: Lithuania*.

<sup>87</sup> CESCR, *General Comment no 18: The Right to Work* [4].

The prohibition of unfair dismissal within both instruments was interpreted in accordance with the standards established under ILO Convention no. 158.<sup>88</sup> These consist of three main elements. Firstly, dismissals should only be executed in the presence of a valid reasons, which ought to be due to either performance of the worker or the operational needs of the undertaking.<sup>89</sup> Next, both the ICESCR and ESC include a list of prohibited grounds for dismissal, such as discriminatory reasons<sup>90</sup> or participation in strikes.<sup>91</sup> Finally, workers should also benefit from procedural guarantees, including a right to appeal the decision to be dismissed.<sup>92</sup>

#### A.4(d): Pursuance of ‘full employment’

The first of the programmatic obligation is that of pursuance of ‘full employment’. As noted above, such an obligation is included explicitly within both the texts of Art.1(1) ESC and Art.6 ICESCR. In both cases the obligation of ‘full employment’ consists of the duty of states to adopt economic policies which are aimed at minimising unemployment. The ECSR in particular has developed a complex framework to determine state compliance which takes into account multiple indicators, such as the economic situation of the state,<sup>93</sup> its Gross Domestic Product (GDP), unemployment rate and percentage of GDP spent on active labour market policies, such as employment service.<sup>94</sup> This is traditionally interpreted as an obligation of means rather than results,<sup>95</sup> meaning that compliance is not determined on the basis of the level of unemployment<sup>96</sup> but rather the extent to which states declare their commitment to increasing employment rates and actively pursue a policy which is aimed at reducing unemployment.<sup>97</sup> The CESCR has not produced a framework as complex as its European counterpart, but it has nevertheless stipulated that states ought to take steps to reduce unemployment rate. The

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<sup>88</sup> CESCR, *General Comment no 18: The Right to Work* [11]; Melanie Schmidt, ‘Article 24: The Right to Protection in Cases of Termination of Employment’ in Niklas Bruun, Klaus Lörcher, Isabelle Schömann, and Stefan Clauwaert (eds), *The European Social Charter and the Employment Relation* (Hart Publishing 2017) 513.

<sup>89</sup> ECSR, *Conclusions 2012, Statement of Interpretation on Article 24*.

<sup>90</sup> ECSR, *Conclusions 2016, Latvia*.

<sup>91</sup> Ibid.

<sup>92</sup> ECSR, *Conclusions 2005*, Cyprus, France, Estonia; ECSR, *Conclusions 2016*, North Macedonia.

<sup>93</sup> ECSR, *Conclusions I* (1969), *Statement of Interpretation on Article 1§1*.

<sup>94</sup> ECSR, *Conclusions XVI-1* (2002), *Statement of Interpretation on Article 1§1*.

<sup>95</sup> ECSR, *Conclusions III* (1973), *Statement of Interpretation on Article 1§1*.

<sup>96</sup> Ibid.

<sup>97</sup> ECSR, *Conclusions I* (1969), *Statement of Interpretation on Article 1§1* (n 93).

obligation of ‘full employment’ under the ICESCR is related to the requirement of ‘availability’ established within General Comment no. 18 and concerns the progressive reduction of unemployment rate through a targeted national strategy.<sup>98</sup>

It may be easy to dismiss the obligation of ‘full employment’ on the basis that it may seem overly indirect in its purported aim to permit individual access to work. Instead, the obligation is highly significant as; by imposing onto states the obligation to manage the economy of the national labour market in a specific way, it promotes the conception that the economic status of the country is within the scope of state’s responsibility under human rights. Consequently, the labour economy is an institution for states to regulate, also for the promotion of enjoyment of socio-economic rights, as opposed to a completely independent entity which states could or should not attempt to manage.<sup>99</sup>

However, there are two significant aspects to the ‘full employment’ obligation that limit its impact. Firstly, within both regimes, signatory states enjoy an enormous margin of appreciation in determining state policy for the regulation of the labour market.<sup>100</sup> This is clearly due to the better suitability of the state’s own institutions to determine which form of policy is most appropriate for addressing unemployment within the current economic situation, but it limits the ability of international bodies to scrutinise state action for the reduction of unemployment.

Second, and perhaps more significantly, the obligation of ‘full employment’ is limited as a result of the way in which the content of the obligation itself was interpreted. In fact, states are under the duty to pursue a policy aiming at the achievement of ‘full employment’. However, ‘full employment’ is interpreted in line with the homonymous concept within macroeconomic theory,<sup>101</sup> which states that there is a ‘natural’ or ‘minimum’ level of unemployment which needs to be maintained. This is also related to the understanding that an excessively high level of employment would compromise price stability<sup>102</sup> or lead to inflation and that, therefore, states should aim to achieve at a maximum, the Non-Augmenting Inflation Rate of

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<sup>98</sup> CESCR, *General Comment no 18: The Right to Work* [41].

<sup>99</sup> Deakin (n 50) 150–51.

<sup>100</sup> ECSR, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) / Confederation of Greek Civil Servants Trade Unions (ADEDY) v Greece*, Complaint No 66/2011, decision on the merits of 23 May 2012 [20].

<sup>101</sup> Diamond Ashiagbor (n 53) 245.

<sup>102</sup> Edmund S Phelps, ‘Phillips Curves, Expectations of Inflation and Optimal Unemployment over Time’ (1967) 34(135) *Economica* 254.

Unemployment (NAIRU).<sup>103</sup> Consequently, the legal obligation of ‘full employment’ does not compel states to seek to lower unemployment to such an extent as to completely eliminate involuntary unemployment, but only to the lowest possible extent in accordance with economic theory. Notably, current macroeconomics debate is not settled on the exact determination of what the ‘natural’ level of unemployment is or even if it actually exists.<sup>104</sup> However, the legal standard still relies on the old economic consensus; otherwise, current unemployment levels would have a more significant impact in assessing compliance with the obligation to pursue ‘full employment’. This interpretation of a core norm of the right to work is highly disappointing when taken in conjunction with the fact that work is the content of a human right. In fact, because of such an interpretation, the right to work essentially allows for long-term involuntary unemployment. While it is acceptable that legal standards which address economic policy should not be in complete disregard of the consensus of economic experts, this interpretation of a central norm of the right to work seems inconsistent with basic principles of human rights.

#### A.4(e): Vocational training and guidance, employment services

The final core norm of the framework derived from the right to work consists of the obligation imposed on states to provide vocational guidance, training and employment services. These services, also referred to as active labour market policies, are crucial for providing workers with information about available positions within their geographical area, with advice on potential career choice and training to support them in their pursuit of an occupation which fits within their personal inclination or ambitions. In contrast to the obligation to pursue ‘full employment’, the obligation to provide vocational guidance, training and employment services does not directly target the labour market as a whole. Instead, it focuses on empowering individuals within the market, enabling them to compete more effectively against other job seekers.

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<sup>103</sup>Roger EA Farmer, ‘Macroeconomics for the 21st Century: Full Employment as a Policy Goal’ (2010) 211 *National Institute Economic Review* R45; Eddy Lee, ‘Is Full Employment Still Desirable and Feasible’ (1997) 18 *Economic and Industrial Democracy* 35.

<sup>104</sup> Olivier De Schutter report (n 11) [49–50].



Both the ICESCR and ESC explicitly impose onto signatory states an obligation to provide such services. The ESC in particular, includes the obligation to provide them under Art.1(4) as well as under two specialised provisions, namely Art.9 on vocational guidance and Art.10 on vocational training. Collectively, these establish a complex regulatory framework on active labour market policies,<sup>105</sup> which underscores their role in preventing unemployment. This may be through the specific targeting of students,<sup>106</sup> in promoting the reintegration of long-term unemployed,<sup>107</sup> and allowing for the management of the labour market especially during times of economic crisis.<sup>108</sup> Similarly, the CESCSC has emphasized the role of active labour market policies in the pursuit of ‘full employment’ and prevention of unemployment. These measures are instrumental in both regimes promoting full employment, by preventing youth unemployment<sup>109</sup> and allowing reintegration within the labour market of the long-term unemployed,<sup>110</sup> but they may also offer better distribution of work opportunities to marginalised groups. However, these remain quintessential programmatic obligations, as they primarily act by creating an enabling environment for individuals to access freely chosen occupations without guaranteeing success. As a result, they often appear insufficient, as the focus is on enhancing individual competitiveness in the labour market, rather than addressing employer practices or reducing broader worker competition. Nevertheless, active labour market policies constitute a key tool for the realisation of the right to work, albeit they do so in a highly indirect fashion.

#### A.5: Discussion:

There are three main characteristics of the framework outlined above that are deserving of further consideration, both as part of a general discussion on the right to work and especially

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<sup>105</sup> Karin Lukas, *The Revised European Social Charter: An Article by Article Commentary* (Edward Elgar 2021) 143–59.

<sup>106</sup> ECSR, *Conclusions 2012*, Montenegro on Art 9; ECSR, *Conclusions 2003*, France (on the intersection of vocational guidance under Art 10(1) and education under Art 10(4)).

<sup>107</sup> ECSR, *Conclusions 2012*, Montenegro.

<sup>108</sup> ECSR, *Conclusions IV* (1975), Statement of Interpretation on Article 9.

<sup>109</sup> ECSR, *Conclusions XVI-1* (2002), Statement of Interpretation on Article 1§1; CESCSC, *General Comment no 18: The Right to Work* [14].

<sup>110</sup> ESC Art 10(4); CESCSC, *General Comment no 18: The Right to Work* [26].

in relation to the discussion below on the role Job Guarantee programmes may fulfil for the realisation of the right.

Firstly, it is important to stress that there is no requirement of direct provision within either the text of the right to work under the ICESCR or the ESC, or within their relevant interpretative documents. Within human rights, direct provision is defined as direct realisation from states of a human right, and it is usually understood as the most central- albeit not in isolation- form of realisation of socio-economic rights.<sup>111</sup> For example, the right to healthcare or to education are traditionally associated with at least partial systems of direct provision, such as through “*provision of equal and timely access to basic preventive, curative, rehabilitative health services and health education*”<sup>112</sup> or by making education accessible to everyone.<sup>113</sup> Conversely, the framework of the right to work does not require states to provide individuals with work, whether temporary or permanent or whether to the general population or for the long-term unemployed. The absence of any obligations entailing direct provision has led commentators to rebuke the status of the right to work as a right.<sup>114</sup>

However, direct provision of the right to work, which can be theorised as a Soviet style system of work distribution,<sup>115</sup> is not compatible with a central norm of the right to work: occupational freedom. The centrality of occupational freedom within the framework of the right to work constitutes the second key characteristic which necessitates further examination. The principle that individuals should be able to choose their own profession to the greatest possible extent is reinforced through the stance taken by the ECSR and CESCR in relation to the prohibition of forced labour and the central role occupied by active labour market policies such as vocational guidance and training. The principle is best aligned with the conception of work as an inherent good, which should ideally be consistent with individual ambitions for self-development, rather than the more orthodox understanding of work as simply a tool to obtain remuneration. Under the latter understanding instead, any job entailing adequate remuneration would be adequate for any individual. Instead, the current framework accommodates the conception of work as the expression of individual desires and ambitions, which individuals are presumptively entitled to achieve, and which is promoted through the removal of obstacles or provision of

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<sup>111</sup> Frédéric Mégret, ‘Nature of Obligations’ in Daniel Moeckli, Sangeeta Shah, and Sandesh Sivakumaran (eds), *International Human Rights Law* (3rd edn, OUP 2018).

<sup>112</sup> CESCR, *General Comment no 14: The Right to the Highest Attainable Standard of Health* [17].

<sup>113</sup> CESCR, *General Comment no 13: The Right to Education* [6].

<sup>114</sup> Nickel (n 5) 147.

<sup>115</sup> Bob Hepple, ‘A Right to Work?’ (1981) 10(2) *ILJ* 65, 69.

‘programmatic’ rights. However, it is self-evident that occupational freedom ought to be limited in practice by the sheer requirement of economic viability, as it would be impractical and unproductive for all individuals to simply be entitled to access the occupation of their choosing. As a result, the current framework based on the right to work requires reliance on market mechanisms to determine the economic viability of each individual’s choice of work.

Thirdly and finally, the relationship between the right to work and unemployment is also significant. A basic understanding of the right to work, would suggest that this should be at its innermost core a right to be protected against unemployment.<sup>116</sup> This understanding partially manifests in the corresponding legal norms as the right to work framework indeed provides for a minimum level of protection against unemployment, firstly, through the prohibition of unfair dismissal which clearly aims at protecting individuals against unemployment. Additionally, the prohibition of discrimination, by promoting fair distribution of work opportunities, provides a minimum level of protection against unemployment for members of vulnerable or economically marginalised groups. However, the level of protection against unemployment is limited due to the current interpretation of the ‘full employment’ obligation, which as discussed above allows states to avoid reducing the unemployment rate through policy below a certain level. As a result of such interpretation, long-term involuntary unemployment is not per se in contravention of the right to work or any of its core norms.

#### A.6: The nature of the right to work

After providing an in-depth outline of the core norms under the right to work within both the ICESCR and the ESC, and further discussing the lack of an obligation of direct provision, the centrality of occupational freedom and the permissibility of a minimum level of unemployment, it is possible to make a general assessment about the nature of the right to work. It is the belief of the author that the framework of the right to work should not be dismissed as an empty policy recommendation. It is undeniable that the regulation of a market and policy-driven field such as the labour market is not easily achievable through legal or rights-based

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<sup>116</sup> Universal Declaration of Human Rights, Art 23: ‘Everyone has the right to work ... and to protection against unemployment’; see also Hugh Collins (n 12) 21.

mechanisms,<sup>117</sup> which means that any normative framework grounded on individual rights will be subject to extensive limitations. The right to work establishes a rather complex and multi-layered set of state obligations, which simultaneously address severe interferences with individual access to a freely chosen occupation and compel states to promote the formation of an economic environment that has the lowest possible level of unemployment, according to economist consensus, and that supports individual access to their first choice of work. It is also notable that the current framework fails to adequately address the diversity of individual experiences of work, whether the occupation chosen by each individual should be the result of profound soul-searching or simply a job that one needs to do and does not need to like.<sup>118</sup> Rather, the current framework leaves the determination of whether individuals may access their first chosen occupation or whether this may be economically viable to be determined through market-based mechanisms.

It is clear that the current framework on the right to work is a valid attempt to reconcile the principle that work should indeed be available and accessible to individuals, in accordance with occupational freedom and the abject need for economic viability. The extent to which such interests can or should be reconciled or if the current attempt to balance them is the most optimal one remains an open question. Of specific note is whether market mechanisms are compatible with the practical implementation of fundamental rights, i.e., whether it is truly desirable, or even possible, for the content of fundamental individual rights to be distributed through competition.

Ultimately, the adequacy of the framework of the right to work is dependent on the understanding of the right as of one of participation within the labour market<sup>119</sup> under the condition that market competition be made fair, or as fair as possible, through state action. Therefore, while it is important to recognise the complexity of the framework of the right to work and its role in promoting fairer labour market participation and overall better labour conditions, it is hardly a right to a job.

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<sup>117</sup>Guy Mundlak, 'The Right to Work: Linking Human Rights and Employment Policy' (2007) 146(3–4) Int'l Lab.Rev. 189, 197–203.

<sup>118</sup> Alan Bogg, 'Only Fools and Horses: Some Sceptical Reflections on the Right to Work' in Virginia Mantouvalou (ed), *The Right to Work* (Oxford University Press 2015) 149–50.

<sup>119</sup> Simon Deakin (n 50) 148.

## **PART B: THE MISSING PIECE? INTEGRATION OF JOB GUARANTEE WITHIN THE RIGHT TO WORK**

Job Guarantee programmes are a form of public employment schemes which link permanently available posts, characterised by decent pay and good working conditions, in social useful occupations to long-term unemployed individuals. While these programmes may seem utopian, they have been implemented in various countries. In addition to the European projects discussed, Community Employment in Ireland, TZCLD in France, and *Kinofelis* in Greece, large-scale permanent schemes also exist in India,<sup>120</sup> South Africa,<sup>121</sup> or Kazakhstan.<sup>122</sup>

While there is some variation on their exact functioning and geographical distribution, it is possible to extract a few main characteristics shared across multiple Job Guarantee programmes. These include, firstly, that the occupational opportunity is always available to all individuals, as Job Guarantee programmes require states to essentially act as ‘employer of last resort’<sup>123</sup> to the long-term unemployed. In practice, schemes often have criteria for participation. These can be modest, as in the case of TZCLD in France, where individuals need only prove six months of unemployment and residence in relevant areas.<sup>124</sup> However, this is not always the case: Community Employment in Ireland benefits only those who have been receiving specific types of welfare payments for twelve months.<sup>125</sup> In Greece, access to *Kinofelis* is limited to long-term unemployed individuals who have not received unemployment

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<sup>120</sup> Jean Drèze, *Employment Guarantee in Action: Insights from India* EDI Note April 1, 2022; Swati Narayan, ‘Fifteen Years of India’s NREGA: Employer of the Last Resort?’ (2022) 65 *Indian Journal of Labour Economics* 779.

<sup>121</sup> Olusegun Aanuoluwapo Oguntona, Opeoluwa Akinradewo, Dineo Ramorwalo, Clinton Aigbavboa, and Wellington Didibhuku Thwala, ‘Benefits of the Expanded Public Works Programme in South Africa: A Direct Stakeholder’s Perception’ in Clinton Aigbavboa, Emmanuel Oke and Wellington Thwala (eds), *Sustainable Construction in the Era of the Fourth Industrial Revolution* (AHFE 2023)

<sup>122</sup> Government of Kazakhstan, *Work in Kazakhstan* (2022) <https://www.gov.kz/article/64596?lang=en> accessed 27 March 2025.

<sup>123</sup> Aslan (n 9) 4.

<sup>124</sup> Manon Chevalier, *Rapport de stage: l’expérimentation Territoire Zéro Chômeur de Longue Durée dans le 20ème arrondissement* (2022) [https://drive.google.com/file/d/1cxIMA-rCpJiFoiDMaEvL\\_2krVANbW-bF/view](https://drive.google.com/file/d/1cxIMA-rCpJiFoiDMaEvL_2krVANbW-bF/view) accessed 19 March 2025.

<sup>125</sup> Department of Social Protection, ‘Community Employment Programme’ (12 August 2019) <https://www.gov.ie/en/service/412714-community-employment-programme/> accessed 19 March 2025.

benefits, and, since the scheme is primarily operated by local authorities, priority is given to specific groups, such as university graduates or those with farming experience.<sup>126</sup>

The second characteristic of Job Guarantee programmes is that these should concern occupations that are ‘socially useful’,<sup>127</sup> or that address neglected ‘*social and environmental needs*’.<sup>128</sup> These have been taken to include primarily jobs in social care<sup>129</sup> but also positions within education or work to facilitate the green transition.<sup>130</sup> Some proposals even address sectors which are more vulnerable to financial crises such as the arts, so that states may promote better resilience.<sup>131</sup> Thirdly, the remuneration provided for individuals in Job Guarantee programmes should be aligned with the national minimum wage or equivalent norm.<sup>132</sup> This is a necessary outcome. Any compensation below minimum wage would not be morally acceptable, and would make the scheme severely in contravention with many international labour and human rights standards surrounding remuneration.<sup>133</sup> Conversely, any compensation above the minimum wage within these programmes would not be achievable for political and practical reasons,<sup>134</sup> related to the frequent contestation to the schemes grounded in their perceived costs.<sup>135</sup> Within current instances of Job Guarantee schemes in Europe, such as in TZCLD in France and *Kinofelis* in Greece, individual remuneration is consistent with minimum wage requirements.<sup>136</sup> Finally, the fourth central characteristic of Job Guarantee

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<sup>126</sup> International Labour Organisation and European Commission, *Kinofelis Programme Implementation Manual* (26 March 2018) 11 [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/documents/instructionalmaterial/wcms\\_623957.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/instructionalmaterial/wcms_623957.pdf) accessed 19 March 2025.

<sup>127</sup> Ibid 5, 9, in reference to public employment programmes in sectors such as agriculture, schooling, social services, and arts.

<sup>128</sup> Pavlina R Tcherneva and Aurore Lalucq, *European Job Guarantee* (Foundation for European Progressive Studies 2022) Special Report 8.

<sup>129</sup> Ibid, 10.

<sup>130</sup> Ibid, 9.

<sup>131</sup> Aslan (n 9) 9.

<sup>132</sup> Hyman Minsky, ‘Ending Poverty: Jobs, Not Welfare’ (2013) *Levy Economics Institute of Bard College* 21; Tcherneva and Lalucq (n 128) 8.

<sup>133</sup> ESC, Art 4; ICESCR, Art 7.

<sup>134</sup> Esther Gehrke and Renate Hartwig, ‘Productive Effects of Public Works Programs’ (2018) 107 *World Development* 111, table 1.

<sup>135</sup> Jon Elster, ‘Is There (or Should There Be) a Right to Work?’ in Amy Gutmann (ed), *Democracy and the Welfare State* (Princeton University Press 1988).

<sup>136</sup> Alexei Tabet, *Quelle création de valeur? Territoires Zéro Chômeur de Longue Durée* (2022) <https://www.tzclld.fr/wp-content/uploads/2022/07/Territoires-ze%CC%81ro-cho%CC%82meur-de-longue-dure%CC%81e-quelle-cre%CC%81ation-de-valeur-La-Fonda-comp.pdf> accessed 19 March 2025]; Rania Antonopoulos, ‘Towards a European Job Guarantee: the “Special Case” of Greece’ (ETUI Seminar, 2021) <https://www.etui.org/sites/default/files/2021->

programmes is that participation within them ought to be exclusively on a voluntary basis and that no form of coercion can be used to force individuals to take part.<sup>137</sup>

### B.1: Job Guarantee as realisation of the right to work

Given those characteristics, it is not surprising that Job Guarantee Programmes are understood as a key tool to fulfil the right to work. In particular, it is aligned with three of its core norms: protection against unemployment, the ‘full employment’ obligation and fair distribution of employment opportunities.

Firstly, and most obviously, Job Guarantee would provide a general and potentially highly effective form of protection against unemployment, which, as established above, is significantly lacking in its current form. In fact, there is no general protection against unemployment within the right to work,<sup>138</sup> which is addressed indirectly through the prohibition of unfair dismissal and the prohibition of discrimination during recruitment. Clearly, the implementation of a general Job Guarantee Programme would provide a much more comprehensive level of protection against unemployment, as all individuals would be provided with a continuously available ‘last resort’ option.

Secondly, Job Guarantee programmes would fall under the ambit of the ‘full employment’ obligation. Given the voluntary nature of Job Guarantee, the programmes are better understood as tools to make employment opportunities available to all individuals, as opposed to a form of direct provision of jobs. Considering that the ‘full employment’ obligation is, in essence, an obligation of states to manage the labour market in such a way as to ensure the lowest possible level on unemployment, the creation of permanently available positions through Job Guarantee would fall within such definition.<sup>139</sup> Furthermore, De Schutter noticed that the implementation of Job Guarantee programmes would also serve the function of stimulating the development of specific sectors of the economy that may lack sufficient investment or funding from the private

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[03/Towards%20a%20European%20job%20guarantee%2C%20the%20special%20case%20of%20Greece\\_2021.pdf](#) accessed 19 March 2025.

<sup>137</sup> Minsky (n 132) 3.

<sup>138</sup> Nickel (n 5) 147-148.

<sup>139</sup> This was also referred to as the ‘*quantitative dimension*’ of the right to work: Harvey (n 12) 124.

sector.<sup>140</sup> This is a prominent feature of the Greek and French scheme, in which local authorities are given discretion to select the occupations which would mostly benefit the local communities. These have included work for the ecological transition and local development in TZCLD in France<sup>141</sup> or work in construction, social services or culture under the Greek *Kinofelis*.<sup>142</sup> Furthermore, as Job Guarantee would provide long-term unemployed individuals with a last resort alternative that is aligned with labour rights and provide, ideally, a liveable wage,<sup>143</sup> this would have an effect on the labour market as a whole, forcing employers in the private sectors to provide better working conditions overall.<sup>144</sup> These indirect functions of Job Guarantee would also fall within the ambit of the ‘full employment’ obligation as it would constitute a form of management of the labour market in order to make competition fairer for individual workers.

The integration of Job Guarantee within the obligations of state to pursue ‘full employment’ may be problematic given the consistent interpretation of ‘full employment’ in accordance with the consensus within economics, namely that there always ought to be a minimum rate of unemployment in order to curb inflation.<sup>145</sup> This paper does not purport to provide an economic analysis of whether Job Guarantee programmes would risk occasioning high and uncontrollable levels of inflation. However, this objection has been widely challenged by De Schutter in his report, on the basis that the theory of a “natural level of unemployment” was formulated in a very different labour market, before the rise of gig economy jobs and persistent underemployment.<sup>146</sup> Additionally, Sarkin and Koenig have observed that the theorisation of a natural level of unemployment does not take into account the costs of unemployment,<sup>147</sup> which Job Guarantee purports to address. Therefore, the dogmatic economic proposition that there needs to be a minimum level of unemployment may require further assessment and does

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<sup>140</sup> De Schutter report (n 11) [25].

<sup>141</sup> Alexei Tabet, ‘Quelle création de valeur? Territoires Zéro Chômeur de Longue Durée’ (2022) 40-96 <https://www.tzclld.fr/wp-content/uploads/2022/07/Territoires-ze%CC%81ro-cho%CC%82meur-de-longue-dure%CC%81e-quelle-cre%CC%81ation-de-valeur-La-Fonda-comp.pdf> accessed 27 March 2025.

<sup>142</sup> International Labour Organisation and European Commission, *Kinofelis Programme Implementation Manual* (26 March 2018) 21.

<sup>143</sup> The right to a liveable wage is a right under both the ICESCR, Art 7, and the ESC, Art 4, which should be taken in conjunction with the right to work; CESCR, *General Comment no 18: The Right to Work* [2].

<sup>144</sup> De Schutter report (n 11) [12–13].

<sup>145</sup> See above, Ashiagbor (n 53).

<sup>146</sup> De Schutter report (n 11) [49–50]; William Mitchell, ‘The Job Guarantee and the Phillips Curve’ (2020) 46(4) *The Japanese Political Economy* 240.

<sup>147</sup> Jeremy Sarkin and Mark Koenig, ‘Developing the Right to Work: Intersection and Dialoguing Human Rights and Economic Policy’ (2011) 33 *Human Rights Quarterly* 1, 33.



not necessarily constitute an insurmountable obstacle to the implementation of Job Guarantee programmes.

In addition to its alignment to ‘full employment’, Job Guarantee may also promote fair distribution of employment opportunities. Both the CESC and the ESCR stress that signatory states are under the obligation to promote higher employment rates in groups that are traditionally more affected by unemployment and underemployment, such as youths, religious and racial minorities or women. Proponents of Job Guarantee programmes stress that they carry a unique potential to promote participation of disadvantaged groups within the labour market,<sup>148</sup> such as women<sup>149</sup> or persons affected by disabilities.<sup>150</sup> This potential arises not only from equitable program designs that include specific accommodations but also from the states' ability to create targeted opportunities in regions with higher unemployment rates. Therefore, Job Guarantee programmes would permit states to more directly address high levels of unemployment and underemployment within traditionally disadvantaged groups more directly and possibly more effectively than through already established tools, such as the prohibition of discrimination at the time of recruitment. On a final note, Job Guarantee would also indirectly provide individuals with experience and skills to individuals aligning with the state's obligation to provide vocational training opportunities.

In summary, Job Guarantee programmes advance multiple norms established under the right to work. First, they offer a substantive layer of protection against unemployment by offering all individuals employment of last resort. Second, such programmes may fall under the scope of the obligation to pursue ‘full employment’ as they essentially consist of job creation, as opposed to job distribution, which also results in the creation of a fairer labour market with better quality of work available for all. Indirectly, they also support non-discrimination by promoting equitable access to work opportunities and also advance the provision of vocational training by permitting enrolled individuals to develop skills.

## B.2: Job Guarantee as the missing piece in the Right to Work?

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<sup>148</sup> Tcherneva and Lalucq (n 128) 7.

<sup>149</sup> Pavlina R Tcherneva and L Randall Wray, ‘Public Employment and Women: The Impact of Argentina’s Jefes Program on Female Heads of Poor Households’ (2007) Working Paper No 519, Levy Economics Institute of Bard College.

<sup>150</sup> Tyler C Emerson, ‘The Job Guarantee as it Relates to People with Disabilities’ (2022) Senior Projects Spring 2022, 136.

The framework of shared norms under the right to work is disappointing in its limited ability to protect individuals from unemployment. Such failure is the main culprit for the significant amount of criticism directed towards the right, which was traditionally deemed as *‘frosting without the cake’*<sup>151</sup> given its apparent inability to provide effective protection to individuals against deprivation of its main object, i.e. an occupation. The promise of Job Guarantee to provide individuals with permanently available positions, which promote better participation into the labour market of disadvantaged groups, providing them with key skills in socially useful or even necessary occupations leading to more resilience in the labour market, seems to provide a crucial missing piece to the current normative framework of the right to work- i.e. the lack of protection against unemployment.

Currently the right to work entails a protective mechanism against especially heinous practices from employers, such as discriminatory practices during recruitment or forced labour, with additional programmatic obligations which promote individual participation within the economy very indirectly, such as macroeconomic policies which reduce unemployment in accordance with the state’s current economic status. Job Guarantee programmes would constitute a more direct way to ensure individual access to an occupation, but their implementation would not transform the right to work from a right to fair participation within the labour market into a right to a job. This is because these programmes are not meant to involve a significant portion of the population, and for most people the object of the right to work would still be subject to market mechanisms. The broader impact of the implementation of Job Guarantee programmes would instead be the creation of a fairer labour market, through the provision of an alternative to other employment opportunities characterised by stability in terms of working patterns, decent pay, and other essential conditions, compared to existing last-resort options like gig economy jobs. In this sense, Job Guarantee would indirectly set minimum standards for the labour market as a whole. As a result, its introduction would have a far greater impact than other programmatic measures, such as vocational guidance and training. By exerting stronger pressure on the labour market, a Job Guarantee would drive more significant changes, making it considerably fairer for workers overall. However, while it is undeniable that Job Guarantee programmes would address the most critical shortcomings of the right to work framework, namely, the unsatisfactory protection against unemployment and

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<sup>151</sup> Nickel (n 5) 145.

the disappointing interpretation of the ‘full employment’ obligation, they would not alter the fundamental nature of the right to work as a right to fair participation in the labour market.

## **PART C: MISSING THE POINT OF PROTECTING WORK AS A RIGHT?**

While it is undeniable that Job Guarantee programmes would be instrumental in promoting full realisation of the right to work, the proposition that such programmes would constitute the missing piece which transforms it into an enforceable right is subject to a few crucial limitations.

### C.1: Occupational Freedom Limitation:

The first issue in this sense is that Job Guarantee does not promote the principle of occupational freedom, which, as established above, holds a very central position within the current interpretation of the right to work and subsequent establishment of its normative framework. Instead, the right to work is better defined as one of fair participation in the labour market, where individuals ought to be given a fair chance to pursue an occupation which best aligns with their own preference. This bears a strict connection with the evolving rationale of protecting work as a right, as work is no longer exclusively an instrumental good tied to the value of monetary remuneration, but is now being classed as an inherent good constituting the chief opportunity for individual self-development.<sup>152</sup> While this understanding may be limited, as not all people will see their work as the maximum implementation of their most profound ambitions, it is important to note that the right to work is not a right to a job, but rather a right to a fair chance to find a job one might like.

While Job Guarantee programmes have the potential of providing individuals with some options as to what occupation they may want, this will always be limited by the criteria of ‘social usefulness’ and would never reproduce the flexibility afforded by the labour market or individual ingenuity. In the examples of current European Job Guarantee schemes considered,

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<sup>152</sup> See Collins (n 12).

participants are provided with limited opportunities in relation to the kind of work they may engage, whether this be limited to community work such as in the case of the Irish scheme,<sup>153</sup> or in accordance to the decisions of the local authority administering the programme in the French and Greek schemes.<sup>154</sup> The submission that since the positions offered through Job Guarantee programmes are socially useful, individuals will be able to derive a sense of fulfilment regardless of whether the work aligns with their own preference and ambitions is highly paternalistic and should not be put forward as a justification for the implementation of Job Guarantee. Rather, it should be noted that this limitation is mitigated as such programmes would mainly affect individuals who have presumably been unsuccessful in their attempts at securing a position within the labour market and that therefore would have to accept something different anyway, whether it is in the market or through public employment programmes. Nevertheless, the fact that Job Guarantee does not promote occupational freedom limits its potential impact in promoting the full realisation of the right to work.

## C.2: Scope Limitation

The occupational freedom limitation is also closely related to the issue of the scope of the right to work, i.e. what forms of work are protected under the scope of the right.<sup>155</sup> This also largely depends on the underlying rationale for protecting the right to work. If work is safeguarded solely as a means to achieve financial autonomy, then only remunerated employment should fall within the scope of this right.<sup>156</sup> Instead, as the rationale for the protection of work as the content of a fundamental right is shifting to appreciate work as a fundamental good and a source of individual self-development and dignity, then the scope of the right to work may also widening to include also non-remunerated forms of work or work that is not protected exclusively as a source of income. This means that it is feasible for activities such as volunteering to fall under the scope of the right to work.<sup>157</sup> Instead, Job Guarantee would only

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<sup>153</sup> Department of Social Protection, 'Community Employment Programme' (12 August 2019) <https://www.gov.ie/en/service/412714-community-employment-programme/> accessed 19 March 2025.

<sup>154</sup> International Labour Organisation and European Commission, *Kinofelis Programme Implementation Manual* (26 March 2018) 21.

<sup>155</sup> Harvey (n 12)124.

<sup>156</sup> Craven (n 21)219.

<sup>157</sup> Ibid; Ben Saul, David Kinley and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (OUP 2016) 283: delegations at the time of drafting the ICESCR

protect the right to remunerated work and would not align with the expanding scope of the right to work. This limitation does not exclude a potential role that Job Guarantee may play in promoting some of the more intangible benefits of work: individuals may benefit from the dignity of financial independence<sup>158</sup> and may also enjoy the opportunity to establish relationships.<sup>159</sup> Nevertheless, Job Guarantee programmes would hardly provide individuals with an opportunity for self-development through their career progression, as it is unlikely that future programmes may provide opportunities for promotion.<sup>160</sup> Nevertheless, Job Guarantee would fully enable individuals to fully pursue their own ambitions through their occupation.

### C.3: Job Guarantee and Workfare?

Finally, the promotion of Job Guarantee programmes has also raised concerns in relation to it becoming a form of welfare conditionality.<sup>161</sup> As noted above welfare conditionality programmes may be in contravention of the right to work under both the ICESCR and ESC, with the latter entailing the strictest stance deeming certain forms of welfare conditionality as forms of forced labour. Such a determination is hardly surprising given the damning assessments made by multiple commentators highlighting the poor outcomes of welfare conditionality programmes in relation to the forms of work achieved and promotion of underemployment,<sup>162</sup> their role in occasioning in-work poverty,<sup>163</sup> exclusion from labour protection legislation<sup>164</sup> and coercive nature of the programme themselves.<sup>165</sup>

Proponents of Job Guarantee acknowledge the tangible risk of such programmes becoming a form of welfare conditionality.<sup>166</sup> This is because Job Guarantee may in practice represent an

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maintained that the right should not be limited to paid work; see also Guy Standing, *Beyond the New Paternalism: Basic Security as Equality* (Verso 2002) 255–261.

<sup>158</sup> James Nickel, 'Is There a Human Right to Employment?' (1978–79) X *Philosophical Forum* 149.

<sup>159</sup> Like the ECHR jurisprudence calls for; see fn 27.

<sup>160</sup> CESCR, *General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)* (2016) E/C.12/GC/23 [31–33], [47(a),(b)] [58]; Aslan (n 9).

<sup>161</sup> De Schutter Report (n 11) [46–48].

<sup>162</sup> Jamie Peck and Nikolas Theodore, "'Work First': Workfare and the Regulation of Contingent Labour Markets' (2000) 24 *Cambridge Journal of Economics* 119.

<sup>163</sup> Tommie Shelby, *Dark Ghettos—Injustice, Dissent, and Reform* (Harvard University Press 2016) 197; Daniel Seikel and Dorothee Spannagel, 'Activation and In-Work Poverty' in Henning Lohmann and Ivo Marx (eds), *Handbook on In-Work Poverty* (Edward Elgar 2018) 245.

<sup>164</sup> Amir Paz-Fuchs and Anja Eleveld, 'Workfare Revisited' (2016) 45(1) *ILJ* 29.

<sup>165</sup> Mantouvalou (n 62) 74–75.

<sup>166</sup> Lynn Lu, 'From Stigma to Dignity? Transforming Workfare with Universal Basic Income and a Federal Job Guarantee' (2021) 72 *SC L Rev* 703, 719.

occupation that individuals accept under the threat of destitution. Furthermore, positions undertaken through Job Guarantee may fall short of the criteria imposed by the ECSR in relation to positions accessed by individuals through workfare.<sup>167</sup> In particular, suitability in relation to individual qualification and comparability in relation to pay within the individual's last held position may not be satisfied within Job Guarantee. It is not likely that the positions offered through Job Guarantee would correspond to their previous qualifications,<sup>168</sup> and it is very unlikely that they would offer remuneration corresponding with either their qualifications or their previously held positions.<sup>169</sup> Job Guarantee may satisfy some of the ECSR's criteria, like flexibility of work patterns and geographical availability,<sup>170</sup> but that is only because those characteristics are purposefully built in the schemes as they are now being proposed.

Of specific concern within this discussion is the level of pay provided to individuals enrolled within Job Guarantee schemes. The proposals for practical implementation of Job Guarantee Programmes usually require for individuals to be paid in accordance with statutory minimum wage or any other equivalent rules pertaining to remuneration. This is problematic as it may make the programmes run afoul on the ECSR's criteria regarding pay- i.e. that it should be in line with the individuals' last held position. When promoting Job Guarantee, it is often postulated that even a minimum wage is preferable to the null income faced by unemployed individuals.<sup>171</sup> However, this argument overlooks ethical concerns about requiring vulnerable people to work for minimum wage, which, even when well-adjusted for national economic conditions and cost of living, does not necessarily equate to a 'fair wage'. Additionally, this argument fails to adequately consider the role of unemployment benefits and other social safety nets, which provide essential financial support to those without work.

Overall, it is quite clear that there is a risk that Job Guarantee programmes as they are currently being promoted may run afoul of the prohibition of forced labour under the ESC if affected individuals had no other alternatives to participating in the programme save for destitution. Consequently, the continued presence of other welfare schemes to support individuals during unemployment remains crucial. However, the provision of any alternative may be difficult as the implementation of a programme as expensive as wide-scale Job Guarantee may lead to the

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<sup>167</sup> Fn 46.

<sup>168</sup> Even though some of the proposals target certain categories of highly qualified individuals that are less likely to find stable employment, e.g. those in the arts—Aslan (n 9)10.

<sup>169</sup> Unless they were paid minimum wage in their previous post.

<sup>170</sup> The geographical availability aspect was part of Minsky's proposals too: Hyman Minsky, *Stabilizing an Unstable Economy* (McGraw-Hill 2008) 345.

<sup>171</sup> Tcherneva (n 8) 8.

defunding of alternative social security programmes which support unemployed individuals.<sup>172</sup> This in turn would deprive individuals of alternative routes to escape long-term unemployment further eroding the voluntary nature of the programme. Furthermore, in order to be aligned with the right to work, Job Guarantee programmes should also be subject to specific requirements to ensure that these do not evolve into a new form of welfare conditionality. These include flexibility of working patterns and wide-spread geographical distribution, which should allow individuals to reconcile their occupation within the programme with education or caregiving responsibility.<sup>173</sup> To some extent, there are instances current schemes tailored to provide individuals with flexibility. The Irish Community Employment programme is characterised by part-time working hours, which are intended to permit individuals to reconcile their participation with caring responsibilities or to seek alternative employment.<sup>174</sup> Next, Job Guarantee programmes should be made fully accessible especially for marginalised communities.<sup>175</sup> A final characteristic that would allow Job Guarantee programmes to be better aligned with the expanding scope of the right to work is the inclusion of career advancement opportunities, whether based on seniority or performance. Unfortunately, current schemes do not necessarily provide opportunities for advancement, as often the placements offered to participants are limited in time to only a few months, as is the case in the Greek *Kinofelis* programme.<sup>176</sup> However, it is crucial to recognize that Job Guarantee programmes should not be viewed as substitutes for other essential elements of the right to work. These programmes must coexist with broader labour market regulation tools designed to ensure fair competition, as well as the provision of vocational guidance, training and employment services.

Therefore, while Job Guarantee would deepen the level of protection offered by the right to work, it may not occasion its full realisation. This is because Job Guarantee programmes would not promote the central principle of occupational freedom, do not necessarily sustain the expanding scope of the right to work,<sup>177</sup> and may risk devolving into a form of welfare

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<sup>172</sup> Hyman Minsky, 'Uncertainty and the Institutional Structure of Capitalist Economies' (1996) Minsky Archive 24 [http://digitalcommons.bard.edu/hm\\_archive/24](http://digitalcommons.bard.edu/hm_archive/24) accessed 29 October 2024.

<sup>173</sup> Lu (n 166) 720.

<sup>174</sup> Department of Social Protection, 'Community Employment Programme' (12 August 2019) <https://www.gov.ie/en/service/412714-community-employment-programme/> accessed 19 March 2025.

<sup>175</sup> Lu (n 166) 710.

<sup>176</sup> International Labour Organisation and European Commission, *Kinofelis Programme Implementation Manual* (26 March 2018) 8.

<sup>177</sup> Harvey (n 12) 124.

conditionality. However, in evaluating whether Job Guarantee will promote, hinder, or fully realise individual enjoyment of the right to work, this paper has underscored the inherent difficulty in distilling a single, definitive conception of what constitutes the fulfilment of that right. It is unclear whether a fully realised right to work would consist of universal employment, where unemployment is solely voluntary and brief, or a status where each individual occupies their preferred role in line with their individual ambitions. Hopefully, the discussion in this paper, which verted on whether and how the Job Guarantee may advance certain facets of this right and alleviate particular shortcomings in its normative framework will prove useful. However, the overarching inquiry regarding the role such programmes may fulfil in bringing forth the 'full realization' of the right to work remains unresolved.

## **CONCLUSION:**

This paper has evaluated the content of the normative content of the right to work under the ICESCR and the ESC. It has outlined the core norms shared across the two regimes, namely the prohibition of interferences with individuals' right to 'seek and engage with a freely chosen occupation' such as discrimination, unfair dismissal and forced labour, and programmatic obligations, consisting of the pursuit of 'full employment' and the provision of vocational guidance, training and employment services. It was noted that the principle of occupational freedom holds a central role within the normative framework of the right to work, and that the framework presents two significant omissions: the lack of any obligation of direct provision and only a very limited level of protection against unemployment. Ultimately, it was argued that the right to work is better defined as right to participation within the labour market, under the condition that competition should be made fairer through state action, even though whether the current balance between the status of work as the content of a right, occupational freedom and the need for economic viability is effectively achieved through the current framework remains to be determined. Furthermore, the issue of whether the content of the right to work, or any other socio-economic right, should be distributed exclusively or primarily through market mechanisms also remains unresolved.



The second section of this paper has argued that Job Guarantee programmes provide a unique opportunity for the realisation of the right to work, by providing an enhanced level of protection against unemployment through job creation and indirect regulation of the labour market coupled with the potential for fairer distribution of professional opportunities. However, Part C has highlighted some central limitations to the potential role of Job Guarantee within the right to work. These include the fact that such programmes simply do not promote occupational freedom and hardly sustain the expanding scope of the right to work. Specifically, given the evolving understanding of the value of work as an inherent good, work should not be protected only as a tool for the provision of remuneration, as Job Guarantee would provide, but rather as an inherent good, which should also include non-remunerated forms of work. Finally, the risk of Job Guarantee transforming into a masked form of welfare conditionality was also explored.

The overall conclusion is that Job Guarantee could fix many deficiencies in the normative framework of the right to work which were discussed, such as inadequate protection against unemployment, weak interpretation of the obligation to pursue ‘full employment’ and a narrow focus on employer discrimination rather than the fair distribution of labour opportunities. However, while Job Guarantee could significantly improve access to employment, it would not fundamentally alter the nature of the right to work, which remains cantered on fair participation in the labour market. Its limitations include not enabling individuals to choose their preferred jobs or promoting the more intangible benefits of work.

This paper has also highlighted to some deeper questions about the right to work and socio-economic rights in general. These include the prescribed value of work through the normative framework under the right to work, i.e. whether work should be seen merely as a tool to earn a living or as a highly individualised tool for self-development resulting from personal ambitions. As this remains an open question, it is impossible to define what would constitute a fully realised right to work, or the role that Job Guarantee would play in promoting it. Ultimately every individual experience surrounding work may vary significantly and it is not for those who draft or interpret human rights instruments to prescribe what such experience should be. This bears a connection with the proposition that unpaid work such as volunteering should be connected with the right to work, albeit the substitution, or even integration, of paid employment with un-remunerated activities is usually reserved a very limited few within the current market-based economy. Ultimately, the role of work in our society remains a recurring question, especially in light of its dual nature as both a key feature within any economic system and a key part of most individuals’ life.