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Does Labor Law Apply in the Church? : An Analysis of the Socio-Legal Conditions on the Example of the Latin Church in Poland

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Does Labor Law Apply in the Church? An Analysis of the Socio-Legal Conditions on the Example of the Latin Church in Poland

Abstract: The article is a reflection on the contemporary socio-legal determinants referring to labour law, on the example of the Church in Poland. The subject undertaken, viewed from the intersection of canon law and Polish law, raises a series of questions, including: Does labour law apply in the Church, and how? Who in the Church is the employee and who is the employer? On the basis of what relationship do people serving various functions in the Church work? The present analysis, along with the referenced cases, clearly shows that although the Church is the employer for many entities and is obliged to comply with labour law, the intersection between canon and state laws can raise many problems of interpretation. The biggest problem concerns the determination by Polish law of the pastoral services of members of the clergy serving as parish priests and vicars. Their services, analyzed at a broad level of contractual relationships, include features so specific that it is impossible to be classified as any of the aforementioned types of contracts. This specificity appears to be clearly perceived by Polish legislation, which emphasizes its distinctiveness in key legal and social areas, such as the matter of insurance and taxation. The services provided by members of the clergy, assessed through the secular optics of the law, should be considered an innominate contract (*contractus innominatus*). Such an agreement, however, does not carry with it the entitlements that result from an employment contract relationship.

Keywords: labor law, social insurance, clergy insurance, tax law, employment relationship, agreement unnamed (*contractus innominatus*)

Introduction

One of the key topics of Leo XIII's encyclical *Rerum Novarum*, which was the basis for John Paul II's encyclical *Centesimus Annus*, is undoubtedly human labor in its various philosophical, social, and legal references. The political transformations in Poland and Europe after 1989 motivate a reflection on human labor, which occurs both in the state and Church order. Taking up this subject, I would like to take a look at the contemporary socio-legal determinants referring to labor law on the example of the Church in Poland. The subject undertaken, considered at the meeting point of canon law and Polish law, raises a series of questions, including the following: Does labor law apply in the Church, and how? Who in the Church is the employee and who is the employer? On the basis of what relationship do people serving various functions in the Church work?

The Church as Employer

There is no doubt that the operations of the Catholic Church in Poland, which governed by its own—guaranteed by the Concordat¹—canon law, must reckon with state law. This dependence is particularly visible in the aspect relating to the forms and conditions of establishing employment relationships, which is directly addressed by Canon 1286 of the Code of Canon Law.² This is why we can read in the documents of the Second Polish Plenary Synod that:

The Church as an employer is obligated to the same extent as other employers to comply with the Labour Code, to shape employment relationships in the context of the needs of the family, fair treatment of workers, equitable remuneration, respecting equality between men and women, dialogue with

¹ The Concordat between the Holy See and the Republic of Poland of 28 July 1993, *Journal of Laws* 1998, 51, 318, 5: "Respecting the right to religious freedom, the State shall guarantee the Catholic Church, irrespective of rites, the free and public exercise of its mission, as well as the exercise of its jurisdiction, management and administration of its own affairs, in accordance with Canon Law."

² Can. 1286 Code of Canon Law: "Administrators of temporal goods: 1° in making contracts of employment, are accurately to observe also, according to the principles taught by the Church, the civil laws relating to labour and social life 2° are to pay to those who work for them under contract a just and honest wage which will be sufficient to provide for their needs and those of their dependents."

employees, and in the event of loss of jobs to give priority to the division of labour before downsizing work positions and dismissals.³

Thus, taking into account the norms of canon law mandating the canonization of certain standards of state law,⁴ it is not surprising that the Church, in the course of its operations, employs people who provide assistance under an employment contract. This category of employees includes organists and sacristans, whom EU law otherwise classifies as the so-called liturgical altar servers.⁵ With this type of employment contract, defining the parties—that is, who is the employer and who the employee—or the scope of services and remuneration does not present major difficulties, since this employment relationship is governed by state legislation (labor law). On the other hand, problems may arise in connection with the work undertaken in the church by persons on the other side of the altar—the clergy performing ministry services in parishes as pastors and vicars. It turns out then that the intersection of canon and state law may give rise to real questions. An example of the fact that the issue raised is not baseless at the following two case studies of clergy from Poland and Slovakia.

The Case of the Vicar from Diocese of Łowicz

The first case concerns a priest of Diocese of Łowicz and a vicar of one of the local parishes, who sustained injuries as a result of a car accident. He was hurt severely enough that rehabilitation was required. Its costs were to be covered by accident insurance obtained from the Social Insurance Company (ZUS). To receive the insurance, it was necessary to submit a so-called accident claim form to the Social Insurance Company, which described all the circumstances of the accident, along with a note that the victim was insured.

The form is customarily issued by the employer. However, according to the priest, neither the Curia nor the bishop himself issued him such a form, explaining that they are not his employer and that there is no employment relationship between them. The priest therefore brought the case to the prosecutor's office and took out a loan to cover the costs of his rehabilitation.

³ The Second Polish Plenary Synod (1991–1999), *Kościół wobec życia społeczno-gospodarczego*, no. 54 (Pallotinum 2001), 79.

⁴ Giorgio Feliciani, "Canonizzazione delle Leggi civili," in *Nuovo Dizionario di Diritto Canonico*, ed. Carlos Salvador, Velasio De Paolis, and Gianfranco Ghirlanda (Milan 1993), 120–21; Henryk Jagodziński, "Kanonizacja prawa cywilnego," *Kieleckie Studia Teologiczne* 3(2004), 355–65.

⁵ Michał Rynkowski, *Sądy wyznaniowe we współczesnym europejskim porządku prawnym* (Wrocław: Prawnicza i Ekonomiczna Biblioteka Cyfrowa, 2013), 70.

Due to this, a problem arises with the Social Insurance Company considering the aforementioned accident as an accident at work, which implies special rights for the victim. Who exactly would issue the accident form, and thus assume the responsibilities of being the employer of said member of the clergy? Should the priest have taken out prior additional insurance on himself? And since the diocese pays for his insurance from the Church Fund, is that not enough to receive compensation from the Social Insurance Company?

The Case of Father Vladimír Šupa

The second case concerns a Catholic priest, who worked in the parish of Pruské, Slovakia, for five years.⁶ In 1994, by the decision of a bishop, he was to be moved to a different parish. He did not agree with the decision and first filed a complaint with the Supreme Tribunal of the Apostolic Signatura, which dismissed the complaint, and then—after being suspended by his bishop—he appealed to the Congregation for the Clergy in Rome, which also upheld the bishop's decision.

The priest then sued for payment of withheld wages in the district court of Považská Bystrica, which referred the case to the district court in Nitra. The court dismissed the suit,⁷ arguing that the relationship between the plaintiff and the diocesan office, which pays the clergy's wages, is governed by canon law and is not an employment relationship within the meaning of Slovak labor law.

The priest appealed to the regional court in Nitra, arguing that the diocesan office should be considered his employer, because it paid his health insurance and issued certificates of employment for the purposes of social security. In turn, the diocesan office argued that, after the transfer of the parish in Pruské to another designated cleric, Father Šupa no longer performed any pastoral duties and therefore was not entitled to compensation.

The regional court upheld the judgment of the court of first instance, stressing that churches and associations are autonomous in defining their functions, and that actions of the state with regards to the fulfillment or termination of clerical service would be unconstitutional. Because the fact was that Father Šupa was not serving any clerical function, and the state court was not competent to declare whether the decisions of the Church were legitimate, the court in Nitra could not assign him any benefits.

The priest appealed—also unsuccessfully—to the Slovak Constitutional Court, alleging a violation of the right to legal protection, equal rights without

⁶ The case took place before the signing of the Concordat between Slovakia and the Holy See. The so-called basic agreement was signed on November 30, 2000. Rynkowski, *Sądy wyznaniowe*, 176–79.

⁷ According to canon law and Article 5(2) and Article 7(1–3).

discrimination to freedom of religion and expression, as well as to decent working conditions, including remuneration, and then—also unsuccessfully—to the European Court of Human Rights in Strasbourg.

Formulation of the Problem

The cases described above—regardless of the fact that they took place in two different systems of state law—concern the intersection of canon and state law, and force the question of the legal nature of the pastoral work of parish priests and vicars.⁸ Focusing on this issue, an analysis will be conducted based on Polish legislation, in which, inter alia, the following questions will be raised: Does the pastoral work of parish priests and vicars in parishes bear the characteristics of employment as understood by Polish law? Are the clergy serving in parishes working there under an employment contract? Who is their employer? How is the scope of their responsibilities regulated? What privileges are they entitled to?

Employment Relationship

Not every person who works in the colloquial sense of the word, that is, working physically or mentally, is automatically an employee in the legal sense. An employee is only the person with whom an employment relationship has been established in a form specified by law. This may be an employment contract, appointment, or election.⁹ The type of legal relationship, on the basis of which the work is performed, is not decided by its formal name, but the actual will of the parties. However, when interpreting declarations of intent, one should take into account the circumstances in which they were made, the rules of social conducts and established customs.¹⁰

In light of the provisions of the Labor Code of 26 June 1974, among the inherent characteristics of an employment relationship are:

- the employee undertakes to perform work of a specified type for the benefit of an employer,
- the employee is under the supervision of the employer,¹¹

⁸ Lucjan Świto, “Charakter prawny posługi duszpasterskiej proboszczów i wikariuszy w parafiach rzymskokatolickich w świetle prawa polskiego,” *Seminre* 27(2010), 41–50.

⁹ Świto, “Charakter prawny posługi duszpasterskiej,” 42.

¹⁰ Wyrok SN, 9 XII 1999, I PKN 432/99, “Orzecznictwo Sądu Najwyższego. Izba Administracyjna, Pracy i Ubezpieczeń Społecznych” 2001, 9, 310; *Kodeks pracy. Komentarz*, ed. Zbigniew Salwa (Warszawa: Oficyna Wydawnicza Branta., 2004), 82.

¹¹ As concerns the time, place, and method of performing the work.

— while the employer undertakes to employ the employee in return for remuneration.¹²

As part of the employment relationship, only work performed in return for remuneration is possible.¹³ At the same time, the principle of personal participation applies, which means that the employee cannot fulfil their obligation through another person.¹⁴

Employer and Salary

Referring these comments to pastoral services, it should be noted that the actions carried out by the parish priest and vicar in a parish do not contain the abovementioned features of an employment relationship. First, they cannot be considered that they have an “employer” who, for the work performed by them in the parish, pays them the agreed remuneration. The parish priest and vicar are directed to work in a specific parish by a bishop, but it is not the bishop who pays them for the pastoral services performed. The abovementioned clergymen also do not receive any remuneration from the parish (as a legal entity), but live on the donations of the faithful, and are therefore “financed” by a body that has no connection with their “employment.”¹⁵

Also speaking against identifying the donations of the faithful made in connection with pastoral services with “payment” or “remuneration,” which implies equivalence of services and a dependence of the services rendered on the payment made, are norms of canon law. The legislator states, in Canon 848 of the Code of Canon Law that a minister is to seek nothing for the administration of the sacraments, and that the needy cannot be deprived of the assistance of the sacraments because of poverty, while in Canon 947, demands that any appearance of trafficking or trading is to be excluded entirely from the offering for masses. Therefore, offerings and donations of the faithful made in connection with pastoral services should be seen rather as donations. These are in fact voluntary payments, made by the faithful in arbitrary amounts. It is therefore difficult to accept that these offerings are remuneration for work as understood

¹² Article 22(1) of the Labour Code. Podaję stronę [www. http://www.en.pollub.pl/files/17/attachment/98_Polish-Labour-Code,1997.pdf](http://www.en.pollub.pl/files/17/attachment/98_Polish-Labour-Code,1997.pdf).

¹³ Andrzej Świątkowski, *Kodeks pracy. Komentarz* (Warszawa: Wydawnictwo C.H. Beck, 2006), 96.

¹⁴ The lack of an absolute obligation of personal participation in the work excludes the possibility of classifying the legal relationship as an employment contract, Wyrok SN, 28 X 1998, “Orzecznictwo Sądu Najwyższego” 1999, 4, 775.

¹⁵ It is of course clear that neither the bishop nor any church legal entity (the parish) assigns to the faithful the obligation of paying gratifications to the ministering priests, and this issue is not subject to any regulation between the bishop and the faithful residing in the parish.

in the Labor Code. No parish priest or vicar, in the exercise of the ministry in a parish, has a guaranteed statutory minimum wage, which is referred to in Article 13 of the Labor Code, and theoretically, it cannot be ruled out that due to a negligible amount of donations, can remain de facto without remuneration.

Subordination to the Employer

Another argument for the fact that the services performed by a parish priest or vicar in a parish do not contain the features of an employment relationship is the fact that priests in a parish are undoubtedly subject to the authority of the bishop, but this relation is not due to the work in the parish, but due to accepted ordination, and its legal basis is laid out in the Code of Canon Law.¹⁶ As an aside, it should be noted, that priests are subject to the bishop's authority even when they cease to perform any functions in the parish.

Personal Participation in the Work

The pastoral service performed by a parish priest and vicar, although usually included in a certain framework of responsibilities, does not provide for a strict requirement of personally providing every service. An implied consent to various "replacement" in this respect is commonly accepted.

Finally, it cannot be accepted that the bishop, in assigning, and the priest, in accepting the specified responsibilities in the parish, do so with the intent of establishing an employment relationship and accepting all the resulting rights and obligations. Similarly, it cannot be considered that the parish priest and the vicar have the option to terminate their service in a given parish on the principle of autonomy of the will, to which every employee is entitled.

Other Provisions of Polish Law

The thesis that performing pastoral services by a member of the clergy in a parish is not treated by the state as performing work under an employment relationship is confirmed by the analysis of other regulations of Polish law: tax law, social security and civil law.

¹⁶ The duty of obedience to the bishop is contained in Can. 273 of the Code of Canon Law, while the consequences of not obeying this requirement are penalized in Can. 1371(2) of the Code of Canon Law.

Tax Law

In accordance with Article 3(2)(b) of the Personal Income Tax Act of 26 July 1991,¹⁷ all individuals who gain income from an employment relationship are obliged to pay taxes. This obligation also applies to clergy if they gain income as remuneration from labor contracts, such as work performed in schools,¹⁸ universities,¹⁹ hospitals,²⁰ correctional and penal institutions,²¹ military bases,²²

¹⁷ Journal of Laws, 2000, 14, 176.

¹⁸ According to Article 2(4) of the Act on the Guarantees of Freedom of Conscience and Faith of 17 May 1989 (Ustawa z dnia 17 maja 1989 r. o gwarancjach wolności sumienia i wyznania, Dz. U. 1989, 29, 155), the Polish state recognized the right of parents to educate their children in accordance with their religious convictions, the consequence of which was the return of religion classes to schools in the 1990/91 school year. For their work, priests and deacons receive—since September 1997—remuneration as other teachers exercising their profession, and the school as personal income tax payer, deducts monthly advances for this tax.

¹⁹ According to the Higher Education Act (Ustawa o szkolnictwie wyższym, Dz. U. 1990, 65, 38), a university may employ an academic teacher as a researcher, researcher-instructor, or instructor. If the work performed by a member of the clergy at the university is associated with their use of copyright and related rights or administering them, the legislature has defined flat-rate costs for such an occasion, in the amount of a specified percentage indicator related to the income derived from a given source and amounts to 50% of earned income (Dz. U., 2000, 14, 176). However, if the work is done in other forms, income from it shall be taxable as remuneration from an employment relationship. In practice, the separation of part of the remuneration resulting from creative work should result from an employment contract, which should at the same time note that the employee receives remuneration in several components, such as a basic salary and royalties. Then, statutory costs apply to the former element, and costs in the amount of 50% to the latter (A Letter of the Minister of Finance, July 11, 1996, POP 5/3-5031/01235/96).

²⁰ According to Articles 30–31 of the Act on the Relations between the State and the Catholic Church in the Republic of Poland, contracts of employment with chaplains performing religious services in hospitals and sanatoriums, as well as closed social assistance institutions are concluded on similar principles as catechists in schools.

²¹ See Article 32; Act on Juvenile Delinquency Proceedings (Ustawa o postępowaniu w sprawach nieletnich, Dz. U. 1982, 35, 228); Regulation on detailed rules of participation in religion lessons and religious practices, the use of religious services and pastoral work organization in correctional facilities and shelters for minors (Rozporządzenie w sprawie szczegółowych zasad uczestniczenia w lekcjach religii i praktykach religijnych, korzystania z posług religijnych i organizacji pracy duszpasterskiej w zakładach poprawczych i schroniskach dla nieletnich, Dz. U. 2001, 106, 1157); Article 106 of the Criminal Code; Regulation on detailed rules of the use of religious services and pastoral work organization in penal institutions (Journal of Laws 1998, 139, 904); Polish Concordat from 1993, Article 17. Chaplains performing religious services in correctional and penal institutions receive, in addition to basic remuneration, an allowance for working in difficult conditions. Advances for the payment of income tax are deducted by the institution employing the chaplain, and then paid to the relevant tax office.

²² According to Article 53 of the Constitution of the Republic of Poland, every citizen is guaranteed the freedom of conscience and religion, and therefore every person, including those in the military service, has the right to participate in religious activities and ceremonies. Rules

bishop curiae, seminaries, etc. However, income gained by clergymen in connection with duties of a pastoral nature²³ is excluded from the general principles of taxation and is subject to separate regulation of tax in a lump sum, the amount of which is linked with the number of parishioners and the function the cleric serves in the parish.²⁴

Thus, if the legislation itself treats the income received in connection with the provision of pastoral services not as income from an employment relationship, but as a separate category of sources of income, establishing a separate tax regulation for it, this circumstance is yet another significant argument speaking to the fact that the pastoral care offered by parish priests and vicars is not carrying out an employment relationship. To conclude otherwise would be contrary to the principle of rationality of the legislator.

Social Insurance

Analogous conclusions also result from the analysis of the provisions on social security. In Article 6(1)(1) and (4) of the Social Insurance Act of 13 October 1998,²⁵ the legislator, in defining the entities subject to compulsory retirement and disability insurance, lists physical persons who are “employees” and persons “performing work under an agency contract, a commission contract, or another services agreement.” However, in subparagraph 10 of the aforementioned provision, the legislator lists “members of the clergy” as a separate category of entities subject to compulsory retirement and disability insurance, from the day of acceptance to the clerical state until the day of leaving the state.

In the case of overlapping entitlements to retirement and disability insurance, that is, when a person achieves income on the basis of an employment relationship, his or her social insurance in this respect is mandatory, which insurance in respect of being a member of the clergy is voluntary.²⁶

of professional military service of professional soldiers apply to military chaplains, and therefore the amount of remuneration received is regulated by the Act on Professional Soldiers' Salary and depends on the military rank held by the chaplain, the functions served and other additions (Journal of Laws 1992, 5, 18).

²³ These include offerings of the faithful made in connection with religious services performed—sacraments and sacramentalia, the so-called *iura stole* (offering for baptism, wedding, funeral, Christmas pastoral visit, prayers for the dead, preaching missions and retreats, Mass stipends, etc.).

²⁴ Act of November 20, 1998, o zryczałowanym podatku dochodowym od niektórych przychodów osiąganych przez osoby fizyczne. Journal of Laws 1998, 144, 930; Lucjan Świto, “Podatki a etyka obywatelska. Opodatkowanie osób duchownych w Polsce,” *Forum Teologiczne*, 11(2010), 44–46.

²⁵ Journal of Laws 1998, 137, 887; Świto, *Podatki a etyka*, 46–47.

²⁶ Journal of Laws 1998, Article 9.

The legislator thus expressly distinguishes such situations in which a member of the clergy performs work under the employment relationship or the aforementioned civil law contracts, and those in which they do not remain in any of these relationships. Indeed, if every priest, by virtue of belonging to the priesthood, became an “employee,”²⁷ specifying these categories in this Act and defining the rules of conduct in the event of overlapping of entitlements would be completely irrational. In the intent of the legislator, providing pastoral services in relation to “being a member of the clergy” is not tantamount to remaining in an employment relationship or providing them on the basis of a civil law contract. Moreover, since the social insurance reform, that is, more than ten years ago, social insurance companies have no doubt that a parish priest and a vicar, performing pastoral functions, are not performing work in the parish in the legal sense, hence these members of the clergy, in the performance of their pastoral work, are subject to social insurance by virtue of being members of the clergy, not through an employment relationship.²⁸

Civil Law

It is also difficult to accept that pastoral care provided in a parish is the performance of work within the framework of a civil legal relationship and would constitute any of the nominate contracts²⁹ provided for in the Civil Code of 23 April 1964.³⁰

Analyzing commission contracts³¹ and specific task contracts,³² that is, those nominate contracts that in their character could superficially conform to pastoral service, it should be noted that the performance of pastoral services by a parish priest and vicar is undoubtedly not any of the abovementioned contracts. According to Article 734(1) of the Civil Code, a person accepting a commission contract is obliged to perform a specific legal task for the principal.³³ It is obvious that the services of a parish priest and vicar do not fit this category of actions. They are also not specific task contracts, since the essential condition for a specific task contract is the definition of the said task, that is, an indica-

²⁷ In the understanding of labour law or civil law contracts.

²⁸ Świto, *Charakter prawny*, 46.

²⁹ Świto, *Charakter prawny*, 47–50.

³⁰ *Journal of Laws* 1964, 16, 93.

³¹ Articles 734–749 of the Code of Civil Law.

³² Articles 627–646 of the Code of Civil Law.

³³ Understood as a function of substantive law, procedural action and activities relating to the representation of the principal in judicial and administrative court proceedings, in arbitration courts and other bodies. See *Kodeks cywilny. Komentarz*, ed. Edward Gniewek (Warszawa: Wydawnictwo C.H. Beck, 2006), 1150.

tion of the expected result, as well as the commitment of the principal to pay the equivalent, that is, remuneration. As has been indicated above, since neither the parish priest nor the vicar, on assuming the duties in a parish, do not agree with the bishop sending them there as to the amount of the “equivalent” for their services and do not receive any remuneration from the bishop, it cannot be said that elements constituting the said contract occur in that relationship. It is also difficult to consider that a specific task contract is entered into each time by the member of the clergy and the faithful making offerings in connection with a specific pastoral service, since the faithful as a rule not only do not have any influence over who will carry out the task, but also—given the specific nature of the matter—cannot give indications or instructions on how the work should be performed in any aspect.

Conclusions

The analysis presented above, along with the referenced cases, clearly shows that although the Church is the employer for many entities and is obliged to comply with labour law, the intersection between canon and state laws can raise many problems of interpretation.

The biggest problem concerns the determination by Polish law of the pastoral services of members of the clergy serving as parish priests and vicars. Their services, analyzed at a broad level of contractual relationships, include specific features that it is impossible to classify them as any of the aforementioned types of contracts. This specificity appears to be clearly perceived by Polish legislation, which emphasizes its distinctiveness in key legal and social areas, such as the matter of insurance and taxation. The services provided by members of the clergy, assessed through the secular optics of the law, should be considered an innominate contract (*contractus innominatus*).³⁴ Such an agreement, however, does not carry with it the entitlements that result from an employment contract relationship.

³⁴ See Witold Czachórski, *Zobowiązania. Zarys wykładu* (Warszawa: LexisNexis, 1995), 109.

Bibliography

- Czachórski, W. *Zobowiązania. Zarys wykładu*. Warszawa 1995.
- Feliciani, G. *Canonizzazione delle Leggi civili*. In *Nuovo Dizionario di Diritto Canonico*, ed. C. Salvador, V. De Paolis, and G. Ghirlanda (Mediolan, 1993), 120–121.
- II Polski Synod Plenarny (1991–1999), Pallotinum 2001.
- Jagodziński, H. “Kanonizacja prawa cywilnego.” *Kieleckie Studia Teologiczne* 3(2004), 355–365.
- Kodeks cywilny. Komentarz*, ed. E. Gniewek. Warszawa 2006.
- Kodeks pracy. Komentarz*, ed. Z. Salwa. Warszawa 2004.
- Kodeks Prawa Kanonicznego. Przekład polski zatwierdzony przez Konferencję Episkopatu Polski, Pallotinum 1984.
- Konkordat między Stolicą Apostolską a RP z dnia 28 lipca 1993 r., Dz. U. 1998, 51, 318.
- Konstytucja RP, Dz. U. 1992, 5, 18.
- Pismo Ministra Finansów z dnia 11 lipca 1996 r., POP 5/3-5031/01235/96.
- Rozporządzenie w sprawie szczegółowych zasad uczestniczenia w lekcjach religii i praktykach religijnych, korzystania z posług religijnych i organizacji pracy duszpasterskiej w zakładach poprawczych i schroniskach dla nieletnich, Dz. U. 2001, 106, 1157.
- Rozporządzenie w sprawie szczegółowych zasad wykonywania praktyk religijnych i korzystania z posług religijnych w zakładach karnych, Dz. U. 1998, 139, 904.
- Rynkowski, M. *Sądy wyznaniowe we współczesnym europejskim porządku prawnym*, Wrocław 2013.
- Świątkowski, A. *Kodeks pracy. Komentarz*. Warszawa 2006.
- Świto, L. “Charakter prawny posługi duszpasterskiej proboszczów i wikariuszy w parafiach rzymskokatolickich w świetle prawa polskiego.” *Seminare* 27(2010): 41–50.
- Świto, L. *Podatki a etyka obywatelska. Opodatkowanie osób duchownych w Polsce*, „Forum Teologiczne” 11(2010), 97–111.
- Ustawa z dnia 26 października 1982 r. o postępowaniu w sprawach nieletnich, Dz. U. 1982, 35, 228.
- Ustawa z dnia 12 września 1990 r. o szkolnictwie wyższym, Dz. U. 1990, 65, 38.
- Ustawa z dnia 13 października 1998 r. o systemie ubezpieczeń społecznych, Dz. U. 1998, 137, 887.
- Ustawa z dnia 17 maja 1989 r. o gwarancjach wolności sumienia i wyznania, Dz. U. 1989, 29, 155.
- Ustawa z dnia 20 listopada 1998 r. o zryczałtowanym podatku dochodowym od niektórych przychodów osiąganych przez osoby fizyczne, Dz. U. 1998, 144, 930.
- Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny, Dz. U. 1964, 16, 93.
- Ustawa z dnia 26 lipca 1991 r. o podatku dochodowym od osób fizycznych, Dz. U. 2000, 14, 176.
- Wyrok SN, 28 X 1998, “Orzecznictwo Sądu Najwyższego” 1999, 4, 775.
- Wyrok SN, 9 XII 1999, I PKN 432/99, “Orzecznictwo Sądu Najwyższego. Izba Administracyjna, Pracy i Ubezpieczeń Społecznych” 2001, 9, 310.

Lucjan Świto

Le droit du travail est-il en vigueur à l'Église ?
L'analyse des conditions sociojuridiques à l'exemple
de l'Église latine en Pologne

Résumé

Le présent article est une réflexion sur les conditions sociojuridiques contemporaines se référant au droit du travail à l'exemple de l'Église en Pologne. La problématique entreprise, considérée au point de rencontre du droit canonique et polonais, incite à poser nombre de questions, entre autres : Le droit du travail est-il en vigueur à l'Église, et comment ? Qui à l'Église est employé et qui y est employeur ? Sur la base de quelle relation travaillent les personnes exerçant différentes fonctions à l'Église ? L'analyse effectuée, avec les cas mentionnés, montre nettement que bien que l'Église soit employeur pour bien des sujets et qu'elle soit obligée de respecter le droit du travail, le point de rencontre du droit canonique et étatique peut engendrer de nombreux problèmes interprétatifs. Le plus grand problème porte sur la manière dont le droit polonais définit le service pastoral des membres du clergé exerçant les fonctions de curé et de vicaires. Leur service, analysé à un large niveau de relations contractuelles, contient des traits si particuliers qu'il est impossible de le classer comme quelconque des types de contrats susnommés. Cette spécificité paraît être clairement aperçue par le législateur polonais qui accentue sa particularité dans les domaines clés juridiques et sociaux, c'est-à-dire dans la matière des assurances et des impôts. Le service des membres du clergé, évalué dans l'optique séculière du droit, devrait être considéré comme un contrat innommé (*contractus innominatus*). Quoiqu'il en soit, un tel contrat ne bénéficie pas des revendications qui résultent de la relation du contrat de travail.

Mots clés : droit du travail, assurances sociales, assurances du clergé, droit fiscal, relation de travail, contrats innommés (*contractus innominatus*)

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Il diritto del lavoro vige nella Chiesa?
Analisi delle condizioni socio-giuridiche sull'esempio
della Chiesa latina in Polonia

Sommario

L'articolo presentato è una riflessione sulle condizioni socio-giuridiche contemporanee riguardanti il diritto del lavoro sull'esempio della Chiesa in Polonia. La problematica intrapresa, esaminata nel punto di convergenza tra il diritto canonico e quello polacco, fa sorgere una serie di domande tra le quali: il diritto al lavoro vige nella Chiesa e come? Chi nella Chiesa è il lavoratore e chi è il datore di lavoro? Nell'ambito di quale rapporto lavorano le persone che ricoprono varie funzioni nella Chiesa? L'analisi condotta, unitamente ai casi citati, mostra chiaramente che sebbene la Chiesa sia un datore di lavoro per molti soggetti e sia tenuta a rispettare il diritto del lavoro, il punto di convergenza tra il diritto canonico e quello statale può comunque suscitare molti problemi di interpretazione. Il problema più grande riguarda la definizione da parte del diritto polacco del ministero pastorale degli ecclesiastici che ricoprono la funzione di parroci e vicari. Il loro ministero, analizzato sul piano inteso ampiamente dei rapporti obbligazionari,

include tratti talmente specifici da non poterlo collocare in alcun tipo di contratto menzionato. Pare scorgere chiaramente tale specificità anche il legislatore polacco che accentua la sua singolarità nelle aree chiave giuridico-sociali ossia in materia di assicurazioni e di imposte. Il ministero degli ecclesiastici quindi, valutato nell'ottica laica del diritto, deve essere considerato un contratto innominato (*contractus innominatus*). Tale contratto non gode tuttavia dei diritti che scaturiscono dal rapporto del contratto di lavoro.

Parole chiave: diritto del lavoro, assicurazioni sociali, assicurazioni degli ecclesiastici, diritto tributario, rapporto di lavoro, contratti innominati (*contractus innominatus*)