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**EVOLUTION OF THE RIGHT OF COALITION.
INTERNATIONAL STANDARDS VERSUS POLISH LAW****Introduction**

One of the basic human rights is the freedom of association in a broad sense, which is understood as a right to establish frames for various types of human activity conducted for a specific purpose, and is recognised among first-generation human rights, or freedoms which do not originate from positive law but from the fact of belonging to the species of *homo sapiens*. It is assumed that man as an intelligent being has rights and obligations that stem from his own nature, and because they are universal and inviolable, they cannot be renounced¹. Hence, the role of the state in relation to the freedoms involves a duty to guarantee and secure these freedoms and to limit them to an extent necessary to protect the values shared by the whole society².

Freedom of association is manifested e.g. in the right of coalition, i.e. a right to establish trade unions and employer organisations. Understood this way, the right of association contrary to the freedom of association in a broad sense, is recognised among second-generation human rights, or social, economic and cultural rights based on the principle of equality. According to this approach, the right of coalition is one of the elements constituting the freedom of trade unions, which is considered not only by reference to the definition of the term in legal regulations but also as the whole functionally combined collection of provisions describing this legal institution³.

¹ See: Pope John XXIII, The Encyclical *Mater et magistra* (MM), par. 31 [in:] *Dokumenty nauki społecznej Kościoła*, Rzym–Lublin 1987, p. 272; P. Czachorowski, *Międzynarodowa Organizacja Pracy. Geneza – struktura – funkcjonowanie. Casus wolności związkowej*, Gdańsk 2002, p. 32; A. Kowalczyk, *Pojęcie sporu zbiorowego oraz pokojowe metody jego rozwiązywania w prawie polskim*, Rzeszów 2017, p. 25.

² P. Czachorowski, *Międzynarodowa Organizacja Pracy...*, p. 32.

³ A. Ziemiński, *Szkice z metodologii szczególnych nauk prawnych*, Warszawa 1989, p. 95; M. Tomaszewska, *Pojęcie wolności związkowej* [in:] *System prawa pracy*, vol. 5: *Zbiorowe prawo pracy. Komentarz*, ed. K.W. Baran, Warszawa 2014, p. 223.

Freedom of trade unions *sensu stricto* is the right of coalition understood as a right to establish trade unions, to join existing trade unions, to leave and to dissolve trade unions⁴. The related guarantees have been stipulated in many international legal acts, including ILO conventions, constituting a universal (common) and regional system designed to protect human rights.

Right of coalition in international legal acts

The common framework for the protection of human rights was established by the United Nations. It includes legal documents of fundamental importance, such as: The Charter of the United Nations, International Covenants on Human Rights, conventions and resolutions adopted by the UN, and specialised organisations, such as ILO. The first international treaty with universal impact was The Charter of the United Nations (further referred to as UN Charter) of 26 June 1945⁵ which introduced the general principle of respect for human rights. The Charter does not define the term “human rights” and does not specify a catalogue of these rights. Nevertheless, it laid the foundations for the international system of human rights, providing the legal basis for further initiatives. As a result, The Universal Declaration of Human Rights (further referred to as The Declaration of Human Rights) was passed on 10 December 1948. The Declaration of Human Rights regulates the rights and freedoms which can be classified as first and second-generation human rights. According to its regulations (Art. 23 clause 4), everyone has the right to form and to join trade unions for the protection of his interests. The Declaration of Human Rights also guarantees the right to freedom of association in the general sense, right of coalition being one of its elements (Art. 20)⁶.

The provisions of the Declaration of Human Rights, presented in broader and more detailed terms, were included in The International Covenant on Civil and Political Rights (further referred to as Political Covenant) dated 19 December 1966⁷. The right of coalition is guaranteed in Art. 22 of the Political Covenant, according to which everyone shall have the right to freedom of association, including the right to form and join trade unions for the protection of his interests. Hence, the provision regulates the right of association in broader terms, in

⁴ See: T. Zieliński, *Prawo pracy. Zarys systemu*, part III, Warszawa–Kraków, 1986 p. 277; M. Seweryński, *Problemy statusu prawnego związków zawodowych* [in:] *Zbiorowe prawo pracy w społecznej gospodarce rynkowej*, ed. G. Goździewicz, Toruń 2000, p. 110 et seq.

⁵ Dz.U. 1947, No. 23, Item 90.

⁶ Polish text of the Universal Declaration of Human Rights [in:] B. Gronkowska, T. Jasudowicz, C. Mik, *Prawa człowieka. Dokumenty międzynarodowe*, Toruń 1996, p. 15 et seq.; cf. P. Czachorowski, *Międzynarodowa Organizacja Pracy*..., p. 51–52.

⁷ Dz.U. 1977, No. 38, Item 167.

a narrower sense understood as the right of coalition. Restrictions to this right are permissible within limits prescribed by law as required to ensure national security and public order⁸.

The right of coalition is also subject to provisions of the International Covenant on Economic, Social and Cultural Rights (further referred to as the Economic Covenant) of 19 December 1966⁹, which, unlike the aforementioned instruments of protection, covers second-generation human rights only. Hence the Economic Covenant regulates the right of coalition, while disregarding the broader concept of freedom of association, covered by the Political Covenant. Article 8 of the Economic Covenant stipulates that everyone has a right to form trade unions and join the trade union of his choice, hence the guarantee does not only relate to the right to establish a trade union, but also to the right to choose membership in existing trade unions. Consequently, this regulation prevents enforced membership in trade unions and results in the freedom to decide to leave the trade union (so-called negative freedom of trade union).

Like the Political Covenant, the Economic Covenant stipulates that the right of coalition may be restricted as required by the need to ensure security and public order or to protect the rights and freedoms of others. Such restrictions may take forms of intervention by a relevant authority or suspension of trade union operation¹⁰.

Freedom of association is also guaranteed in documents issued by the International Labour Organisation, whereby it is recognised among the three basic human rights in the social sphere, alongside the right to work and the right to equal opportunities and to non-discrimination. Protection of freedom of association, as stipulated by ILO documents, is based on the assumption that the existence of independent trade unions is necessary for the effective protection of employees' interests, which in turn is the primary mission of ILO¹¹.

Freedom of association was already guaranteed by the Treaty of Versailles of 28 June 1919, which also established the International Labour Organisation¹². Freedom of association was awarded to both employees and employers. The right of coalition is also regulated in the ILO Constitution of 10 September 1946¹³. Article 1 of the Constitution provides that ILO is to carry out operations for the promotion of the objects set forth in the Preamble, which include freedom of trade unions. On the other hand, the first part of the Declaration says that freedom of association is an indispensable precondition for progress. The right of coalition

⁸ Cf. P. Czachorowski, *Międzynarodowa Organizacja Pracy...*, p. 54.

⁹ Dz.U. 1977, No. 38, Item 169.

¹⁰ Cf. P. Czachorowski, *Międzynarodowa Organizacja Pracy...*, p. 61.

¹¹ See: L. Florek, M. Seweryński, *Międzynarodowe prawo pracy*, Warszawa 1988, p. 120; J. Wratny, *Prawo pracy...*, p. 161.

¹² Dz.U. 1920, No. 35, Item 200.

¹³ Dz.U. No. 43, Item 308 as amended.

is also regulated by ILO conventions. The first convention related to the right to establish trade unions was Convention No. 11 from 1921 on the freedom of association and right of coalition in agriculture¹⁴. In the light of its provisions, people employed in agriculture had the same rights to establish unions as industrial workers. Hence it introduced equal rights of the two groups, however it did not resolve on the form of specific regulations to which the principle of equal rights relates. Therefore, it was necessary to regulate all employees' trade union rights set forth in Convention No. 11. This took place in 1948, when ILO adopted Convention No. 87 on the freedom to establish organisations and on trade union rights¹⁵. It stipulates workers' right to establish trade unions of their choosing and to join existing organisations (Art. 2), thereby defining the full and restricted right of coalition. The right was awarded to all workers, regardless of the type of work performed, including civil servants. With regard to the latter, an Expert Committee decided that they are entitled to the right of coalition regardless of their rank and place of employment. A failure to award the right of coalition to them was deemed to violate the general principle saying that workers may establish organisations to defend their rights and interests¹⁶. The only subjective restrictions apply to armed forces and security agencies, because pursuant to Art. 9 national laws and regulations may specify if the right of coalition may be applicable to them and based on what principles. Apart from that the right of coalition applies without limitations, however it must be executed in compliance with the contents of the trade union's statute (Art. 2). Convention No. 87 does not only regulate personal right of coalition, but also collective rights, by awarding trade unions, in Art. 5, with the right to establish or join federations and confederations¹⁷. The guarantees for the freedom to establish unions, provided for in the Convention, should comply with by the laws of the states which have ratified the document (Art. 8 clause 2).

In addition to the universal system of human rights protection, there are regional systems, including the one developed in Europe. The fundamental document of this system is the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) dated 4 November 1950, introducing a broader catalogue of human rights, compared to that defined in the Declaration of Human Rights.

ECHR contains regulations which guarantee the freedom of association, including the right to establish trade unions (Art. 11). In this case the right of coalition is also treated as part of a broader concept of the freedom of association,

¹⁴ Ratified by Poland in 1924 (Dz.U. 1925, No 54, Item 378).

¹⁵ Before it was passed, there were attempts to introduce related regulations elsewhere; the first step towards regulations with regard to the rights to establish trade unions was reflected by Convention No. 84 from 1947 on the right of association in dependent territories. Cf. L. Florek, M. Seweryński, *Międzynarodowe prawo...*, p. 121.

¹⁶ See: P. Czachorowski, *Międzynarodowa Organizacja Pracy...*, p. 141.

¹⁷ These rights are also applicable to employers; See Art. 2 et seq. of Convention No. 87.

however, just like in the other acts of international law, the importance of the right of coalition was emphasised by the fact it was named in Art. 11 ECHR. Furthermore, by placing the right of coalition in the catalogue of human rights, ECHR provides a guarantee for the right to establish trade unions and freedom to join existing organisations. Exercise of this right may be subject to statutory limitations resulting from conditions such as those provided for in the acts of the universal system for the protection of human rights, i.e. internal security and the need to protect the rights and freedoms of others¹⁸.

The right of coalition is also guaranteed by the European Social Charter (ESC), dated 18 October 1961¹⁹, which is another document establishing the regional system for the protection of human rights. The charter contains guarantees related to twenty-three basic social rights, including the right of coalition²⁰. Article 5 ECS provides a guarantee for establishing trade unions and for joining existing organisations. These guarantees relate to individuals' rights to establish trade unions, and to the collective right to organise in trade unions for more effective protection of their members' rights and interests. Furthermore, in ECS the right of coalition is defined in a positive and negative sense. In the former case, this means a freedom to establish trade unions and to join existing organisations, and the consequences of this guarantee include the state's obligations to undertake measures to make exercise of the right of coalition possible. According to the latter approach, the right of coalition means that no restrictions may apply to the right to establish, join and withdraw from trade unions, and to dissolve or suspend their activities, except for those provided for in the Charter. Such restrictions of the right of coalition may only be applicable to members of armed forces, hence a prohibition to establish trade unions by employees of state organs as well as "closed shop" agreements are a violation of Art. 5 of the Charter²¹.

The European system for human rights protection, in addition to the Council of Europe, is also being created by the European Union, which has developed several related documents. These include the Declaration of Fundamental Rights and Freedoms (further referred to as Declaration of Freedoms) dated 12 April 1989²² which is also related to the freedom of association. Like in many aforementioned documents of international law, here the right of coalition appears in the context of the freedom of association, recognised among the first-generation human

¹⁸ Text of ECHR [in:] *Europejska Konwencja Praw Człowieka. Międzynarodowy Pakt Praw Obywatelskich i Politycznych*, Katowice 1992, p. 9 et seq.

¹⁹ Dz.U. 1999, No. 8, Item 67.

²⁰ The basic text of ESC contains a catalogue of nineteen fundamental social rights; it was expanded by the 1988 Protocol to include three more rights.

²¹ J. Wratny, *Prawo pracy Rady Europy* [in:] *Europejskie prawo pracy i ubezpieczeń społecznych*, ed. L. Florek, Warszawa 1996, p. 160 et seq.

²² Text of the Declaration of Freedoms [in:] *Prawa człowieka. Dokumenty międzynarodowe*, translated and elaborated by B. Gronowska, T. Jasudowicz, C. Milk, Toruń 1996, p. 298–303.

rights. The Declaration of Freedoms was adopted by the European Parliament, which did not have competences to independently institute laws, hence the document did not have a status of a binding legal act. However, it was used as a model for the regulations on human rights and freedoms, set forth in the Treaty of European Union (further referred to as The Treaty).

On 9 December 1991, a resolution of the European Council adopted the Community Charter of the Fundamental Social Rights of Workers (further referred to as The Charter), defining employers' and employees' freedom of association (points 11–14). Pursuant to these provisions, they have the right to establish trade organizations and trade unions of their choice, to represent their economic and social interests. This freedom also includes the right to join and withdraw from trade unions²³.

In 1991, Member States of the European Community adopted the Protocol on Social Policy, an integral part of the Maastricht Treaty. Based on its provisions, the freedom of association, the right to strike and lockout were excluded from Community regulations (Art. 2 § 6). This does not mean the most important principles of collective labour laws were waived, however the relevant competences related to their legal regulation were transferred to the Member States²⁴.

Evolution of regulations related to the right of coalition in Polish legislation

In Polish collective labour law, during the post-war period, the structure of trade union movement and the right of coalition were subject to a number of changes. The principle of monism was introduced by the Trade Union Act of 1 July 1949²⁵, and later transformations were initiated as a result of the events which occurred in August 1980; these involved relaxation of the monism principle and the breakdown of the centralized union movement into separate currents, as a result of which a temporary legal regulation was introduced by a resolution of the Council of State on 13 September 1980²⁶ on newly established trade unions (registration of a trade union by a Regional Court of Law), and amendment of the Trade Union Act (confirmation of the rules of registration, which made it possible to register Solidarity Trade Union). Further changes in the right of coalition were to be adopted as stipulated in the Trade

²³ My discussion of the Charter is based on: P. Czachorowski, *Międzynarodowa Organizacja Pracy...*, p. 83.

²⁴ Cf. L. Florek, *Prawo pracy Unii Europejskiej* [in:] *Europejskie prawo pracy i ubezpieczeń społecznych*, ed. L. Florek, Warszawa 1996, p. 81.

²⁵ Dz.U. No. 41, Item 293.

²⁶ M.P. No. 22, Item 104.

Union Act of 8 October 1982²⁷. However, it was only following the Round Table Agreement that the act was actually changed whereby the legal regulations permitting only one trade union were abolished²⁸.

As for the right of coalition according to the 1949 Trade Union Act, those entitled included blue-collar workers, white-collar workers and other individuals employed under employment contract, apprenticeship contract and nomination contract; the act did not differentiate between complete and limited right of coalition. Hence there is a question whether the subjective scope of the right of coalition correlated with the labour market. Even if we consider the realities of economy at that time, it does not seem so, because the law did not cover e.g. representatives of liberal professions. It should be remembered, however, that the structure of trade union movement based on the principle of monism and the way the economy was organised did not permit such broad scope of the right of coalition. Compared to the situation in democratic countries permitting autonomy of the relations between employees and employers, there was a change in the system resulting from nationalisation of economic operations. Due to the political and economic transformations the state apparently became a party to employment relationships, both individual and collective. Furthermore, socialist economy was significantly centralised, as a result of which the decision-making process was moved from enterprises to the bodies on national authority. This affected the functioning of trade union structures which typically also adopted decisions made at a higher level, away from the relevant enterprise²⁹.

The consequences of the ideology attributed to trade unions, and the broad competences delegated to them, included the systemic principle of monism in the structure of trade union movement³⁰. It was in force in Poland and in other European countries in the Soviet zone of influence. In accordance with the principle of monism there could only be one trade union organisation in a workplace, and only one head office at the national level. Furthermore, trade unions were established based on a production-related criterion. This meant that employees of all entities operating within the same industry could belong to only one specialised trade union. The latter principle excluded the possibility to establish trade unions based on other criteria than affiliation with one specif-

²⁷ Dz.U. No. 32, Item 216.

²⁸ Act of 7 April 1989 on amendment of the Trade Union Act (Dz.U. No. 20, Item 105).

²⁹ M. Grzybowski, A. Świątkowski, *Wolność związków zawodowych. Aspekt prawny i ustrojowy* [in:] *Kompetencje związków zawodowych*, ed. A. Świątkowski, Warszawa 1984, p. 58, 59.

³⁰ Cf. L. Machol-Zajada, B. Skulimowska, J. Tulski, A. Woźniakowski, W. Załęski, *Związki zawodowe w Polsce w latach 1989–1993. Struktura – programy – problemy*, Raport IPiSS 1993, z. 4, p. 8; J. Wrątny, *Związki zawodowe w prawodawstwie polskim w latach 1980–1991*, Lublin 1994; A. Kowalczyk, *Pojęcie i skutki prawne zasady reprezentatywności związków zawodowych w prawie polskim*, Rzeszów 2014, p. 21 et seq.

ic industry (type of operation)³¹. This structure of the trade union movement was in conflict with the standards defined by ILO Convention No. 87. Nevertheless, the situation introduced by the 1949 Trade Unions Act was maintained until the early 1980s. The changes to the act proposed by Solidarity envisaged that the right to establish trade unions were to be awarded to employees and individuals who, pursuant to the provisions of labour law, were treated in the same way as employees. The draft allowed for trade unions to be established by social and professional groups with a status different than that of employees, i.e. individual farmers, artists, liberal professions, taxi drivers and students. However, the 1982 Trade Union Act restricted the subjective scope of the right of coalition to people working under employment contract, and conditionally to retirees, pensioners, and temporarily unemployed individuals. Subsequently, the amendment of 6 April 1984 awarded a limited right of coalition to individuals involved in cottage industries or to agents. The above act revoked the right to establish trade unions, previously awarded to individual farmers and other non-employee groups.

The political and economic transformations of the late 1980s and early 1990s, inevitably led to changes in legal regulations pertaining to various spheres of social relationships, including collective labour laws. Consequently, a new act on trade unions was also adopted³². Pursuant to its provisions, complete right of coalition was awarded to working people, irrespective of the basis for their employment relationship, members of workers' production cooperatives, individuals performing work under agency contracts, if they are not employees, and persons doing alternative military service. Those with limited right of coalition included individuals performing home-based work, retirees, pensioners and the unemployed. The catalogue of those entitled to it was not restricted to employees, as they are defined in Art. 2 of Labour Code³³. Notably, in accordance with the above legal regulations, those entitled to belong to trade unions included individuals performing work based on selected types of civil law agreements. The right however was not awarded to those working under contracts of mandate or contracts for specific work. It seems that such varied approach reflected the realities of the labour market in 1991. Rapid increase in employment based on

³¹ The principle of monism, as a model for the structure of trade union movement in post-war Poland, was highlighted in a policy document of the underground movement initiated by the Polish Workers' Party. The program of the new trade union movement was presented in the article entitled "On revival of trade unions" („O odbudowie związków zawodowych") published in *Trybuna Wolności*. The article pointed out it was necessary to establish a uniform trade union movement, based on factory committees, and organized according to the principle: a single trade union in one workplace. See: A. Łopatka, *Państwo socjalistyczne a związki zawodowe*, Poznań 1962, p. 28, 29.

³² Act of 23 May 1991 (Dz.U. 2015, Item 2029).

³³ Act of 26 June 1974 (Dz.U. 2014, Item 1502 as amended).

the above types of contracts has been observed only in the 21st century, particularly during its second decade. One might argue however that, irrespective of the realities of the labour market in the 1990s, the legislator should not have adopted a different approach to contractors.

This opinion was presented by the Constitutional Tribunal which decided that the above regulations were in conflict with the Polish Constitution³⁴. The Tribunal adjudicated that the definition of the rights to establish and join trade unions is too narrow with respect to the constitutional guarantees resulting from Art. 59 clause 1, in connection to Art. 12 of the Polish Constitution³⁵. According to the Tribunal, type of employment should not be applied as a criterion in awarding the right of coalition. It is important that the relevant individuals perform paid work for another entity and they have work-related interests which should be protected. Furthermore, the Constitutional Tribunal decided that the regulations of the 1991 Trade Union Act were in conflict with ILO Convention No. 87. The Polish translation of the document uses the term “pracownicy” [employees] with reference to individuals awarded with the right of coalition, while the terms used in both English and French language versions, according to the Tribunal, do not match the Polish definition of the term “pracownik” contained in the Labour Code, and related to individuals subject to employment contracts.

Notably, the broader meaning of the term “workers”, which is not limited to people working under employment contracts, had in fact been pointed out by ILO bodies. The Committee on Freedom of Association, set up by the Governing Body of the International Labour Office, presented an opinion that freedom of association in the light of the above Convention does not depend on any existing employment contracts, and is also applicable to individuals in other contractual relationships with employees.

In view of the above, the Polish legislative authority undertook to extend the subjective scope of the right to establish and join trade unions in order to enforce the decision issued by the Constitutional Tribunal. The works were completed only in 2018, as a result of which the subjective scope of the right of coalition was changed³⁶. Hence, in the light of the regulations currently in force, complete right of coalition is applicable to individuals performing paid work, individuals designated to work for a given employer in order to perform alternative forms of service, individuals employed under agency contract, provided they are not employers, as well as members of agricultural production cooperatives. Limited

³⁴ Adjudication of the Constitutional Tribunal dated 2 June 2015 (www.sejm.gov.pl).

³⁵ Art. 12 introduces guarantees related to freedom of association, while Art. 59 clause 1 covers the right of coalition, understood as second-generation right.

³⁶ Act of 5 July 2018 on amendment of Trade Union Act and certain other acts (Dz.U. 2018, Item 1608).

right of coalition is applicable to unemployed individuals, volunteers, interns and other individuals who personally perform work for no pay, in accordance with terms and conditions stipulated in a statute, as well as retirees and pensioners, because in their case the right to belong to trade unions is not revoked by retirement or by a title to pension benefits.

In accordance with the statutory definition, “individual performing paid work” should be understood as an employee or a person working for remuneration under different terms than employment contract.

As for the term employee the Trade Union Act refers to Art. 2 of the Labour Code. Hence, the complete right of coalition is guaranteed to individuals employed under an employment contract, or based on appointment, designation or election, or under cooperative employment contract. Therefore, acquisition of the status of employee depends on the terms of employment, while working hours, employee’s leave of absence or limited-duration of employment are irrelevant³⁷. As for the second category of individuals with complete right of coalition, the basic condition which must be met is defined as work for remuneration under different terms than employment contract. It is however, necessary to meet additional statutory conditions, that is perform the work in person (rather than by employing other people for this purpose) and have rights and interests related to the performance of work, which can be protected by a trade union. The legislator does not specify the rights and interests in detail; however, it should be assumed that this relates to all the rights and interests which, in accordance with statutory regulations, may be protected and represented by trade unions. Therefore, the criteria formulated this way award the right of coalition to a wide range of individuals, starting with those hired to work based on civil law contracts, such as contracts of mandate or contracts for specific work, and ending with self-employed individuals.

Conclusion

The broader subjective scope of the right of coalition results in far-reaching legal effects because it allows non-employees to benefit from a wide range of rights which were previously unavailable to them or were available to a limited extent only. One of the essential rights under collective labour law (or perhaps collective employment law?) is the right of collective bargaining, which is the basic instrument enabling trade unions to implement their rightful objectives. Most importantly it provides a possibility to conclude collective labour agreements. In the light of the legal regulations in force before the right

³⁷ See: K.W. Baran, *Ustawa o związkach zawodowych* [in:] *Zbiorowe prawo zatrudnienia. Komentarz*, ed. K.W. Baran, Warszawa 2019, p. 34 and references therein.

of coalition was expanded, collective bargaining provisions could be extended to contractors hired based on civil-law contracts of mandate or for specific work, however such contractors were not entitled to conduct related negotiations. As a consequence of the more broadly defined right of coalition, these individuals may conclude collective labour agreements, to define their rights exclusively. The right of collective bargaining is also linked with a possibility to initiate and conduct collective disputes, related to a far greater group of employees than previously.

Consequences of the expanded right of coalition also include changes in regulations permitting protection of trade union activists who are not employees; changes in the regulations defining who can be represented by trade unions; changes in the number of members necessary for company trade union organisations to realise their rights; changes making it possible to inspect the numbers of trade union members, and to increase representativeness threshold.

Importantly, by adopting the above regulations, the legislator equipped many of those involved in our labour market, and performing paid work, with instruments designed to secure their rights and interests. Yet, to what extent they will benefit from the changes is up to those newly awarded with the rights. Those working under contracts of mandate or for specific work constitute a majority among non-employee subjects awarded with the complete right of coalition. Notably, however that there are many reasons why some decide to work under these types of contracts. One of such reasons, although not dominant, is a lack of lasting relationship with the employing entity. This will be a legitimate argument for civil law contracts in the case of those who, owing to their qualifications and a large demand in the market, do not have problems with finding jobs and the specificity of the work performed provides legal justification for this type of employment. It does not seem that these people are interested in trade unions and in using the instruments that are designed to guarantee their protection. In the other end of the spectrum there are people working under civil-law contracts due to a lack of other opportunities. Theoretically they should be interested in securing their rights and interests, and consequently in trade union membership. Yet, they also may be discouraged from establishing trade unions by the lack of stable relationship with the employer and the “temporary” nature of their employment.

To sum up, these changes may prove to be insufficient for ensuring protection of the aforementioned groups of workers and we will face a dilemma related to further changes in these regulations; as it seems these will have to cover individual labour laws. This is highly likely, given the low union membership rates among employees, which may justify the supposition that the problem may also apply to non-employee workers.

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Summary

The right of coalition, understood as a second-generation human right, is related to equality, and is one of the manifestations of the freedom of association. The latter is recognised among the first-generation human rights, or those which do not originate from positive law but from the fact of belonging to the species of *homo sapiens*. The role of the state with respect to freedoms is to guarantee and secure them, while implementation of equality rights requires a legal framework and financial outlays. The current publication presents the evolution of the right to establish trade unions, as stipulated by Polish law, starting from the post-war period and ending with the latest changes which came in force on 1 January 2019; these are shown in the context of international regulations.

Keywords: the right of coalition, trade unions, Polish law, international regulations

EWOLUCJA PRAWA KOALICJI. STANDARDY MIĘDZYNARODOWE A PRAWO POLSKIE

Streszczenie

Prawo koalicji, rozumiane jako prawo człowieka drugiej generacji, czyli prawo równościowe, jest jednym z przejawów wolności zrzeszania się. Ta ostatnia jest zaliczana do praw człowieka pierwszej generacji, których źródłem nie jest prawo stanowione, a sama przynależność do gatunku *homo sapiens*. Rolą państwa w odniesieniu do praw wolnościowych jest ich poręczanie i zabezpieczanie, w przeciwieństwie do praw równościowych, do których zagwarantowania konieczne są ramy prawne i nakłady finansowe. W niniejszej publikacji autorka przedstawia ewolucję prawa koalicji związków zawodowych w prawie polskim, począwszy od okresu powojennego aż po ostatnie zmiany, które weszły w życie 1 stycznia 2019 r., na tle regulacji międzynarodowych.

Słowa kluczowe: prawo koalicji, związki zawodowe, prawo polskie, regulacje międzynarodowe