Working document

NFS ILO Project – Steering group note

Introduction

One of the main purposes of this project is to determine whether any given legislation or practice complies with the ILO Core Conventions and Convention 144 on Tripartite Consultation.

As a baseline for this analysis, Niklas Bruun prepared a report, structured as separate country reports for each of the three Baltic States, including a description of the approach to international conventions taken by the respective national legal systems and the implementation of the respective ILO Conventions. Finally, Niklas Bruun also drew some conclusions for each country and made some general conclusions and recommendations relating to all three Baltic States.

Niklas Bruun's report was the starting point for the field study interviews conducted by Siri Relling and Bernt Fallenkamp, which successfully contributed to the analysis of the Baltic States Trade Union Movement challenges in relation to the ILO core conventions and social dialogue.

Some questions have arisen regarding the answers received from the field study and the questions that we did not get any answers to. The right to strike in the public sector is such an issue.

The Steering Group therefore prepared this separate note on questions that arose from the Niklas Bruun report and as well as the answers received, including parts of the interviews that remain unanswered. It is our intention by doing so, to identify areas of concern that need further discussion and consideration.

The Steering Group therefore would like to draw the attention to the following issues during the presentation of the field study at the midway conference in Tallinn 29 August 2017, followed by a discussion on developing a strategy to improve workers' rights in the respective countries.

Estonia

Niklas Bruun highlights the following concerns with regard to:

3.2 Freedom of Association (Conventions 87 and 98)

i. Section 19 of the Trade Union Act recognizes that privileges due to trade union membership should not be regarded as discrimination. However, concerns have been raised within Estonian trade unions that the Labour Inspectorate holds the position that trade unions and employers are not allowed to agree on certain benefits for trade union members in collective agreements. Such an interpretation is clearly not within the limits of ILO conventions 87 and 98.

ii. Under Article 9 of Convention 87, the extent to which the guarantees of the Convention must apply to the armed forces and police can be determined by national law, but when restrictions are placed on the right to strike in the public sector, these restrictions should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part. Second, the group defined as exercising public authority seems to be very broadly defined in Estonia. Therefore, the problem still appears to be partly unresolved in Estonia. (The issue is also addressed in the Field Study report)

iii. According to section 59 of the Civil Service Act, the strike ban applies only to officials exercising public authority, however this group seems to be very broadly defined in Estonia, raising questions whether this goes beyond the limited restrictions allowed for in or C 87 and 98. (The issue is also addressed in the Field Study report)

From the Field Study interview, the following observations are made:

1. Benefits, vacation, additional vacation, work-time is regulated by law, but some issues are discussed by collective agreements, which indicate the point raised by Mr. Niklas Bruun (i).
2. The restrictions on freedom of association and collective bargaining, including the right to strike within the public sector, highlights and address a key principle of the fundamental conventions, including the objective of the strike, definition of civil service and essential services.
3. It is not clear whether the criteria: *"5 members to make trade unions, 5 trade unions to have sectoral organization, and 5 to make central organization"* derives from legislation or trade union statutes?
4. Discrimination against Trade Union members or leaders seems to occur frequently, which raise the issue of protection against anti-union discrimination. The interviews suggest that the government has recognised a problem with the enforcement of laws in regard to protecting trade union members. And the trade unions emphasize that there is no labour court, only dispute committees under the labour inspectorate.
5. There seems to be two terms to define a worker representative: 1) trade unions, and 2) workers representative – (Trustee)?
6. The labour contract act gives you minimum and maximum obligations. But the civil service act is a maximum act. These contracts clearly have a great impact and limits the collective bargaining possibilities.
7. There seems to be great uncertainty regarding what would be regarded as political strikes and hence illegal (stated both by the Employer Confederation and the Trade Union Confederation).

Niklas Bruun highlights the following concerns with regard to:
3.3 Child Labour (Conventions 138 and 182)

i. The Committee of the European Social Charter has concluded that the daily and weekly working hours for children subject to compulsory education were excessive as the situation does not conform with Article 7.3 of the European Social Charter. There are clearly similar problems relating to ILO Convention 138.

Niklas Bruun highlights the following concerns with regard to:
3.4. Forced Labour (Conventions 29 and 105, and Protocol 2014)

i. The Committee encouraged the Government to pursue its efforts to ensure that thorough investigations and prosecutions are carried out against perpetrators of human trafficking. It requests the Government to continue providing information on the application of Section 133 of the amended Penal Code in practice, including the number of investigations and prosecutions carried out, as well as the specific penalties applied.

ii. The Committee also requested the Government to provide information on the application in practice of the "Development plan for reducing violence (2010–2014)", indicating whether the objectives set out had been achieved and whether an evaluation had been made to assess the impact of the measures adopted.

iii. The Committee also requested information on the measures taken to protect victims of trafficking and to facilitate their access to immediate assistance and effective remedies.

Niklas Bruun highlights the following concerns with regard to:

3.5 Equal pay and non-discrimination (Conventions 100 and 111)

i. …….there are still no efficient policies in place to address the remaining structural inequality problems on the Estonian labour market.

ii. …….Therefore, the UN CEDAW-Committee10 raised concerns regarding the following matters in 2016:

   a) the lack of an effective mechanism for filing complaints about sexual harassment in the workplace that allows cases to be brought before the court ex officio;

   b) the existence of a persistent horizontal and vertical occupational segregation and gender pay gap of almost 30% and a lack of transparency concerning wages at enterprise level;

   c) the lack of systematic collection of sex-disaggregated statistical data on employment, as required under the Gender Equality Act;

   d) women's significant underrepresentation in management positions in the private sector;

   e) the low employment rate among women aged 25–49, due to unequal sharing of child raising and caretaking responsibilities between women and men, and the lack of childcare services in the state;

   f) employment discrimination against women returning to work after maternity leave.

iii. The CEACR has raised similar concerns and requested information on any measures taken by the social partners to promote equality at all levels of the Estonian labour market.

Niklas Bruun highlights the following concerns with regard to:

3.6. Convention 144

i. There are some reports from Estonia indicating that the handling of the economic crisis in Estonia damaged the relations between the state or the government, on the one hand, and the social partners, on the other. Trade unions agreed to cuts, but government promises were not fulfilled and several agreements already made were breached. Furthermore, the wish to make quick decisions resulted in low or only formal involvement of social partners. (The issue is also pointed out in the Field Study report)

From the Field Study interview, the following observations are made:

1. Statements like *"doesn't take ILO too seriously" – "government or other authorities don't work to encourage social dialogue" -"there is no national tripartite committee"- "would like to have it more organized and formalized" – "social dialogue is important, but our politicians have stated other priorities"* underlines and clarifies the point raised by Mr. Niklas Bruun (i)

2. The lack of social dialogue stresses the importance of dialogue/meetings and cooperation between the social partners in order to strengthen their position towards the government/parliament and create the basis for a future positive social dialogue in the country. The social partners indicate problems both in regard to informality of structure, information and involvement.

3.7 In general, the following possible actions are proposed from the Field Study interview:

1. The Government should establish solid tripartite institutions and fora that irrespective of the change of governments/political parties will last and contribute to a sound social dialogue on both bipartite and tripartite level.

2. The Trade Union and the Employers' organisation both stated the need for strong social partners, and more education. Training of managers and shop stewards in labour relations is vital for building strong organisations and to have a good social dialogue on a bilateral level, including focus on negotiation skills, OHS-regulations, etc. This is also in the interest of the Government, which should support this kind of training.

Latvia

Niklas Bruun highlights the following concerns with regard to:
4.2 Freedom of Association (Conventions 87 and 98)

i. In the 2014 Trade Union Act, this requirement was revised and the requirement of 50 members now applies to industrial unions only (established outside an undertaking), while the requirement is otherwise at least 15 members, or less than one-fourth of the total number of employees at the undertaking, which may not have less than 5 employees (Section 7).

ii. Other restrictions concern the objectives of a strike. Solidarity strikes are considered illegal unless the dispute concerns a 'general agreement', i.e. a sectoral-level collective agreement. Since sectoral agreements are rare, this makes strikes even rarer. Politically-motivated strikes are also illegal.

iii. Finally, there are restrictions on the right to strike for various groups of public servants (e.g. firefighters, police officers, judges, public prosecutors, etc.).
The list of 'essential services' that have to be ensured during a strike is very broad. Essential services include medical science and first aid services; public transportation services; drinking water supply services; services generating and supplying electricity and gas; communications services; air service control and the service providing meteorological information to the air service control; services relating to the security of all kinds of transportation; waste and sewage collection and water purification services; radioactive goods and waste storage; utilisation and control services and civil protection services. (The issue is also addressed in the Field Study report)

From the Field Study interview, the following observations are made:

1. According to Niklas Bruun, the legislation fixes a requirement of 50 members to create industrial unions, which by ILO has been considered obviously, too high a figure. Consultation in order to reduce the fixed number is recommended.
2. The strong restriction on both the objection on strikes and the right to strike for various groups due to the very broad list of essential services is generally not of big concern. Nevertheless, further discussion and consideration on these issues might be worth considering.
3. It is not clear from the field study if there exist two definitions of worker representative: 1) trade unions, and 2) workers representative?
4. In regard to collective bargaining in the public sector there are restrictions on what issues that can be agreed upon in law? (TU interview) Also unclear if this was "just" for the public sector or concerns all collective agreement bargaining?
5. The trade unions also made a general comment that collective bargaining "does not function properly" which seems worth exploring further, not least given the low coverage.
6. There is also here an access to justice challenge concerning conflicts on labour rights: labour commissions that are informal, at company level and seek compromises.

Niklas Bruun highlights the following concerns with regard to:
4.3 Child labour (Conventions 138 and 182)

i. Amendments to Section 132 introduced a distinction between the maximum working time of youths aged 13 to 15 and youths aged 15 to 18. Previously, Section 132 had allowed the employment of youths aged 13 to 18 for a maximum of 4 hours daily and 20 hours weekly during school holidays. The amendments allow the employment of youths aged 15 and above for up to 7 hours daily and 35 hours weekly during school holidays. The amendments were justified as reflecting the reality that individuals aged 15 to 18 have the ability to perform the same type of work, with the restriction of working time depending on whether the person aged 15 to 18 is still subject to mandatory schooling. *The ILO position on these amendments has not yet been published.*

Niklas Bruun highlights the following concerns with regard to:

4.4 Forced labour (Conventions 29 and 105, and Protocol 2014)

i. Until now, Latvia has not ratified Protocol 2014 of the Forced Labour Convention.

ii. In relation to Convention 29, issues relating to the work of prisoners and the right of members of the armed forces to leave service during peacetime have been a matter of particular concern. Therefore, the Committee requested the Government, in its next report, to provide information on how national legislation and practice ensure that work done by prisoners for private enterprises both inside and outside prison premises, occurs only with their formal and informed voluntary consent and that this consent is free from the menace of any penalty, including the loss of rights or privileges.

Niklas Bruun highlights the following concerns with regard to:

4.5 Equal pay and non-discrimination (Conventions 100 and 111)

i. Section 60 of the Latvian Labour Code (Law) stipulates that the principle of equal pay for the same kind of work or work of equal value shall apply.

ii. Under Convention 100, the CEACR has addressed the gender wage gap and occupational segregation. The Committee noted an overall gender wage gap in 2013 (first quarter) of approximately 24.8% in the public sector and 13.9% in the private sector (23.4% and 15.6% respectively in 2011). Also, referring to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee noted the Government's indications regarding measures to implement the Gender Equality Action Plan 2012–2014 to address occupational segregation, particularly in the field of education. Noting that the gender wage gap remained stable, the Committee once again urged the Government to take the necessary steps to reduce the gender wage gap in the public and private sectors, including taking measures to improve women's access to a wider range of jobs and positions.

iii. The Committee also asked the Government to continue to provide updated statistical information on the distribution of men and women in the various economic sectors, occupational categories and positions, as well as their corresponding earnings.

iv. The Committee asked the Government to ensure that the method used to establish the classification of the positions and, accordingly, to determine whether the remuneration of public officials and employees are based on objective criteria, and positions traditionally occupied by women are not undervalued and therefore classified at a lower level in comparison to those traditionally held by men.

v. The Committee recalled that in discussing equal remuneration, the overall societal context of equality and non-discrimination cannot be ignored and needs to be addressed, and if measures to reconcile work and family responsibilities are important in this context, it is essential that such measures are made available to both men and women on an equal footing.

vi. The Committee requests the Government to ensure that emerging forms of discrimination that may lead to discrimination in employment and occupation based on colour and social origin are adequately

monitored to assess whether the protection afforded by the legislation remains appropriate and effective.

vii. Finally, the CEARC addressed discrimination based on national origin. For a number of years, the Committee had been referring to certain provisions of the Law on State Language of 1999 concerning language requirements that may have a discriminatory impact on minority groups in employment and occupation (particularly on Russian-speaking minorities).

viii. Also, discrimination based on political opinion or political affiliation was addressed. The CEARC had been referring to the mandatory requirement set out in the State Civil Service Act (2000), which provides that to qualify as a candidate for any civil service position the person concerned "is not or has not been in a permanent staff position, in the state security service, intelligence or counterintelligence service of the USSR, the Latvian Soviet Socialist Republic (SSR) or some foreign State" (Section 7(8)), or the persons concerned "are not or have not been members of organisations banned by laws or court rulings" (Section 7(9)).

From the Field Study interview, the following observations are made in regard to
4.6. Convention 144

1. There is a consensus on a well functioning Social Dialogue among the government and social partners in Latvia on central level. All parties however do point out that there are problems on sectoral and company level.

4.7 In general, the following possible actions are proposed from the Field Study interview:

1. Although there is a solid tripartite dialogue on the national level, there is low coverage of collective agreements on sectorial and company level. The Trade Union and the Employers' organisation need to develop a solid bipartite dialogue on branch union level, and focus on training of shop stewards and managers on labour relations, with the focus of negotiation-skills and modernisation of the collective agreements.
2. The Government, as an employer for the public sector, should consider establishing collective agreements that include negotiations on wages for their employees, including teachers, nurses, etc.

Lithuania

Niklas Bruun highlights the following concerns with regard to:
5.2 Freedom of Association (Conventions 87 and 98)

i. The categories of civil servants whose freedom of association rights are restricted have given cause for some concern……..Employees of the professional Lithuanian army seem to be completely outside the right to organise in a trade union, although they can organise in a general association.

ii. The procedure for declaring a strike has been much debated….. The 2016 Labour Code has reintroduced the requirement for a strike ballot, but now the required majority is one-quarter of the members of the trade union. This requirement seems only to apply to enterprise-level strikes in accordance with Article 245, however.

iii. A matter of concern has also been the way in which minimum services during a conflict are defined, and the compensatory measures undertaken for those employees who are deprived of the strike weapon because they participate in providing vital services to the public during the strike.

iv. Regarding the procedure for defining the minimum services, this task is now given to the impartial body hearing the labour dispute (arbitration), which is in accordance with ILO requirements.

v. In relation to the 2016 Labour Code. there are some new issues which might give cause for concern concerning the obligations for Lithuania under ILO Conventions 87 and 98. Especially the new employee representation system, as described in Article 165, could undermine the position of trade unions and collective bargaining. (The issue is also addressed in the Field Study report)

From the Field Study interview, the following observations are made:

1. The workers' organization points out limitations on the right to strike in the new labour code, that the government is reassessing at the time of the interview:

"Regarding strikes, there used to be restriction for replacement of striking people by the employer, this restriction is not there anymore. New concept: "lock-out". Strike can only be 7 days long and after that, the employer can enforce a lock-out, which means they will replace the workers."

2. The employers organization points at a problem where lawyers work to get cases to court even though the social partners agree on issues. ("90 % of cases where the social partners agree, the lawyers want to go to court.")

3. The Trade Unions point out that the new labour code only offers protection to the trade union leader and the Work Council, not to other elected leadership.

Niklas Bruun highlights the following concerns with regard to:
5.3 Child labour (Conventions 138 and 182)

i. If the concept of "light work" is similarly interpreted in Article 7 of the Convention as in Article 7 of the European Social Charter, which seems to be consistent and reasonable, the legal situation in Lithuania does not seem to be in full conformity with ILO Convention 138.

Niklas Bruun highlights the following concerns with regard to:
5.4 Forced labour (Conventions 29 and 105 (and Protocol 2014)

i. Lithuania has not ratified Protocol 2014 of the Forced Labour Convention (29).

ii. Lithuania is a country of origin of victims of trafficking, but to certain extent a country of destination, particularly for men subjected to trafficking for labour exploitation.

iii. Prisoners working for private enterprises without their prior, voluntary, formal and informed consent is a problem (Article 2 (2) (c). (C 29).

Niklas Bruun highlights the following concerns with regard to:
5.5. Equal pay and non-discrimination (Conventions 100 and 111)

i. Regarding equal pay and non-discrimination, there have been three concerns raised by the ILO supervisory body relating to the Lithuanian situation: 1) there are issues related to the assessment of equal pay, on the one hand, and the enforcement of the principle of equal pay, on the other (Convention 100); 2) in relation to Convention 111, there are concerns regarding discrimination on multiple grounds, such as ethnic minority groups like Roma women and persons with disabilities, and also regarding the lack of mechanisms to deal with and enforce cases of sexual harassment; 3) there are concerns that the general approach of weakened protection against dismissals and changes in terms and conditions of employment in the new Labour Code might especially result in a weakened position for pregnant women and women with small children.

Niklas Bruun highlights the following concerns with regard to:
5.6 Convention 144

The administrative structure of the Tripartite Council of Lithuania was modified: the independent legal person (Office of the Tripartite Council) was abolished in November 2014 and the Ministry of Social Security and Labour took over the organisational aspects of the functioning of the Tripartite Council of the Republic of Lithuania. Corresponding amendments to the Labour Code were made. (The issue is also addressed in the Field Study report)

i. The 2016 Labour Code contains detailed rules on the Tripartite Council of the Republic of Lithuania. The list of matters the Tripartite Council shall consider explicitly mentioned "matters to be considered according to provisions of the International Labour Organisation's Convention 144" (Article 185.9).

From the Field Study interview, the following observations are made:

5.6 Convention 144

1. According to the two social partners, the state alone tried to impose changes to the tripartite council without consultations with the social partners. Now, the government has to approve who the partners in the council should be. The Employers' organisation and Trade Union oppose this, and argue that this should not be decided by one partner alone. The interview with the government representative also emphasizes that the social partners need to meet specific criteria that will be assessed by the Ministry of Social Security and Labour.

5.7 In general, the following possible actions are proposed from the Field Study interview:

1. The Government, in cooperation with the Trade Union and Employers' Organisation, should, according to ILO Convention 144 on Tripartite Consultations, strive to make a clear and transparent selection of partners in the tripartite council, based on representativity. To include other partners on the tripartite council that are not Trade Unions or Employers' Organisations, or who lack representativity, can fragment the organisations and weaken the dialogue within the tripartite council.

2. The Government should establish solid tripartite institutions and fora that, irrespective of the change of governments/political parties, will last and contribute to a sound social dialogue on both bipartite and tripartite level.

3. The government should establish independent institutions that can deal with labour issues and breaches of standards and regulations, as e.g. through a Labour Court. There is a need for a neutral place for the Trade Union to voice concern related to labour issues, like harassment of workers/shop stewards.

4. The Government should, together with the Employers' organisation and the Trade Union, work to combat the informal sector and corruption, and to increase transparency, trust and sound debate.

Other general conclusions that can be drawn from the field study:

- Respondents in all countries have identified the need for strong social partners and more education. Training of managers and shop stewards in labour relations is vital for building strong organisations and to have a good social dialogue on a bilateral level, including focus on negotiations skills and capacity building in collective bargaining
- Many of the respondents have pointed at the structure of the labour market as a key challenge for organising. i.e the number of SMEs. This problematic could merit further study.
- The partners have pointed out a need for education and information about the ILO system
- All parties have pointed out the problem of representativity

- There seems to be a general problem of access to justice in cases regarding fundamental labour rights. Bruun suggests that “to strengthen these rights, it would be important to make an in-depth review of each country to identify the mechanisms that lead to the lack of effective enforcement of fundamental labour right.” Might this be a suggestion as part of a strategy going forward?