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THE SUBJECTIVITY OF WORK AND THE NATURE OF EMPLOYMENT-BASED WORK

PODMIOTOWOŚĆ PRACY A CHARAKTER ZATRUDNIENIA PRACOWNICZEGO

Summary: Along with the recognition that human work involves human dignity, the employment relationship of workers should be viewed in terms of the relationship with the state. Indeed, the essence of employment-based work is that the employee's responsibilities are never entirely precise. Thus, the employee gives up his freedom to another entity. This entity can only be the state, exercising its powers through the workplace.

Keywords: human rights, freedom, workplace, public authority, community

Streszczenie: Wraz z uznaniem, że praca człowieka wiąże się z jego godnością, stosunek zatrudnienia pracowniczego należy postrzegać w kategorii relacji z państwem. Istotą zatrudnienia pracowniczego jest bowiem to, że zakres obowiązków pracownika nie jest nigdy do końca precyzyjny. A skoro tak, to pracownik oddaje swoją wolność innemu podmiotowi. Tym podmiotem może być jedynie państwo, wykonujące swoje kompetencje za pośrednictwem zakładu pracy.

Słowa kluczowe: prawa ludzkie, wolność, miejsce pracy, autorytet publiczny, społeczność

1. INTRODUCTORY REMARKS

The natural element of employment-based work is the obligation to perform it personally. This is because work always refers to the activity of a particular person. It should be added that there is no doubt that a „labour code employee" is obliged to perform work personally, although the word „personally" is not mentioned in the definition of the employment relation contained in the Article 22 of the labor code. I would, however, consider such

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a regulation excessive. The law would suggest that one can work in a non-personal capacity. And this is a mistake resulting precisely from the fact that for years we have been confusing the notion of „work" with the notion of „provision of a service".

Meanwhile, work is not one form of service. Since the adoption of the ILO Constitution in 1944, we have accepted that „labour is not a commodity".

The above is because the concept of „work" is inseparable from and focuses on the working man. Meanwhile, the concept of a „service" focuses on the needs of the recipient of the service. Therefore, one cannot „work non-personally" but one can „perform services non-personally for profit".

As already mentioned, „personal" is integrally related to work understood as human activity. This should be emphasized, because the word „work" has other meanings as well. When we say, for example, that „there is a lot of work to do", we do not refer to the performer, but to the existing need. On the other hand, in an action context, the word „work" is also sometimes used to refer to a machine. After all, we say that „the machine works".

For the above reasons, the work referred to in the Labour Code is derived from the right to work, i.e. a human right. And human rights belong to everyone separately and are inalienable. Thus, all the more so, work is always performed personally[1].

2. WORK AND MAN − AXIOLOGICAL RELATIONS

The claim that work cannot be separated from the person doing it is obvious to every working person, whether employed or self-employed. Doing work is an effort and commitment of body, mind and emotions. Yet when we turn to the language of legal analysis, we quickly forget this. In legal analysis, work becomes alienated from human beings. We suddenly forget that in doing the work someone has become physically tired. And we are completely indifferent to the fact that someone experienced certain emotional experiences while working. Both the good ones, when the effort brought satisfaction. And the unpleasant ones, when the person at work did not succeed or when he or she was hurt by the behavior or judgments of other people.

For supporters of the claim that the employment contract is a civil law contract, that is still for the vast majority of representatives of the Polish science, emotions and fatigue of the working person can not have a legal meaning. After all, in the private legal perspective, there are the effects of work that are bought[2]. The rest is, as it were, „next to" the labor purchase agreement, that is, it is legally indifferent[3]. In the world of transactions, and such is the "world of private law," all that matters is the value of the benefits exchanged. And this is not changed by the occasional interference of the state, which, on the basis of Article 5 of

[1] As to protected values, see, among others, A.M. Świątkowski, M. Wujczyk, *Bezpieczeństwo prawne i socjalne pracowników jako uniwersalna aksjologiczna podstawa współczesnego prawa pracy i zabezpieczenia społecznego. Wybrane zagadnienia* (eng. *Legal and social security of workers as a universal axiological basis of contemporary labor law and social security. Selected issues)*, [in:] M. Skąpski, K. Ślebzak (red.), *Aksjologiczne podstawy prawa pracy i ubezpieczeń społecznych* (eng. *Axiological foundations of labour law and social insurance)*, Poznań 2014, p. 164.

[2] I leave aside, of course, the situation in which, by law, wages are paid despite not having performed work.

[3] The above statement does not refer to the attitudes of the Polish labour law doctrine, because the experience of work is seen as an important element of reflection. The above refers to the axiology of the civil law contract.

the Civil Code, sometimes denies public protection to one of the parties to a contract in the name of justice and other values. This exception only confirms the rule.

Therefore, it must be forcefully said that in the Polish science of labor law we actually and universally adhere to the claim that work is detached from man, that is, that it is nevertheless a commodity. Meanwhile, the inseparable connection of work with man is obvious. As it was mentioned, work always involves the body, mind and emotions of the worker. After all, work is a human effort. Work cannot be done otherwise. And since this is so, legal reasoning about work must simultaneously apply to humans.

The above way of thinking is quite obvious for people who are more familiar with the social teaching of the Church. I think that it is worth referring to this heritage.[4] Before that, however, I will make a disclaimer that I try to make on every occasion when I refer to the Church's achievements in terms of its social diagnosis. After all, I am aware that some readers who are not connected to the Church, and especially to the Catholic Church, may feel uncomfortable accepting arguments coming from this intellectual circle. Especially since, I agree, the institutional Catholic Church has major credibility problems in the realm of social practice. It also has a long history of the gratuitous use of other people's labor in the form of serfdom, which I don't think it has ever explicitly condemned, just as it has not recognized manorial relations as slave relations. Malicious people claim that Christianity as an attitude of man towards man has not been accepted in Poland. Instead, the so-called popular piety took hold.

However, the above should not lead to belittling the fact that European culture is based on Christian values. And it is not about religious culture, but about social order. Therefore the views on work represented by the social teaching of either the Catholic Church or the Reformed Churches have a universal dimension, at least in European culture.

If we add to this that the Constitution of the Republic of Poland in principle directly refers to Christian values, although maintaining the secularity of the state, this direction of philosophical search about the relation between man and work is fully justified.

Having the above in mind, let us refer at this point to the most developed official statement of the Catholic Church, which is well known in the circles of Polish legal science encyclical Laborem Exercens. We read there that "work is the basic dimension of man's existence on earth", which is justified theologically. Since man was created in the likeness of God, he has to make the earth subject to himself, just as it is subject to the Creator. Therefore, the most important dimension of work is the subject dimension. Thus we read: "Work is the good of man – the good of his humanity – for through work man "not only transforms nature", adapting it to his needs, but also "realizes himself" as a human being and, in a way, "becomes more "human"[5].

Consequently, work is not a matter of man's choice, but his moral obligation. Let's look at another quote: "Work is, as has been said, *man's duty*, or *obligation, and this in a manifold*

[4] I refer here primarily to the work of A. Musiała, *Polskie prawo pracy a społeczna nauka kościoła. Studium prawno-społeczne* (eng. *Polish labor law and the social teaching of the church. A legal and social study*), Poznań 2019.

[5] In the literature the above is called self-creation of the subject, compare A. Sylwestrzak, *Filozofia pracy w encyklikach Leona XII i Jana Pawła II* (eng. *Philosophy of work in the encyclicals of Leo XII and John Paul II*), [in:] M. Seweryński, J. Stelina (red.), *Freedom and Justice in Employment. A memorial book dedicated to the President of the Republic of Poland Professor Lech Kaczyński*, Gdańsk 2012, p. 328.

sense. Man should work both because of the Creator's command and because of his own humanity, the maintenance and development of which demands work". I leave aside those statements of John Paul II in which he states that labor is not a "peculiar commodity"[6], for the above quotations make this conclusion obvious. But I would add the Pope's conclusion that the consequence of such reasoning must be to recognize „the primacy of work over capital." This is perfectly understandable, since work is a form of realization of the Christian's duty to follow the Creator, and capital is only the fruit of his labor.

The above statements clearly depart from civilistic thinking about employment. After all, the performance of work in the form of employment cannot nullify the fact that the worker expresses his humanity through work. In other words, performing work for pay does not reduce work to a commodity, for through work „man realizes himself as man and becomes more of a man." It is therefore impossible to separate the process of doing work from the person doing it. Let us also add that man realizes himself through all work, not only through paid work. The focus in this book on paid work is only due to its main thesis.

But this is not the only consequence of the personalistic vision of man in the context of work. For the above approach explains the existence of workers' rights stemming from the moral, and not merely contractual, obligation to perform work[7]. It also justifies restrictions on employer ownership[8], as well as the right of employees to co-manage their workplace[9]. Employees and employers are seen as partners working together rather than one for the other[10].

To the analysis of the encyclical Laborem Exercens, let us add other statements of the Church's social doctrine[11], using the study by Marta Gąsiorek and the literature she collected[12]. For the author shows a whole spectrum of statements from which it is clear that the

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[6] The above was not new in the social teaching of the church. Cf. John XXIII *Encyclical Mater et magistra*, n. 18, 1961.

[7] „If work – in the manifold sense of the term – is a duty or obligation, it is also a source of rights for the working man. These rights must be considered in the broad context of the totality of human rights, many of which have already been proclaimed by the competent international bodies and which are being increasingly guaranteed by the individual States in relation to their own citizens.". John Paul II, *Encyclical Letter Laborem Exercens*, p. 183.

[8] „In addition, in the Church's teaching property has never been understood in such a way as to constitute a social opposition to work (...) property is acquired primarily through work in order to serve work. This is particularly true of the ownership of the means of production. To separate them out as a separate group: ownership, in order to set it against „labor" in the form of „capital", and even more so to exploit labor, is contrary to the very nature of these means and of their ownership. They cannot be possessed in opposition to work, nor can they be possessed for the sake of possession, since the only legitimate title to possess them - whether in the form of private, public or collective property - is that they should serve work. And further: that, by serving work, they make possible the realization of the first principle in this order, which is the universal destination of goods and the right of their universal use. From this point of view, that is, from the point of view of human work and universal access to goods destined for man, it is not excluded that certain means of production be made social under appropriate conditions". Ibidem, p. 178.

[9] „(...) it should generally be emphasized that the working man desires not only due payment for his work, but also the inclusion in the very process of production of such opportunities that he may have the feeling that, even working in common, he is at the same time working ‚on his own"". Ibidem, p. 182.

[10] In a similar vein and using the phrase „empowerment of employees", writes M. Gładoch, showing the theoretical foundations of the right of employees to co-manage their workplace, although the author more strongly emphasizes the element of solidarity and morality, which, moreover, not only does not contradict this analysis, but complements it, cf. M. Gładoch, *Uczestnictwo pracowników w zarządzaniu przedsiębiorstwem w Polsce. Problemy praktyki i teorii na tle prawa wspólnotowego* (eng. *Employee participation in enterprise management in Poland. Problems of practice and theory against the background of Community law*), Toruń 2008, p. 40-50.

[11] I particularly refer to the first chapters of S. Wyszynski's book, *Duch pracy ludzkiej* (eng. *The spirit of human labour*), Warsaw 1957. In particular, I would like to draw your attention to those remarks of the author which show the influence of work on the development of the worker himself in a non-religious dimension.

[12] M. Gąsiorek, *Pojęcie pracownika w nauce społecznej kościoła, tekst niepublikowany, przyjęty do druku w* „Pra-

whole analysis of the phenomenon of work is made from the perspective of the perception of man, his personal attitude to work and work-related social relations[13], rather than work per se. The above results in many interesting conclusions for labor law, providing numerous axiological justifications for the existing state of the law.

Here I will use only a few conclusions, closest to the subject of this study. Thus, it is pointed out that work, as a duty to improve oneself as a person but also as a part of society, cannot be done properly without cooperation with other people[14]. Turning to the language of law: work has a social dimension and is cooperative by nature, not just by choice. The above provides an axiological justification for the democratization of enterprise structure, i.e., the influence of workers on the management of the workplace[15].

There is a strong emphasis on the personal nature of work, which is due to the nature of the work, since its performance requires the involvement of human workforce [16], and the power of work is in the person and is owned by the person [17]. The above exposes the inadequacy of the market perception of the value of labor. Indeed, the focus should be primarily on the person of the worker as a contractor[18], supplementing this perspective with such reference points as the common good, public utility, responsibility, rarity (talent), education, quality, efficiency[19]. Quoting after M. Gąsiorek and the literature she indicates: „For work is always intimately connected with the innate dignity of the human person, since, as a human activity, it flows from the subject, who is a person, and from there flows all its value and dignity"[20].

This coincides with the Second Vatican Council's Constitution Gaudium et Spes, which states: „Human activity originates from man and is directed towards him. For by working, man not only transforms things and communities, but also perfects himself.

In concluding this passage, I shall only mention that, in the perception of the relationship between man and work, at least at the level of theses, the views of the social teaching of the Church presented above do not differ significantly from the views of Karl Marx, the so-called materialist views. He too viewed work as a source of self-realization. The difference lies in the diagnosis of the desired state of social relations which are to make this self-realization possible. Marx was convinced that the development of large-scale industrial economic organizations had given rise to the phenomenon of the alienation of labor, which in practice made human development through work impossible. The remedy for this situation, in his view, could only be the

ca i Zabezpieczenie Społeczne" (eng. *The concept of a worker in the social teaching of the church*, unpublished text, accepted for publication in "Work and Social Security").

13 Cf. J. Majka, *Rozważania o etyce pracy* (eng. *Reflections on work ethic*), Wrocław 1986, p. 5.

14 Cf. C. Strzeszewski, *Praca ludzka, Zagadnienia społeczno-moralne* (eng. *Human labour, Socio-moral issues*), Wrocław 2004, p. 169.

15 Cf. J. Kondziela, *Osoba we wspólnocie. Z zagadnień etyki społecznej, gospodarczej i międzynarodowej* (eng. *The person in community. From issues of social, economic and international ethics*), Katowice 1987, p. 107-114.

16 J. Majka, *Chrześcijańska myśl społeczna* (eng. *Christian social thought*), Warsaw 1988, p. 341.

17 Leo XIII, *Rerum novarum*, 1891.

18 Z. Gałdziński, *Humanizacja pracy* (eng. *Humanization of work*), [in:] J. Krucina (red.), *Jan Paweł II. Laborem exercens. Powołany do pracy* (eng. *John Paul II. Laborem exercens. Called to work*), Wrocław 1983, p. 272.

19 F. Mazurek, *Wolność pracy, przedsiębiorczość, uczestnictwo* (eng. *Freedom to work, entrepreneurship, participation)*, Lublin 1993, p. 11.

20 Cf. A. Klose, *Katolicka nauka społeczna w zarysie* (eng. *Catholic Social Teaching in Outline*), Tarnów 1995, p. 37-38; I. Dec, *Elementy antropologiczne w encyklice Jana Pawła II Laborem exercens* (eng. *Anthropological elements in John Paul II's encyclical Laborem exercens*), [in:] J. Krucina (red.), *Jan Paweł II. Laborem exercens. Powołany do pracy* (eng. *John Paul II. Laborem exercens. Called to work*), Wrocław 1983, p. 285.

socialization of the economic process, which he saw as impossible under capitalist conditions[21]. It is worth mentioning because it explains why in the encyclical Laborem Exerecens there is a quite extensive passage proving that the protection of workers' rights and the dignity of work does not require the socialization of the means of production, although, as mentioned, it does justify the democratization of workplace management[22]. The above can be complemented by the legal construction of the workplace as a community, which, although it does not socialize property, does socialize labor relations.

3. LEGAL IMPLICATIONS OF WORK-HUMAN RELATIONSHIPS

Considering the inseparability of man from his work, that is, the connection of work with man's corporeality, mind, and emotionality, the statement "work for someone" would mean as much as "giving oneself to someone," that is, "giving one's freedom to someone.

And the statement "labor is a commodity" would mean as much as "man is a commodity".

Yet man is denied the right to dispose of himself to the extent that he subjects himself to personal dependence. Freedom is a human right. And human rights cannot be renounced. For this reason, work can be done "together" and not "for someone". Consequently, the entrepreneur and the employee appear as partners, one of whom, in the role of employer, directs the work performed together, and this direction results – as I try to prove – from the fact that the employer is granted public authority over the community of persons performing work, which will be discussed below.

I will stop here for a moment, because I am touching on a very important issue from the philosophical sphere, which is closely connected with the law in force. After all, the reader may notice at this point that the law of obligations is based precisely on the principle that a person can self-limit his freedom or property by entering into an obligation. How does this relate to the thesis expressed above that the law prohibits man from disposing of himself? Well, there is no contradiction here.

First, as I mentioned above, freedom of contract does not extend to personal property, such as freedom and health.

Secondly, the subject of obligations are services, that is, as has already been mentioned, the effect of work and not work. For this reason, the subject matter of a private obligation must be concretized in order for the obligation to be effective and enforceable. In other words, the obligee by his will must include the subject of the obligation, the condition for which is its definition. The above is moreover obvious, as the obligation must be verifiable to such an extent that its performance can be enforced in court. That is why it is possible for a person entitled to a benefit to claim the so-called substitute performance. It should be added that the law knows cases of so-called irreplaceable actions. In such a case however, the execution of the action can only be ordered by the court, through the system of coercive fines (The Article 1050 of the Code of Civil Procedure). The above shows, however, that the

[21] Por. L. Krzyżanowski, *Marksowska koncepcja alienacji* (eng. *Marx's concept of alienation*), „Acta Universitatis Nicolai Copernici. Philosophy" 1990, z. 11(197), p. 135.

[22] Although the encyclical speaks of an enterprise, there is no doubt that this is just another linguistic formulation. In legal terms, an enterprise cannot be democratized, for it is an ensemble of things and rights, not a human ensemble.

compulsion to perform a personal act, i.e. involving a person personally, always lies with the public authority.

Finally, we should add that the concretization of a civil obligation consists in its essence in the fact that the obliged person decides independently about the scope of his involvement. By the same token, he independently decides about his freedom, and even here the law introduces limits. In no case, however, does it relinquish its freedom in favour of the contracting party.

However, work consists of performing activities that cannot be defined in advance[23]. This is clearly indicated in Article 22 of the Labour Code, according to which an employee undertakes to perform work of a "specific type" (Article 22 of the Labour Code), and not to perform a specific activity. A civil-law obligation would be invalid if the subject of the performance was defined in this way, because it would not allow the entitled party to specify the content of the claim. An employee cannot be effectively demanded to perform "work of a specified type". Such a claim is unenforceable. On the other hand, an employee may be required to perform work that has first been made concrete by an order. In other words, performance of work in an employment relationship is only possible if the employer uses an act of direction.

Let us develop this thread. The point is that since man and work cannot be separated, acts of direction concerning work also concern man and his freedom. With the order to perform an act of labor, the superior unilaterally imposes on a person the obligation of a certain behavior, that is, he interferes with his freedom. And if we add the above-mentioned connection of work with the employee's body and psyche, we will immediately find connections with health and personal dignity, i.e. other indisputable personal goods.

It is therefore no exaggeration to say that the essence of the employment relationship is the partial (within the "type of work") placing of the employee's freedom at the disposal of the employer. The latter acquires the right to decide unilaterally, within the limits of the law, about a number of the employee's personal goods (e.g., freedom, health, privacy) and to interfere in his private life, for example, by imposing periods during which work is performed[24]. However, similar statements can be found in the literature. Will it be about making oneself available, as T. Liszcz writes[25], or whether we indicate the "biological" incorporation of a human being into rendering work, as A. Musiała writes[26], it is only a different way of describing giving up a part of one's freedom. Resistance to such reasoning stems

[23] Similarly A. Kijowski, *Przedmiot pracowniczego świadczenia ze stosunku pracy* (eng. *Object of employee benefits from the employment relationship*), „Ruch Prawniczy, Ekonomiczny i Socjologiczny" (eng. Legal, Economic and Sociological Movement) 1977, no. 1, p. 5-6. Similarly, the essence of the position of an employee is described by J. Jankowiak, although with a private law argumentation, cf. J. Jankowiak, *Pracodawcze prawo do wydania polecenia (wydawania poleceń) na tle prywatnoprawnej czynności trwałej*, „Państwo i Prawo" (eng. *The employer's right to issue an order (to give instructions) against the background of a private-legal permanent act*, "State and Law") 2001, no. 4, p. 86-88.

[24] M. Swiecicki also came to such a conclusion, claiming that the employing entity directs the employee's behavior within the boundaries of the contract and the law. The weakness of this statement, in my opinion, is that it does not indicate that the direction is also exercised on the basis of law. cf. M. Swiecicki, *Prawo pracy* (eng. *Labour Law*), Warsaw 1969, p. 331.

[25] T. Liszcz, *Podporządkowanie pracownika a kierownictwo pracodawcy – relacja pojęć* (eng. *Employee subordination versus employer direction - the relationship of the concept*), [in:] Z. Góral (red.), *Z zagadnień współczesnego prawa pracy. Księga jubileuszowa profesora Henryka Lewandowskiego* (eng. *Issues of Contemporary Labour Law. Professor Henryk Lewandowski's jubilee book*), Warsaw 2004, p. 150-151.

[26] Cf. A. Musiała, *Zatrudnienie nie pracownicze* (eng. *Non-employee employment*), Warsaw 2011, p. 171, 179-180, and the cited French literature.

from the fact that we equate the concept of employer with that of entrepreneur, failing to recognize the social position of the former and the private position of the latter.

At the same time, as has been mentioned, man cannot renounce his freedom, especially in favor of another man. However, man and his freedom can be subjected to public authority. It follows from the above that the employer not only is, but must be a subject of public law and performs activities within the scope of public authority, and the employment relationship is of a public nature, i.e. it is connected with the employer's subjection to public authority.

I would like to emphasize once again that our personal goods may be limited only by public authority in order to realize our rights and freedoms and those of others, and only to the extent that cannot be replaced by another action (subsidiarity) and to the extent that is necessary (proportionality). In any case, only then is the "commitment of a person to perform an activity not specified on the date of taking up employment" - which is what the employment relationship actually is, is safe for him. The above results from the fact that the public authority has a constitutional duty of care to the individual. Meanwhile, a party to a civil relationship may be guided solely by his own interests, provided that he does not violate the law, and in extreme situations - the so-called rules of social coexistence.

At this point I would like to remind the reader that the term "employer" is not synonymous with the terms "entrepreneur", "office", "social organization" and the like. An employer is a subject of social policy, a leader of a company community appearing only in relations of labor law, i.e. in social relations. An entrepreneur, on the other hand, is a person who appears in civil law relations in the so-called economic turnover, an office appears in power relations and so on.

As I mentioned above, based on the same employment contract, it is impossible to construct a claim for the performance of specific work. For the specific duties of the employee do not arise from the content of the employment contract (I am leaving aside completely exceptional cases to the contrary, resulting from practice, not from the requirements of the law), but from the employer's instructions, which are not covered by the contract. And the employer's orders are nothing else than acts unilaterally shaping the legal situation of the employee, i.e. individual acts of public law. At the same time, for failure to carry out an instruction, an employee may be punished by a penalty under Article 108 of the Labour Code, i.e. an administrative penalty[27].

4. FINAL REMARKS

The inextricable link between the exercise of paid activity and man justifies the statement that paid work may only be performed under conditions guaranteeing man's dignity, or, in very simple terms, subjectivity. For this very reason, work of a non-occasional nature can only be performed under conditions of employment or self-employment. Only in such relationships does a person retain this subjectivity.

In the case of self-employment, the issue is relatively simple. The self-employed person – to the best of his or her knowledge, economic and psychological possibilities – decides where and how he or she wants to work, and thus how to take care of his or her life, health, psychological comfort, and so on. In other words, in a situation of self-employment there

[27] Cf. K. Kulig, *Teoria pracowniczej odpowiedzialności porządkowej* (eng. *A Theory of Workers' Liability)*, Warsaw 2017, p. 183 et seq.

is no threat to the subjectivity of the worker. Although I emphasize that I am writing here about the absence of a formal threat, not a real one.

The situation looks different in the case of employee-based employment. By employee-based employment here I mean employment based on an employment relationship, which also includes clerical employment. In this case, a person works in a group and for an „employer", i.e. under conditions of dependence. Only in this case, too, there are numerous guarantees that the employee retains his subjectivity, at least on two levels.

Firstly, the workplace – as has already been mentioned – is a community. When a person joins it, he becomes a member of it, that is, he becomes its subject. On this account the state has granted him the right to co-determine the fate of this community, although the financial effects of this co-determination are usually borne by the entrepreneur or the state. In the case of Polish labour law, the above influence is realised mainly by trade unions, which have been granted rights in the sphere of establishing working conditions, benefits and remuneration. Although this is an indirect influence, this form of co-determination is typical for communities. Each of us is a member of a community, which is the Republic, but our influence on it is realized through the party system, social organizations and elections.

Therefore, it is irrelevant whether or not we use these tools in our daily practice. The crisis of the trade union movement comes from the omissions of workers who do not exercise their right to co-management. The same observation applies to workers' councils. However, the possibility of obtaining such influence exists at any time.

Secondly, the law imposes very numerous obligations on the employer, the sole purpose of which is that in the process of performing work, the dignity of the worker and its derivatives (life, health, family, personal development, etc.) should not be violated. This has already been mentioned. I will only remind you that a natural element of this model is to place the employer in the position of an entity exercising public authority over the community, that is, an entity whose aim and duty is to take care of the dignity of both employees and entrepreneurs. Contrary to the first intuition, which is quite common especially in Poland, properly exercised public authority is not intended to limit freedom, but to make it more real. The above presupposes the possibility of interfering with and restricting freedom, but only so that there may be more freedom in reality, and not only in form. This is the essence of the second generation of human rights. Just to give you an example: the power to exercise authority in the field of health and safety at work allows to protect life and health not only of third parties, but also of the addressee of the order; the order to work overtime in order to remove an emergency ultimately allows to protect workplaces; the order to perform work other than that agreed pursuant to Article 42 § 4 of the Labour Code in order to replace an absent person allows the latter, for example, to take care of a child without the risk of losing his/her job, which right or another similar right may be exercised in the future by the person who is currently replacing the absent person, and so on.

To sum up, the position of an employee is as subjective as that of a self-employed person. Working for the community, the employee is not only a partner of the entrepreneur, which justifies his influence on management, but he also works in a sense for himself. The prosperity of the community is also his prosperity, or at least increases the chances of his individual prosperity. At this point, I am referring to the legal model, and not to the actual implementation of the postulates arising from labor law. The fact that community thinking does not exist in Polish industrial rela-

tions is obvious to me. But it is difficult to state otherwise, since the science of Polish law has begun to notice community thinking seriously only for several years. So how should employees and entrepreneurs know about it. In all this the only good news is that the Polish labour law provides all necessary arguments to see this community, and thus the subjectivity of both the employee and the entrepreneur. It „emerges" e.g. from each institution of the collective labour law.

It is a certain paradox that an employee enjoys better protection of his dignity than a self-employed person. On the one hand, he is more limited in his freedom, but on the other, he enjoys a number of its guarantees. He does not decide on his working hours, but he is guaranteed an income, paid leave, technical means of life and health protection and the like.

Meanwhile, a person who exercises his freedom in the sense that he organizes his own work must at the same time take care of himself, while the state (employer) takes care of the employee. Thus, as A. Musiała very aptly writes, „freedom, which is the essence of non-work employment and its axiological basis, sometimes becomes an illusion due to dramatic economic inequality"[28].

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[28] Cf. A. Musiała, *Zatrudnienie…*, p. 47.

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