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The Baltic States and the Core Conventions of the ILO

A report for the NFS written by Professor Niklas Bruun

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This report has been commissioned by the Council of Nordic Trade Unions as part of the NFS project: ***An analysis of the Baltic Countries: Determining whether any given legislation or practice complies with the ILO Core Conventions and Convention 144 on social Dialogue.***

The paper is commissioned as an independent part of a larger project context and it has been written by researcher Niklas Bruun, Professor at the Hanken School of Economics in Helsinki. The content and analysis in the paper are the work of the author and has been commissioned as impartial and independent. The report does not reflect the policies of NFS.

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1. Introduction

This report discusses the implementation of the eight core ILO Conventions in the Baltic States as well as the implementation of Convention 144 on tripartite consultations. The report was commissioned by the Council of Nordic Trade Unions (NFS).

The report starts with a short presentation of the ILO system and the core conventions to facilitate an understanding of the implementation issues. Thereafter the report is structured in the form of separate country reports for each of the three Baltic States. For each state, the author begins by presenting a few basic background facts and a description of the approach to international conventions taken by the respective national legal systems. Then the implementation of the respective ILO Conventions is discussed and finally some conclusions are drawn. In the last chapter some general conclusions are made relating to all three Baltic States.

The first draft of this report was distributed to various experts in the Baltic States and elsewhere in early February. Many useful comments were received and the draft was also presented at the NFS Conference "Employees' rights in the Baltics", held in Vilnius on 23 February 2017. The feedback and comments on the draft are integrated into this report.

In this context, the author wants to thank all commentators and participants in the conference for their useful comments and contributions. I also want to thank Maria Häggman and Magnus Gissler of the NFS for their support. For all remaining errors and misunderstandings, however, the author bears sole responsibility.

2. The ILO, its standard-setting system and the methodology of the report

The International Labour Organisation (ILO) was established already in the aftermath of the World War I in 1919. Since then, the ILO has brought together the governments, employers and labour representatives of the now 187 Member States to set labour standards, develop policies and devise programmes promoting decent work for all women and men. It is the only UN agency with a tripartite structure. This tripartite structure should also form an integrated part of all ILO-related activities in the member states, where tripartite consultations should be the standard procedural mechanism as envisaged in Convention 144 on Tripartite Consultations.

Setting standards has traditionally been a core activity for the ILO and it has adopted many conventions and recommendations to set an international minimum standard for working conditions. Member states must take these instruments to the national Parliaments, which decide whether to ratify them. Member states must also report on the fulfilment of ratified conventions to the ILO. The Committee on Experts of the Application of Conventions and Recommendations (CEACR) is the body doing this work for the ILO. A separate ILO body – "The Freedom of Association Committee" (CFA) – is responsible for monitoring the Conventions on the Freedom of Association when complaints regarding individual cases have been filed.

In 1998, the ILO Conference decided to proclaim eight of the existing labour conventions as Core Labour Standard Conventions.[1] These Conventions are divided into four categories: freedom of

[1] **Forced Labour**:
Convention 29: Forced Labour – 1930 (including Protocol 2014)

association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.

The decision on Core Labour Standards was taken in the form of an ILO Declaration on Fundamental Principles and Rights at Work. The Declaration commits Member States to respect and promote principles and rights, irrespective of whether they have ratified the relevant conventions. This declaration makes it clear that these rights are universal and that they apply to all people in all states regardless of the level of economic development. It particularly mentions groups with special needs, including the unemployed and migrant workers. It recognises that economic growth alone is not enough to ensure equity and social progress and to eradicate poverty.

The commitment by all member states to abide by the core conventions is supported by a follow-up procedure. Member states that have not ratified one or more of the core conventions are asked each year to report on the status of the relevant rights and principles within their borders, noting impediments to ratification and areas where assistance may be required. These reports are reviewed by the Committee of Experts (CEACR). In turn, their observations are considered by the ILO's Governing Body.

When discussing the interpretation of the ILO Core Conventions, it is important to note some basic facts. Most of these core conventions are rather old. The only exception is the new, legally-binding Protocol on Forced Labour, supported by a Recommendation (No. 203), aiming to advance prevention, protection and compensation measures and to intensify efforts to eliminate contemporary forms of slavery. The convention regulating the worst forms of child labour is as recent as from 1998. The older instruments are rather brief and many interpretations of their content have gradually been developed in practice.

The supervisory mechanisms of the ILO have been used as the main source for these reports. The author has systematically studied the reports regarding the Baltic States concerning their implementation of the core conventions and Convention 144. All three Baltic States have ratified these conventions, although Estonia is the only country so far to ratify Protocol 2014 for the Forced Labour Convention.

The author has used the unofficial English translations of labour legislation in the Baltic States and refers to these English texts/translations. The Baltic States also report on their implementation of fundamental labour standards set by the UN, the European Council and the EU. Such material has also been used to assess the implementation of the ILO conventions.

Convention 105: Abolition of Forced Labour – 1957
Freedom of Association:
Convention 87: Freedom of Association and Protection of the Right to Organise – 1948
Convention 98: Right to Organise and Collective Bargaining – 1949
Equality:
Convention 100: Equal remuneration – 1951
Convention 111: Discrimination (Employment and Occupation) – 1958
Child Labour:
Convention 138: Minimum Age Convention – 1973
Convention 182: Elimination of the Worst Forms of Child Labour – 1999

3. Estonia

3.1 Background

Trade-union membership in Estonia is estimated to be slightly below 10%, distributed over two organisations: the Confederation of Estonian Trade Unions (EAKL) and the Estonian Employees' Unions Confederation (TALO). The Estonian Employers' Confederation represents private-sector employers. The coverage of collective bargaining has been about 30%, however, at least in some periods due to extension mechanisms used in some sectors.

Estonia's legal system is based on the Constitution of the Republic of Estonia (Eesti Vabariigi põhiseadus).[2] Article 29.5 of the Constitution sets out that everyone is free to belong to unions and federations of employees and employers. Furthermore, according to Article 29.5, unions and federations of employees and employers may assert their rights and lawful interests by means that are not prohibited by law. The conditions and procedure for the exercise of the right to strike are provided by law.

The procedure for resolution of labour disputes is provided by law (Art. 29.6).

The fundamental political rights are also enshrined in the Constitution. According to Article 47, everyone has the right to assemble peacefully and to conduct meetings without prior permission.

Issues related to foreign relations and international treaties are regulated in Chapter IX of the Constitution. Article 123 states that the Republic of Estonia may not accede to treaties which are in contravention of the Constitution. It also states that when Estonian laws or other legislation conflicts with an international treaty ratified by the Parliament, Riigikogu, provisions of the international treaty apply.

3.2 Freedom of Association (Conventions 87 and 98)

The legislation foreseen in the Constitution is the Collective Agreements Act 1993 (14.4.1993) with subsequent amendments, the Trade Unions Act (14.6.2000) with subsequent amendments and the Collective Labour Dispute Resolution Act (5.5.1993). Individual employment contracts are regulated by the Employment Contracts Act (17.12.2008), while the Civil Service Act (13.6.2012) applies to public-sector employees.

The right to not be discriminated against on the basis of trade union membership is protected by Section 19 of the Trade Unions Act, but there are no direct sanctions if violations occur.

There have been some relatively recent incidents and court cases in Estonia regarding discrimination against trade union members. To strengthen the freedom of association, the Penal Code was amended and Section 155 entered into effect on 1 January 2015. This introduced sanctions to guarantee the right to form and join trade unions, but the sanctions do not apply when those who already are trade union members face unfavourable treatment.

Section 19 of the Trade Union Act recognises 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.

[2] Passed 28.06.1992, entered into effect 3.7.1992, RT 1992, 26, 349, 1992.

Estonia has had a long-standing debate with the supervisory bodies of the ILO regarding the freedom of association rights for public servants. The issue was at stake in a case that emanated from a complaint submitted by the EAKL to the CFA, arguing that by totally prohibiting the right to strike in the public sector, the Government of Estonia violated workers' rights.[3] The Committee, and consequently ILO, gave several detailed recommendations already in 2008:

> - The Committee expects that the legislation will be soon amended, in consultation with representative workers' and employers' organisations concerned, to ensure that public servants who do not exercise authority in the name of the State enjoy the right to strike.
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> - The Committee requests the Government, within the framework of consultations on the reform of the Public Service Law, to ensure that the mechanisms available to workers who are deprived of an essential means of defending their socio-economic and occupational interests (mediation, conciliation and/or arbitration) are impartial and rapid.
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> - The Committee expects that a list of enterprises or agencies where minimum services should be maintained during a strike will soon be adopted, in full consultation with the workers' and employers' organisations concerned.
>
> - The Committee requests the Government to ensure that priority is given to collective bargaining as a means of determining the employment conditions of public servants, rather than adopting legislation to restrain wages in the public sector.

This issue was followed up by the CEACR on several occasions until Estonia finally adopted the Public Service Act (or Civil Service Act) in June 2012 which entered into effect on 1 April 2013. Section 7 of this Act distinguishes between officials appointed to a post of authority which involves the exercise of official authority, on the one hand, and employees whose jobs do not involve the exercise of public authority, but only work to support the exercise of such authority, on the other. The strike ban applies only to officials (Section 59). This solution formally satisfies the old recommendation of the CEACR that the Estonian government should ensure that the right to strike is guaranteed to all public servants, with the only possible exception of those exercising authority in the name of the state. This solution still has problems, however. 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.[4] Second, the group defined as exercising public authority seems to be very broadly defined in Estonia.[5] Therefore, the problem still appears to be partly unresolved in Estonia.[6]

Several issues relating to the draft Collective Agreement Negotiation and Collective Labour Dispute Resolution Act, which was brought before the Parliament already in 2014, have been controversial. Since this legislation does not seem to be on the agenda of the present government, I do not further

[3] The Freedom of Association Committee (CFA) Case 2543 (Estonia), Report 350, June 2008.
[4] See *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*. 5th revised edition 2006. p 596.
[5] During an ILO Mission in 2014, the author was given an estimation from an official in the Ministry of Justice that the public sector had around 12,000 officials and 7,000 employees.
[6] See also the European Committee of Social Rights, Conclusions 2014 – Estonia, Article 6.4, where similar concerns are raised in relation to Article 6.4 of the European Social Charter.

discuss these legislative initiatives. Also, the discussions regarding a reform of the extension mechanisms, which have been going on since 2009, have not resulted in any reforms so far.

3.3 Child Labour (Conventions 138 and 182)

In relation to Articles 5 and 7(1) of Convention 182, the CEACR noted in 2014 that, following its previous comments, the Government had provided information in its report under the Minimum Age Convention, 1973 (No. 138), that the labour inspectors visit enterprises aimed at conducting inspections of legal relations as well as carrying out targeted inspections of working conditions of minors. The Government's report indicated that during the period from 2010 to 2013, investigations concerning minors were conducted in 79 enterprises, where 67 infringements were identified. Most of these violations related to working hours, rest periods, holidays and overtime. In addition, seven violations were related to the employment of young persons in hazardous work, such as work in bars and breweries, gardening work using dangerous machines and the lifting of heavy weights. Misdemeanour procedures were initiated in 21 cases concerning the violation of the Employment Contracts Act, and in 14 cases, sanctions amounting to a total of €8,030 were imposed.[7]

Furthermore, the Committee noted from the Government's report that out of the 243 crimes registered during the period from 2011 to 2013, 152 cases related to the production and distribution of child pornography (Section 178 of the Penal Code), 24 cases related to trafficking of minors for prostitution (Section 175 of the Penal Code) and 23 cases related to procuring or offering a child for sexual purposes (Section 178(1) of the Penal Code). The Committee requests the Government to provide information on the number of persons prosecuted and the specific penalties imposed for the crimes related to the worst forms of child labour.

Convention 138 permits light work for persons aged 13 to 15. In its 2015 Conclusions on Estonia relating to Article 7.3 of the Charter, the Committee of the European Social Charter has stated that, according to Section 43 (4) of the Employment Contracts Act, the maximum working hours for children enrolled in compulsory education are as follows:

- children aged 7–12: 3 hours per day (followed by a rest period of at least 21 consecutive hours) and 15 hours per seven days;
- children aged 13–14 or who are under an obligation to attend school: 4 hours per day (followed by a rest period of at least 20 consecutive hours) and 20 hours per seven days.

The Committee 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.[8] There are clearly similar problems relating to ILO Convention 138.

3.4. Forced labour (Conventions 29 and 105, and Protocol 2014)

Estonia ratified the 2014 Protocol to the Forced Labour Convention (29) on 24 November 2016 and the Protocol will come into force on 24 November 2017.

Regarding Articles 1(1), 2(1) and 25 of Convention 29, the Committee noted the Government's indication concerning the adoption in 2012 of Penal Code amendments criminalising and penalising human trafficking.[9] Pursuant to Section 133 as amended, the crime of trafficking is punishable by one to seven years' imprisonment. The Committee also noted the statistical information provided by the Government regarding the number of cases of human trafficking brought before the courts. The

[7] CEACR Direct Request – adopted 2014, published 104th ILC session (2015)
[8] The European Committee of Social Rights, Conclusions 2015, Estonia, Article 7.3.
[9] CEACR Direct Request – adopted 2014, published 194th ILC session 2015.

Government further indicated that, as of 2010, actions against trafficking fall within the scope of the "Development plan for reducing violence (2010–2014)". The development plan encompasses a multi-layered action plan against trafficking, which focuses on both sexual and labour exploitation and provides for prevention measures, as well as measures to assist victims and strengthen investigations. The plan also drew attention to the need for heightened awareness of the various facets of human trafficking, as well as for clear procedural guidelines for conducting interviews with potential victims. 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. 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. 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.

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

The factual situation on the Estonian labour market shows that although Conventions 100 and 111 as well as the European Union equality legislation, or EU acquis, are formally implemented by the Equal Treatment Act (2008) and the Gender Equality Act (2004), with subsequent amendments, there are still no efficient policies in place to address the remaining structural inequality problems on the Estonian labour market.

There are limited statistical data available from the labour disputes committees and courts that would make it possible to evaluate the impact of the legislation and of specific sanctions for employers who are violating the relevant provisions of the Gender Equality Act, including the principle of equal pay for work of equal value.. Therefore, the UN CEDAW-Committee[10] raised concerns regarding the following matters in 2016:

- 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;

- 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;

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

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

- 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;

- employment discrimination against women returning to work after maternity leave.

[10] UN Committee on the Elimination of Discrimination Against Women, 18.11.1016 CEDAW/C/EST/CO/5-6. Available on www.un.org.

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.[11]

3.6. Convention 144

Convention 144 requires Member States of the ILO to conduct tripartite consultations in all matters related to the ILO. This applies to discussions on possible ratifications, reporting to the ILO, etc. In Estonia, these consultations take place in the ILO Council.

In 2013, the CEACR noted the reply of the Estonian government to its direct request that intense tripartite consultations be conducted in preparation for the new Maritime Labour Act, which will include the provisions of the Maritime Labour Convention and work involving the Fishing Convention (188).

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.[12]

Involvement in the ILO policy by management and labour makes it possible to provide separate observations regarding reports of the implementation of different ILO instruments; such reports from labour and management have been rare in the case of Estonia.

4. Latvia

4.1. Background

Trade-union membership in Latvia is estimated to be around 13 %. The only recognised confederation at national level is the Free Trade Union Confederation of Latvia (LBAS). Management associations include the Employers' Confederation of Latvia (LDDK), having more than 5,000 member companies, employing 35% of employees in Latvia.[13] The most important level for bargaining is at company level, but sectoral bargaining occurs in some sectors. Collective bargaining is conducted to some extent in the public sector, although the Act on Remuneration of Officials and Employees of State and Local Government Authorities significantly limits the scope of public-sector bargaining.

The Constitution of the Republic of Latvia sets out the fundamental human rights which the state must recognise and protect in accordance with the constitution, laws and international agreements binding on Latvia (Art. 89). In Latvia, there is a Constitutional Court which can review the constitutionality of the individual laws. International human rights treaties can be directly applied in Latvian courts. The principle of freedom of association is confirmed in the Constitution (Art. 102). According to Article 108, "Employed persons have the right to a collective labour agreement, and the right to strike. The State shall protect the freedom of trade unions". It is further stated that everyone has the right to freely choose their employment and workplace according to their abilities and qualifications. Forced labour is prohibited (Art. 106). Human rights must be realised without discrimination of any kind (Art. 91.2).

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[11] CEACR Direct Request adopted 2012, published at the 102nd ILC session 2013, on ILO Conventions 100 and 111.

[12] Jaan Masso, Kerly Krillo, Inta Mierina, Presentation at in the conference "The European Social Model in times of Economic Crises and Austerity Policies", Brussels, 27–28 February 2014.

[13] See Lulle, Aija, *Estonia, Latvia and Lithuania – Labour Relations and Social Dialogue*. Annual Review 2013. Friedrich Ebert Stiftung.

4.2 Freedom of Association (Conventions 87 and 98)

The regulatory framework for freedom of association and collective bargaining is the Law on Trade Unions (2014), the Employers' Organisations and Associations Law (1999), the Labour Dispute law (2003), the Act on Strikes (2005) and the Labour Law (2002) and especially Part B on Collective Agreements (Sections 17–27).

For a long period of time, Latvia was criticised by the ILO regarding the threshold it had set for the establishment of trade unions, which, according to the 1990 legislation, was set at 50 members or at least one-quarter of the workforce. ILO considered this too high and the number was likely to create an obstacle to the establishment of trade unions at enterprise level.[14]

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).

One of the barriers to lawful strikes, as identified by the ILO, is the obligation to observe an excessive quorum or to obtain an excessive majority support for the strike action. The decision to strike must be adopted by a three-quarters majority at a meeting attended by at least 75% of all employees in company-wide strikes or 75% of members of the trade union in sector-wide strikes.

These requirements were removed in 2005. The decision must now be taken at a general meeting of the trade union attended by at least half of the members. The decision must then be adopted by a simple majority (Section 11 of the Act on Strikes).

Other restrictions concern the objectives of a strike.[15] 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. 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 ILO has repeatedly asked the Latvian government to extend the application of collective bargaining procedures to public servants who are not directly exercising public authority.[16] In 2014, the Constitutional Court ruled that the prohibition which prevented border guards from forming and joining trade unions was unconstitutional, whereas the prohibition of strike action was deemed constitutional (case No. 2013-15-01). Finally, the list of 'essential services' that have to be ensured during a strike is very broad.

According to the Act on Strikes, during the strike a minimum of "essential services" – the discontinuation of which would threaten the security, health and life of the state, of the whole society, of a group of the population or of some individuals – must be continued at enterprises or joint ventures, organisations and institutions. 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.

[14] See CEACR, Direct Request, adopted 2010, published 100th ILC session, 2011.
[15] This information is from ETUI Reforms Watch 2017. See https://www.etui.org/Reforms-Watch/Latvia/Strikes-in-Latvia-background-summary.
[16] See CEACR Observation 2010, published 100th ILC session, 2011.

4.3 Child labour (Conventions 138 and 182)

In 2014, some important amendments were introduced to comply with the ILO Conventions on child labour and European Directive 94/33/EC on Young Workers.

Section 37 of the Labour Code was amended by a provision stipulating that employment restrictions for youths are applicable (based on the nature of the work) to the employment of youths aged 15 to 18 (who continue schooling to acquire basic education (compulsory schooling is 9 years)). Under Latvian law, two schemes (depending on the nature of the work) exist for work that can be performed by persons under the age of 18: lighter work, which applies to youths aged 13 to 15, and work that is not as restrictive that can be performed by youths aged 15 to 18. In principle, this means that Latvian law provides the right to employ any person aged 15 to 18 years, irrespective of whether they continue their compulsory nine-year schooling and are thus considered either children or adolescents.

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.

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

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

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.

The CEACR recalled in 2012 that the Convention requires career members of the armed forces to fully enjoy the right to leave their service in peacetime at their own request within a reasonable period, either at specified intervals, or by giving advance notice, and requested the Government to provide information on the application of Section 43(1) of the Military Service Law in practice, indicating the criteria applied in accepting or rejecting a resignation, as well as the number of cases in which such resignations were refused and the grounds for refusal.[17]

The CEACR also noted that legislation permitted work to be done by prisoners for private enterprises. It requested the Government to provide statistics in its next report specifying the number of prisoners who perform work for private enterprises. While noting that, according to national legislation, prisoners' conditions of working for private enterprises may approximate those of a free labour relationship, the Committee observed that the formal and informed consent of prisoners to work for private enterprises did not appear to have been asked for. 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.[18]

[17] CEACR Direct Request 2012, published ILC session, 2013.
[18] Ibid.

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

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.

Under *Convention 100*, the CEACR has addressed the gender wage gap and occupational segregation.[19] 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. 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.

In relation to Article 2 of the Convention, the CEACR noted the adoption of Cabinet Regulation No. 1075 of 30 November 2010 determining a unified system for classification of positions and classification procedures for positions in state and local government ("Catalogue of positions of the State and local government authorities") and Cabinet Regulation No. 66 of 29 January 2013 regarding remuneration of officials and employees of state and local governments and procedures for the determination thereof, as well as several other regulations concerning specific positions. The Committee understood from the Government's report that the classification of the positions is based on the functions to be performed and the level of responsibility and complexity of the position. The Government had argued that the determination of the monthly salary, as well as other benefits, was therefore not related to the gender of officials or employees. The Committee recalled the fact that a system of remuneration is based on a classification of jobs established by law, however, and it does not formally distinguish between men and women and does not prevent indirect discrimination, which can be due to the way the classification of jobs itself was established, the tasks performed mainly by women often being undervalued in comparison to the tasks traditionally performed by men. 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.

In relation to Article 2(2)(c), the Committee noted the Government's indication that in Latvia, most collective agreements are concluded at enterprise level. Although some agreements contain provisions prohibiting discrimination, none of them provided expressly for the principle of equal pay for work of equal value. According to the Government's report, the Free Trade Union Confederation of Latvia, LBAS had recommended that collective agreements include measures to improve women's training as well as measures to reconcile work and family responsibilities such as flexible working time for women or paid additional leave, with a view to reducing wage inequality. 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. The Committee once again asked the Government, in

[19] CEACR Direct Request 2013, published 103rd ILC session, 2014.

cooperation with the social partners, to promote the inclusion of the principle of equal pay for men and women for work of equal value in collective agreements, and to provide information in this regard, including on any measures envisaged to reconcile work and family responsibilities.

Recalling that the concept of "equal value" requires some method of measuring and comparing the relative value of different jobs, the CEACR asked the Government, in cooperation with workers' and employers' organisations, to promote, develop and implement practical approaches and methods for the objective evaluation of jobs with a view to effectively applying the principle of equal remuneration for men and women for work of equal value in the public and private sectors as required under Article 3 on objective job evaluation.

The CEACR welcomed initiatives taken by the LBAS with respect to gender equality, including equal remuneration, such as the publication and dissemination of information, and the organisation of a meeting with the Employers' Confederation of Latvia to discuss wage inequalities. The Government indicates that the Gender Equality Committee had played a significant role in the recommendations to balance the number of men and women in education with a view to narrowing gender gaps. The report also indicated that issues of remuneration, including equal remuneration for work of equal value, had been examined by the Labour Affairs Tripartite Cooperation Sub-council of the National Tripartite Cooperation Council (LATCS). The Committee asked the Government to provide information on any initiatives undertaken by the social partners, by the Gender Equality Committee, the LATCS or otherwise, to promote specifically the principle of equal remuneration between men and women for work of equal value.

The CEARC welcomed the amendment of Section 60 of the Labour Code which extended the period during which a worker can bring a claim for equal remuneration before a court from one to three months. However, the Government had indicated that from 1 July 2011 to 30 June 2012, no such claims had been submitted to the courts and no violations of equal remuneration provisions had been detected by the State Labour Inspectorate. It had also indicated that the Ombudsperson had examined only two cases of non-compliance with equal remuneration provisions. Noting this information, the Committee pointed out that in cases where no or few cases or complaints are being lodged, this probably indicates a lack of an appropriate legal framework, insufficient awareness of rights, a lack of confidence in or absence of practical access to procedures or a fear of reprisal. The Committee asked the Government to take measures to heighten awareness of the relevant legislation, to enhance the capacity of the competent authorities, including judges, labour inspectors and other public officials, to identify and address cases of unequal pay, and to examine whether the applicable substantive and procedural provisions actually allow claims to be brought successfully.

Under Convention 111 regarding discrimination, issues related to colour and social origin were addressed. The Committee referred to the earlier adoption of the Law on the Prohibition of Discrimination of Natural Persons Engaged in Economic Activity, which prohibits discrimination with respect to self-employment on several grounds except colour and social origin. In this respect, the Committee noted the Government's indication that the grounds of race and ethnic origin, both of which are covered by the Law, include the ground of colour. The Government had further indicated that the competent authorities had yet to receive any information on cases of discrimination against self-employed persons based on social origin. The Committee recalled that the grounds of colour and race, while generally examined together, should not be considered identical, as colour differences may exist between people of the same "race" (see General Survey on the fundamental Conventions, 2012, paragraph 762). 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.

The CEARC noted the detailed information provided by the Government concerning the activities and institutions implementing policies for Roma inclusion. The Committee also noted the statistical information provided by the Government on the participation of Roma in training and public employment projects. These data do not allow the Committee to assess whether the number of Roma who participate in training is proportionate with the number of Roma in the total population, however. The Committee further noted that a survey on "The Situation of Roma in Latvia" with respect to education and employment was to be carried out in 2015. The Committee requested the Government to indicate whether the policy on Roma inclusion has been finally adopted and to provide specific information on the impact of measures taken to promote equal opportunity and treatment in education, vocational training, employment and occupation for minority groups, including Roma, and the obstacles encountered.

The CEARC noted from the Government's report that, between January 2013 and June 2014, labour inspectors received 43 complaints related to discrimination, on the basis of which administrative penalties were imposed on 17 persons or entities, and that enforcement measures were applied pursuant to section 32 of the Labour Law on discriminatory job advertisements. Moreover, labour inspectors participated in a training course focused on discrimination and differential treatment in May 2014. The Committee further notes the awareness-raising activities carried out by the Ombudsman concerning the rights of persons with disabilities, among others. The Committee requested the Government to continue providing information on the complaints received by labour inspectors and the Office of the Ombudsman, as well as the cases filed with the judicial authorities concerning discrimination in employment and occupation, and the sanctions imposed.

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). In this respect, the Committee noted that the European Commission against Racism and Intolerance (ECRI) had indicated that occupations in the private sector which "affect the lawful interests of the public" for which the official language must be used in accordance with Section 6(2) of the Law on State Language, concerned over 1,000 professions (CRI(2012)3, 21 February 2012, paragraph 62 6(2) of the Law on State Language, so as to limit this to instances where language is an inherent requirement of the job. The Committee requested further information regarding the language requirement regime.

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)). The Committee noted the Government's indication that the restrictions are intended to ensure a loyal and politically neutral civil service, which in turn will ensure a stable and politically neutral state administration, and that there is no intention to repeal this restriction. The Government indicated that in 2013, 18 persons were dismissed from civil service positions due to the mandatory requirements for civil servants. While understanding the Government's concerns regarding the requirement for all government unit members to be loyal to the State, the Committee recalled that for measures not to be deemed discriminatory under Article 4 of

the Convention, they must affect an individual due to activities he or she is justifiably suspected of being or proven to have been involved in. These measures become discriminatory when simply based on membership of a particular group or community.

4.6 Convention 144

Latvia has a tripartite Cooperation Council for tripartite consultations. The Government Report from the Republic of Latvia regarding the implementation of Convention 144 reports that six meetings of the National Council were held in 2012, one in 2013 and four in 2014 to discuss domestic legislative issues. Furthermore, extensive tripartite consultations were reported in relation to ILO reporting and ILO related activities.[20]

5. Lithuania

5.1 Background

Trade-union membership in Lithuania is estimated at around 10%, distributed over two main confederations: LPSK and Solidarumas.[21] Collective bargaining coverage in the country is deemed to be rather low, around 10–15%, and the enterprise level is the principal level for bargaining.

Trade union activities are regulated by the Lithuanian Constitution. It stipulates that "trade unions shall be freely established and shall function independently. They shall defend the professional, economic and social rights and interests of employees." Furthermore, all trade unions must have equal rights. (Article 50). Also, the right to strike has been enshrined in the Constitution: "While defending their economic and social interests, employees shall have the right to strike. The limitations of this right and the conditions and procedure for its implementation shall be established by law." (Article 51)

The most important legislative instrument governing the Lithuanian labour market is the Labour Code. At present, the 2003 Labour Code is still in force, as subsequently amended numerous times since 2003, but the Lithuanian Parliament adopted a new Labour Code in 2016. The coming into force of this piece of legislation has been postponed for six months, however, until 1 July 2017, to give the Tripartite Council in Lithuania the possibility of discussing and agreeing on some amendments to the contested Code.

This makes the legislative situation in Lithuania rather unusual: it has an old Labour Code that is still in force and a new one that has been adopted, but which is still not in force and could undergo some changes before coming into force. In accordance with the preferences from NFS, the following report deals with both the present and the future labour codes. The law in force is described simply as the "Labour Code", whereas wherever the adopted future Labour Code is referred to as the "2016 Labour Code" (2016 being the year when it was adopted by the Lithuanian parliament).

Article 8 of the Labour Code codifies the principle that international conventions can be directly applicable in Lithuania by stating that "Where international treaties to which the Republic of Lithuania is a party establish rules other than those laid down by this Code and other labour laws of the Republic of Lithuania, the rules of the international treaties to which the Republic of Lithuania is a party shall

[20] See Republic of Latvia, Government Report on Convention No. 144 "Tripartite Consultation (International Labour Standards) Convention" (1976).
[21] A third confederation, LDF, has been excluded from the national tripartite council since it is not regarded as real.

be applied," and that "International treaties to which the Republic of Lithuania is a party shall be directly applied to employment relationships, except in cases where international treaties provide that the application thereof requires a special regulatory act of the Republic of Lithuania".

While the Labour Code gives clear precedence to international conventions over national law, the 2016 Labour Code is less clear on this point. In Article 3(4), it states, regarding the sources of Lithuanian labour law, that "the international treaties of the Republic of Lithuania shall apply to employment relations directly only in cases when direct application of the international treaty stems therefrom". It could presumably be argued that what is presently the main rule (international treaties have precedence) has become an exception that applies only when direct application from a treaty "stems therefrom". If the Lithuanian courts and authorities adhere to the principle that national law should as far as possible seek conformity with international instruments, this difference might have restricted significance in practice, but the new formulation is clearly not aimed at strengthening international labour law in the Lithuanian labour law system.

5.2 Freedom of Association (Conventions 87 and 98)

In relation to the Labour Code and the present Act on Trade Unions, some issues have been raised in the dialogue between the ILO supervisory bodies (especially the Committee of Experts, CEACR).

The issue of criteria for the establishment and membership of a trade union has been discussed and resolved positively.[22]

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.

The procedure for declaring a strike has been much debated. Until 2010, the Labour Code had a clause which stated that one condition for declaring a strike was that at least half of the employees in the enterprise concerned voted in favour of the strike in a secret ballot. This was regarded as an excessive requirement by the ILO supervisory system, which deemed it unjustified to include non-voting employees in the assessment, and arguing that at least a majority of voting employees should be sufficient. As a result of this dialogue, the requirement was deleted and left to be regulated by the internal statutes of the trade unions.

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.

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.[23]

[22] Originally, 20 members were needed to establish a trade union. These requirements were changed, and it also became possible for a trade union to appeal in court against a decision regarding a refusal to register a trade union. See ILO, Direct Request (CEACR) adopted 2014, published 104th ILC session (2015). Furthermore there were restrictions against third country nationals becoming members in a Lithuanian trade union while working in Lithuania. In this regard, the legislation was amended 2013 (Act No XII-364 of 13 June 2013).

[23] See Observation (CEACR) adopted 2014, published 104th ILC session (2015).

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.

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 new system is prescribed in the following way:

> **Article 165. System of the representation of employees**
>
> 1. The representation of employees shall mean the protection of employees' rights and interests and their representation in relations with other parties of social partnership, in labour-dispute resolution bodies and institutions of social partnership as well as the creation and changes of their rights and duties or other participation when determining employees' labour, social and economic rights and duties in accordance with the procedure established by labour law norms.
>
> 2. The representatives of employees shall be a trade union, works council or employees' trustee.
>
> 3. Trade unions shall collectively represent their members – employees and persons working of equivalent to labour relations provided for in the Employment Law of the Republic of Lithuania in accordance with the procedure established by this Code or other laws. Trade unions shall also individually defend their members and represent them in individual labour relations. Collective bargaining, the conclusion of collective agreements and the initiation of collective labour disputes of interests shall be the exclusive right of trade unions.
>
> 4. The works council and the trustee of employees shall be independent representative organs of employees and represent all employees in information, consultation and other procedures of participation, whereby the employees and their representatives shall be involved in the employer's decision-making processes at employer level in the cases and in accordance with the procedure established in this Code or on the place of employment level, if it is stipulated in this Code or agreements of social partners. The employees' representatives at employer level shall be considered the employees' representatives at the place of employment level, unless labour law norms or agreements of social partners provide otherwise.
>
> 5. The activities of employees' representatives shall be organised and exercised by their cooperation and in such a way so that the general interests and rights of employees are protected as efficiently as possible. The works council may not exercise the functions of employee representation which, according to this Code, are considered exclusive rights of trade unions.

An undermining mechanism might be that works councils are made the main bodies for interaction between workers and employers. It is understandable that complementary mechanisms in addition to trade union representation are needed since the trade unions often lack representativity, but the dividing line between collective bargaining and procedures involving the works councils are made in a manner that seriously risks undermining collective bargaining. As a starting point, works councils are

charged with all functions, except for collective bargaining, the conclusion of collective agreements and the initiation of collective labour disputes of interests, which are the exclusive right of trade unions. On the other hand, the parties to a collective agreement can only agree on procedures for the exercise of the rights to information, consultation and other participation as long as they do not reduce the statutory powers of the works council. It is obvious that the legislator here is creating a dual system even at workplaces with highly representative trade unions, and it is very difficult to see how this is possible considering the state's obligation to promote collective bargaining.

Article 193. Contents of collective agreements

1. In a collective agreement, the parties shall specify employment, social and economic terms and conditions and guarantees of the employees, as well as mutual rights, obligations and liability of parties.
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4. The parties may consider, in a national (inter-branch), territorial or branch (production, services, professional) collective agreement:

1) matters related to the setting of wages for employees of several employers or employers operating within the same branch or territory, working norms and other wage-related matters;

2) health and safety at work;

3) matters related to the employees' employment, professional training and requalification;

4) social partnership support measures enabling the avoidance of collective labour disputes;

5) other working, social and economic conditions relevant to the parties;

6) procedures for making amendments and additions to the collective agreement, its term of validity, enforcement system and procedures, and other organisational matters related to the conclusion and carrying out of the collective agreement.

5 The parties may consider, in an employer-level collective agreement or a collective agreement on a level of a place of employment:

1) terms of conclusion, amendment and termination of employment contracts;

2) remuneration conditions;

3) working and rest time conditions;

4) health and safety at work measures;

5) conditions of providing one another with information;

6) procedures for the exercise of the rights to information, consultations and other participation of employees' representatives in the employer's decision adoption process, without reducing the statutory powers of the work council;

7) other working, economic and social conditions relevant to the parties;

8) procedure for the carrying out of the collective agreement;

9) procedures for making amendments and additions to the collective agreement, its term of validity, enforcement system and procedures, and other organisational matters related to the conclusion and carrying out of the collective agreement.

According to the ILO Convention 98, Article 4 the state is under an obligation to "encourage and promote" collective bargaining. The fact that the works councils under the 2016 Labour Code have been made the primary body for employer-level interaction between employees and the employer, through a clause stating that collective bargaining cannot reduce the statutory power of the works council, has together with the provision in Article 197 regarding the application of collective agreements, according to which the agreement shall only apply to the members of the trade union that is a party to the agreement (can apply to all workers only if it is approved by the general meeting of all employees), in fact undermines collective bargaining as a general primary tool for regulating working conditions. This does not comply with the principles of freedom of association.

Compliance could easily be achieved if the main principle for collective agreements was to apply them to all employees (unless otherwise stipulated in the agreement) in combination with flexible rules regarding the content of collective bargaining which would enable the parties to also agree on information and consultation rights, while the works councils could be complementary bodies for information and consultation rights when no collective agreements are applicable.

Other issues: *Dismissal protection for trade union representatives and other employee representatives*. In the "old" Labour Code, we find some Articles aimed at protecting employee representatives. According to Article 134, employees who are elected to employee-representative bodies may not be dismissed from work without the prior consent of the body concerned during the period for which they have been elected. Furthermore, Article 135 stipulates that in the event of a reduction in the number of employees for economic or technological reasons or due to structural reorganisation at the workplace, the right of priority to retain the job must be enjoyed by those who are elected to employee representative bodies.

Similar stipulations cannot be found in the 2016 Labour Code. Instead the new code introduces a mechanism granting special authority to the State Labour Inspectorate to give consent to terminate the employment contract of a person representing employees. Trade union control is replaced by state-body control. From the point of view of the principles of freedom of association, this is not a problem per se. The problem is that, based on the text of the new Act, the prioritisation seems to be lacking. The Act introduces a procedure where the State Labour Inspectorate has to verify that the termination is not arbitrary or discriminatory, but employee representatives do not have priority rights any longer. This could mean that in a redundancy situation where two out of ten employees are facing dismissal, the employer can apparently lawfully choose to terminate the employment contract of the union representative.

Article 83 of the "old" Labour Code sets out some principles regarding action prohibited for the employer during industrial action. An example is that replacing striking workers with new recruitments is not allowed. The new 2016 Labour Code is mute on this point. Considering Article 256 of the 2016 Labour Code, which stipulates that the employer can declare a lockout seven days after a strike begins, it seems to be possible to recruit new workers to replace those who are on strike and continue the lockout against trade union members.

5.3 Child labour (Conventions 138 and 182)

Convention 138 may permit light work for persons aged 13 to 15. In its 2015 Conclusions on Lithuania, the Committee of the European Social Charter, referring to Article 7 of the Charter, according to

Section 36 of the Law on Occupational Safety and Health, states that during holidays, young persons under 15 years of age may work up to 7 hours per day and 35 hours per week and young persons who have reached the age of 15 may work up to 8 hours per day and 40 hours per week.[24] The Committee´s interpretation is that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week to avoid any of the risks that the performance of such work might have for their health, moral welfare development and education. 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.

5.4 Forced labour (Conventions 29 and 105 (and Protocol 2014)

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

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.

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

5.5. Equal pay and non-discrimination (Conventions 100 and 111)

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.

In the following we discuss these concerns more in detail.

In its Direct Request[25] to Lithuania in 2013, the CEACR sought information on the methodology used to classify and rank different jobs and positions, i.e. how job evaluation and classification were performed. Furthermore, the Committee asked the Government to provide information on the concrete measures taken to strengthen the capacity of labour inspectors to identify and address unequal remuneration, as well as to promote public awareness of the legal provisions on equal remuneration, the procedures and remedies available, and to assist workers in such procedures. The CEACR noted the persistent gender-based pay gap and that the Lithuanian State report did not contain information on measures taken to reduce the gender-based pay gap. In relation to Articles 3 and 4 of Convention 100, the Committee made some observations and asked for information on measures adopted to promote the use of objective job evaluation methods that are free from gender bias, and the results achieved. The Committee also asked the Government to provide information on the steps taken, in cooperation with the social partners, to promote the principle of the Convention in sector,

[24] Conclusions 2015 – Lithuania Article 7-1.
[25] Direct Request (CEARC) – adopted 2013, published 103rd ILC session (2014)

territorial and enterprise negotiations and to ensure that work in sectors and occupations in which women are predominantly employed is not being undervalued.

The obligations under Convention 111 were addressed in the Direct Request from the CEACR in 2013.[26] The Committee wanted information on preventive measures regarding sexual harassment at work, as well as information about any cases brought before the competent authorities.

The CEACR raised concerns regarding possible discrimination in Lithuania on the labour market based on political opinion, nationality, disabilities and ethnic background (especially the employment opportunities for the Roma community).

The problems of implementation and enforcement have also been addressed by several supervisory bodies. In Lithuania, the Equal Opportunities Ombudsperson does not have the right to initiate legal proceedings. The Ombudsperson can be involved as an expert witness, but cannot directly assist a victim of discrimination to bring a case to court. The Ombudsperson may refer relevant material to the public prosecution authorities, if there are indications that a criminal offence might have been committed. The 2015 Annual Report from the Equal Opportunities Ombudsperson shows that 33% of complaints received (altogether 265 in 2015) were workplace related and in only 2% of the cases was the investigation referred to a pretrial investigation.[27]

The Lithuanian Law on Equal Opportunities for Women and Men was amended in 2014. The new legislation has been assessed especially from the point of view of EU law by professor Tomas Davulis.[28] His general conclusion is that the general implementation of EU gender equality directives in Lithuania is considered satisfactory, but that there is a lack of any evidence of a real practical implementation of non-discrimination legislation and that there is some inconsistency between two relevant different legal instruments: the 1998 law on Equal Opportunities for Women and Men (amended 2014) and the 2003 Law on Equal Treatment (amended 2008).

Regarding the protection of pregnant women employees and women returning to work after maternity leave, it seems that the special protection regime from the 2010 Labour Code is kept in the 2016 Labour Code. This special protection applies to women working in an open-ended contract. The fact that the new legislation paves the way for different forms of flexible employment contracts might result in a decrease of employee women who actually enjoy this stronger protection.

5.6 Tripartite consultations

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 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).

[26] Direct Request (CEACR) – adopted 2013, published 103rd ILC session (2014).
[27] See the Annual report of the office of the Equal Opportunities Ombudsperson. General statistics 2015. Available http://www.lygybe.lt/en/
[28] Davulis Thomas, Country Report. Gender Equality. How are EU rules transposed into national law? European Commission 2016., p. 43.

6. Conclusions

6.1. Ratifications

In terms of the eight core ILO labour conventions, the Baltic States have done their homework. All conventions have been ratified and implementation reports have been submitted. The only remaining instruments to be ratified among the Core Conventions are, for Latvia and Lithuania, the 2014 Protocol to Convention 29, which Estonia recently ratified.

6.2 The general picture

The legislation required to implement the ILO standards has been adopted. The problems that remain primarily involve enforcement rather than a lack of adequate legislative measures.

There is a general problem regarding access to justice in cases regarding fundamental labour rights. 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 rights.

The crisis after 2008 created problems both for the tripartite dialogue as well for trust relations between the Baltic States and the labour market organisations. The crises also revealed that the labour market systems in the Baltic States are still rather fragile and that much development work has been done with support from the European Union and other international organisations, but that efforts need to be made to consolidate the national institutions to enable them to deal with future developments in a sustainable manner. Otherwise there is a risk that unresolved social problems will foster populism, nationalism and extremism.

This situation seems to have been handled slightly differently in the respective states. In Estonia, new legislation has been put on hold, in Lithuania the Government is introducing a rather radical legislation more or less openly aimed at undermining trade unions and the collective bargaining system.

From the ILO point of view, the formal minimum requirements set out in Convention 144 are fulfilled by all three Baltic States. The ILO activities, however, are not regarded as an integral part of the developing of the national labour market systems, but as a necessary international obligation. The labour market parties are rather passive in using the ILO system and they rarely submit observations and reports to the ILO. There are obviously many reasons for this situation, not at least the lack of resources and experience of ILO matters.

One way to strengthen the ILO commitment and the influence of trade unions in the Baltic States would be to establish close cooperation on ILO matters between trade-union confederations in the Baltic States. Since there also is a need to raise awareness about ILO standards in the Nordic countries, it could be worth exploring whether some cooperation also could cover the Nordic trade unions and the NFS. This is also important considering that the ILO's core conventions are currently not only relevant in the context of the making of national labour law, but they are – based on European Union law - used in public procurement for subcontractors and in corporate social responsibility (CSR) codes and commitments that multinational companies frequently enter into.

6.3 Implementation of the Core Conventions in the Baltic States

Freedom of association. There are several common features regarding the approach to ILO Conventions 87 and 98 in the Baltic States. This may not be surprising considering their common history. In the following, I briefly sum up the main areas were implementation needs to be improved:

a) We find different forms of restrictions of freedom of association for groups employed in the public sector. The ILO conventions allow for some limited restrictions, but legislation in the Baltic states clearly goes beyond these minimum standards.

b) The other area where the Baltic states have adopted a minimalistic approach relates to the collective bargaining system. The protection of union representatives seems rather weak, and there is little promotion or strengthening of collective bargaining on the part of state authorities.

The 2016 Labour Code in Lithuania goes one step further in this regard since it clearly makes collective bargaining a secondary tool for worker participation by narrowing the issues that can be agreed upon in collective agreements. The simultaneous restriction of the scope of application of collective agreements to union members only together with the weakening of the position of union representatives cannot result in any other conclusion than that this legislation undermines collective bargaining in a way that is incompatible with ILO Conventions 87 and 98.

c) The detailed legislation regarding industrial action and strikes in the Baltic States is also rather restrictive, as pointed out in the above. Many of the stipulations have not been tried in practice and the extent to which national courts could interpret some of them in accordance with ILO standards is unclear.

Forced labour, child labour and non-discrimination. In these areas, it is not only important to have a minimum of ILO standard legislation in place, it is also crucial to introduce policies and programmes to deal with the problems in a systematic, long-term manner. Here, preventive measures are as important as well-functioning enforcement measures.

Tripartite activities to identify the problems, and tackle them, seem to be absent in the Baltic States. We do need more than casuistic programs financed by EU institutions or other international organisations; long-term policies and commitment at national level should also be established.