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Rights (Claims) of Parents and the Child's Welfare

Ecumeny and Law 3, 9-24

2015

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.

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Keywords: right to have/not to have a child, reproductive health, reproductive rights, legal positivism, rights of the child

In many contemporary debates and ethical disputes, in particular in those which concern bioethical issues, an argument over *the right of parents to have or not to have a child* arises. On the one hand, we hear some quite common arguments such as: “We have the right to have a child.” This argument, put forward in the disputes concerning the in vitro fertilization, comes from the couples suffering from infertility, who further strengthen their standpoint with a statement somehow especially justifying this “right” — “we love each other.” Thus, a claim included in the form of law and supported with strong ethical-sounding arguments appears as a consequence: “Since we love each other very much, we have the right to have a child.” The same reasoning appears in the discussions concerning the legalization of adoption of children by homosexual relationships: “If these people are in love and want to have a child and raise it, they should be allowed to execute that right.”

On the other hand, there appear arguments which in a comparable style and based on an analogous “legal” structure, express firm opposition toward having a child. We often hear that “a woman has the right to abortion.” Behind this statement lies a more or less immediately realized opposition — between the articulated woman’s right to terminate the life of the fetus and the alleged rights of the child to life.

The problem of this opposition is the hallmark of our civilization and the concept of democracy. Saint John Paul II in his encyclical *Evangelium Vitae* wrote very distinctly and unequivocally: “Certainly the purpose of civil law is different and more limited in scope than that of the moral law.

But ‘in no sphere of life can the civil law take the place of conscience or dictate norms concerning things which are outside its competence’, which is that of ensuring the common good of people through the recognition and defence of their fundamental rights, and the promotion of peace and of public morality. The real purpose of civil law is to guarantee an ordered social coexistence in true justice, so that all may ‘lead a quiet and peaceable life, godly and respectful in every way’ (1 Tim 2:2). Precisely for this reason, the civil law must ensure that all members of society enjoy respect for certain fundamental rights that innately belong to the person, rights which every positive law must recognize and guarantee. First and fundamental among these is the inviolable right to life of every innocent human being.”¹

Pope reiterates also the clear teaching of Saint Thomas Aquinas, who writes that “human law is law inasmuch as it is in conformity with right reason and thus derives from the eternal law. But when a law is contrary to reason, it is called an unjust law; but in this case it ceases to be a law and becomes instead an act of violence.”² And again: “Every law made by man can be called a law insofar as it derives from the natural law. But if it is somehow opposed to the natural law, then it is not really a law but rather a corruption of the law.”³

The Pope’s teaching is in a stark contrast to the ideology of today’s distributed so-called reproductive rights. This ideology is also contrary to the original human rights, including the rights of the child. The reflection undertaken herein follows the above-described situation. Its starting point is the ideologised concept of the so-called reproductive rights, and it seeks justification in the so-called reproductive health. Then the rights of a child will be outlined in the light of chosen acts of the positive law. This should allow for the complementation of the vision of positive law with the concept of children’s rights proposed by John Paul II, which is more axiomatic than juridical.

1. “Reproductive health” and “reproductive rights”

According to the World Health Organization definition, the “[reproductive] rights rest on the recognition of the basic rights of all couples

¹ JOHN PAUL II: *Encyclical Letter “Evangelium vitae.”* March 25, 1993 (henceforth: EV), no. 71.

² *Summa Theologiae*, I—II, q. 93, a. 3, ad 2um.

³ *Ibidem*, I—II, q. 95, a. 2. Aquinas quotes Saint Augustine: *Non videtur esse lex, quae iusta non fuerit; De Libero Arbitrio*, I, 5, 11: PL 32, 1227; EV, no. 72.

and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence.”⁴

Reproductive rights are treated as elements of the basic human rights and are connected with the “reproductive health.” This term entered the language of the United Nations documents in 1972, at the same time when it was adopted by Jose Barzelatto, head of the WHO human reproduction programme.⁵

Twenty years later, the term “reproductive health” appeared in the WHO report prepared by Mahmoud Fathalla, the successor of Barzelatto. Interpretation of the then presented vague term, included “the fertility regulation,” of which part was “the termination of pregnancy.”

By promoting anti-birth strategy, WHO entered constitutively in the concept of “reproductive health” and “reproductive rights,” and at the same time appealed very strongly and equally unreasonably to human rights (i.e. displayed a rights-based approach).

The WHO definition of reproductive health was propagated during the population conference in Cairo in 1994. The results of this conference were, among others, reproductive health programmes promoted by a number of organizations such as USAID, UNFPA, Population Council, Ford and MacArthur Foundations. Support for the enumerated organizations was provided by the World Bank and other institutions.

Despite the expansion on a global scale, individual states have rejected demands to recognize abortion as a human right, accepted conference documents (from Cairo, and a year later from famous conference on the woman in Beijing), with reservations, rejecting the term “reproductive health” and other similar, together with the definition of “fertility regulation” promoted by the WHO.

In 1996, the movement for “reproductive health” adopted a slightly different approach, forcing the UN treaty bodies dealing with human rights to reinterpret the existing rights, in such a way that they include the right to abortion. Then, at the level of domestic courts, there began a process of questioning the national provisions on the protection of the unborn as incompatible with human rights treaties. Another progress in the promotion of reproductive rights took place in 2012, when the “Office of

⁴ THE UNITED NATIONS: Programme of action of the International Conference on Population and Development, Cairo, 1994. New York 1995, paragraph 7.3.

⁵ Cf. S. YOSHIHARA: “Fiasko praw reprodukcyjnych na gruncie prawa międzynarodowego” — <http://www.ordoiuris.pl/fiasko-praw-reprodukcyjnych-na-gruncie-prawa-miedzynarodowego,3315,analiza-prawna.html> (accessed 12.12.2014).

the High Commissioner for Human Rights issued technical guidelines on abortion as a human right included in the right to health.”⁶ However, due to the need to “adjust” data on abortion, in 2011 the movement met with reservations, coming from the General Assembly of the United Nation.

The following years brought new attempts at new strategies: smuggling of the term “reproductive health” in the appendix to the report of the Secretary General for 2007, or in the contents of binding international treaty in 2006, in the Convention on the Rights of Persons with Disabilities.

Terminological ambiguities related to the scope of the concept of reproductive health contributed to the fact that there are interpretations indicating that the concept of reproductive health does not include “any new rights,” as well as, indoctrination efforts in expanding the circle of supporters of the “right” to abortion.

Not analysing the problem thoroughly, one should pay attention to the contemporary repercussions in a contemporary Polish context. These were expressed in recent months as the dispute over the “Chazan case” which can be equaled to the conflict of “the right to abortion” versus the standpoint of a doctor supporting “the right to live.” The statements on the parliamentary press conference organized by the Deputy Speaker Wanda Nowicka on March 8, 2014 were another expression of the problem: According to Nowicka, “problems in the private sphere are associated with violence against women, since the law (on the prevention of domestic violence) does not protect them adequately.”⁷ As the Deputy Speaker stated, these are also issues “related to reproductive rights that mean the termination of pregnancy, in vitro [fertilization] and access to contraception.”⁸

Professor Magdalena Środa, in turn, emphasized that women do not demand “nothing extraordinary, but the basic rights.”⁹ In her assessment, Polish women still do not have reproductive rights, namely the right to sex education, contraception refund and in vitro [fertilization] funding. “These rights must be guaranteed, even if no one would exercise them”¹⁰ — she added.

⁶ Ibidem.

⁷ WANDA NOWICKA (DEPUTY SPEAKER OF SEJM) — http://samorzad.pap.pl/palio/html.run?_Instance=cms_samorzad.pap.pl&_PageID=2&s=depesza&dz=redakcyjne.sejm&dep=105056&data=&_Checksum=-524941045 (accessed 12.12.2014).

⁸ Ibidem.

⁹ SEJM — LOWER CHAMBER OF THE POLISH PARLIAMENT: Conference organized to celebrate Women’s day. Cf. <http://www.tvpparlament.pl/aktualnosci/sejm-konferencja-z-okazji-dnia-kobiet/6689794> (accessed 12.12.2014).

¹⁰ Ibidem.

What is the most striking, however, in this briefly signalled ideological jargon, is the rendering of quite ambiguous “reproductive rights” as “human rights,” while at the same time completely ignoring the rights of the child, who becomes, in the context of aforementioned reproductive rights, a disposable object.

2. Rights of the child in chosen legal acts of positive law

In the light of the Act of January 6, 2000 on the Ombudsman for Children, one can define a child as a legal subject, and indicate its basic individual rights:

Article 2.

Within the meaning of the Act, a child is every person from the moment of conception until the age of majority.

The age of majority is set forth in separate regulations.

Article 3.

1. The ombudsman shall take measures on terms set forth in this Act to provide the child with full, harmonious development, respecting the dignity and subjectivity of the child.
2. The Ombudsman Acts for the rights of the child, in particular:
the right to life and health protection,
the right to be raised in a family,
the right to decent social conditions,
the right to education.
3. The ombudsman shall take measures aiming at protection of the child against violence, cruelty, exploitation, demoralization, neglect and other forms of maltreatment.
4. The ombudsman shall provide disabled children with special care and help.
5. The ombudsman shall promote the rights of the child and ways to protect them.¹¹

The Polish act, therefore, at first emphasizes the subjectivity itself, of a child as a human being, at the same time defines this subjectivity from

¹¹ Act of January 6, 2000 on the Ombudsman for Children, prepared on the basis of: *Journal of Laws* 2000 r. no. 6, item. 69, from 2008 no. 214, item. 1345, from 2010 no. 182, item 1228, no 197, item 1307, from 2011 no. 168, item 1004. (English version — The Act of 6th January 2000 on the Ombudsman for Children, *Journal of Laws* of 6th January 2000 — http://brpd.gov.pl/sites/default/files/ustawa_o_rpd_en.pdf [accessed 12.12.2014]).

the moment of conception. It also indicates toward a (meager) catalogue of children's rights which, however, is arranged in a certain axiological space — from the fundamental right to life, through the right to education in the family, which implies what is the potential and specificity of such education — education to love, education to the moral values of life and participation in society, to end with the right to decent development conditions.

One can complete this catalogue of children's rights, based on the norms of international law. In particular, two legal acts are worth considering here — the Convention on the Rights of the Child adopted by the United Nations on November 20, 1989,¹² and the European Convention on the Exercise of Children's Rights, prepared in Strasbourg on January 25, 1996.¹³

The first act is especially worth noting, since it clearly stresses that children are subjects of certain inalienable freedoms and rights of all human beings by the virtue of their humanity. The Convention on the Rights of the Child is an international human rights treaty, the aim of which is to ensure that all children and each child individually have the right to survival, health and education. The convention also emphasizes the child's right to a caring family environment, to play and to have access to culture; to protection from exploitation and abuse of any kind. It conveys the belief that the right of a child is also to be heard and child's opinion or views to be taken into account when dealing with a variety of key issues.

The Convention of 1989 is the culmination of more than 60-year-long history of advocacy for the rights of the youngest human beings. It is worth noting and stressing that it had been developed by non-governmental organizations and experts in the field of human rights, and passed owing to an unusual consensus of governments (except two) at the international level.

It is believed that the Convention on the Rights of the Child is a unique document, due to the fact that the rights of the child are its subject overall. It also has a universal value — the object of interest is all children, in all situations, in the global dimension of the international community. It also has the unconditional character, so it is also an appeal addressed to the government institutions that do not have sufficient resources for the effective protection of children's rights. Finally, the convention is definitely opting for the non-transferability, indivisibility, interdependence and mutual equality of these rights.

¹² *Journal of Laws* 1991 no. 120 item 526 — <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19911200526> (accessed 12.12.2014).

¹³ *Journal of Laws* 2000 no. 107 item 1128 — <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20001071128> (accessed 12.12.2014).

The Convention on the Rights of the Child is based on four basic principles. The first two of these are general and apply to the entire human population, two others — relate to children in a special way.

The first two universal principles indicate toward the prohibition of discrimination and the right to survival and development. The first rule defines the prohibition of the “discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”¹⁴ The second rule defines the right to development also in terms of physical, emotional, psychosocial, cognitive, social and cultural development.

Two detailed and specific rules apply to priority character of actions in the best interests of the children, taken both by the state, administrative or judicial authorities, as well as by family and to possibility of the free expression of views and opinions of children who should be heard and treated with due respect.

Built on these principles, the rights of children create a detailed catalogue which includes civil, social, cultural and political (for older children) rights. An exception is the exclusion of the economic rights which have been left under the supervision of adults.

The rights of the child:

- the right to life and development,
- the right to a civil status,
- the right to acquire a nationality,
- the right of the child to a family,
- the right to know his or her genetic origin, the right to be educated by the biological parents;
- the right to the freedom of religion and believes,
- the right to the freedom of expression of views, which are to be respected by adults;
- the freedom from physical or mental violence, exploitation, cruelty and sexual abuse;
- the freedom from direct participation in hostilities (up to 15 years of age),
- a ban on the use of the death penalty or life imprisonment sentence against a child.

Social rights:

- the right to benefit from social security,

¹⁴ THE UNITED NATIONS: Convention on the Rights of the Child, November 20, 1989 (henceforth: CRC), Art. 2,1 — <http://www.un.org/documents/ga/res/44/a44r025.htm> (accessed 12.12.2014).

- the right to the enjoyment of the highest attainable standard of health care,
- the right to a decent standard of life,
- the right to rest and leisure, to engage in play and recreational activities.

Cultural rights:

- the right to education (primary education and secondary education compulsory and available free to all),
- the right to the variability of his or her rights,
- the right to use the culture,
- the right of ethnic minorities to enjoy their own culture, to profess and practice their own religion.

Political rights:

- the right to freedom of association and to freedom of peaceful assembly,
- the right to freedom of expression, freedom to seek and impart information and ideas of all kinds;
- the right to freedom of thought, conscience and religion.¹⁵

Recognizing the significance and importance of the above-mentioned legal acts, one could propose some critical comments, which arise from the particular option of the philosophy of law. Firstly, it seems that the fact of a specific definition of the child, as contained in the convention may be worrisome: “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”¹⁶ When it comes to the upper age limit for being a child, it is defined here precisely and unequivocally, however the convention lacks the wording that the child exists from the moment of conception. Another article provides: “[...] the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents,”¹⁷ might suggest that the lower limit to recognize that one is a child is the moment of birth. In this perspective — the rights of the fetus and an unborn child are completely abolished with the claims of others (in the form of the so-called right to abortion).

The problem remains within philosophical justification of these laws — a reference to the principle of non-discrimination and the right to development do not indicate an anthropological basis of these laws. If we are commanded to respect every human being equally, regardless of his

¹⁵ See CRC, Part I (articles 1—41).

¹⁶ CRC, Art. 1.

¹⁷ CRC, Art. 7,1.

beliefs, race, age, or ethnicity, or one points to the right of personal development, it is certainly a good idea to justify such wording — demands with the fundament of human dignity.

These dilemmas, characteristic for the concept of human rights, stemming from the perspective of positive law and not from the legal and natural perspective, have and may have their significance.

This is probably the reason why in practical dispute concerning human rights, their interpretation is used to manipulate. They are respected depending on this manipulation. In practice, it happens that the rights of the child are manipulated by ideologues. Today, for example, it takes the form of the withdrawal of parents' rights to educate their child because of "an offense," which is considered to be the use of any type of physical punishment, oral, harsh scolding, but also a refusal to replace sex education institutions with education for love, which is the prerogative of parents through the sex education, which becomes the ideological policy operation. Contemporary situations where parental rights are taken away on the basis of a slap, disagreement for the "gender" education, or due to a "thought crime" (externalized attitude stereotypically defined as homophobia, xenophobia) seem to interfere with one of the articles of the Convention: "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child."¹⁸

These situations, showing not so much the legal gaps, but the gap in anthropological-axiological basis of the laws, point to the need to take the voice of the Church into account.

3. A concept of the rights of the child by Saint John Paul II

John Paul II, who in his consistent personalism and relentless struggle for the "culture of life" lavished every man equally and with the same commitment, used a kind of a preferential option when it comes to children and adolescents.

Stressing that the man is the first and the main aim of the Church, he noticed the uniqueness of this aim, which is the child. This uniqueness was proved to John Paul II by the fact of the Incarnation of God-Man:

¹⁸ CRC, Art. 7.

“The highly favoured Son of God becomes present among us as a newborn baby; gathered around him, the children of every nation on earth feel his eyes upon them, eyes full of the Heavenly Father’s love, and they rejoice because God loves them. People cannot live without love. They are called to love God and their neighbour, but in order to love properly they must be certain that God loves them.”¹⁹

The fact of the Incarnation of God and his coming into the world as a child was not symbolic in nature, but thoroughly real and existential. Jesus, in his mature teaching, has made a clear promotion of the dignity and rights of the child. John Paul II, during his apostolic journey to Poland in 1979, said: “No one of us can ever forget the following words of Jesus; ‘Let the children come to me, and do not hinder them’ (Lk 18:16). I want to be, before you dear Polish children, a living echo of these words of our Saviour, particularly in this year in which the Year of the Child is celebrated throughout the whole world. With my thought and with my heart I embrace the infants that are still in the arms of their fathers and mothers. May those loving arms of parents never cease to exist! May the number be extremely small on Polish soil of those who are known as ‘social’ orphans, coming from broken homes or from families that are unable to educate their own children. May all the children of pre-school age have easy access to Christ. May they be prepared with joy to receive him in the Eucharist. May they grow ‘in wisdom and in stature, and in favour with God and man’ (Lk 2:52), as he himself grew, in the house of Nazareth.”²⁰

The Pope’s words in a very simple, yet fundamental, way, point to a genetic natural family environment as a factor necessary for the full development of the individual child. One can see the Pope’s utterance, on the one hand, as only to see the child as a person in the community of the nation, as a human being endowed with dignity in the community of social life subjects. One can also, and no doubt one should, see this fundamental relationship between parents and children, which creates the family community. This topic in the days of John Paul II and the beginning of his pontificate gained its momentum due to increasing plague of divorces, social orphanhood and breakdown of family ties. Today, it gains its dramatic concretization in a form of ideological currents, which redefine the term and model of marriage, in this way taking away from the child the possibility to grow in the natural environment comprised of the mother and the father (and not the “parent 1” and the “parent 2”).

¹⁹ JOHN PAUL II: *Letter to Children in the Year of the Family* “Tra pochi giorno”, December 13, 1994 — http://w2.vatican.va/content/john-paul-ii/en/letters/1994/documents/hf_jp-ii_let_13121994_children.html.

²⁰ JOHN PAUL II: *Apostolic Journey to Poland, Welcoming Ceremony in Gniezno. Address* (June 3, 1979), no. 2.

Emphasizing this genetic relationship between the child and parents, Saint John Paul II also confirmed and emphasized, in the new cultural context, the fundamental rights of the child and the basic duties of parents. Their mutual relation is governed by the principle of subsidiarity, which determines both the authority and duties of parents toward the child, but also equally their inviolable skills and powers in relation to higher authorities and institutions (school, state). Speaking on the rights of the child, John Paul II noticed the right to spiritual development and associated with it the conditions for its implementation, including education for a life of faith, the right to pray and the right to the use the sacraments. Rights treated this way were seen not solely in their judicial aspect — their reference point was and remained the authentic good of the child, his or her dignity and destiny. One could say that this is not due to the negative principle — the prohibition of discrimination, as stipulated by the convention — but because of the positive principle: affirmation of good and dignity of the child, John Paul II derived the rights of the minors.

Pointing to the genealogy of the person and the genealogy of the child, invariably associated with marital community — a community of love, open to the gift of life, Saint John Paul II already showed children the need to find the meaning of life as a recognition of God's calling. In this way, not only did he set the tasks for them as a requirement for general human freedom and responsibility, but also showed the child in a view of a perspective of the man searching for the meaning of life. Not only the origin of life, but also its purpose is a measure of human dignity. Both the initial and final points of human existence measure the good in human life, including the child's life. "God calls every person, and his voice makes itself heard even in the hearts of children: he calls people to live in marriage or to be priests; he calls them to the consecrated life or perhaps to work on the missions... Who can say? Pray, dear boys and girls, that you will find out what your calling is, and that you will then follow it generously."²¹ Here one can see what real fatherly love is. Such love understands, leans with care, supports with a good word, but is also very trusting, and based on that trust it sets tasks, shows and thus arises and allows growth.

Child revealed — according to John Paul II, as may be inferred from his speech — authentic beauty and value of human dignity, which is why the Pope appealed to adults: "The child is the beauty of human existence. The beauty. Jesus affirmed this with his actions, as I said at the beginning.

²¹ JOHN PAUL II: *Letter to Children* — http://w2.vatican.va/content/john-paul-ii/en/letters/1994/documents/hf_jp-ii_let_13121994_children.html (accessed 12.12.2014).

The beauty of the child! Let us still be stared at the beauty of the child, us, the adults.”²²

The beauty revealed and manifested dignity typical to a child. It was the foundation and even a kind of synonym for the rights of the child. Perhaps because of these ambiguities in interpretation, the Pope stated: “The Church [...] not always using the recent term for the rights of the child — consistently considered the child not as a unit that can be used, not as an object, but as a subject of inalienable rights, as an emerging and developing personality, which has its own value and its particular destiny.”²³

Subjectivity, exceptional value as a human being — a person (that is the dignity of the human person) and destiny — these are the determinants that protect the child (the human being) from the utilitarian use and instrumentation.

It is easy to see that regardless of the catalogue of formulated laws, precisely in this respect — a full recognition of the status of the child, along with all its consequences, there appears a dramatic dispute over the life of the child, especially an unborn child.

Saint John Paul II, in this respect, represented an utterly and absolutely clear standpoint. He expressed it in a myriad of his speeches. In the *Letter to Families* of 1994, he made it clear that no human authority has the right to grant permission to kill another human being, also the one that is still in the mother’s womb. The law of God in relation to human life is clear and categorical. God commands: “Thou shalt not kill” (cf. Exodus 20:13). No human lawgiver can therefore establish laws that would have questioned the fundamental right to life of another human being, regardless of the stage of his biological or social development. “How can one morally accept laws that permit the killing of a human being not yet born, but already alive in the mother’s womb? The right to life becomes an exclusive prerogative of adults who even manipulate legislatures in order to carry out their own plans and pursue their own interests. We are facing an immense threat to life: not only to the life of individuals but also to that of civilization itself. The statement that civilization has become, in some areas, a ‘civilization of death’ is being confirmed in disturbing ways. Was it not a prophetic event that the birth of Christ was accompanied by danger to his life? Yes, even the life of the One who is at the same time Son of Man and Son of God was threatened.”²⁴

²² IDEM: “Speech given in the pediatrics hospital, Olsztyn, June 6, 1991,” no. 7. In: JAN PAWEŁ II: *Pielgrzymki do Ojczyzny*. Kraków 2005, p. 663.

²³ J. GÓRNY: *Jan Paweł II Wielki. „Z potrzeby serca”*. Olsztyn 2005, p. 128.

²⁴ JOHN PAUL II: *Letter to Families “Gratissimam sane”* (February 2, 1994), no. 21.

John Paul II expressed it even more strongly in his encyclical on life: “Among all the crimes which can be committed against life, procured abortion has characteristics making it particularly serious and deplorable. The Vatican II defines abortion, together with infanticide, as an ‘unspeakable crime’.”²⁵ “But today, in many people’s consciences, the perception of its gravitas has become progressively obscured. The acceptance of abortion in the popular mind, in behaviour and even in law itself, is a telling sign of an extremely dangerous crisis of the moral sense, which is becoming more and more incapable of distinguishing between good and evil, even when the fundamental right to life is at stake. Given such a grave situation, we need now more than ever to have the courage to look the truth in the eye and to call things by their proper name, without yielding to convenient compromises or to the temptation of self-deception.”²⁶

The Pope’s words reveal the tradition of the Catholic Church teaching on the right to life. John Paul II not only argued with more and more increasing, in his time, claims of the “reproductive rights,” but in a way that did not allow any objections, proclaimed the right to life. Referring to *nasciturus* — a conceived but unborn child, became and remains a measure of not only the legal culture, but a measure of civilization and a measure of the democratic system.

Today these rights are being replaced by freedom claims of absolute, anarchic provenance, which does not take into account the horizon of truth about another person as a subject of fundamental rights.

In the era of the bioethical discussions, especially those most vulnerable and essential — those on the life of the unborn threatened by murder — through the act of abortion, or threatened by manipulation reaching to the elimination of in vitro fertilization in the act of reproduction, “rights to freedom,” “rights to self-determination” of a woman about her fetus or embryo are often invoked. These rights are implemented on the basis of arbitrary and hypocritical, in relation to the truth of other human, decisions. They become an expression of the dominance of the strong against the weak. They become an expression of the totalitarian submission of the weak to the strong. They, *de facto*, become an act of lawlessness. In the face of such option of positive law philosophy, it is worth to look at, growing out of the mainstream of legal and natural, yet deeply personalistic, conception of human rights by John Paul II, the Pope of human rights.

²⁵ EV no. 58; VATICAN II: *Pastoral Constitution on the Church “Gaudium et spes,”* no. 51: *Abortus necnon infanticidium nefanda sunt crimina.*

²⁶ EV no. 58.

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PAWEŁ BORTKIEWICZ

Rights (Claims) of Parents and the Child's Welfare

Summary

In the contemporary bioethical disputes, which are at the same time political, what is often put forward is the argument of the right to have or not have a child. According to the supporters of this right, it is a consequence of widely promoted reproduction rights (which are an expression of the so-called reproductive medicine). Such a perspective constitutes an expression of a peculiar asymmetry — claims with relation to the child do not correspond with the rights of the child. The mentioned idea, visible in the acts of the codified law, is the subject of Church criticism. In place of the claims with relation to the child, the Church, by the means of John Paul II's words, formulates an original idea and the charter on the rights of the child.

PAWEŁ BORTKIEWICZ

Les droits (revendications) des parents face au bien de l'enfant

Résumé

Dans les litiges bioéthiques et politiques contemporains, on avance un argument relatif au droit d'avoir ou ne pas avoir d'enfant. D'après les personnes qui réclament ce droit, il est la conséquence des droits reproductifs largement propagés (résultant de la soi-disant médecine reproductive). Une telle perspective manifeste une asymétrie particulière, à savoir les droits de l'enfant ne correspondent pas aux revendications envers l'enfant. La conception mentionnée, visible dans les actes du pouvoir réglementaire, constitue l'objet de la critique de l'Église. En recourant à l'enseignement de Jean-Paul II, l'Église, au lieu des revendications envers de l'enfant, formule une conception originelle et une charte des droits de l'enfant.

Mots clés : droit d'avoir un enfant/de ne pas avoir d'enfant, santé reproductive, droits reproductifs, positivisme juridique, droits de l'enfant

PAWEŁ BORTKIEWICZ

I diritti (le rivendicazioni) dei genitori e il bene del bambino

Sommario

Nelle controversie bioetiche e nel contempo politiche dei nostri tempi, spesso viene presentato l'argomento del diritto ad avere o non avere figli. Secondo i postulatori di tale diritto è la conseguenza dei diritti riproduttivi ampiamente divulgati (che costituiscono l'espressione della cosiddetta medicina riproduttiva). Una simile prospettiva esprime un'asimmetria particolare — alle rivendicazioni nei confronti del bambino non corri-

spondono i diritti del bambino. La concezione menzionata, visibile negli atti di legge emanati, è oggetto della critica della Chiesa. Al posto delle rivendicazioni nei confronti del bambino, la Chiesa, con le parole di Giovanni Paolo II, formula una concezione originale e la carta dei diritti del bambino.

Parole chiave: diritto ad avere/non avere figli, salute riproduttiva, diritti riproduttivi, positivismo giuridico, diritti del bambino