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The Right to Work and Family Wage Some Reflections on Article 10 of the Charter of the Rights of the Family from the Polish Perspective

Ecumeny and Law 2, 205-225

2014

Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

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The Right to Work and Family Wage Some Reflections on Article 10 of the Charter of the Rights of the Family from the Polish Perspective

Keywords: employment, work, right to work, family wage, fair remuneration

The right to work and family wage has its source in Art. 10 of the Charter of the Rights of the Family.¹ It contains the right of each family to a “social and economic order in which the organization of work permits the members to live together, and does not hinder the unity, well-being, health and the stability of the family, while offering the possibility of wholesome recreation.” The article is further extended by two points and it specifies remuneration and the work of the mother at home in the following way:

- a. “Remuneration must be sufficient for establishing and maintaining a family with dignity, either through a suitable salary, called a ‘family wage’, or through other social measures such as family allowances or

¹ Carta dei Diritti della Famiglia presentata dalla Sant Sede a tutte le persone, istituzioni ed autorità interessate alla missione della famiglia nel mondo di oggi (22.10.1983). *Communicationes* 15 (1983), no. 2, pp. 140—152. All the English quotations from the Charter of the Rights of the Family are cited after: http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html. The proclamation of the Charter of the Rights of the Family on 22 October 1983 realized the wish of the Synod Fathers who convened in Rome in 1980 to deliberate on the role of a Christian family in the contemporary world.

the remuneration of the work at home of one of the parents; it should be such that mothers will not be obliged to work outside the home to the detriment of family life and especially of the education of the children.”

- b. “The work of the mother at home must be recognized and respected because of its value for the family and society.”

This entry in the Charter introduces a postulate which refers to, among others, the so-called family policy addressed mainly to all national governments, public institutions, but also to families and all men and women. It calls for establishing a “pro-family” policy and strengthening the subjective and autonomous nature of a family.² It is to guarantee a greater protection of a family, strengthen it, appreciate it and acknowledge it as a subject.

1. The right to work

In his encyclical *Laborem exercens* (henceforth LE) of 1981 John Paul II reminded that: “Work is one of the characteristics that distinguish the human from the rest of creatures, whose activity for sustaining their lives cannot be called work. Only human is capable of work, and only human

² In the exhortation *Ecclesia in Europa* of 28 June 2003 John Paul II quoted the Synod Fathers who postulated that: “In all events it will be necessary to encourage, assist and support families, both individually and in associations, who seek to play their proper role in the Church and in society, and to work for the promotion of genuine and adequate family policies on the part of individual States and the European Union itself.” See IOANNES PAULUS II: *Adhortatio apostolica post-synodalis “Ecclesia in Europa”, vivente nella sua Chiesa, sorgente di speranza per l’Europa* (28.6.2003). AAS 95 (2003), pp. 649—719, n. 91. All the English quotations from *Ecclesia in Europa* are cited after: http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_20030628_ecclesia-in-europa_en.html. As the initiators of the Charter of the Rights of the Family, the Bishops’ Synod held in 1980 pointed out that the families themselves should be the first to ensure that positive laws and public institutions do not infringe laws and duties of a family, but that they support and defend them. The Synod warned that families should also become more aware of their role as the co-authors of the so-called “pro-family policy” and they should take responsibility for changes in their society. Otherwise, they will become first victims of the evil at which they looked indifferently (see IOANNES PAULUS II: *Adhortatio apostolica de Familia christiana muneribus in mundo huius temporis “Familiaris consortio”* (22.11.1981). AAS 74 (1982), pp. 81—191, n. 44). The concerned Synod also observed a grave problem that the family, which is the subject of laws, state’s duties and other communities, falls prey to society, its indolent interventions and gross injustice.

works [...].”³ Work is also a fundamental dimension of Man’s existence on earth (LE 4). The primary and basic value of work is Man — the subject of it, and work is inherent to human nature. It is not a punishment for disobedience but on the contrary. The Man’s thinking nature is its primary source.⁴ It is the human mind that directs him/her to work. Work enables Man to achieve means of living and sustaining life.⁵ The Catechism of the Catholic Church of 1992 teaches that in work “the person exercises and fulfils in part the potential held by his/her nature. [...] labour stems from Man himself, its author and its beneficiary. Work is for Man, not Man for work”⁶ (CCC 2428).

A Polish researcher and specialist in labour law, Teresa Liszcz, explains that the two following elements constitute the right to work: the right to obtain an employment and the right to keep it (protection of employment stability). The right to financial benefits from public funds for the unemployed complements the right to work.⁷ The Constitution of the Republic of Poland from 1997 guarantees equal rights regarding employment and remuneration in Art. 33, and Art. 67 point 2 stating that: “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.”⁸ The Labour Code of 1997 in Art. 10 §1 includes the following entry relating to labour law: “Everyone has the right to choose their work freely.”⁹ However, this right is not subjective in its nature and does not allow a claim for establishing an employment relationship even if the employer has a job vacancy. Also the employee’s difficult situation

³ IOANNES PAULUS II: *Litterae encyclicae de labore humano, LXXXX expleto anno ab editis litteris encyclicis “Laborem exercens”* (further LE) (14.9.1981). AAS 73 (1981), pp. 577—647. All the English quotations from *Laborem exercens* are cited after: http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_14091981_laborem-exercens_en.html.

⁴ S. WYSZYŃSKI: *Duch pracy ludzkiej. Myśli o wartości pracy*. Warszawa 2000, p. 35. The Polish edition was first published in 1946. The English edition came out under the title *Work*, published by Scepter in 1960, and was translated by J. ARDLE McARDLE. See also: Gn 2, 15; Gn 3, 19. In the Second Letter to Thessalonians St. Paul urged “not to let anyone eat if he refused to work” (2 Th 3, 10) and “to go on quietly working and earning the food that they eat” (2 Th 3, 12).

⁵ S. WYSZYŃSKI: *Duch pracy ludzkiej...*, p. 35.

⁶ All the English quotations from the Catechism of the Catholic Church (further CCC) are cited after: http://www.vatican.va/archive/ENG0015/___P8D.HTM.

⁷ T. LISZCZ: “Prawo pracy a rodzina.” In: *Prawo pracy a rodzina. Układy zbiorowe pracy*. Ed. T. LISZCZ. Warszawa 1996, p. 23.

⁸ Quoted after: <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> (accessed 25.9.2013).

⁹ *The Labour Code. Kodeks Pracy. Bilingual edition*. Trans. A. JAMROŻY. Warszawa 2012, p. 15.

at home does not grant him/her a subjective right to work.¹⁰ Liszcz points to the fact that having a family to support or being the single breadwinner does not constitute a premise for a greater protection of employment stability.¹¹ In Poland, no binding laws provide for family preferences or any other privileges granted upon employment. The employment policy is based on the principle of equal treatment. The Act of 20 April 2004 on the promotion of employment and labour market institutions¹² in Art. 19c states the following: “The employment agency cannot discriminate the person for whom it searches employment or other gainful work on grounds of sex, age, disability, race, religion, ethnic origin, nationality, sexual orientation, political beliefs and religion or due to membership to a trade union.” The principle of equal treatment denotes absence of any kind of discrimination resulting from Convention no. 111 of the International Labour Office of 1958 and directives of the European Union.¹³

In 1994 on the occasion of the International Day of Families, pope John Paul II addressed a letter to families in which he wrote: “Unemployment is today one of the most serious threats to family life and a right-

¹⁰ T. Liszcz: “Prawo pracy a rodzina...,” p. 23.

¹¹ *Ibidem*, pp. 25–26.

¹² The Act of 20 April 2004 on the promotion of employment and labour market institution, J.L. 2013, item 674. All the quotations are taken from the English translation prepared by Ministry of Labour and Social Policy, Warsaw 2012.

¹³ Convention no. 111 of the International Labour Office with regard to discrimination in the field of employment and occupation (adopted in Geneva on 25 June 1958, effective on 15 June 1960) reads: “1. For the purpose of this Convention the term discrimination includes: a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers’ and workers’ organisations, where such exist, and with other appropriate bodies. 2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination. 3. For the purpose of this Convention the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.” See: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_85_en.pdf (accessed 10.9.2013). Also: Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, OJ L 204, p. 23 and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, p. 16.

ful cause of concern to every society.”¹⁴ Therefore, he emphasised that national and international institutions responsible for the direction of employment policy should pay attention to the basic issue which is having a job, that is “suitable employment for all who are capable of it.”¹⁵ The opposite of this desired situation is unemployment, which is evil in all cases and can become a social disaster if it reaches a certain level. The problem of unemployment is especially painful when it concerns young people who cannot find a job despite appropriate cultural, technical and vocational preparation. As Pope observes, although they are truly willing to take up a job and ready to accept responsibility for the economic and social development of the community they end up frustrated.¹⁶

The teaching of the Church related to unemployment is also included in the Catechism of the Catholic Church where we read: “Unemployment almost always harms its victim’s dignity and threatens the equilibrium of his life. Besides the harm done to him/her personally, it entails many risks for his/her family” (CCC 2436,2).

Joblessness is one of the most important socio-economic and moral problems that are present in almost all countries in Europe and all over the world. Unemployment, in the common understanding of the word, should be understood as a lack of gainful employment on the job market for people seeking it. In his encyclical *Laborem exercens* John Paul II defines unemployment as “the lack of work for those who are capable of it” (LE 18). There are different types of unemployment.¹⁷ It can be voluntary and involuntary. Nowadays, the involuntary unemployment is more frequent. Voluntarily unemployed people think that it is better to use the help provided by the government or other people than to take up a legal job, or they even prefer to work illegally. Involuntary unemployment applies to situations when people want to work, they are capable

¹⁴ IOANNES PAULUS II: *Littere Familis ipso volente Sacro Familiae anno MCMXCIV “Gratissimam sane”* (2.2.1994). AAS 86 (1994), pp. 868—925, n. 17. All the English quotations from *Gratissimam sane* are cited after: http://www.vatican.va/holy_father/john_paul_ii/letters/documents/hf_jp-ii_let_02021994_families_en.html.

¹⁵ LE 18.

¹⁶ *Ibidem*. John Paul II emphasized that “the obligation to provide unemployment benefits, that is to say, the duty to make suitable grants indispensable for the subsistence of unemployed workers and their families, is a duty springing from the fundamental principle of the moral order in this sphere, namely the principle of the common use of goods or, to put it in another and still way, the right to life and subsistence” (LE 18).

¹⁷ On the subject of different types of unemployment see W. RATYŃSKI: *Problemy i dylematy polityki społecznej w Polsce*. Vol. 1. Warszawa 2003, pp. 33—38; M. SZYLKO-SKOCZNY: “Problemy społeczne w sferze pracy.” In: *Polityka społeczna. Podręcznik akademicki*. Eds. G. FIRLIT-FESNAK, M. SZYLKO-SKOCZNY. Warszawa 2008, pp. 217—220, 223—225.

and ready to take up a job, but they cannot perform it due to some factors beyond them. Lack of employment results in depriving people of means of living and it hinders their development. It is also a reason of many personal and family problems and entails high social costs.¹⁸ What is more, joblessness and the precarious nature of employment threaten human dignity. They create situations of injustice and poverty that often lead to despair, crime and violence and may even result in an identity crisis, as emphasised by Pope Benedict XVI.¹⁹

Today, we can echo Cardinal Stefan Wyszyński's words, as written in his 1946 *Duch pracy ludzkiej* (*The Spirit of Human Labour*), that "joblessness became a profession. Millions of people all over the world were willing to work but did not have any opportunity for it. The whole humanity felt a deep inappropriateness of such a state of affairs."²⁰ Unemployment is an overwhelming problem and there seems to be no accessible solution for it. People would like to introduce some changes but they are unable to do so. In present times young people are the greatest victims of the economic crisis and lack of workplaces which it entails. Over 20% of Europeans between 15 and 24 who are willing to take up a job remain jobless. A few million of young people are not even able to enter the job market and the unemployment rate in this age group has stabilized at an all-time high level. The statistics show that in Spain and Greece there are 40% of unemployed young people, whereas in Poland, Hungary, Italy and Sweden — over 20%. If young people find a job, more and more often the contract is for a specified period of time. In this respect Slovenia and Poland are on the first place with over 60% of the employed people under 25 who have fixed-term contracts.²¹ At the beginning of one's professional career a temporary job is acceptable but in the case of young

¹⁸ The Official Statement of the Social Council at Metropolitan Archbishop of Poznań on the subject of unemployment of 6 May 2006. In: THE SOCIAL COUNCIL AT METROPOLITAN ARCHBISHOP OF POZNAŃ: *Oświadczenia 2005—2008...*, p. 34.

¹⁹ See: <http://www.polskieradio.pl/5/3/Artykul/477379,Papiez-o-etyce-pracy-zamach-na-godnosc-czlowieka> (accessed 26.8.2013). For the complete text of the Message on the Occasion of the Second National Congress for the Family in Ecuador (9—12 November 2011) see: http://www.vatican.va/holy_father/benedict_xvi/messages/pont-messages/2011/documents/hf_ben-xvi_mes_20111101_familia-ecuador_en.html.

²⁰ S. WYSZYŃSKI: *Duch pracy ludzkiej...*, p. 23. The original reads: "[...] bezrobocie stało się zawodem. Miliony ludzi na świecie objawiało wołę pracy; nie mieli jednak możliwości pracy. Ludzkość cała czuła jakąś głęboką niestosowność tego stanu."

²¹ B. WYŻNIKIEWICZ: "Bezrobocie młodych koszmarem Europy." Available at <http://biznes.pl/wiadomosci/unia-europejska/bezrobocie-mlodych-koszmarem-europy,5562167,news-detal.html> (accessed 10.9.2013). See also CENTRAL STATISTICAL OFFICE, DEMOGRAPHIC SURVEYS AND LABOUR MARKET DEPARTMENT: "Materials for the press conference on 22 March 2013." Available at http://www.stat.gov.pl/cps/rde/xbcr/gus/PW_kwart_inf_aktywn_ekonom_ludnosci_4kw_2012.pdf (accessed 10.9.2013).

people it becomes a standard regardless of seniority. Upon termination of an employment contract employers offer another one, often forcing consent for low remuneration in return for a vague promise of permanent employment. Internships and vocational practices often turn into prolonged periods of unpaid employment. More and more often we can talk about a lost generation or a generation of the unemployed.²² This varied group of young people is bound together by the uncertainty of tomorrow that prevents them from planning, whereas low remuneration does not allow to lead a fair life. The Latin term *precarius* means “depending on the will or request,” and a “precariat” is a class of people caught between wealth and poverty, devoid of material security and always in danger of a social fall. Guy Standing, the author of *Precariat*, claims that in front of our eyes a new social class is being born, namely a global class.²³

In the last few decades work was an obligation, a right, today it is often a privilege and perhaps in some regions it may even become a miracle. In such a situation no one can seriously think of starting and raising a family. The words of Pope John Paul II, addressed to the representatives of governments present at the occasion of the 68th Session of the International Labour Conference in Geneva in 1982, seem to be a suitable response to such a state of affairs. The pope said: “I refuse to believe that mankind today, with its prodigious scientific and technical prowess, is incapable of the kind of creative effort, inspired by the very nature of human work and solidarity among all living beings, which will yield fair and effective answers to the essentially human problem of employment.”²⁴

2. Family wage or fair remuneration?

In the 20th century the right to work and a proper remuneration was included in many international and national documents. The Universal

²² “Pracodawcy: Unia psuje młodzież i rynek pracy.” Available at: <http://www.centrumrekrutacyjne.pl/p/pracodawcy-unia-psuje-mlodziez-i-rynek-pracy,131.html> (accessed 10.9.2013). See: “Stop umowom śmieciowym.” Available at: <http://www.solidarnosc.org.pl/pl/strona-glowna/stop-umowom-smieciowym-4.html> (accessed 28.8.2013).

²³ See: G. STANDING: *Precariat*. Available at: http://www.praktykateoretyczna.pl/prekariat/01_Prekariat_Rozdz.1.pdf (accessed 26.8.2013).

²⁴ JOHN PAUL II: “The Speech for the 68th Session of the International Labour Conference, Geneva, 15th June 1982, no. 12.” For the Polish text see *L'Osservatore Romano* 7—8 (1982), pp. 3—5; the English text quoted from: <http://www.mop.pl/doc/pdf/inne/przemowienie15-6-1982.pdf> (accessed 25.9.2013).

Declaration of Human Rights²⁵ of 1948 in Art. 23 states that “1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. 2. Everyone, without any discrimination, has the right to equal pay for equal work. 3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.” Article 25 of the Declaration states that “1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his/her control.”

The European Social Charter²⁶ drawn up in Turin in 1961 includes, among others, entries on remuneration, employment and protection of the family. Article 4.1 of the Charter states: “With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake: 1. to recognize the right of workers to a remuneration such as a will to give them and their families a decent standard of living.”²⁷ Thirty five years later in the Revised European Social Charter²⁸ of 1996 Art. 4 stated: “All workers have the right to fair remuneration sufficient for a decent standard of living for themselves and their families,” and Art. 27: “All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities.” The subject of family wage was also included in the International Covenant on Eco-

²⁵ THE UNITED NATIONS GENERAL ASSEMBLY: The United Nations Universal Declaration of Human Rights, adopted and proclaimed 10 December 1948 in Paris. The Polish text at: <http://libr.sejm.gov.pl/tek01/txt/onz/1948.html> (accessed 10.9.2013). All the English quotations from the Universal Declaration of Human Rights are cited after: http://www.unic.org.in/items/Other_UniversalDeclarationOfHumanRights.pdf.

²⁶ See A. ŚWIĄTKOWSKI: *Karta Praw Społecznych Europy*. Warszawa 2006, pp. 132—139. See also the Community Charter of Fundamental Social Rights of Workers proclaimed by the Council on 8—9 December 1989 in Strasbourg, which includes the right to employment and remuneration: *Charte Communautaire des Droits Sociaux Fondamentaux des Travailleurs*, also called *Strasbourg Charter*. On this subject see also: J. SZCZOT: “Fundamental Rights on the Labour Market in EU.” In: *Współczesny rynek pracy wobec wyzwań XXI wieku*. Eds. W. CHOMICZ, J. SZCZOT. Konin 2013, p. 31.

²⁷ Quoted after: <http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm>.

²⁸ See the Revised European Social Charter at: <http://www.coe.int/t/dghl/monitoring/socialcharter/presentation/escrbooklet/Polish.pdf> (accessed 10.9.2013). All the English quotations from the Charter are cited after: <http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm>

conomic, Social and Cultural Rights²⁹ proclaimed by UN in 1966. Art. 7 reads:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant.

The Treaty of Lisbon of 13 December 2007 in Title IX. Employment, Art. 147 (ex Art. 127 TEC) refers to the concern of the European Union for a high level of employment and attention to the application of the principle of equal pay.³⁰ The Charter of Fundamental Rights of the European Union³¹ in Art. 15 guarantees freedom to choose an occupation and the right to take up a job. Point 1 reads: “Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.” The Con-

²⁹ The International Covenant on Economic, Social and Cultural Rights adopted by General Assembly resolution 2200A (XXI) of 16 December 1966. The Covenant was adopted by the United Nations General Assembly on 16 December 1966 and opened for signature in New York on 19 December 1966. In accordance with the provisions of Art. 27 § 1 it came into force on 3 January 1976. Poland ratified the Covenant on 3 March 1977, the ratification document was presented to the Secretary-General of the United Nations on 18 March 1977 and the Covenant came into force in Poland 18 June 1977. See: <http://libr.sejm.gov.pl/tek01/txt/onz/1966a.html> (accessed 28.08.2013). All the English quotations are cited after: http://www.ptpa.org.pl/public/files/akty_prawne/InternationalCovenantonEconomicSocialandCulturalRights.pdf.

³⁰ Article 147 (ex Art. 127 TEC) reads: “The Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected. 2. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Union policies and activities.” Article 157 (ex Art. 141 TEC) reads: “1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. 2. For the purpose of this Article, ‘pay’ means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.” See: The Consolidated Version of the Treaty on the Functioning of the European Union at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:0047:0200:EN:PDF> (accessed 10.9.2013).

³¹ Charter of Fundamental Rights of the European Union (2010/C 83/02). All the quotations are from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF> (accessed 28.8.2013).

stitution of the Republic of Poland of 1997 in Art. 65 guarantees that the minimum remuneration for work and setting its level is specified by statute.³²

A considerable majority of families, not only the Polish ones, have the means to maintain their families from the work performed by their adult members.³³ It was already written in the Old Testament that workers should be paid what is due to them without delay (Pr 3, 27).³⁴ As early as in first centuries of Christianity the right of the worker to fair remuneration was emphasised. The Code of Canon Law promulgated in 1983, the same year the Charter of the Rights of the Family was proclaimed, includes canons that refer to fair remuneration. In Canon 231 § 2 we read as follows: “Without prejudice to the prescript of can. 230 § 1 and with the prescripts of civil law having been observed, lay persons have the right to decent remuneration appropriate to their condition so that they are able to provide decently for their own needs and those of their family. They also have a right for their social provision, social security, and health benefits to be duly provided.”³⁵ Canon law does not define which remuneration is fair and with regard to employment, remuneration and social protection it points to legal norms that are binding in the faithful’s country of residence and in the social teachings of the Church.

The Catechism of the Catholic Church defines fair remuneration as “the legitimate fruit of work” (CCC 2434). In order to establish a level of fair remuneration both needs and the amount of work have to be taken into account. As expressed by the Second Vatican Council in the Pastoral Constitution *Gaudium et spes* (GS 67),³⁶ “remuneration for labour is to be such that man may be equipped in the means to cultivate worthily his

³² In Poland the binding law is Act of 10 October 2002 on minimum wage, Dz.U. 2002 nr 200 poz. 1679, see also: Dz.U. 2012 nr 0 poz. 1026. See also: Convention no. 131 of the International Labour Office of 1970 on stipulating minimal remuneration and recommendation 135; J. KROPIWNICKI: “Płaca minimalna w Polsce a standardy międzynarodowe.” *Ethos* 4 (1995), pp. 122—132.

³³ T. Liszcz: “Prawo pracy a rodzina”..., p. 23.

³⁴ The Polish version reads: “Pracownikom nie odmawiaj zapłaty, gdy masz możliwość działania. Nie mów bliźniemu: ‘Idź sobie, przyjdź później, dam jutro — gdy możesz dać zaraz.’” Quoted from *Biblia Tysiąclecia* at: <http://biblia.deon.pl/rozdzial.php?id=541> (accessed 30.9.2013).

³⁵ The English version of the Code of Canon Law is quoted after: http://www.vatican.va/archive/ENG1104/_PV.HTM. See the commentary on this canon in: D.L. BARR: “Formation and remuneration for Church Service.” In: *New Commentary on The Code of Canon Law*. Eds. J.P. BEAL, J.A. CORIDEN, T.J. GREEN. New York, N.Y./Mahwah, N.J. 2000, pp. 302—303.

³⁶ All the quotations from *Gaudium et spes* (further GS) are cited after http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html.

own material, social, cultural, and spiritual life and that of his dependents, in view of the function and productiveness of each one, the conditions of the factory or workshop, and the common good.” Moreover, in the Catechism the Church teaches that “Agreement between the parties is not sufficient to justify morally the amount to be received in wages” (CCC 2434). The refusal of the pay or delaying it may be a gross injustice.³⁷

In his encyclical *Laborem exercens* pope John Paul II wrote about a just remuneration understood as an amount sufficient to establish and maintain a family and provide for its future. Such remuneration can be realised through family wage, that is a wage paid to the head of the family which is sufficient for its needs without the other spouse having to take up a job outside the home or without the help of other social measures, such as family allowances or maternal pay for a woman solely devoted to her family.³⁸ A remuneration is a just one when it makes the fairness of the employer-employee relationship real. Notwithstanding the types of means of production, the relation between an employer and an employee is based on salariat,³⁹ that is an appropriate remuneration for the performed work. The Pope emphasised that a “just wage is the concrete means of *verifying the justice* of the whole socio-economic system and, in any case, of checking that it is functioning justly.”⁴⁰ In John Paul II’s understanding of the term, a just remuneration is the one which accounts for primacy of the subject, of the person, before the material and work. An employee should

³⁷ Cf. A. ZWOLIŃSKI: *Grzechy wołające*. Kraków 2012, pp. 291—300.

³⁸ LE 19.

³⁹ “Salariat” is a social class of workers, mainly white-collar workers, who earn a salary. See W. KOPALIŃSKI: *Słownik wyrazów obcych i zwrotów obcojęzycznych*. 17th, extended edition. Warszawa 1989, p. 451. The term was used by Pope Pius XI in his encyclical *Quadragesimo anno* of 15 May 1931 on reconstruction of the social order and its adjustment to the Law of the Gospel, on the 40th anniversary of the publication of Leon XIII’s encyclical *Rerum novarum*. See: AAS 23 (1931), pp. 177—228, no. 65. In no. 68 of the encyclical we read: “The just amount of pay, however, must be calculated not on a single basis but on several, as Leo XIII already wisely declared in these words: ‘To establish a rule of pay in accord with justice, many factors must be taken into account’.” In no. 69 we read: “For they are greatly in error who do not hesitate to spread the principle that labour is worth and must be paid as much as its products are worth, and that consequently the one who hires out his labour has the right to demand all that is produced through his labour. How far this is from the truth is evident from that we have already explained in treating of property and labour.” All quotations from: http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno_en.html.

⁴⁰ LE 19. For more see J. WRATNY: “Koncepcja płacy sprawiedliwej a niektóre aktualne problemy prawa pracy i polityki płac w Polsce.” *Ethos* 4 (1995), pp. 133—141; L. DYCZEWSKI: “Płaca sprawiedliwa i słuszna.” *Ethos* 4 (1995), pp. 113—121.

be remunerated for his role in the production of goods not only for what he produced.⁴¹ The truth about this primacy belongs to the legacy of the Church and “the primacy of person over things” should be emphasised and enhanced (LE 12).

In his encyclical *Centessimus annus*⁴² proclaimed in 1991, John Paul II urged that: “A workman’s wages should be sufficient to enable him to support himself, his wife and his children. ‘If through necessity or fear of a worse evil the workman accepts harder conditions because an employer or contractor will afford no better, he is made the victim of force and injustice’” (CA 8). What is more, society and the state should guarantee such wage levels that they are sufficient to provide for the worker and his family and also allow for making some savings. In this respect the role of trade unions is very important as they conclude contracts and negotiate minimum salaries and working conditions (CA 15). Teresa Liszcz considers a respectful and suitable standard of living, based on family wage, to be a threshold level needed for a four-person household in a given country to lead a decent life which should not go down below a certain level.⁴³ In Poland, the so-called social minimum, stipulated by the Institute of Labour and Social Matters, is taken as a measure of this level.⁴⁴ In western countries fair minimal wage is defined in relation to an average salary or gross national income per capita. In his attempt to define family wage Jerzy Wratny observes that such criteria are only met by remuneration which is verified as regards to its capability to provide sufficiently for family needs. According to international and European standards such a premise, compliant with conditions of family wage, is met by fair remuneration. It can be assumed that fair remuneration is by its definition also family wage.⁴⁵ Article 4 of the European Social Charter states the right to fair remuneration for work. The Committee of Independent Experts of the Council of Europe attempted to set out the level of fair remuneration, taking the average wage as its starting point. According to the experts, fair remuneration should be 68% of the national average wage.⁴⁶

⁴¹ For more see J. WRATNY: “Płaca rodzinna (szkic zagadnienia).” In: *Prawo pracy a rodzina. Układy zbiorowe pracy*. Ed. T. LISZCZ. Warszawa 1996, pp. 43–44.

⁴² IOANNES PAULUS II: *Litterae encyclicae “Centessimus annus”* (further CA) (1.5.1991). AAS 83 (1991), pp. 793–867. All the quotations from *Centessimus annus* are cited after: http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_01051991_centessimus-annus_en.html.

⁴³ T. LISZCZ: “Prawo pracy a rodzina...,” p. 29.

⁴⁴ See Z. JACUKOWICZ: “Płaca godziwa a minimum socjalne.” *Ethos* 4 (1995), pp. 142–153, 145–147.

⁴⁵ J. WRATNY: “Płaca rodzinna...,” pp. 42–43.

⁴⁶ See: *Ibidem*, pp. 48–49. In Poland the average wage in the first quarter of 2013 amounted to 3,612.51 PLN. See: <http://www.zus.pl/default.asp?p=1&cid=24> (accessed

Unfortunately, Poland ratified Article 4 of the European Social Charter⁴⁷ with the exception of point 1 relating to the right to fair remuneration. Guarantees provided by Polish legislation focus on defining the minimal wage which is not identical with fair remuneration. In 1996 an important amendment to the Labour Code was introduced in Art. 13 stating that “Employees have the right to a respectful remuneration for work. The conditions for exercising this right are specified by the provisions of labour law, as well as by the state remuneration policy, in particular by specifying the minimum remuneration for work.”⁴⁸ The above-mentioned provision guarantees the employees the right to such remuneration which will provide for their needs and maintaining their family. The right to a fair remuneration consists of five elements:

1. The right to such remuneration which will provide for an appropriate standard of living for employees and their families. The appropriate standard of living should be understood as a fixed ratio of the minimum wage to the average wage in a given country. This indicator should amount to at least 68% of the average gross wage or 66% of the national income per capita. Also, social benefits for family, e.g. family allowance or tax relief, constitute fair remuneration.
2. The right to a greater amount of remuneration for overtime work, subject to exceptions.
3. The right of all employees, men and women, to equal remuneration for work of an identical value.
4. The right to a reasonable period of notice in case of termination of an employment contract.
5. The right to protection of remuneration for work prior to deductions, provided that the deductions are made in accordance with the conditions and within amounts stipulated in national legislation or labour agreements or arbitration awards.⁴⁹

28.8.2013). From 1 January 2013 on the minimum wage is 1,600 PLN. The index adds up to about 44%.

⁴⁷ Poland ratified the European Social Charter on 25 June 1997.

⁴⁸ *The Labour Code...*, p. 14.

⁴⁹ See J. WRATNY, D. KOTOWSKA, B. SKULIMOWSKA, J. SZCZOT: *Kodeks pracy. Tekst ujednolicony Ustawy z komentarzem i przepisami wykonawczymi oraz orzecznictwem Sądu Najwyższego*. 7th edn. Warszawa 2001, p. 22.

3. Final remarks: thirty years after the Proclamation of the Charter of the Rights of the Family

1. If it is true that Man is destined for work and called to it and, most importantly, work is “for Man” and not “Man for work” (LE 6), any other arrangement of work in Man’s life may turn against him.
2. Flexible forms of employment (so-called flexicurity⁵⁰), strongly advocated in the EU policy (i.e. in the European Employment Strategy 2020), contribute to popularization of “junk contracts” which do not provide employees, mostly young people, with any means to support themselves or establish a family. The commonly used term “junk contracts” refers to all kinds of employment, apart from “full-time jobs,” which are performed under the so-called civil-law agreements. “Junk contracts” have a negative connotation and they do not give any stability of employment.
3. On the one hand, it is emphasised that there should be a high level of employment and it should grow in the EU countries (Strategy Europe 2020⁵¹), but on the other hand, there is still a substantial level of unemployment.
4. In present times most families need two salaries to maintain their family and provide for its needs. The minimum wage does not meet the requirements of family wage. For decades in Poland the minimum wage has not met the criterion of fairness.
5. In Poland employees do not have any right to raise claims against an employer relating to calculating remuneration higher than the minimum wage, which would guarantee fairness in accordance with Art. 13 of the Labour Code.
6. Lack of nursery schools, kindergartens or the necessity to provide care for small children and the elderly members of the family make it difficult to reconcile family responsibilities with those at work, and more and more women are forced by economic conditions to take up a job outside the home at the expense of their family.

⁵⁰ See: “*Flexicurity* na polskim rynku pracy.” Available at: http://flexicurity.biz/pobr/PORADNIK_03.pdf (accessed 10.9.2013); J. GMURCZYK: “Flexicurity w Danii i Polsce, wnioski i rekomendacje, 2012/3 Analiza.” Available at: http://www.pte.pl/pliki/1/100/Flexicurity_w_Danii_i_Polsce.pdf (accessed 10.9.2013). The Europe 2020 strategy names *flexicurity* model as the main tool in combating labour market segmentation and long-term unemployment.

⁵¹ See “Strategia na rzecz inteligentnego i zrównoważonego rozwoju sprzyjającemu włączeniu społecznemu Europa 2020.” Available at: http://www.mg.gov.pl/files/upload/8418/EUROPA_PL.pdf (accessed 10.9.2013).

7. "No one can be at the same time a good Catholic and a true socialist," taught pope Pius XI in his encyclical *Quadragesimo anno* in 1931. Assessing socialism pope John Paul II points to its basic, anthropological mistake: "Socialism considers the individual person simply as an element, a molecule within the social organism, so that the good of the individual is completely subordinated to the functioning of the socio-economic mechanism" (CA 13). Moreover, socialism maintains that the wellbeing of an individual can be realized without taking into account his free choice and responsibility for good and evil. Therefore, supporting the poor needs to be combined with creating possibilities for economic development, and thus supporting the development of family. Providing social benefits for the poor, in the long run, does not guarantee a better life but only provides for their current needs, still leaving them in the same place (and then joblessness becomes problematic because it turns into a profession, as written by Cardinal Wyszyński).
8. "Economic phenomena are closely connected with the entirety of human life. An economic crisis creates the atmosphere of uncertainty and temporality, which negatively affects not only the growth of family, but also establishment of its forms."⁵² Only economic freedom which is properly realized (the state should foster economic development) will give hope and the basis for full and productive employment, and thus enable to reach family wage.
9. Analysing Art. 10 of the Charter of the Rights of the Family from the current socio-political and economic situation in Poland it needs to be noted that law is realized to a small extent. Employees' remuneration remains generally at a low level, lack of employment stability does not help with establishing a family, and women's work at home does not meet with social respect and recognition. In western countries of the European Union and also gradually in Poland programmes are being implemented to reconcile family roles with the professional ones, that is by introducing flexible working hours. A positive change for the benefit of a family is an extended maternity leave (since 2013), the introduction of additional maternity leave (since September 2014) and parental leave (26 weeks).
10. The latest Document of the Polish Bishops' Conference, prepared by the Council for Social Issues and entitled "W trosce o człowieka

⁵² C. STRZESZEWSKI: *Kryzys gospodarczy a rodzina*. Poznań 1936, p. 9. The original version reads: "Zjawiska gospodarcze pozostają w ścisłym związku z całokształtem życia ludzkiego. Kryzys gospodarczy stwarza atmosferę niepewności, tymczasowości, która fatalnie odbija się nie tylko na rozwoju, ale i powstawaniu form życia rodzinnego." Trans. A. BYSIECKA-MACIASZEK.

i dobro wspólne” (Warsaw 2012), does not mention, in any way, the subject of fair remuneration or family policy. In fact, nowadays in Poland the term “family wage” is no longer used. It was substituted with the commonly used term “fair remuneration” or “minimal wage,” ignoring the remuneration rate in relation to the family supported by an employee. Certain changes introduced for the benefit of a family are not connected with the realized postulates but rather with a bad demographic situation in Europe and Poland which forces governments to take up some actions.

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ELŻBIETA SZCZOT

The Right to Work and Family Wage
Some Reflections on Article 10 of the Charter of the Rights
of the Family from the Polish Perspective

Summary

The article analyses Art. 10 of the Charter of the Rights of the Family, proclaimed by the Holy See in 1983, which states that remuneration for work should be sufficient for establishing and maintaining a family. The article presents different terms used to define “remuneration” as included in the Universal Declaration of Human Rights of 1948, the European Social Charter of 1961 and the Revised European Social Charter of 1996, the Constitution of the Republic of Poland of 1997, John Paul II’s encyclicals *Laborem exercens* of 1981 and *Centessimus annus* of 1991. It presents labour law and the dilemma whether remuneration should be a family wage or a fair remuneration. In Poland the term “family wage” is not used.

ELŻBIETA SZCZOT

Droit à l’emploi et au salaire familial
Réflexions sur l’article 10 de la Charte des droits de la famille du point
de vue de la Pologne

Résumé

Dans l’article, on a présenté l’analyse du contenu de l’article 10 de la Charte des droits de la famille annoncée par le Saint-Siège en 1983, où l’on a mentionné que la rémunération du travail devrait être suffisante pour que l’on puisse fonder une famille et l’entretenir. Dans cet article, on a dénoté les différents termes se référant à la notion de rémunération et inclus dans la Déclaration universelle des droits de l’homme de 1948, la Charte sociale européenne de 1961 et la Charte sociale européenne révisée de 1996, la Constitution de la République de Pologne de 1997, les encycliques du pape Jean Paul II *Laborem exercens* de 1981 et *Centesimus annus* de 1991. On a présenté le droit au travail et les dilemmes concernant la question si le salaire devrait être une rémunération familiale ou convenable. En Pologne, la notion de « salaire familial » n’est pas utilisée.

Mots clés : emploi, travail, droit au travail, salaire familial, rémunération convenable

ELŻBIETA SZCZOT

Il diritto all'assunzione ed al salario familiare
Riflessioni sull'art. 10 della Carta dei Diritti della Famiglia
dalla prospettiva polacca

Sommario

Nell'articolo è stata presentata l'analisi del contenuto dell'art. 10 della Carta dei Diritti della Famiglia, proclamata dalla Sede Apostolica nel 1983, in cui è stato definito che la remunerazione del lavoro deve essere sufficiente per poter fondare e mantenere una famiglia. Sono stati indicati vari termini usati per la nozione di remunerazione, e scritti nella Dichiarazione Universale dei Diritti dell'Uomo del 1948, nella Carta Sociale Europea del 1961 e nella Carta Sociale Europea Riveduta del 1996, nella Costituzione della Repubblica di Polonia del 1997, nelle encicliche del pontefice Giovanni Paolo II *Laborem exercens* del 1981 e *Centessimus annus* del 1991. Sono stati presentati il diritto al lavoro ed i dilemmi se il salario debba essere una remunerazione familiare o conveniente. In Polonia la nozione di "salario familiare" non è usata.

Parole chiave: Assunzione, lavoro, diritto al lavoro, salario familiare, remunerazione conveniente