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## The role of trade unions in sport - the essence, features and perspectives

Michał Matuszak, PhD  
Faculty of Management  
University of Warsaw  
ORCID: 0000-0003-2794-3634  
[mmatuszak@matuszaklegal.pl](mailto:mmatuszak@matuszaklegal.pl)

### Summary

Trade unions play an important role in organizing activities in the field of labour law, although some representatives of the doctrine believe that the ruling powers of trade unions are in fact administrative in nature. The role of trade unions is important in all sectors of the economy, including sports. In many European countries, trade unions in sport play a key role in ensuring that players' rights are respected. The potential of trade unions in Poland is still not fully used. The aim of this article is to analyse the role of trade unions in sport by determining their features and perspectives, in particular taking into account the extension of the subjective scope of the coalition right after the amendment to the Trade Unions Act. The deliberations will lead to an answer to the question: Is it finally time for trade unions in the professional sport sector or is it still a distant perspective?

The article uses the dogmatic and legal method, and also indicates foreign solutions in relation to the comparative method. The considerations present legal solutions in the USA, England and the Netherlands. The deliberations concern both labor law and sports law. The main conclusion from the conducted research is that there are formal and legal possibilities for trade unions to play a more important role in the medium and long term, however, there is no specific entity or group of entities that would be really interested in their development, both among the athletes themselves as well as in sports clubs and Polish sports associations or the Ministry of Sport

**Key words:** trade unions, sport, labor law, sport contract

### Preliminary issues

Professional sport is not homogeneous, it is internally quite diverse, and individual disciplines differ significantly from each other. Sport is a difficult phenomenon to grasp because it occurs in various perspectives - as physical activity, as essential part of any economy, as a social and partly also political phenomenon, or as a daily work item for millions of people around the world. The shape of sport is influenced not only by various sports disciplines, but also by the country in which it is practiced, because sport is determined by social, economic and historical factors related to specific national conditions. To put it simply, it means that in each country, sport faces different challenges, including the area of how athletes, coaches and other people related to sport perform their work. A particular issue in the context of the broadly understood employment of athletes is the problem of low trade union density in sport. It is an issue that has not been discussed too often in the doctrine of labour law, and which, especially in the era of rapid changes, is socially important.

Trade unions play an important role in organizing activities in the field of labour law, although some

representatives of the doctrine believe that the ruling powers of trade unions are in fact administrative in nature<sup>1</sup>. In fact, the rights of trade unions are essential in preserving employment rights as well as in the area of effective negotiation of employment conditions, mainly remuneration. The main tasks of trade unions are still: representing employees, striving to ensure safe and healthy working conditions, resolving conflicts in the workplace and raising problems related to the treatment of employees<sup>2</sup>.

The aim of this article is to analyse the role of trade unions in sport by determining their features and perspectives, in particular taking into account the extension of the subjective scope of the coalition right after the amendment to the Trade Unions Act. The deliberations will lead to an answer to the question: Is it finally time for trade unions in the professional sport sector or is it still a distant perspective?

## Trade unions in Poland - selected issues

The source of collective labour law is both the Constitution (article 59, which provides for freedom of association in trade unions, socio-professional organizations of farmers and employers' organizations), in the act of 26<sup>th</sup> of June 1974, the Labour Code, in the act of 23<sup>rd</sup> of May 1991 on trade unions, in the act of 23<sup>rd</sup> of May 1991 on the resolution of collective disputes, in the act of 23<sup>rd</sup> of May 1991 on employers' organizations or in the act of 7<sup>th</sup> of April 2006 on informing employees and conducting consultations with them. In the field of collective labour law, the International Labour Organization conventions are also relevant, including, for example: Convention 87/1948 on trade union freedom and protection of the rights of trade union, Convention 98/1949 on the application of the principles of the right of association and collective bargaining, and Convention 135/1971 concerning the protection and facilitation of employees' representatives in enterprises. One of the main tasks of legal regulation of labour is to guarantee the rights of employees.<sup>3</sup>

The Trade Unions Act regulates in particular the principles of establishing, joining and subsequent functioning of trade unions, in which people performing paid work may organize. The amendment to the Trade Unions Act adopted by the Parliament of the Republic of Poland on 5<sup>th</sup> of July 2018 extended the subjective scope of the coalition right, which currently includes both employees and non-employees who - according to the Act - should be understood as people performing paid work on a basis other than the employment relationship<sup>4</sup>. In practice, in order for a person to be considered an employee who has the right to a coalition, four conditions must be met: (i) perform work for remuneration, (ii) on a legal basis other than employment relationship, (iii) have professional interests that may be protected collectively; and (iv) not to employ other people<sup>5</sup>. The extension of the subjective scope may be one of the factors that, in the medium and long term, may contribute to the dissemination of trade unions, especially in those sectors of the economy where an employment contract is not widely used, such as, inter alia, in sport.

The doctrine of labour law emphasizes that trade unions, for various reasons, including limited resources, focus almost exclusively on defending the rights of people employed under the employment contract<sup>6</sup>. The experience to date shows that extending the scope of the coalition did not significantly increase the interest of people who work on other grounds in trade unions, but also did not increase the interest of trade unions in these people. In the labour law doctrine, it is emphasized that the fundamental right of all employees is the right to form trade unions, which results from many legal acts, including the International Labour Organization conventions<sup>6</sup>, but also from national and EU law, International Human Rights Covenants, the European Social Charter, the European Convention on Human Rights or supranational collective agreements<sup>7</sup>. The right of association should have two aspects, firstly, a formal one, which should be understood as creating a legal framework for the functioning of trade unions by the legislator, and, second, a factual one, which should be

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<sup>1</sup> Arkadiusz Sobczyk, Władcze kompetencje związków zawodowych w sferze wolności pracy [w:] *Praca i Zabezpieczenie Społeczne* 11/2014, p. 7-11.

<sup>2</sup> Rick Delbridge, Beyond the enterprise: trade union representation of freelancers in the UK [w:] *Human Resource Management Journal*, 14/2, 2004, p. 25.

<sup>3</sup> Iryna Pidpala, Special status of the seafarer in the system of labor relations, *Journal of Education, Health and Sport*, 6/2016, s. 941.

<sup>4</sup> Krzysztof W. Baran, O zakresie prawa koalicji w związkach zawodowych po nowelizacji prawa związkowego z 5 lipca 2018 roku, *Praca i Zabezpieczenie Społeczne* 9/2018, p. 3.

<sup>5</sup> *Ibidem*, p. 3-4.

<sup>6</sup> Wiesława Kozek, Piotr Ostrowski, Elastyczność zatrudnienia a pozycja związków zawodowych na poziomie zakładu pracy. Wnioski z badania według metodologii Programu Badawczego CRANET, *Problemy Polityki Społecznej* 26/2014, p. 116.

<sup>7</sup> Krzysztof Walczak, Funkcja promocyjna prawa pracy – co może oznaczać w zglobalizowanej gospodarce i co można zrobić, aby była skuteczniej realizowana, *Studia prawnicze* 2010, p. 64.

understood as a real possibility of a coalition, which was made possible by the efficient operation of trade unions, high level of knowledge of employees<sup>8</sup> about collective law and practical benefits of functioning within trade union. In the author's opinion, in Poland the formal aspect remains fulfilled, while the factual aspect only partially.

Membership in trade unions in Poland is declared by only 6% of adult Poles, and most trade unions belong to trade unions that are members of large organizations<sup>9</sup>. The highest trade union density is in the Scandinavian countries and amounts to 52% in Norway and 74% in Finland<sup>10</sup>, respectively. Trade union density in Poland is not uniformly distributed, as it is clearly higher in some sectors of the economy (e.g. in the mining and quarrying sectors), and practically absent in other sectors of the economy (e.g. in sport). The doctrine of labour law emphasizes that the employer's ownership issues have a significant impact on the level of trade union density, as trade union density among employees of public entities is generally higher than in the private sector, which results from many historical and strictly pragmatic conditions in terms of employment stability. In the sports sector in Poland, there are practically no trade unions, as they are still only single cases, such as: Polski Związek Zawodowy Sportowców Sport Assistance or Polski Związek Piłkarzy [Polish Union of Footballers].

### **The essence of trade unions in sport**

On the basis of my own experience, I can say that employment in the sports sector in Poland is chaotic, uncoordinated and largely random. In many clubs or sports associations, the manner of employment results from the practice implemented over the years, and the people managing these entities are often not eager to change - although in this area an improvement has been visible in recent years. Employment in sport is relatively complex due to its diversity, which results from dozens of different sports disciplines coexisting with each other, having their own specificity, properties and features that influence the rights and obligations of athletes.

It should be recalled that the concept of a sports contract does not imply the athlete's employment status, but is a collective term for any contract that the athlete concludes with a sports club (or sometimes other entity) for the purpose of participating in sports competition. The basis for employment of the athlete may be the following contracts: an employment contract, a civil law contract or a contract concluded as part of his/her own business<sup>10</sup>. For tax and pragmatic reasons and in order to rectify the requirements set by a given Polish sports association, civil law contracts are most often used, and less often the employment contract<sup>11</sup>.

Athletes are usually relatively young people who have devoted the vast majority of their lives to playing sports, participating in training units and participating in sports competitions. They often did not have the opportunity to acquire the skills necessary to analyse the terms of a sports contract and to acquire the negotiating skills necessary to guarantee fair working conditions. If players perform in commercially significant disciplines and have some successes that have brought them significant income, they have a greater chance of getting the support of other people or entities to first negotiate good working conditions and then ensure their implementation by the employing entity.

The terms of a sports contract are most often agreed by the athlete (sometimes with the participation of his/her agent or law office) directly with the sports club, taking into account the terms of such contract that have been adopted by the relevant Polish sports association (such regulations do not exist in every discipline). In fact, the final shape of the contract and the mutual regulation of the obligations and rights of the athlete and the club largely depend on three factors: the sports discipline, financial and sports capabilities of the club, and the position (place) of the athlete, which is related to the possibility of negotiating the best possible conditions. While trade unions cannot influence the first two factors, they may be important in relation to the third factor. The subjects of interest of modern trade unions include, first of all, justified social and economic goals, including protection against unemployment and poor working conditions, unfair pay or care for social security<sup>12,12</sup>.

It should be assumed that reaching agreements between athletes and sports clubs should be of a consensual character, which could be achieved through collective labour agreements or concluded agreements<sup>13,13</sup>.

<sup>8</sup> Joanna Unterschütz, Prawo do rokowań zbiorowych – prawo pracowników czy związków zawodowych?, *Studia z zakresu prawa pracy i polityki społecznej* 24/2017, p. 239-255.

<sup>9</sup> Komunikat z badań CBOS. Związki zawodowe w Polsce 138/2019, p. 5, [www.cbos.pl](http://www.cbos.pl) (access: March 2022).

<sup>10</sup> Michał Matuszak, Pracownik, artysta czy prekariusz – w poszukiwaniu protoplasty e-sportowca na kanwie prawa pracy, *Przegląd Prawa i Administracji* 127/2021, p. 490.

<sup>11</sup> More considerations about the possibilities of using an employment contract in sport are included in the doctoral dissertation of the author of this publication entitled "Umowa o pracę sportową", which was presented at the Faculty of Law and Administration of the University of Łódź in 2020.

<sup>12</sup> Franciszek Kampka, Związki zawodowe dzisiaj, *Roczniki Nauk Społecznych* 1/1991-1992, p. 104.

<sup>13</sup> Michał Passon, Michał Różycka, Wybrane problemy związane ze statusem zawodnika e-sportowego w świetle

Trade unions are sometimes perceived by the public as entities aiming at social unrest and provoking tensions in workplaces, when in fact their activities boil down to maintaining dialogue between the employer and employees, but only in the absence of it or insurmountable differences in positions the collective disputes are held. And although there are cases of instrumental use of trade unions for other purposes (for example: strictly private or political), the experiences related to the functioning of trade unions in Poland should be assessed positively.

### **Features and perspectives of trade unions in sport**

Trade unions have the right, *inter alia*, to express opinions on assumptions and active legal projects in the field covered by the tasks of trade unions, to conduct collective bargaining and conclude collective labour agreements as well as other agreements provided for by the provisions of labour law, or to exercise control over compliance with labour law and participate in supervision on compliance with the provisions and rules of safety and hygiene. The scope of operation of trade unions under Polish conditions is relatively wide, and their powers are essential to guarantee the rights of employees in employment, although these rights may also be preserved in non-union activities (trade unions help significantly, but are not a *sine qua non* condition). Such a conclusion seems justified, especially since in many other sectors of the economy trade unions are efficient and they assist employees in resolving employment disputes.

However, let us look at the experiences of other countries in the field of sport - including, for example, the United States of America. As far as the legal situation of an individual in the American model of sport is concerned, attention should be paid to the Collective Bargaining Agreement, which is the equivalent of Polish collective agreements. They are quite common in American sports (including MLS and NBA) and collectively regulate such issues as, among others: remuneration, a number of hours, employment conditions, club discipline, medical law, and retirement conditions. The legal basis for the efficient functioning of collective agreements in the USA remains the National Labour Relations Act, which allowed athletes to be covered by protection in the workplace, and in particular, allowed them to join their Polish counterparts (certified labour unions). An independent agency of the US federal government is the National Labour Relations Board (NLRB), which is responsible for enforcing US labour law in relation to collective bargaining and unfair labour practices. It has jurisdiction over all organized sports in the USA.

It should be noted that collective agreements in the USA are used in sport much more often than in Poland, as they regulate almost every aspect of the athlete's employment there. In Polish sport, the provisions of collective agreements as well as other non-statutory sources of labour law, referred to in art. 9 of the Labour Code, i.e. other collective agreements, regulations and statutes based on the act, defining the rights and obligations of the parties to the employment relationship, are not commonly used (more on this in the previous section).

The trade union representing professional athletes in the USA has the right to declare a strike if no collective agreement has been negotiated, which will most often consist in refusing to participate in or to prepare for scheduled sporting events. The professional league has the right to apply the so-called lockouts, which consist in temporary suspension of work or refusal to work in a given period during an employment dispute. The above tools (i.e. strikes and lockouts) are intended to create an obstacle to the conclusion of collective bargaining agreements, and these instruments have repeatedly led to difficulties in playing out individual seasons, e.g. in Major League Baseball, in the National Hockey League, in the National Basketball Association, and in the National Football League. In the United States of America, it is possible to use an offensive and defensive lockout. An offensive lockout should be understood as the use of this statutory instrument as an element of pressure on the trade union organisation in order to negotiate the intended tasks, and a defensive use of a lockout as an activity aimed at defending one's own economic interests against the employees' strike.

Trade unions in sport also have their successes in Europe, including the Professional Footballers' Association, which has been operating in England since the beginning of the 20<sup>th</sup> century, and currently associates several thousand members, in the Netherlands, with the participation of the trade union, the so-called pensions for football players, which are put aside from part of the earnings of players, and then paid after the end of their career and before retirement age, and in Spain a trade union has created camps where players who are temporarily without a contract with sports clubs

can train<sup>14</sup>. By the way, it should be remembered that there are also international organizations in sport, for example in sport there is FIFPro (Fédération Internationale des Associations de Footballeurs Professionnels), which is the International Federation of Professional Footballers, which associates over sixty thousand footballers from over sixty countries, and which aims is to ensure dialogue with FIFA, UEFA and the European Union.

In my opinion, it should be emphasized that trade unions in the professional sport sector in Poland could play an important role in the near future, however, currently there is still no greater interest in participating in such organizations among athletes. In order to be able to influence the situation in a given workplace and, more broadly, in a given sector of the economy, through the activity of trade unions, at least a moderate degree of trade union density is necessary. However, it is difficult to expect significant improvement in this respect in the coming years. Because although the extension of the subjective scope of the coalition's right could be of significant importance in sport (the employment contract is used much less frequently than civil law contracts), it seems that athletes will be reluctant to join trade unions. This is due to at least several reasons: the lack of an appropriate trade union tradition in society, the lack of conviction among athletes about belonging to a community of representatives of the given discipline, relatively frequent changes of employers (sports clubs), but also the specificity of sport itself.

## Summary

The research carried out leads to the following several conclusions:

- (i) trade unions play an important role in employment and in ensuring that employees' rights are respected, irrespective of the economic sector;
- (ii) the level of trade union density in Poland is relatively low and there is no clear action on the part of the legislator to change this trend, which is largely due to historical conditions and the lack of strong trade union traditions (despite NSSZ Solidarność);
- (iii) trade unions in sport operate to the small extent and their influence on the actual functioning of sport in Poland is illusory;
- (iv) in the medium and long term, trade unions in sport, in particular in connection with the amendment to the Trade Unions Act, extending the subjective scope of the coalition right, may play an important (more important) role and become intermediaries between players and sports clubs, and sports unions, however, it is difficult to expect that the level of trade union density in sport will be significant.

In this regard, some concluding remarks should be made. Regardless of the subject of the research, it is possible to predict future events and trends only to the limited extent, and in particular those that would be in some contradiction to past experience. This leads to the need to exercise some caution in formulating unambiguous theses. The amendment to the Trade Unions Act may be of significant importance in the long term, although the first few years of its use have not changed much. However, the experience of other countries shows that trade unions in sport make sense, and their operation may have a significant impact on the functioning of the entire sports competition. In a conflict situation, trade unions, as a larger organization - a union of hundreds or thousands of players, have the opportunity to more fully oppose the introduction of unfavourable changes or the lack of will to introduce more favourable changes (an example is the American experience: numerous lockouts that could last for months - incl. in Major League Baseball, there were strikes in 1972, 1980, 1981, 1985 or 1994, and lockouts in 1973, 1976, 1990, there was a strike in 1992 in the National Hockey League, and lockouts in 1994-1995, 2004-2005, 2012-2013, lockouts in the National Basketball Association in 1995, 1996, 1998-1999 and in 2011, and in the National Football League there were strikes in 1968, 1970, 1974, 1982, 1987, and lockouts in 1968, 1970, 2011). Under Polish conditions, collective disputes on matters important for athletes and other people performing paid work in sport would be potentially possible to introduce.

However, when answering the original question: Is it finally time for trade unions in the professional sport sector? The answer should be 'no'. There are formal and legal possibilities for trade unions to play a more important role in the medium and long term, however, there is no specific entity or group of entities that would be really interested in their development, both among the athletes themselves as well as in sports clubs and Polish sports associations or the Ministry of Sport. In the opinion of the author of this article, the Polish reality

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<sup>14</sup> Michał Trela, Stare jak futbol. Związki zawodowe piłkarzy wychodzą z cienia, <https://newonce.sport/artykul/stare-jak-futbol-zwiazki-zawodowe-pilkarzy-wychodza-z-cienia> (access: March 2022).

still lacks strong entities that would represent athletes and other people working in the field of professional sport, and which had a significant impact on the functioning of the given sports discipline. Increasing the trade union density level should be one of the many goals of modern sport, although as Bruce Lee used to say: "A goal is not always meant to be reached, it often serves simply as something to aim at."

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