

LABOR et EDUCATIO

nr 6/2018

STUDIES

Marek Klimek*

ORCID 0000-0001-5908-4112

Pedagogical University of Cracow, Poland

The Right to Work in International Law of the Twentieth Century

Prawo do pracy w dokumentach prawa międzynarodowego XX wieku

Introduction

In the entire system of international law, the idea of the protection of human rights is of special significance. Especially in the second half of the twentieth century, the issue was addressed by numerous declarations, pacts, conventions, resolutions and international agreements. A very significant role was played by the United Nations (UN), although one should bear in mind other international entities and organisations, both global and regional, in this regard. Furthermore, the area of human rights became regulated and protected by the national legislations of numerous countries, especially by their constitutions. Taking this into account, one should, however, pay particular attention to the effectiveness and efficiency of the regulations in question, i.e.

* **MAREK KLIMEK**, Ph.D., Associate Professor, Institute of Social Affairs, Pedagogical University of Cracow, Poland; e-mail: marek.klimek@up.krakow.pl

the degree to which they have actually influenced respect for human rights and prevented their violation. One of the most essential human rights, regulated by numerous international legal documents, is the right to work. This paper aims to define the position of the right to work in the system of international law in twentieth century.

The concept of human labour

Undoubtedly, the right to work constitutes one of the fundamental human rights. Work is not only a way to make a living, but also one of the essential tools for comprehensive human development. Moreover, performing work is one of the most important determinants of an individual's status in society. In his encyclical, *Laborem exercens*, John Paul II states that labour denotes "any activity performed by a human being, regardless of its nature and circumstances, i.e. any human activity which can and should be regarded as work among a variety of activities they are capable of and predisposed to do by their very nature, by their humanity" (John Paul II, 1995). Furthermore, also within the framework of Catholic social teaching, Czesław Strzeszewski, characterising the nature of labour, writes that "it is a free, although naturally necessary, human activity stemming from their sense of duty, combined with effort and joy, and aiming to create socially useful spiritual and material values" (Strzeszewski, 1994, p. 580). Henryk Januszek and Jan Sikora define work as "every purposeful activity which is socially useful or significant, ensuring a specific position in society" (Januszek and Sikora, 1994, p. 9). On the other hand, in *Dictionary of Psychology*, Norbert Sillamy emphasizes that labour is "a physical or mental activity one purposefully imposes upon themselves. When performed willingly and spontaneously, it can enrich one's personality (...), it usually gives a person a sense of belonging to the society, makes them feel better in comparison to others like them, and allows them to be financially independent" (Sillamy, 1994, p. 218).

Work in Catholic social teaching

Catholic social teaching emphasizes work as a human calling. It results from the very nature and essence of humanity. Through work, a human being develops and realises their sense of existence. As Dawid Chroma points out, "the

Catholic social doctrine emphasizes the personal nature of work, its influence on self-improvement, and its relation to the human person's dignity" (Chroma, 2014, p. 232). The subject of work, in particular the protection of workers' rights, has occupied an important place in Catholic social teaching for a long time. Nevertheless, increased threats resulting from the mass industrialisation and widespread violation of labour rights in the nineteenth century forced the Church to regularly reflect on the matter. In a more systematic way, the subject started to be addressed in popes' social encyclicals, starting in 1891 with Leon XIII's *Rerum novarum*. John Paul II's teaching has a special place in the religious doctrine of work in the Roman Catholic Church. The encyclical *Laborem exercens* (issued in 1991 on the 100th anniversary of the encyclical *Rerum novarum*) discusses the problem of work in theological, social, philosophical, economic and ecological terms. The Pope differentiates between the subjective and objective nature of work, simultaneously emphasising that one should look for sources of the dignity of work in its subjective dimension (John Paul II, 1995, p. 20–23).

The international system of protection of human rights and the right to work

The idea of human rights in international law was developed to the greatest extent in the second half of twentieth century, upon the establishment of the UN. The Charter of the United Nations of 26 April 1945 expressed the international community's belief in fundamental human rights and the dignity and value of the human person. Among the UN's most important goals, Article 1 of the Charter indicated the necessity of international cooperation with regard to "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" (The Charter of the United Nations, 1945, Art. 1.). The UN General Assembly of 10 December 1948 adopted the Universal Declaration of Human Rights. Although the document did not impose obligations on particular States Parties, it determined a broad spectrum of human rights, as well as protection standards "achievable to all peoples and nations." The Declaration states that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" (The Universal Declaration of Human Rights,

1948, Introduction). The Universal Declaration of Human Rights was also the first international document to express the right to work. According to Art. 23 § 1 of the Declaration „everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment” (The Universal Declaration of Human Rights, 1948, Art. 23 § 1).

The tense international relations after World War II (the period of the Cold War) and the clash of different visions of human rights contributed to the fact that the UN adopted subsequent documents in the area of human rights on 16 December 1966. Those were the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The first, similar to the Universal Declaration of Human Rights of 1948, is also based on the idea of absolute human rights, directly deriving them from the inherent dignity of the human person. Pursuant to Art. 3, “the States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant” (The Universal Declaration of Human Rights, 1948, Art. 23 § 3). The right to work is laid down in Art. 6 § 1 of the second. Accordingly, the signatories to the Pact “recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard this right” (The International Covenant on Economic, Social and Cultural Rights, 1966, Art. 6 § 1). In turn, Art. 6 § 2 of the Pact stipulates that “the steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual” (The International Covenant on Economic, Social and Cultural Rights, 1966, Art. 6 § 2). Furthermore, the Pact lists the following guarantees: the right to the enjoyment of just and favourable working conditions (Art. 7) and the right to form trade unions (Art. 8).

In regard to the strengthening of the right to work and its protection in practice, an essential role is played by the International Labour Organisation (ILO). Established in 1919, it is the oldest active international organisation in the sphere of social policy. Nowadays, as Katarzyna Zamorska emphasizes, the

organisation is a significant platform for dialogue and action for social justice, including, above all, the safeguarding of employees' rights (Zamorska, 2006, p. 363). The principal assumptions and tasks of the international system of the protection of labour relations are defined in the Declaration of Philadelphia of 10 May 1944, which simultaneously constitutes an annex to the Constitution of the International Labour Organisation. According to the Declaration, the most important principles adopted by the organisation are as follows:

- labour is not a commodity;
- freedom of speech and of assembly is an indispensable prerequisite for sustainable progress;
- poverty anywhere is a threat to prosperity everywhere;
- and the fight against poverty should be pursued both by particular states and through international cooperation. Moreover, the Declaration underlines everyone's right to improve material prosperity, to spiritual development in the context of freedom, and to dignity, economic security and equal opportunities (Kuzniar, 1992, p. 91–92).

The ILO has also adopted numerous recommendations, resolutions and other documents addressing the safeguarding of the right to work. One of them is Recommendation No. 169 of 1984, concerning employment policy, which indicates the necessity to promote full, productive and freely chosen employment, which should be regarded as a means of achieving, in practice, the realisation of the right to work (Chroma, 2014, p. 234). Convention No. 122 of 1964 on employment policy, Convention No. 29 concerning forced or compulsory labour, Convention No. 111 concerning discrimination in respect of employment and occupation (Chroma, 2014, p. 234), as well as Convention No. 168 of 1988 concerning employment promotion and protection against unemployment (Chroma, 2014, p. 234) should also be mentioned. As Jerzy Wratny correctly points out, although the ILO does not directly define the concept of the “right to work,” an analysis of numerous conventions and other documents issued by the organisation makes it possible to indicate the essential components of the right in question, on which it places special emphasis. These are: freedom to work, no discrimination with regard to employment and occupation, equal pay for men's and women's equal work, pro-employment policy, addressed by a number of conventions on job matching, professional training, employment of the disabled, and the payment of unemployment

benefits (Wratny, 2005, p. 42). It should be underlined that the role of the ILO in the construction of the system of labour law and the safeguarding of employees' rights is significant. It results both from its established position in the system of international entities (related to the over 100-year-old tradition, among other factors) and the performance of supervisory authorities appointed by it.

Other than the universal system, regional, continental and specialised systems play an important role in the process of the protection of human rights. In this respect, Krzysztof Motyka indicates a specific "advantage" of such systems over the universal one. This is due to the fact that, in his opinion, they gather ideologically, culturally and civilizationally close states, which makes developing consistent solutions with regard to the protection of human rights, as well as mechanisms to monitor their observance easier to a degree (Motyka, 1999, p. 40). In Europe, an important institution involved in the process of the protection of human rights is the Council of Europe (CoE), established in 1949. Its chief document in this area is the European Convention for the Protection of Human Rights and Fundamental Freedoms adopted on 4 November 1950 in Rome. The Convention attaches great significance to the protection of civil and political rights, and the list of rights it contains brings it close to the International Covenant on Civil and Political Rights. The CoE's international legal act which defines the right to work most fully is the European Social Charter. It was adopted by its member states in 1961 in Turin.¹ It defines the right to work as "the opportunity to gain a living by means of a freely chosen occupation" (The European Social Charter, 1961, Part 1, Item 1). Moreover, the signatories of the Charter are obliged to realise it. The list of rights contained in the Charter includes: the right to work (Art. 1), the right to just working conditions (Art. 2), the right to safe and healthy working conditions (Art.3), the right to fair compensation (Art. 4), the right to organise (Art. 5), the right to bargain collectively (Art. 6), the right of children and young persons to protection (Art. 7), the right of employed women to protection of maternity (Art. 8), the right to vocational guidance (Art. 9), the right to vocational training (Art. 10), the right to protection of health (Art. 11), the right to social security (Art. 12), the right to social and medical assistance (Art. 13), the right to benefit from social welfare services (Art. 14), the right of disabled persons to independence, social integration and participation in the life of a community (Art. 15), the right

¹ Additionally, a revised version of the European Social Charter was adopted in Strasbourg in 1996.

of the family to social, legal and economic protection (Art. 16), the right of children and young persons to social, legal and economic protection (Art. 17), the right to engage in a gainful occupation in the territory of any one of the other State Parties (Art. 18), the right of migrant workers and their families to protection and assistance (Art. 19), the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Art. 20), the right to information and consultation (Art. 21), the right to take part in the determination and improvement of working conditions and working environment (Art. 22), the right of elderly persons to social protection (Art. 23), the right to protection in cases of termination of employment (Art. 24), the right of workers to the protection of their claims in the event of the insolvency of their employer (Art. 25), the right to dignity at work (Art. 26), the right of workers with family responsibilities to equal opportunities and treatment (Art. 27), the right of workers' representatives to protection in the undertaking and to be afforded appropriate facilities to carry out their functions (Art. 28), the right to information and consultation in collective redundancy procedures (Art. 29), the right to protection against poverty and social exclusion (Art. 30), and the right to housing (Art. 31). As Zamorska notices, "the document (the European Social Charter) is worthy of particular attention due to the fact that the right to work is directly included in social law. At the same time, it is presented in the most specific way compared to similar provisions in other documents of the kind. It is also noticeable that the right to work is linked to other articles of the European Social Charter, which should be interpreted as meaning that even the provisions which do not seem to pertain directly to the right to work, can only be satisfied on one condition – by guaranteeing the right to work" (Zamorska, 2006, p. 364).

It should also be emphasised that the question of the right to work and the safeguarding of employees' rights falls within the scope of interest of European Union (EU) law, although, as Chroma remarks, the right "is not stated expressly either in primary or derived law" (Chroma, 2014, p. 234). The Community Charter of the Fundamental Social Rights of Workers of the Council of Europe, signed in 1989, which addresses employees' rights, especially the issues related to labour law, including protection against unjustified dismissal, protection of health, occupational safety and health, sickness benefit entitlement, professional training entitlement etc., is of great significance. It contains provisions referring to employees' fundamental freedoms (i.e. freedom of movement,

organising and collective bargaining), as well as regulations concerning anti-discrimination in the labour market (Zamorska, 2009, p. 149-150). The Charter of Fundamental Rights of the European Union is a particularly important collection of fundamental human rights. It was adopted on 7 December 2000 during the Summit of the Council of Europe in Nice on behalf of three EU bodies: the Parliament, the Council and the European Commission. In 2004, it was included in the Constitutional Treaty of the European Union. Currently, it plays an important role in the caselaw of the European Court of Justice. According to Art. 1 of the Charter, human rights are based on the dignity of the human person. It constitutes an inviolable value, and, as such, should be respected and protected. In line with the Preamble, “conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law” (The Charter of Fundamental Rights of the European Union, 2000, Preamble). It also addresses rights related to freedom, safety, respect for marriage and family, equality, and no discrimination of the elderly and the infirm. Furthermore, it lists economic, social, political and judicial rights (Klimek, 2010, p. 38). As far as workers are concerned, Art. 15 § 1 of the Charter states that everyone has the right to work and to pursue a freely chosen or accepted occupation, while Art. 15 § 2 stipulates that every citizen of the EU has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any member state. Art. 15 § 3 ensures equal treatment of all workers and confirms the right of nationals of third countries who are authorised to work in the territories of the Member States to working conditions equivalent to those of citizens of the EU (The Charter of Fundamental Rights of the European Union, 2000).

The right to work in domestic law (on the example of Poland)

The protection of the right to work is not a province exclusive of international law. Within the framework of domestic law, the issues related to labour law are regulated by the Constitution, acts and other legislation. Although the Constitution of the Republic of Poland of 2 April 1997 does not directly address the right to work, according to Art. 24, “work shall be protected by the Republic of Poland. The State shall exercise supervision over the conditions of work” (Constitution of the Republic of Poland, 1997, Art. 24).

Art. 65 § 1 ensures the freedom to choose and pursue an occupation, and to choose a place of work. Art. 65 § 5 is of special significance, as it stipulates that “public authorities shall pursue policies aiming at full, productive employment by implementing programmes to combat unemployment, including the organization of and support for occupational advice and training, as well as public works and economic intervention” (the Constitution of the Republic of Poland, 1997, Art. 65 § 5). Moreover, the Constitution lists other rights directly related to the protection of workers: the freedom of association in trade unions, employers’ organisations and other bodies (Art. 59), the right to safe and hygienic working conditions (Art. 66 § 1), the right to holiday leave (Art. 66 § 2), the right to social security whenever incapacitated for work or unemployed (Art. 67). The right to work also results from other domestic legislation. In this context, a special role is played by the Labour Code of 26 June 1974 (uniform text, Journal of Laws, 2018, Item 917 as amended), or the Act on Employment Promotion and Labour Market Institutions of 20 April 2004 (uniform text, Journal of Laws, 2018, Item 1265 as amended).

Conclusion

An assessment of the effectiveness of the international system of the protection of human rights, including the protection of the right to work, is a complex task. On the one hand, if the measure of the effectiveness of the system in question was the full realization of the individual’s rights and eliminating any violations thereof, or, at least – as Roman Wieruszewski points out – preventing the most extreme and brutal symptoms of their violation, the conclusions would be explicitly negative. Although sanctioned and codified in numerous international and domestic law documents, human rights have been continuously infringed (Banaszak, et al., 2003, p. 59). One should bear in mind, however, that despite these violations, a broad discussion on human rights, initiated in nineteenth century and continuing to this day, has contributed to significant progress in this area, and human rights have become an essential element of the international order, as well as a marker of democracy (Banaszak, et al., 2003, p. 59).

Human rights are integral and, for this reason, the right to work cannot be considered separately from other rights; all human rights constitute an integrated whole. The main task of the state and its bodies, as well as the entire

international community, is to build a social and economic order ensuring that citizens' rights are fully effective. The right to work is one of the fundamental social rights and ensuring it is a particular challenge for the state, and even for international entities (e.g. for the EU). It constitutes a moral challenge for the aforementioned entities with regard to providing the conditions for achieving fullest employment. Exercising this right enables the individual and their family to secure a material base necessary for their functioning and development. Work also ensures a person's comprehensive development and offers a chance for civilizational progress towards the fulfilment of the entirety of humanity's needs to the whole community.

Abstract: Ensuring the observance of human rights is a challenge faced by both international and domestic entities. This paper focuses on one of the individual's most important social rights, i.e. the right to work. The most essential international legislation of the twentieth century is discussed in the context of the aforementioned right. It occupies a special place in the documents of the United Nations, the International Labour Organisation, as well as the Council of Europe. Moreover, the Catholic social doctrine (especially John Paul II's teaching) emphasizes a person's right to work, which not only ensures their and their family's livelihood, but also facilitates their comprehensive development.

Keywords: work, human rights, right to work, United Nations, International Labour Organisation, Council of Europe

Streszczenie: Wyzwaniem zarówno dla organów międzynarodowych, jak i podmiotów krajowych, jest szczególna troska o przestrzeganie praw człowieka. W artykule uwagę poświęcono jednemu z najważniejszych praw społecznych człowieka, jakim jest prawo do pracy. Omówiono najważniejsze regulacje prawa międzynarodowego XX wieku w kontekście tego uprawnienia. Szczególne miejsce zajmuje ono w dokumentach Organizacji Narodów Zjednoczonych, Międzynarodowej Organizacji Pracy, a także Rady Europy. Również na gruncie katolickiej nauki społecznej (w tym zwłaszcza w nauczaniu Jana Pawła II) podkreśla się prawo człowieka do pracy, która nie tylko zapewnia środki egzystencji dla człowieka i jego rodziny, ale także umożliwia wszechstronny rozwój osoby ludzkiej.

Słowa kluczowe: praca, prawa człowieka, prawo do pracy, Organizacja Narodów Zjednoczonych, Międzynarodowa Organizacja Pracy, Rada Europy

References

- Banaszak, B., Bisztyga, A., Complak, K., Jabłoński, M., Wieruszewski, R., Wójtowicz, K. (2003). *System ochrony praw człowieka*. Kraków: Wydawnictwo Zakamycze.
- Chroma, D. (2014). Geneza prawa do pracy w prawie międzynarodowym i krajowym. *Acta Erasmiana. Z badań nad prawem i administracją*. 8, 229–240.
- Jan Paweł II (1995). *Encyklika Laborem Exercens*. Wrocław: Wydawnictwo Wrocławskiej Księgarni Archidiecezjalnej.
- Januszek, H., Sikora, J. (1994). *Socjologia pracy*. Poznań: Akademia Ekonomiczna w Poznaniu.
- Klimek, M. (2010). *Ochrona praw kobiet w systemie prawa międzynarodowego XX wieku*. In: Witkowska-Paleń, A., Maciaszek, J. (eds.), *Kobieta we współczesnym społeczeństwie*, (p. 27–42). Stalowa Wola: Katolicki Uniwersytet Lubelski Jana Pawła II. Wydział Zamiejscowy Nauk o Społeczeństwie. Instytut Socjologii.
- Kuźniar, R. (1992). *O prawach człowieka*. Warszawa: Wydawnictwo Naukowe PWN.
- Leon XIII, *Encyklika Rerum Novarum*. (1891). Retrieved from: <http://www.mop.pl/doc/html/encykliki/Rerum%20novarum.htm>
- Motyka, K. (1999). *Prawa człowieka. Wprowadzenie. Wybór źródeł*. Lublin: Wydawnictwo „Morpol”.
- Sillamy, N. (1994). *Słownik psychologii*. Katowice: Wydawnictwo Książnica.
- Strzeszewski, Cz. (1994). *Katolicka nauka społeczna*. Lublin: Redakcja Wydawnictw KUL.
- The Charter of the United Nations. (1945). Retrieved from: <http://www.un.org/en/charter-united-nations/>
- The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, no. 78, item 483).
- The EU Charter of Fundamental Rights. (2000). Retrieved from: http://www.europarl.europa.eu/charter/pdf/text_en.pdf
- The European Convention for the Protection of Human Rights and Fundamental Freedoms. (1950). Retrieved from: https://www.echr.coe.int/Documents/Convention_ENG.pdf
- The European Social Charter. (1961). Retrieved from: <https://rm.coe.int/168006b642>
- The International Covenant on Economic, Social and Cultural Rights. (1966). Retrieved from: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>
- The UN Universal Declaration of Human Rights. (1948). Retrieved from: http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf
- Wratny, J. (2005). *Obecność prawa do pracy w prawie międzynarodowym i europejskim*. In: Mazur, J. (ed.), *Prawo do pracy a polityka społeczna*, (p. 41–48). Lublin: Wydawnictwo KUL.

- Zamorska, K. (2006). *Prawo do pracy*. In: Florczak, A., Bolechow, B. (eds.), *Prawa i wolności I i II generacji*, (p. 359–377). Toruń: Wydawnictwo Adam Marszałek.
- Zamorska, K. (2009). *Prawa społeczne w Unii Europejskiej*. In: Florczak, A. (ed.), *Ochrona praw podstawowych w Unii Europejskiej*, (p. 143–161). Warszawa: Wydawnictwa Akademickie i Profesjonalne.

Date of the submission of article to the Editor: 25.06.2018

Date of acceptance of the article: 23.11.2018