

**THE ISSUE OF EMPLOYMENT IN THE PROVISIONS  
OF THE CONSTITUTION OF THE REPUBLIC OF POLAND  
AND THE PREVENTION OF CRIME**

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ABSTRACT

Crime prevention is one of fundamental duties of Poland, resulting from provisions of its Constitution. While fighting against crime, the state can apply various measures, both repressive and preventive ones. Among the latter, an important role is played by an adequately pursued social policy, including employment policy which allows legal livelihood to be acquired. In this regard, the Constitution of the Republic of Poland contains many provisions relating to labour and employment, implementation of which may help to reduce crime. They mainly concern: a) conducting by the state of a policy of full and productive employment of citizens, b) ensuring minimum wages, c) putting work under state protection, d) social security of persons unable to work; e) right to information about the work of public servants. These provisions contain a preventive potential against crime, but the degree of its use, and thus its impact on reducing crime, will depend on the degree of implementation of these provisions, which is dependent, inter alia, on the State's financial resources that determine the manner in which the social policy of the country is conducted. Moreover we must remember that the lack of employment and the consequent lack of livelihoods is just one of many criminogenic factors. Therefore, in the process which leads a person to committing a crime (criminogenesis), unemployment can sometimes play a leading role, while at other times only a marginal, or may not participate in the process at all (not have any meaning.)

**Key words:** crime prevention, social policy, employment policy, criminogenic factors

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The obligation of public authorities to combat and prevent crime derives from the constitutional provisions that stipulate that the Republic of Poland ensure the freedoms and rights of persons and citizens and safety of its citizens (see: Article 5 of the Constitution<sup>1</sup>). A violation of personal or material safety of an individual is an offence, as it violates the freedoms and rights to which the person is entitled and which are legally protected, as well as rights which are the subject of a criminal attempt.<sup>2</sup> Since the fight against crime is built on a normative act with the highest legal force in the system of sources of law – the constitution, it should be included into the fundamental obligations (duties) of the state and of public authorities acting on the state's behalf.

In a fight against crime, the state can apply various measures, both repressive (especially legal and criminal) as well as preventive ones. Among the latter, an important role is played by an adequately pursued social policy aimed at members of a society, satisfying many of their everyday needs and related problems, the lack of a legal solution to which is often the cause of criminal behaviour. A part of a social policy is the policy of employment (job market), whose objective is to create conditions for maintaining a balance on the work market and the efficient use of labour. The employment policy is focused on:<sup>3</sup> a) a development of the infrastructure of the work market (employment offices, institutions of information and vocational guidance), b) assisting the creation of new jobs; c) increase in the adaptability of the labour force (retraining the unemployed in order

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<sup>1</sup> The Constitution of the Republic of Poland of 2nd April, 1997 (Journal Laws of 1997 No. 78, item. 483, as amended).

<sup>2</sup> Vide: G. Kowalski, *Ochrona jednostki przed przestępczością jako prawo podstawowe*, [in:] T. Guz, M. R. Pałubska, M. Kuć (ed.), *Księga pamiątkowa z okazji 10-lecia Wydziału Zamiejscowego Nauk Prawnych i Ekonomicznych Katolickiego Uniwersytetu Lubelskiego Jana Pawła II w Tomaszowie Lubelskim*, Lublin 2006, p. 436-437. See also E. Zwierzchowski, *Bezpieczeństwo obywateli*, [in:] W. Skrzydło, S. Grabowska, R. Grabowski (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny*, Warszawa 2009, p. 108.

<sup>3</sup> J. Žižková, *Politika zaměstnanosti*, [in:] V. Krebs [et al.] *Sociální politika*, Praha 2005, p. 292-293.

to adapt them to the work market), d) securing – through various forms of benefits and assistance – living conditions for people who have temporarily found themselves unemployed.

#### EMPLOYMENT AS A MEANS OF CRIME PREVENTION

Lack of resources to meet people's needs often turns out to be an important criminogenic factor. It can lead to a search for illegal ways of obtaining them. A deprivation of needs, especially elementary ones, whose satisfaction is essential for the survival and normal functioning of the organism, first of all biological needs but also psychological and social ones, no less important for the normal existence of a person, frequently significantly stimulates criminal behaviour, in which way (often the only one that the individual perceives) they can satisfy their own needs. This applies to both ordinary crimes and organized crime, aimed at a quick and relatively easy profit – drug trafficking, extortion of protection money, taking advantage of someone else's prostitution. A deprivation of needs may give rise to other social pathologies which, although they do not bear the signs of lawlessness themselves (such as alcoholism, drug addiction, prostitution), they are important etiologic factors of behaviour against the norms of criminal law.

The primary, although certainly not the only, legal way to acquire means of subsistence is work and remuneration for work. It is said that unemployment creates a fertile ground for engaging in illegal activities, at least for some of the unemployed, who are an excellent recruitment base for organized crime.<sup>4</sup> The ability and willingness to undertake legal work certainly can be an important inhibitory factor with respect to manifestations of criminal behaviour. In particular, this applies to crimes committed for material reasons, but not only. It should be borne in mind that an offence can cause a number of further adverse consequences for the perpetrator, apart from criminal penalties, they can involve the loss of a job or of the general social status of the offender.

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<sup>4</sup> B. Hołyst, *Psychologia kryminalistyczna*, Warszawa 2004, p. 393 and ff.

Work will be one of the factors preventing crime if it finds its rightful place not only in the system of values of the individual, but also of the entire society. It is therefore necessary to create a correct attitude towards work as such.<sup>5</sup> Work is, in fact, not only important for the life of the individual, but the society as a whole. This results from the functions which it performs:<sup>6</sup> a) income, expressing itself in obtaining income necessary for life (livelihood), b) economic, consisting in creating opportunities for growth of manufacturing and services, contributing in this way to an increase in the social welfare, c) social, manifested in the way in which employment enables individuals to achieve the social need to work, its social and professional aspirations, and also allows them to participate in community life.

The Constitution contains several provisions relating to labour and employment. From the standpoint of crime prevention, the following issues are of fundamental importance: a) the conduct by the state of a policy of full and productive employment of citizens, b) ensuring minimum wages, c) putting work under state protection, d) social security of persons unable to work; e) right to information about the work of public servants.

#### CONDUCTING AN ANTI-UNEMPLOYMENT POLICY

In accordance with Article 65 Section 5 of the Constitution, public authorities (both state and local governments) are required to maintain a policy that would attempt to achieve full and productive employment by means of implementing programmes to combat unemployment. This objective must be achieved, inter alia, by organizing and supporting guidance and vocational education, as well as public works and intervention. That provision in terms of crime prevention is so important because an

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<sup>5</sup> G. Kowalski, *Rola autorytetu w resocjalizacji więźniów*, [in:] J. Świtka, M. Kuc, I. Niewiadomska (ed.), *Autorytet i godność służb penitencjarnych a skuteczność metod resocjalizacji*, Lublin 2004, p. 181.

<sup>6</sup> W. Ratyński, *Problemy i dylematy polityki społecznej w Polsce*, vol. 2, Warszawa 2003, p. 628-629.

unemployed person is in a deteriorating mental condition and it gives rise to concerns about the future, to the conviction of being a loser, a feeling of loneliness and abandonment, followed by the degradation of attitudes towards work, there comes resignation from participation in culture, there appear family conflicts, the prospects of development disappear<sup>7</sup>. Unemployment results, in fact, in a drop in the standard of living for the unemployed person, the emergence in him of a sense of hurt and frustration, increased social isolation, loss of professional qualifications, deterioration of health along with increased social conflicts and pathological behaviour.<sup>8</sup>

The Constitution does not guarantee an individual the right to obtain a job, not even citizens. However, with respect to finding employment by an individual, whether a citizen or a foreigner (*constitutione non distinguente*), the legislator imposes on public authorities the responsibility to take such an action which would allow for it, thus preventing unemployment. The basic meaning of this obligation amounts to carrying out a social-economic policy that will promote full, and at the same time productive, employment of human resources.<sup>9</sup> Methods to combat unemployment mentioned in the Constitution – organizing and supporting guidance and vocational education, as well as public works and intervention – are illustrative in character, but mandatory as well, which means that in a situation of unemployment they should be used in the first place.<sup>10</sup>

The possibility of obtaining lawful income will undoubtedly be an inhibiting factor for the manifestation of criminal behaviour, even if by removing the need to obtain resources to meet people's needs through illegal channels. Objectively, it must be added that your work can also contribute to bringing about and facilitating the perpetration of crimes

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<sup>7</sup> W. Szczęsny, *Zarys resocjalizacji z elementami patologii społecznej i profilaktyki*, Warszawa 2003, p. 146-147.

<sup>8</sup> M. Szyłko-Skoczny, *Bezrobocie jako kwestia społeczna*, Warszawa 1987, p. 30, quoted from: W. Ratyński, *Problemy i dylematy polityki społecznej w Polsce*, vol. 1, Warszawa 2003, p. 123.

<sup>9</sup> W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2009, p. 71.

<sup>10</sup> B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2009, p. 341-342; J. Oniszczuk, *Polityka pełnego zatrudnienia*, [in:] W. Skrzydło, S. Grabowska, R. Grabowski (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny*, Warszawa 2009, p. 349.

(criminogenic factor), especially those connected with the occupation of a particular position or performance of a particular profession. In this context, we should mention Article 17 Section 1 of the Constitution, which authorizes the creation of professional associations by means of acts. The tasks of the government should not only be to represent people who do jobs of public trust, but also to exercise, within the limits of public interest and for its protection, due care of the professions, which is to prevent any pathologies (including criminal behaviour) that may occur in the performance of professions of public trust.

#### THE RIGHT TO A MINIMUM REMUNERATION FOR WORK

Article 65 Section 4 of the Constitution has guaranteed an individual the right to a minimum wage laid down by the legislator. The legal guarantee of the minimum wage is an expression of the state taking on responsibility for social peace, because in terms of remuneration for work, there are certain limits which cannot be exceeded, neither up nor down even more, so as not to endanger the good of the society, which is precisely the social peace. A violation of this peace can happen both by means of collective riots as well as individual behaviour affecting the social order, resulting from the mismatch of pay for the job (type, quantity and quality) as well as the requirements of life, the satisfaction of which is often a prerequisite for survival.<sup>11</sup> And the situation when your work is not able to guarantee your livelihood is a pathology.<sup>12</sup>

It should be noted, however, that the legislator undermines the constitutional nature of the right to a minimum wage, as Article 81 of the Constitution states that this right can be claimed only within the limits specified by acts of Parliament. Therefore, *de facto*, it is a simple act and not the Constitution that specifies the extent to which this right can be

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<sup>11</sup> A. Dylus, „*Kwestia płacowa*” *dawniej i dziś*, „Ethos” 1995, vol. 32, p. 108.

<sup>12</sup> Vide: Z. Wiatrowski, *Prawidłowości i sytuacje patologiczne w obszarze kształcenia zawodowego i działalności zawodowej*, [in:] T. Sołtysiak (ed.), *Zjawiska patologii społecznej – uwarunkowania, rozmiary, profilaktyka, prognozy*, Bydgoszcz 1995, p. 51.

exercised, thereby depreciating its constitutional nature by bringing the right to a minimum wage to the level of a statutory law. Minimum wages for work will significantly counteract the emergence of criminal behaviour when they ensure decent living conditions. Hence, the minimum wage referred to in Article 65 Section 4 of the Constitution must be understood in terms of a wage which will satisfy at least the minimum basic needs of working people, guaranteeing a minimum standard of living.<sup>13</sup> In that situation it will ensure the creation of a correct attitude towards work and its recognition as a primary source of obtaining resources to satisfy needs. The formulation of Section 4 of Article 65 of the Constitution dealing with the right to a minimum wage meets with criticism in the doctrine. It is indicated that we should rather be talking about a fair wage – fair, equitable, which will provide even the minimum standard of decent living.<sup>14</sup> In this context it is worth mentioning provisions of Article 10 § 2 and Article 13 of the Act of 26 June 1974 the Labour Code<sup>15</sup> under which despite the State determining the minimum amount of remuneration for work, the worker has the right to equitable remuneration for it, though conditions for the implementation of this law are specified by labour laws and the policy of the State in areas of wages, in particular through setting minimum wages.

#### COVERAGE OF WORK WITH PROTECTION BY THE STATE

Pursuant to provisions of Article 24 of the Constitution of the Republic of Poland, work is under protection of the state which supervises the terms of its execution. That supervision should not, however, be confined

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<sup>13</sup> B. Banaszak, M. Jabłoński, *note fifth to Article 65*, [in:] J. Boć (ed.), *Konstytucje Rzeczypospolitej oraz komentarz do Konstytucji RP z 1997 roku*, Wrocław 1998, p. 123.

<sup>14</sup> See: T. Liszcz, *Konstytucyjne zasady prawa pracy*, [in:] T. Bojarski, E. Gdulewicz, J. Szreniawski (ed.), *Konstytucyjny ustrój państwa. Księga jubileuszowa Profesora Wiesława Skrzydły*, Lublin 2000, p. 155; and J. Oniszczyk, *Wynagrodzenie za pracę*, [in:] W. Skrzydło, S. Grabowska, R. Grabowski (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny*, Warszawa 2009, p. 692-693.

<sup>15</sup> Unified text Journal Laws of 2014, item. 1502, as amended.

to issues of labour law compliance, but should also cover social issues.<sup>16</sup> That provision, by raising employment to the level of a constitutionally protected value<sup>17</sup>, establishes a kind of guardianship of the state over the performance of work, which aims to prevent abuse, in particular employers' abuse of employees, including abuse of the strongest nature, bearing the signs of offences against the rights of the employee. This protection of employment will address the protection of labour rights in particular, guaranteed under the Constitution, such as the right to work in safe and hygienic conditions and related obligations of the employer, or the right to rest, including statutory holidays, annual paid leave, and also to establish maximum levels of working time (see: Article 66 Section 1 and 2 of the Constitution).

#### SOCIAL SECURITY FOR PERSONS UNABLE TO WORK

The legislator in Article 67 Section 1 of the Constitution foresaw some benefits for people who cannot do work, providing them with legal sources of obtaining funds necessary for existence. This provision grants, although only to Polish citizens, the right to social security (to the extent and forms as specified in the Act) when they are unable to work because of illness or disability, or have reached retirement age. In accordance with Article 67 Section 2 of the Constitution, Polish citizens who are not unemployed voluntarily and at the same time have no other means of subsistence are entitled to social security.

Public authorities are also obliged to provide assistance to persons with disabilities when it comes to their livelihood security, preparation for employment and social communication (Article 69 of the Constitution). Helping to secure livelihood includes essential guarantees of financial and in-kind character for people with disabilities, and help them adapting to

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<sup>16</sup> B. Banaszak, *op. cit.*, p. 142; J. Ciapała, *Ochrona pracy*, [in:] W. Skrzydło, S. Grabowska, R. Grabowski (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny*, Warszawa 2009, p. 290.

<sup>17</sup> J. Ciapała, *op. cit.*, p. 290.



work, the creation (also by creating specially prepared jobs) for those people of possibilities of normal work.<sup>18</sup> By social communication, in turn, we should understand the personal, physical and spiritual contact of disabled people with others.<sup>19</sup> Social-occupational integration of disabled people, not their alienation, may significantly contribute to the prevention of homilopathy, manifested by disorders of social contacts of persons with disabilities caused by their disability. In addition, disabled war veterans who fought for independence are covered by special protection (Article 19 of the Constitution), which includes social benefits for them<sup>20</sup>, providing them with means of subsistence.

#### THE RIGHT TO INFORMATION ABOUT THE WORK OF PUBLIC OFFICIALS

In accordance with Article 61 Section 1 of the Constitution, a Polish citizen shall have the right to obtain information about the activities of public authorities, persons discharging public functions, organs of self-governing economic and professional government, as well as other persons and organisational units, though only in so far as those persons and entities perform the tasks of public authority and manage the property of the state or local government. The right to obtain the above information includes access to documents and entry – with sound or picture recording – to meetings of collective organs of public authority which were elected in general elections (Article 61 Section 2 of the Constitution), as well as the possibility of dissemination of the information, because according to Article 54 Section 1 of the Constitution, everyone is free to express their views and to obtain and disseminate information. The right to information about the activities of public authorities is an important tool of control of

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<sup>18</sup> B. Banaszak, *op. cit.*, p. 356.

<sup>19</sup> P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Warszawa 2000, p. 92.

<sup>20</sup> B. Banaszak, *op. cit.*, 123-124.

public opinion in relation to persons who hold public authority.<sup>21</sup> The above-mentioned provisions, ensuring maximum transparency of public authorities, must undoubtedly be helpful with preventing pathology at work in the so-called centres of power, especially at their highest levels and, thus, in preventing abuse of these authorities, including the ones bearing the features of specific crimes. Ensuring transparency in the functioning of the government not only realizes the constitutional right of citizens to access information on the activities of public authorities, but also creates unfavourable conditions for corruption offenses.<sup>22</sup>

#### EMPLOYMENT AS A MEANS OF PREVENTING RECIDIVISM

Finally, it is worth mentioning that employment is an important instrument not only of socialization but also of rehabilitation (see: Article 67 § 3 and Article 121-129 of the Act of 6 June 1997 Executive Penal Code<sup>23</sup>). Therefore, employment is used both to prevent the perpetration of a crime by a man for the first time, and in order to prevent them from returning to crime (recidivism). Work carried out by convicts develops proper attitudes in them in terms of their acceptance of obtaining means of subsistence in a very legal way.<sup>24</sup> Provided of course, that work is properly paid for and allows the least for the satisfaction of basic needs and there is also a proper social climate towards the attitude to work in the form of a proper position in the socially acceptable system of values.<sup>25</sup> Unfortunately, it is difficult to

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<sup>21</sup> W. Skrzydło, *op. cit.*, p. 65.

<sup>22</sup> М. І. Мельник, *Корупційна злочинність* [in:] О. М. Джужа (ed.), *Курс кримінології. Особлива частина*, Київ 2001, p. 33; А. П. Закалюк, *Курс сучасної української кримінології, У трьох книгах. Книга 2: Кримінологічна характеристика та запобігання вчиненню окремих видів злочинів*, Київ 2007, p. 219.

<sup>23</sup> Journal Laws of 1997 No. 90, item. 557, as amended.

<sup>24</sup> Cf. М. В. Романов, *Праця засуджених до позбавлення волі* [in:] А. Х. Степанюк (ed.) *Кримінально-виконавче право України*, Харків 2006, p. 190-191.

<sup>25</sup> This is a requirement of nature, not only socio-political, but also legal. As it is states in Article 24 of the Constitution (speaking about covering employment with the protection of the Polish Republic) that includes the obligation of the state in terms of

speak of either of them with respect to prisoners and persons released from penal institutions. Indeed, if they manage to obtain a job at all, it is usually physical work, poorly paid and without respect in the eyes of society, which in no way constitutes an incentive for the recognition by a current or former prisoner of legal work as the primary means of a fundraising maintenance.

## CONCLUSIONS

In conclusion, it should be noted that the provisions of the Constitution relating to the problems of employment contain a preventive potential against crime. The degree of its use, and thus its impact on reducing crime, however, will depend on the degree of implementation of these provisions, which is dependent, *inter alia*, on the State's financial resources that determine the manner in which the social policy of the country is conducted. At the same time we must remember that the lack of employment is just one of many criminogenic factors. In the process, which leads a person to commit a crime (criminogenesis) unemployment can sometimes play a leading role, while at other times only a marginal, or may not participate in the process (not have any meaning.) Therefore, we should be aware that even if we were able to ensure work for everyone which would be fairly rewarded, the problem with crime would not disappear, and at best may be to some extent decreased.

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adopting legal solutions aimed at ensuring respect for work and make it a basis for human existence (see: B. Banaszak, *op. cit.*, p. 141).

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