I. Research articles

DOI: 10.17951/et.2016.28.59

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Human work: A commodity or an ethical value?*

According to most economists, work and the ability to work are commodities, while remuneration for work is the price of this commodity, determined by the law of supply and demand. They point out, however, that the job market is strongly rationed.

The commodity view of paid work or of the ability to work is shared by relatively few specialists in labour law. Rather, the contract of employment is treated as a purchase-sale agreement of the labour force for the sum of the remuneration. With regard to the commodity view, they underscore the peculiar nature of the commodity, with an inalienable bond between work itself and the person who performs it. The bond must be protected, mainly through appropriately liberalised labour law.

Following most specialists in labour law, the author of the present study is against the commodity view of work as being in discord with the dignity of persons, for whom work can not only secure survival but facilitate their development as persons. People engage in work with all their personalities, not only with the mere ability to perform it. Because of the obligation to protect life, public authorities should grant everyone the right to earn their own living, and in the cases of shortage of work, they should grant material help to the worker and his or her family.

Key words: *praca*, work, labour, commodity, remuneration, job market, freedom of work/labour, right to work

* The article appeared in Polish as "Praca ludzka – wartość ekonomiczna czy etyczna?" in *Etnolingwistyka* 28, pp. 59–80. The present English translation has been financed by the Ministry of Science and Higher Education, project titled "English edition of the journal *Etnolingwistyka. Problemy języka i kultury* in electronic form" (no. 3bH 15 0204 83).

1. Introduction

Let me begin with an explanation of two key terms used in the title: work (the Polish *praca*)[1] and commodity. In *SJP Szym* [Dictionary of the Polish Language], *praca* is defined in general terms as a "conscious, purposeful human activity, performed with the purpose of producing artefacts or cultural goods; it is also the basis of and the prerequisite for the existence and development of the society" (*SJP Szym*, vol. 2: 904). In more specialist publications, it is defined in a variety of ways (Pszczołowski 1966; Strzeszewski 1978, 2003; Stachowski 1984; Majka 1982; Tischner 2007 [1981]a,b). The following encyclopaedic definitions are the closest to my understanding of the Polish *praca* in this study:

> 1) in economy: a process of complex physical and mental activity of a person or persons, the purpose of which is to transform natural resources into goods that satisfy human needs; one of the factors of production (next to land and capital [...]) (*Encyklopedia PWN*, vol. 3: 41);
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> 2) [...] in the strict sense: the creation of material-economic or intellectual-spiritual values that are socially useful [...] (*Encyklopedia katolicka*, vol. XVI: 211).[2]

In comparison, commodity (Pol. *towar*) is defined in a more uniform manner as "a product intended for sale in commodity-monetary economy; it has a utility value, i.e. it can satisfy needs, and an exchangeable value, which is reflected in its price" (*Encyklopedia PWN*, vol. 3: 602; and an almost identical definition in *Encyklopedia katolicka*, vol. XIX: 930).

A substantial modification of the concept of work that I propose with regard to the above-mentioned definitions is to limit it to work performed for another entity in return for payment, i.e. to paid work. The relations between the contractor of paid work and an entity for whose benefit the work is performed are currently regulated mainly by labour law but also civil law and administrative law.

Until the appearance of labour law, which was formulated in Europe after the end of WWI (and became a full-fledged and recognised notion after WWII), those relations had been handled by civil law, financial transactions being regulated by two fundamental principles: a formal equality (i.e., equality before the law) of the parties involved and freedom of contract, i.e., the freedom to enter into, dissolve and establish the content of contracts. That freedom led to the formulation of the maxim "to the willing comes

[1] The Polish term is usually translated as *work* or *labour*, another relatively frequent option being *job*. In most contexts, *work* will be used throughout the paper, unless the context requires otherwise. [translator's note]

[2] All translations into English by A.G. [translator's note]

no injury".[3] At that time, the same principles also regulated employment transactions or, to be more specific, transactions concerning the human ability to work, under contracts for the hire of work and labour or contracts for the supply of services.

In the socio-economic system of the time, i.e. liberal market economy, the hire of work and labour was subject to the laws of supply and demand. As the supply of free hired workers, willing or forced to accept paid work, always exceeded the demand for their labour, the owner of the means of production (the capitalist) dictated the conditions of this superficially "free" hire, guided by his objective of profit maximisation. In the nineteenth century this led to the extreme exploitation of workers, causing biological degradation of the entire working class. This is known as "the social question" or "the worker question". It was to put an end to that exploitation by liquidating private ownership of the means of production *via* armed revolution that communist and workers' parties guided by Marxist ideology (cf. the Communist Manifesto of 1848) launched their agenda.

The Catholic Church also voiced its opinion on "the worker question", albeit with considerable delay. In his 1891 encyclical *Rerum novarum* (henceforth *RN*), Pope Leo XIII described the contemporaneous situation thus:

> Hence, by degrees it has come to pass that working men have been surrendered, isolated and helpless, to the hardheartedness of employers and the greed of unchecked competition. The mischief has been increased by rapacious usury [...]. To this must be added that the hiring of labor and the conduct of trade are concentrated in the hands of comparatively few; so that a small number of very rich men have been able to lay upon the teeming masses of the laboring poor a yoke little better than that of slavery itself. (*RN*, para 3)

In order to change that situation, the Pope proposed solutions in accordance with the essence of the mission of the Church. He defended private property as the main driving force of human enterprise, pointing to the ways of propagation of that concept. He called on workers to organise themselves into trade unions for the purpose of claiming their rights more effectively but at the same time he condemned strikes, "concerted interruption of work" and "crafty agitators". He pointed out the duties of the rich and employers

> not to look upon their work people as their bondsmen, but to respect in every man his dignity as a person ennobled by Christian character. They are reminded that, according to natural reason and Christian philosophy, working for gain is creditable, not shameful, to a man, since it enables him to earn an honorable livelihood; but to misuse men as though they were things in the pursuit of gain, or to value them solely for their physical powers – that is truly shameful and inhuman. (*RN*, para 20)

[3] From the Latin *Volenti non fit iniuria*.

The Pope then went on to exhort employers by saying that "[t]o defraud any one of wages that are his [i.e., the worker's, A.G.] due is a great crime which cries to the avenging anger of Heaven". The Pope pointed out that

> [o]f these duties, the following bind the proletarian and the worker: fully and faithfully to perform the work which has been freely and equitably agreed upon; never to injure the property, nor to outrage the person, of an employer; never to resort to violence in defending their own cause, nor to engage in riot or disorder; and to have nothing to do with men of evil principles [...]. (*RN*, para 20)

Finally, the Pope reminded the rulers that

> when there is question of defending the rights of individuals, the poor and badly off have a claim to especial consideration. The richer class have many ways of shielding themselves, and stand less in need of help from the State; whereas the mass of the poor have no resources of their own to fall back upon, and must chiefly depend upon the assistance of the State. And it is for this reason that wage-earners, since they mostly belong in the mass of the needy, should be specially cared for and protected by the government. (*RN*, para 37)

Acting in the well-conceived interest of the state, including the privileged classes, and being influenced by revolutionary movements, the leaders of the European countries of that time – including the most industrialised ones – took hired workers under legal protection. "The hire of work and labour" was excluded from the scope of civil law and made subject to regulation by means of separate provisions, initially drafted as factory legislation, and then as labour law. The primary function of those provisions was, and still is, to protect the workers as the weaker party in their relationship with the employer. Labour law fulfills this function by specifying the minimum standards of protection, such as the universal right of workers (as well as the persons hired without the legal status of an employee) to safe and healthy working conditions, minimum wage, maximum standards of working time and minimum standards of leisure. Labour law forbids, under pain of nullity, the inclusion in the employment contract of any provisions less favourable to the employee than the relevant provisions of labour law (cf. Art. 18 of the Polish Labour Code). In this respect, the principle "to the willing comes no injury" does not apply to labour relations.

Protection by labour law does not concern all paid work, but, as a rule, only that which is performed under an employment relationship, i.e. under the conditions of organisational subordination of the employee to the employer – as to the time, place, and manner of performance of the work, on the basis of a contract of employment or other acts mentioned in labour law, i.e. appointment, nomination, or election to a position. Similar protection concerns work performed as part of the so-called service relationship referred

to as "service": in the police force, in other uniformed services, and as professional service in the Polish army. This type of protection (with the exception of the right to safe and healthy working conditions) is not enjoyed by persons who perform work or various types of service under contracts for mandate or other contracts for the supply of services, with the assumption that there is no subordination to the employer, which is regulated by civil law.

2. Is work a commodity?

2.1. In his encyclical on human work, *Laborem exercens* (henceforth *LE*), issued on the 90th anniversary of the appearance of *Rerum novarum*, Pope John Paul II writes:

> In the modern period, from the beginning of the industrial age, the Christian truth about work had to oppose the various trends of *materialistic and economistic* thought.
>
> For certain supporters of such ideas, work was understood and treated as a sort of "merchandise" that the worker–especially the industrial worker–sells to the employer, who at the same time is the possessor of the capital, that is to say, of all the working tools and means that make production possible. This way of looking at work was widespread especially in the first half of the nineteenth century. Since then, explicit expressions of this sort have almost disappeared, and have given way to more human ways of thinking about work and evaluating it. [...] Nevertheless, the *danger* of treating work as a special kind of "merchandise", or as an impersonal "force" needed for production (the expression "workforce" is in fact in common use) *always exists,* especially when the whole way of looking at the question of economics is marked by the premises of materialistic economism. (*LE*, para 7)

We are currently witnessing a materialisation of this danger. In the language of economics (but not only economics), the commonly used terms include *labour force*, *human resources*, *job fair*, *labour/job market*; remuneration is understood as *the price of labour* and an element of *labour costs*. Most economists openly claim that human work is a commodity, while pay is the price of that commodity (Krawczyk and Krzyżanowska 1991: 1 ff.; Meller 1993: 6 ff.). This view is also shared by some specialists in labour law. It has found its most open expression so far, with respect to labour relations, in Andrzej Świątkowski's 1992 article "Praca towarem?" [Is work a commodity?].[4] Among other things, the author declares:

> I take the view that human work is a commodity [...]. Labour law deals with work as a commodity in the same way as civil law deals with personal or property relationships.

[4] That author's views, from nearly a quarter of a century ago, are reaffirmed in Świątkowski (2015: 79).

Further on, the author continues:

> As a commodity, human work or labour is to be found on the labour market. It is such an important and special commodity that a separate market has been created [...]. Although the parties in individual labour relationships are defined using the terms *employee* and *employer*, in fact they are buyers and sellers of a specific type of product, namely of human work [...]. Human work is sold on the basis of contract of employment. (Świątkowski 1992: 19)

The main argument in favour of these views is, according to the author, that in a market economy work is an object of transactions with the character of an obligation. Under the conditions of market economy, an employee is a seller and an employer is a purchaser of labour force. In this sense one may

> [...] argue that work is a commodity, it is subject to economic laws, has its price, affects the price of products and services, operates on a specially created market. The exchange of work for money takes place within the framework defined by law, on the basis of a contract (the contract of employment), based on the principles set out in the law of obligations, which governs commodity turnover. (Świątkowski 1992: 19)

Świątkowski also resorts to semantic arguments, including the use of the term *workforce* in social and economic policy, where work is conceptualised as a mass phenomenon. Another argument is that remuneration for work, social security contributions, and expenditure on social benefits are the so-called personnel costs – an important segment of the total cost of an enterprise, in particular of a business type. The contract of employment, under which human labour is sold, although governed by labour law, is nevertheless based on the principle characteristic of the *do ut des* type of obligation, in which "the worker transfers to the employer professional skills, committing themselves to make use of them in time designated in work regulations for professional work. In return, the employer will pay the employee remuneration".

Świątkowski continues by stressing that

> [...] work is a commodity of particular significance, and as such should be subject to special protection. Protection includes not only the conditions under which the work is performed; it also includes the value that work constitutes in itself. (Świątkowski 1992: 19)

In general, everyone who treats work as a commodity also points out that this is a special kind of commodity that requires special treatment (protection) because it cannot be dissociated from the person who performs it. The only infamous exception that I am aware of is what could be found in one of the Polish weeklies about a decade ago:

> Free market is the freedom to shape the relationship between employers and employees according to the principle that work is the same commodity as socks, tanks, or pickled

cucumbers. The regulation of working time or pay by the state has as much sense as would a ministerial regulation on the shape of socks or the length of pickled cucumbers. (Mazur 2000: 8)

The absurdity of this argumentation shows where the commodity view of work can take us.

2.2. One aspect of the commodity view of work is the notion of the labour market, something that is obvious at least for some economists (cf. Strzeszewski 1978, 2003; Majka 1982; Stachowski 1984; Szałkowski 1992; Tischner 2007 [1981]a,b). The notion is also used in social policy and labour law, as well as being a legal term.[5] Despite the fact that the term is in common use, its meaning is far from clear (cf. Sanetra 2011: 2ff.).

Undoubtedly, when speaking of the labour market, those who view work as a commodity have in mind the economic market, similar in its significance to the capital (financial) market or the goods-and-services market. What is meant is an economic mechanism that consists in free exchange of commodities, services, and capital for the price defined mainly through supply and demand.[6] On the labour market, a free exchange of work and remuneration should be taking place (through contracts of employment and other agreements of this kind), where the pay or remuneration for work is treated as its price.

Economists draw attention to the following specific features of the labour market:

1) Labour supply in this context is extremely inflexible (it is difficult to significantly reduce or increase the population of those who can and want to work).

2) Labour market is subject to segmentation (there is no uniform labour market, national or, even less so, international).

3) Competition on the labour market is often limited by organisations of partners representing labour demand (employers' associations) and labour supply (trade unions and organisations of persons seeking employment).

4) The effects of the global (and permanent) imbalance on the labour market are extensive, costly, and difficult to eliminate. They have the form of surplus labour force (i.e. of unemployment: as opposed to a surplus of goods, the unemployed are real people that need decent living conditions). Besides, for the sake of maintaining social stability, the state intervenes, mainly by increasing the demand for labour, *inter alia* with the help of institutions and instruments of the labour market. In view of the above, it is hard to

[5] It is used in particular in the Treaty on the Functioning of the European Union (TFEU), article 14 of Title IX EMPLOYMENT and the Polish Act of 20 April, 2014 on the promotion of employment and labour market institutions (cf. the Journal of Laws of 2013, item 674, as amended).

[6] According to *Encyklopedia katolicka* (vol. XVII: 682), market is "a system of economic coordination of social life, involving all exchange relations between economic entities that sell particular products or services (supply) and those that purchase them (demand); a place to conclude transactions of purchase and sale or exchange".

disagree with Sanetra when he doubts whether such a regulated "labour market" is in fact a market (Sanetra 2011: 9).

2.3. In the commodity view of work, remuneration is the price of work. Economists understand pay as "any benefits (monetary and non-monetary) which the employee receives by virtue of employment, and which for the employer constitute the full cost of work" (Meller 1993: 6). Consider this insight from a classic textbook:

> Labor is a special kind of commodity [...]. The employer buys this commodity at a price: the wage rate the laborer receives in exchange for his or her efforts. In a competitive market, the price, or wage rate, of labor is determined just as other prices are: by the interaction of supply and demand. (Kamerschen, McKenzie, Nardinelli 1989: 671)

The quotation probably refers to an abstract labour market, where there is free competition. However, as already mentioned, competition on the "labour market" is in fact "very imperfect" and the very proponents of the commodity view of work acknowledge that in modern market economies, particularly in the social market economy, free-market price of work does not exist (Meller 1993: 7). This is because the state influences the level of wages and salaries, mainly by means of the establishment of minimum pay, by directly deciding on salaries in the public sector, and by limiting the contractual freedom to determine the level of remuneration. Moreover, economists point out that the regulation of prices also occurs on the market of "regular goods" and services, in the form of state-imposed minimum prices for some goods (e.g. crops) or maximum prices for others (e.g. housing rents).

However, the view of work as a commodity and of pay as its price is not accepted by all economists. For example, Jacukowicz (1992: 16–18) shows how payment for work is established and why, in the author's opinion, that view is misleading. Although the notion of price is not defined precisely, it most often denotes "an expression of the value of a commodity".[7] The price depends on the cost of producing a commodity and on the demand, i.e. on how much the consumer is ready to pay. The cost of work as a commodity is the expenditure incurred for the education of future employees and their preparation for the profession. In his 1776 book, Adam Smith wrote that "the lowest species of a common labourer must everywhere earn at least double their own maintenance, in order that one with another they may be enabled to bring up two children" (Smith 1776, para 15). However, Jacukowicz points

[7] According to Kamerschen, McKenzie, and Nardinelli (1989: 470), "[p]rice is whatever a person must give up in exchange for a unit of goods or services purchased, obtained, or consumed".

out that the examination of factors affecting pay shows no direct dependence of the level of pay on the cost of "creating the ability to work".

Also, the supply of and demand for work affect pay only to a small degree. A greater demand for workers of a particular specialisation in the absence of sufficient "supply" may (in the private sector) result in an increase of their salaries but, according to Jacukowicz (1992: 16), these are "marginal effects rather than a common rule". Jacukowicz also points out that the type and quantity of goods on the market are adapted to the demand, while an increase in "labour force" (i.e. population) does not depend on the demand for labour. On the contrary: one of the basic objectives of the socio-economic policy of the state is to ensure a sufficient number of jobs for citizens (Jacukowicz 1992: 17). Also, as opposed to commodity prices, there is nothing like the global price of labour.

The amount of remuneration is established differently from commodity prices. The decisive factors are: (i) the amount of national income *per capita* and the proportions of its division into consumption and accumulation; (ii) the share of remuneration in the costs of work (which, apart from remuneration, include expenses on social insurance, social services and the financing of various dedicated funds, the transportation of workers, etc.); (iii) the employment and pay policy of a given state, including the level of minimum pay set by the state and the bargaining power of trade unions.

According to Stanisława Borkowska,

> [...] the amount of pay is limited from above by the financial possibilities of a company and the state (the development strategy and the requirements of competitiveness), and from below by the level of the costs of living. These are the boundary conditions for determining the level and differentiation of pay relative to the differential levels of the difficulties and effects of work. This differentiation may be subject to slight correction under the influence of the labour market and the social partners. (Borkowska 1994: 2)

The level of the cost of living should be the determinant factor in establishing the minimum pay:

> Pay for work that is performed fairly, even if the latter is simple and does not require special qualifications, should be sufficient to provide modest support for the family, i.e. to allow for a decent life. (Meller 1994: 3)

As is apparent from this cursory review of opinions, it is not obvious even to economists that work is a commodity and pay is its price. According to Jacukowicz, it is "one of the most controversial issues in the theory of wages" (Jacukowicz 1994: 2).

3. Work is not a commodity

Unlike Andrzej Świątkowski, quoted above, I believe that human work or the human ability to work is not and should not be treated as a commodity. I daresay my stance is shared by many researchers in labour law, as well as lawyers applying the provisions of this law, even if it is not expressed openly.

During its 26th session in Philadelphia on 10 May 1944, the International Labour Organisation confirmed in the so-called Declaration of Philadelphia that one of its main objectives is to materialise the non-commodity view of labour. Also, a call for rejecting the commodity view was issued during the 1991 XIII World Congress of the International Society for Labour and Social Security Law in Athens by one of the Congress's general reporters.[8]

The human ability to work cannot be a commodity as it is inseparable from the working person and is an attribute of that person. In *Rerum Novarum*, Leo XIII wrote:

> Hence, a man's labor necessarily bears two notes or characters. First of all, it is personal, inasmuch as the force which acts is bound up with the personality and is the exclusive property of him who acts, and, further, was given to him for his advantage. Secondly, man's labor is *necessary*; for without the result of labor a man cannot live, and self-preservation is a law of nature, which it is wrong to disobey. (*RN*, para 44)

In his homily during the Holy Mass celebrated for the labour world in Gdańsk, Poland, on 12 June 1987, Pope John Paul II said:

> Work may not be treated – anywhere or ever – as a commodity, because man may not be a commodity to man; man must be the subject. Man engages in work through their whole humanity and their whole subjectivity [...]. It is therefore necessary to perceive all human rights in relation to man's work to do justice to all of them. (Jan Paweł II 1999)[9]

The very ability to work cannot be isolated from the human person and made an object of trade. It can only be sold and bought together with the whole human being, as it is done in slave trade. When engaging in work, a person does not make use of only their ability to work, leaving the rest of their personality behind. In the relationship with the employer, the worker has primarily one role: that of a person who performs a particular kind of work for the employer's benefit, realising a commitment that does not consist in producing an item or performing an action (alone or in cooperation) but

[8] The general reporter of Section I of the Congress (cf. Uriarte 1991: 44). According to Świątkowski (1992: 18), the reporter's motives were not ideological but above all economic and political. There was also anxiety concerning a threat to social peace on the national and international scale.

[9] Cf. http://www.pope2016.com/en/faith/catholic-church/john-paul-ii/news,489116, the-most-famous-john-paul-ii-quotes.html; accessed 20 November, 2016. [translator's note]

in making their person available to the employer in order to perform the work specified in the contract, at a fixed time and place. At the same time, the worker does not cease to be a complete human being, somebody's son or daughter, spouse, parent, citizen, and often a Christian or a follower of another religion.

The inherent dignity of the worker as a human being (Art. 30 of the Constitution of the Republic of Poland) gives rise to an obligation of the employer and third parties to respect the worker's natural rights, even if their implementation collides with the obligation to perform work. As a free individual, the employee decides whether and with whom they will sign a contract of employment. As a rule, a person undertakes work in order to earn their livelihood and usually to provide for their family. But it often happens that this is done despite the absence of such needs: out of sheer altruism, to realise one's passion, to develop one's personality, or for other non-material reasons.

However, the obligations of the employer are not limited to paying remuneration. The employer has many other responsibilities towards the employee, often not contingent on the worker's actual performance or independent of the work's quality. These include ensuring that the worker's health and life are protected, that their dignity and other personal rights are respected, or that the employee's parenthood is not jeopardised but enjoyd benefits.

In the homily quoted above, John Paul II said:

> Human work must be paid for but the one who performs it cannot be remunerated only by payment. A person is not only a "contractor" but also a co-creator. Therefore, the worker has the right to decide about his or her workplace. The worker has the right to enjoy self-government asn an employee, which is realised, *inter alia*, through the institution of trade unions, independent and self-governing [...]. Human work, through hundreds and thousands, if not millions of workplaces, contributes to the common good of society. It is in their work that working people find the right [...] to decide about the matters of the whole society, which lives and develops thanks to their effort. (Jan Paweł II 1999)

On the other hand, the employee is obliged to perform the work carefully and diligently, regardless of whether the employer has fulfilled their obligations towards them; in particular, irrespective of whether the work is remunerated fairly (except when, as a result of breach of duty by the employer, the worker's life or health are jeopardised, in which case the worker has the right to refuse to perform the work).

Regardless of the conscientious and careful execution of a specific task, the employee has a general duty to take care of the welfare of the employer: Art. 100, para 2, point 4 of the Polish Labour Code stipulates that the employee is obliged to "respect the interest of the work establishment, protect its

property and keep confidential any information that could cause damage to the employer if disclosed".[10] It seems quite obvious to me that the object of such a commitment does not have the character of a commodity.

4. The worker's perspective

According to some authors, "the dispute over the commodity nature of work and the price view of pay is not essential in the context of practical rational human resources management" (Meller 1993: 8). This may indeed be true at the level of "human resources management". However, there is no doubt that the issue *is* essential when it comes to the situation of an individual working person and their relationships with cooperating persons. As rightly pointed out by the author of this view,

> The commodity approach means that it is essential to be competitive, to offer a commodity (i.e. one's work) of the highest quality, adapted to the expectations of the future employer. One must also be able to promote their skills and abilities. (Meller 1993: 8)

Such an approach radically changes the relationships in the workplace. A fellow employee is no longer a colleague to be kindly helped when coping with a professional problem, but a competitor that one finds beneficial to "trip up" when the occasion arises. This leads to the so-called "rat race", especially in corporations.

An important factor in this competition is full availability of the employee, which often renders family life or restful leisure practically impossible. In such situations, the work brings money but to some extent degrades or even destroys a person – there have been cases of suicide or death from overwork among young corporate employees who could not cope with the workload and stress in the workplace.

The consequences of the commodity view of work as far as pay is concerned are that remuneration is treated as the price of labour, the main determinant of which should be (although this still has to be realised) the cost of the "depreciation of the ability to work". It is worth noting at this point that the Constitution of the Republic of Poland, committing the legislator in Art. 65, para 4, to determine the minimum remuneration for work (or the method of determining that amount), does not provide any guidelines

[10] The English version is available at www.ilo.org/dyn/natlex/docs/ELECTRONIC/45181/91758/F1623906595/The-Labour-Code%20consolidated%201997.pdf; accessed 20 February 2017. [translator's note]

in this respect. In particular, it does not require that remuneration be fair and does not even refer to the social minimum.

Another important issue is labour safety and hygiene. In the personalistic approach, it pertains to the protection of life and health of the employee as person. Therefore, each employee should be protected equally, independent of the economic value of the work he or she performs, because the inherent dignity of every human being and the ethical value of their work is the same for all.

If, however, work and the ability to work are treated in isolation from the employee as a person, i.e. as commodities, then it is legitimate to say that, with regard to employment, protection does not pertain to the employee as a human being but to their ability to work.[11] And because this "commodity" may have a differential economic value, the degree of protection (when one's ability to work is viewed as a commodity) may vary. In particular, the employer may decide that it is not beneficial to invest more than what is required by law in the health and safety of persons performing menial jobs, i.e. those who can be easily replaced by the vulnerable unemployed.

The commodity concept of work implies the need for "the employee to adapt to work". In addition to having the relevant qualifications, this means subordination of the employee's personal and family life to the needs and expectations of the employer. In many cases, the employer expects from the employee almost unlimited availability.

These expectations are met by the provisions of Polish labour law, which allows employers to organise work in a way that is the most beneficial for them, without the need to take into account the interests of the employee and his family. The main problem is the maximally flexible, in my view, regulation of working time, which is to a large degree determined solely by the employer. The specific issues include:

1. the setting of working time standard with respect to the "average" level;
2. a 12-month settlement period for employees;
3. the freedom to apply special (irregular) working time systems;
4. the right to commission overtime work, by the discretion of the employer and under an effectively ruthless obligation to accept that work;
5. full freedom of the employer to set for the employee their duty time and business trips;
6. the right to make decisions concerning shift and night work;

[11] For a similar view cf. Jończyk (1995: 383–384), who claims that it is the ability to work "as a unique personal good and an economic value" that is protected by labour safety regulations.

7. the right to allow to a large extent work on Sundays and holidays, which – according to Art. 66, para 2 of the Constitution of the Republic of Poland – are free from work.

These regulations are clearly contrary to the general principle of "adapting work organisation to the worker", as formulated in Art. 13 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.[12] Another problem is that in practice this very principle seems to be falling into oblivion and giving way to the opposite directive: that of a person's adaptation to work.

5. The language issue

Finally, the language that is used to describe reality we live in is significant and has practical consequences. Consider abortion. In my student days, the word that was commonly used was the enigmatic *zabieg* 'surgery/procedure' or the more brutal *skrobanka*, lit. 'scraping'. Some students would undergo that procedure several times, as if it were a beauty treatment. Abortion became the subject of serious public debate when, instead of or along with the word *foetus*, the term *unborn child* gained broader currency. Abortion itself began to be called bluntly – but properly – *murder*. Another example is the issue of animal rights. What has contributed to the current improvement in this respect to some extent is the explicit statement in Art. 1 of the Act of 21 August 1997 on the protection of animals,[13] to the effect that an animal is not a thing but a living being that can suffer and that deserves respect and care from humans.

These are the reasons why I do not agree to the use of *commodity* and *workforce* in reference to human work or the human ability to work. By referring to workers as commodities, human resources, or workforce, we degrade their humanity and prepare ground for their instrumental treatment as objects. Even if the practice is useful for the purposes of economic calculation, lawyers need not and should not adopt those terms and this way of thinking in the language of labour law or its doctrine.

[12] The Polish and English versions of the Directive may be found in Jaśkowski and Maniewska (2006). This Directive has replaced Directive of the EU Council of 23 November 1993 under the same title.

[13] The Polish Journal of Laws, no. 111, item 724.

6. Freedom of work, the right to work, unemployment

6.1. In accordance with Christian ethics, a person who is capable of working has a moral obligation to do so under the Creator's command to subdue the earth, as well as

> [. . .] because of his own humanity, which requires work in order to be maintained and developed. Man must work out of regard for others, especially his own family, but also for the society he belongs to, the country of which he is a child, and the whole human family of which he is a member, since he is the heir to the work of generations and at the same time a sharer in building the future of those who will come after him in the succession of history. (*LE*, para 16)

In Poland, as in all developed countries, there is no legal obligation to work.[14] The use of forced labour is forbidden by the Constitution of the Republic of Poland (Art. 65, para 1, which introduces the principle of freedom of work) and by international agreements binding the Republic of Poland.[15]

These acts, however, allow for compulsory employment of persons sentenced to a deprivation of or restrictions on liberty (with the exception of the so-called political prisoners, which in democratic countries should not be an issue).[16] Permissible is also the so-called unilaterally appointed (*de facto*, forced) labour of soldiers for purely military purposes as well as persons directed by administrative decisions to deal with natural disasters.[17]

In the current reality, both in Poland and worldwide, the main social problem is not forced labour but the lack of a sufficient number of jobs,

[14] According to the provisions of Art. 19 of the Constitution of the Polish People's Republic of 1952, work was a right, a duty, and a matter of honour of every citizen. A general obligation to work, concerning men aged 18 to 45, was stipulated in the Act of 16 September 1982 on proceedings against persons evading work (the Polish Journal of Laws No. 35, item 229, repealed by Art. 45 of the Act of 29 December 1989 on employment, in the Polish Journal of Laws No. 75, item 446, as amended). The act did not lead to the employment of the so-called "social parasites" but exposed Poland to embarrassment on the forum of the International Labour Organisation.

[15] In particular, these include the ILO Conventions: No. 29 of 1930 concerning forced or compulsory labour (the Polish Journal of Laws of 1959, No. 20, item 122 and No. 105 of 1957 on the abolition of forced labour; the Polish Journal of Laws of 1958, No. 39, item. 240) as well as Art. 8, para 3 of the International Covenant on Civil and Political Rights of 1966 (the Polish Journal of Laws of 1977, No. 38, item 169).

[16] In Poland, the employment of convicted offenders is specified by: the Criminal Code of 1997 (the Polish Journal of Laws No. 88, item 553, as amended), the Executive Penal Code of 1997 (the Polish Journal of Laws No. 90, item 557, as amended), and the Act of 1997 on the employment of persons deprived of freedom (the Polish Journal of Laws No. 123, item 777, as amended).

[17] Cf. the Act of 18 April 2002 on the state of natural disaster, the Polish Journal of Laws No. 62, item 558, as amended.

coupled with large numbers of people able and willing to work, without an opportunity to perform it.

According to John Paul II, unemployment of millions of people is social disaster (*LE*, section IV, para 18). Unemployment is also a serious breach of human dignity. The lack of work and the accompanying poverty degrade people being affected: they cannot participate in cultural or social life, they may lose respect in their own eyes, as well as in the eyes of the family, they also lose interest in what is happening in their local community and their country. Depression may ensue, sometimes leading to suicidal attempts (cf. Wichrowska-Janikowska 2004: 46 ff.).

6.2. Therefore the question of the right to work is currently of fundamental importance. In the social teaching of the Church that right is derived directly from every person's right to live and an obligation to sustain life. It is one of the fundamental human rights (*LE*, para 16).

The right to work is mentioned in almost all basic acts of international and European law concerning human rights. The Universal Declaration of Human Rights of 1948, Art. 23, para 1, reads: "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment".[18]

The International Covenant on Economic, Social and Cultural Rights, Art. 6, para 1, stipulates:

> The State Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.[19]

The European Social Charter[20] (henceforth: ESC), Part I, Section 1, provides that the Contracting Parties accept as the aim of their policies the creation of conditions under which "Everyone shall have the opportunity to earn his living in an occupation freely entered upon", while in Part II, containing provisions binding on the Parties, Art. 1 expressly establishes "the right to work". In order to ensure effective exercise of this right, the ESC Parties committed themselves:

> 1) to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment; 2) to protect effectively the right of the worker to earn his living in an occupation freely entered upon; 3) to establish or maintain free employment

[18] www.un.org/en/universal-declaration-human-rights/; accessed 20 February 2017.

[19] www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf; accessed 20 February 2017.

[20] The treaty drawn up by the Council of Europe in 1961 and revised in 1996 (the Polish Journal of Laws of 1999, No. 8, item 67, as amended).

services for all workers; 4) to provide or promote appropriate vocational guidance, training and rehabilitation.

The Charter of Fundamental Rights of the European Union of 2007,[21] Art. 15, provides that "[e]veryone has the right to engage in work and to pursue a freely chosen or accepted occupation" (para 1) and that "[e]very citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State" (para 2). Moreover, according to Art. 29 of the Charter, "[e]veryone has the right of access to a free placement service", while by virtue of Art. 30, "[e]very worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices".

6.3. The Constitution of the Republic of Poland of 1997 does not grant the right to work, although it was expressed in Art. 68 of the Constitution of the Polish People's Republic of 1952: "Citizens of the Polish People's Republic have the right to work, that is, the right to employment paid in accordance with the quantity and quality of work done".[22] The creators of the current Constitution probably feared that the right to work established in it would be understood too literally as a subjective right, from which could be derived a claim for employment on the basis of an employment relationship. It was emphasised that, unlike the Polish People's Republic, a state with a market economy does not have at its disposal any material guarantees for the realisation of the right to work in the form of state-owned means of production and centralised economic management. In my opinion, such an approach was based on a misunderstanding, because the right to work, even when based on the constitutions of communist states, despite their practical realisation of full (albeit unreasonable) employment, had never been considered a subjective right (with the nature of a legal claim) in jurisprudence, administrative practice, or the practice of jurisdiction. The right to work meant the obligation of public authorities to conduct an economic and social policy ensuring full employment. The constitutional principle of the right to work was a legislative and interpretive guideline, particularly important in the interpretation of the regulations concerning termination of employment.

As opposed to the Polish People's Republic and other communist states, in democratic countries with market economies the right to work has not been

[21] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2007.303.01.0001.01.ENG&toc=OJ:C:2007:303:TOC; accessed 20 February 2017.

[22] The English version is available at http://libr.sejm.gov.pl/tek01/txt/kpol/e1952a-r7.html; accessed 20 February 2017. In this source, the quoted Article has the number 58. [translator's note]

understood as the right to employment only in an employment relationship, but as formulated in ESC, i.e. as the right to make a living thanks to one's own work, realised in various legal forms: outside the employment relationship, also in one's own workshop (or a shop), on a farm, in the form of a freelance profession or through providing services on the basis of civil law contracts. Alhough the Constitution of the Republic of Poland does not declare that work is a right, it imposes on the authorities certain public responsibilities that are to lead to its implementation. As stated in Art. 65, item 5,

> Public authorities shall pursue policies aiming at full, productive employment by implementing programmes to combat unemployment, including the organization of and support for occupational advice and training, as well as public works and economic intervention.

Above all, however, it should be emphasised that by ratifying ESC, Poland considers itself bound, among others, by the provisions of the Charter concerning the whole Art. 1 entitled "The right to work" (paragraphs 1–4). It should be noted that in Art. 10, para 1 of the Labour Code, the right to work is treated as one of the basic principles of labour law ("Everyone has the right to choose their work freely") that serves as an interpretative guideline when applying the standards of labour law. Therefore, there is no doubt that the public authorities of the Republic of Poland carry out the obligations arising from the right to work, determined primarily in Art. 4 ESC and Art. 65, para 5 of the Constitution. They can be most generally described as counteracting unemployment.

The social and economic policies of the state should therefore be focused on job protection and expansion by creating conditions beneficial to the development of enterprise and by supporting those investments that aid employment. What is also significant, however, is also a fair division of the existing supply of jobs. The right to work might be an important instrument of that division. The question must be asked whether the Polish labour law favours the realisation of this objective.

Let us look at regulations concerning working time. The goal to provide an opportunity of paid employment to the largest possible number of those who are able and willing to work, consistent with the principle of social justice, may be realised, among other things, by reducing the number of working hours. This has been done e.g. in France, where it has been lowered to 35 hours per week with a corresponding decrease in salary, thus enabling the employment of more workers.

Obviously, in Poland, the remuneration received by the vast majority of employees is too low to propose its decrease on a large scale as a result of reduction in working hours, although there are cases of individual employers

who in situations of crisis resort to this solution, whereby jobs are rescued by virtue of an agreement between social partners.

In high unemployment, it seems rational to limit the admissibility of overtime work. According to the current law, apart from unquestionable reasons for the admissibility of overtime employment – if it is necessary to conduct a rescue operation or repair a failure – such employment is allowed in the case of special needs of the employer. In practice, this provision implies free assessment of those causes solely by the employer, without a possibility to effectively challenge that assessment before a court or the National Labour Inspectorate. This allows employers to limit the relatively permanent employment to the minimum level necessary for the duration of a low demand for labour, while an increased demand is covered by overtime work. As a result, overtime, which should be exceptional and sporadic, has become in today's Poland a normal, scheduled practice in the private economic sector. A negative assessment of this state of affairs must not, in my view, be attenuated due to majority of employees willingly accepting overtime work – either to append their income[23] or for fear of provoking the employer's dissatisfaction.

Another way of ensuring that the amount of work available is shared justly is to reduce "multiple employment" (including "civil law" contracts), as well as to limit the possibility of combining paid employment with a pension. The usual argument posed in connection with such proposals is that from the workers's perspective they are contrary to the principle of the freedom of work (Art. 65, para 1 of the Constitution), while from the employers' perspective they are contrary to the principle of freedom of business-economic activity (Art. 20 and Art. 22 of the Constitution). My respose is that these freedoms are not absolute and are subject to restrictions, in accordance with Art. 31, para 3, and Art. 22 of the Constitution. In particular, they should give way to the principles of social justice, which have the status of the supreme constitutional principles, as expressed in Art. 2 of the Constitution.

In a situation of an acute deficit of jobs, including high unemployment among young people, an increase in the retirement age to 67 years seems to have been a dubious step.[24]

The right to work is complemented with the right to social security in situations of a shortage of jobs. The Constitution of the Republic of Poland

[23] This reason has been losing its importance due to the practice of compensating for overtime with time off work, especially when the amount of working time is settled on an annual basis.

[24] In Poland, the retirement age has been lowered back to 60 for women and 65 for men. This Act will come into force in October 2017.

adopted on 17 March 1921 committed the state to create and maintain social insurance against unemployment. The current Constitution, Art. 67, para 2, states: "A citizen who is involuntarily without work and has no other means of support, shall have the right to social security, the scope of which shall be specified by statute". On the basis of the Act of 20 April 2004 on the promotion of employment and labour market institutions,[25] the financial benefit for an unemployed person is lower than the so-called social minimum per one working person, which can be received, as a rule, for no longer than 6 or 12 months (Art. 72, para 1). Due to the rigorous regulations of the entitlement to the unemployment benefit and the short benefit period, only several percent of the registered unemployed persons are actually entitled to the unemployment benefit (ca. 17.4% in 2013).[26] After the benefit period, an unemployed person may only count on an allowance from the social assistance system.

7. Conclusion

Work is a great human good, not only utilitarian but equitable. It is something that befits human dignity and contributes to the development of the human side of a person (cf. *LE*). Apart from its diverse utilitarian (economic) value, all work has an unequivocal moral value because its subject is the human being, a person endowed with inherent and inalienable dignity.

One of the most important responsibilities of the state as the so-called indirect employer is to carry out the economic and social policy that shall create conditions under which everyone willing and able to work (including the disabled according to their capabilities) can earn their living through the work of their hands or minds.

The proper instrument to be used in order to ensure a proportionate distribution of a limited number of jobs is labour law, in particular the provisions concerning working time and the admissibility of concurrent work for more than one employer.

The Constitution of the Republic of Poland (in Art. 24) commits the state to protect work and exercise supervision over working conditions. As part of that protection, the state should ensure that no entity in any situation should treat work as a commodity.

translated by Agnieszka Gicala

[25] The Polish Journal of Laws of 2008, no. 69, item 415, as amended.

[26] Documents of the Ministry of Labour and Social Policy, Department of Labour Market. Information on persons unemployed and seeking employment in February 2013; 2/2003, Warszawa, p. 8.

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