European Foundation for the Improvement of Living and Working Conditions

Social dialogue and conflict resolution in Estonia

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Context

This report is part of a series of projects from the Foundation which focuses on aspects of industrial relations in the run-up to enlargement. The national report for Estonia is part of the second phase of a project on 'Social dialogue and EMU' carried out by the European Foundation for the Improvement of Living and Working Conditions in 2002-3, in cooperation with the Swedish 'Work Life and EU Enlargement' programme. This phase of the project looked at the current mechanisms for resolving industrial conflicts prevailing in each of the ten acceding countries involved in the project: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

The main report provides an overview of the whole project and is available online at http://www.eurofound.eu.int/publications/EF0421.htm. It looks specifically at the role of social dialogue in resolving industrial relations conflicts. In most of these countries, both the systems of industrial relations as well as conflict resolution mechanisms are relatively new and have been subject to intense upheaval during the transition phase to market economy. Collective and individual industrial disputes are a new phenomenon for these countries as well. The report gives an overview of the existing institutional and regulatory frameworks for industrial action prevailing in each country, then goes on to describe the various systems in place to deal with conflict resolution. The overall aim of the research is to show how social dialogue can be harnessed to devise a road map for industrial peace.

Introduction

Estonia reformed its industrial relations system during the transition period, establishing new mechanisms for resolving individual and collective industrial disputes and for regulating strikes. Estonian labour laws dealing with organised labour are in accordance with the Constitution of Estonia, ILO Conventions and other international acts.

Empirical studies for transition countries have found that the measures of formal legislation have only a small effect on labour market performance (Cazes 2002). The problem is that the efficiency of regulations imposed by economic policy depends on the extent to which law enforcement agencies control the fulfilment of laws and regulations, punish violations etc. Even strict laws may have little influence on the economy, if the legislative acts are frequently violated or if law enforcement agencies are weak. According to Masso (2003), employees in Estonia have been quite active in submitting complaints to labour inspectors. Thus in 2001 0.58 cases were submitted per 100 employees. One reason for frequent individual complaints may be the low level of trade union membership in Estonia (only 14.2% in 2002). Workers have won quite a high percentage of cases (82% of cases in 2001), which may have been due also to the frequent violations in the workplace.

This report gives an overview of the collective conflict resolution mechanisms in Estonia. It describes the legal background and institutions and presents statistics on strikes and lockouts.

Industrial framework for conflict resolution

Economic and social tripartite bodies

The governing labour market institution in Estonia is the Ministry of Social Affairs (formed in February 1993). In the administrative sphere, the ministry makes a direct contribution to the collective regulation of working conditions. It is also responsible for inspections (Labour Inspection), contributes to the resolution of collective disputes and performs a range of administrative duties.

The Labour Inspectorate (founded in 1992) is responsible for observing and inspecting industrial relations and working conditions in enterprises, monitoring the observance of labour laws and advising employers and employees on labour laws, workplace safety, etc. The general objective of the Labour Inspectorate is to guide the activity of employers in removing, reducing and controlling risks in the working environment so as to secure the health and safety of workers and to ensure that legal requirements are complied with. The Labour Inspectorate:

- supervises the enforcement of provisions that regulate occupational safety and health, as well as employment relations, including the safety of machines, other equipment and general safety of the working environment;
- supervises inspection of industrial accidents and occupational diseases, as well as occupational accidents that end fatally or with severe injury;
- provides advice to employers and workers' representatives in working environment issues;
- grants approval and concordances to the applications submitted by employers;
- resolves individual industrial disputes between workers and employers.

There are several tripartite councils and consultative organisations in Estonia that deal with industrial relations:

- The Estonian Council of the ILO (established in May 1992) is a consultative and advisory body, without power to take binding decisions. The aim of the council is to provide ILO materials, principles and conventions to help improve the legislation and to develop tripartite negotiations, discuss all draft laws, exchange information with ILO and to help the government to fulfil the obligations that arise from ILO membership.
- The Socio-Economic Council (established in 1999) is a tripartite informative, consultative and advisory institution. Its main objective is to advise the government and social partners in different social, economic, employment issues; to monitor socio-economic processes and macro-economic relations; to analyse relevant legal acts and methods used in the socio-economic policy.
- The employment councils[1] in regions (established in August 1999 by county employment offices) have an advisory function in planning and implementing employment measures at the local employment offices. The objective of these councils is to increase efficiency of public employment offices in solving complex problems, utilising local initiative.
- The Work Environment Council is an advisory body on working conditions at the Ministry of Social Affairs. The main function of the council is to enable the representatives of the social partners to present their proposals and to express their opinion about devising and implementing the work environment policy.

As can be seen from the objectives of these institutions, their main aim is to prevent conflicts by establishing the legislative, economic and social environment for employment relationships.

Industrial relations tripartite bodies

The main institutions dealing with conflict resolution in Estonia are the industrial dispute commissions, the public conciliator and local conciliators, as well as the courts.

[1] Today five employment councils are established.

The industrial dispute commissions are extra-judicial independent individual industrial dispute resolution bodies. Industrial dispute commissions are established within the local labour inspectorates. There are 15 county industrial dispute commissions, which settle disagreements between employees and employers in cases where the partners cannot arrive at a peaceful mutual agreement. An industrial dispute commission is competent to resolve industrial disputes if the chairman of the committee[2] and at least one representative of the employees and one representative of the employers[3] participate in the work of the committee. The chairman of an industrial dispute commission shall invite an equal number of employees' and employers' representatives to participate in the work of the committee. The working conditions of industrial dispute commissions are provided by the Labour Inspectorate. The administrative expenses of industrial dispute commissions and expenses related to the resolution of industrial disputes are covered from the state budget out of the funds allocated to the Labour Inspectorate for these purposes.

The Public Conciliator and local conciliators are responsible for conciliating the parties during an industrial dispute. The Public Conciliator is appointed for three years by the government on the basis of a joint agreement of the Ministry of Social Affairs and central federations of employers and employees. The institution of Public Conciliator has been in operation since the second half of 1995. The Public Conciliator appoints local conciliators for the resolution of industrial disputes in prior co-ordination with the local government. Industrial disputes between federations of employers and federations of employees are resolved by the Public Conciliator. Individual as well as collective industrial disputes at enterprise level are resolved primarily by the local conciliators.

Individual as well as collective industrial disputes may be resolved also by a court. Estonia has a three-tier court system: rural and city courts, district courts and the State Court (which acts as a supreme court).

Institutions at enterprise level

At enterprise level, the representation of employees is regulated by the Employees' Representatives Act (enforced in July 1993, amended in March 2000), which provides the legal basis for the activities of employees' representatives in industrial relations between employees who authorise the representatives and employers.

The law provides for two options for workers' representation: a representative, who is elected by the members of a union or a representative elected by a general meeting of employees, who do not belong to a union of employees.

The role of workers' representatives is to:

- represent employees in industrial relations with the employer;
- control the implementation of the provisions of collective agreements and individual labour contracts and labour laws;
- observe the 'peace clause' during the application of the collective agreement;
- mediate between the parties during industrial disputes;
- communicate information they have to the employer and to workers, local unions and the union federation;
- keep confidential information.

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[2] The Minister of Social Affairs shall appoint to and release from office the chairman of labour dispute commissions on the proposal of the Labour Inspectorate. The chairman of labour dispute commission is an employee of a local labour inspectorate of the Labour Inspectorate.

[3] The directing bodies of federations (central federations) of occupational and professional associations of employees and central federations of employers shall appoint the required number of representatives of employees and employers to the Labour Inspectorate as determined by the Labour Inspectorate for the membership of labour dispute commissions.

The employees' representation has a right to information regarding everything they need to know to carry out their functions. This includes everything concerning industrial disputes, plant closures, restructuring and collective redundancies and the competencies of workers' representation systems. In relation to the latter, they have the bargaining authority as well. The right of consultation exists in the event of collective redundancies, plant closures, restructuring and the competencies of workers' representation systems. Employees' representatives may negotiate matters of pay, working conditions, working hours, training and additional benefits.

Another form of employees' representation at enterprise level is to be found in the field of occupational safety and health. On the basis on the Occupational and Safety Act (enforced in June 1999), employees can be elected for the Councils of Enterprise's Work Environment.

Institutional basis for conflict resolution

The Constitution of Estonia (adopted in June 1992) establishes human and basic rights, including freedom of association and the right to strike, and freedom of choice of employment and location. The federations, associations and unions of employees and employers can stand up for their rights and legal interests using means that are not forbidden by the law. The Constitution also states that the regulation of working conditions is the responsibility of the state.

The main laws concerning industrial relations and the dates they came into effect:

- Employment Contracts Act (July 1992);
- Collective Agreements Act (May 1993);
- Employees Representation Act (July 1993);
- Regulation of Tripartite Consultations (1996);
- Occupational and Safety Act (July 1999);
- Trade Union Act (July 2000);

The main regulative acts concerning industrial disputes, including strikes and lockouts are:

- Collective Industrial Dispute Resolution Act (June 1993);
- Individual Industrial Dispute Resolution Act (September 1996), and
- several other acts.

Legal basis for strikes and lockouts

The main legal act dealing with strikes and lockouts is the Collective Industrial Dispute Resolution Act. A collective industrial dispute is a disagreement between an employer or a federation of employers and employees or a federation of employees, which arises upon entry into or performance of collective agreements or establishment of new working conditions.

The Collective Industrial Dispute Resolution Act defines a strike as an interruption of work on the initiative of employees or a federation of employees in order to achieve concessions from an employer or federation of employers to lawful demands in labour matters. According to the law, a decision to organise a strike is made by a general meeting of employees or federation of employees and a strike leader is elected. A strike leader shall act within the limits of

international and Estonian legislation as well as the resolution of the general meeting of employees authorising the strike leader. During the strike, a strike leader has to represent the interests of those who authorised him/her and to inform the public through the media about the course of the industrial dispute. A strike leader does not have the right to adopt decisions which are within the competence of state bodies, government agencies or other organisations or the other party to the industrial dispute. A strike leader is also required to apply measures to preserve the assets of the other party and to maintain the rule of law and public order and is liable for violations of law and damage caused by a strike. The authority of a strike leader terminates if the parties sign a conciliation (agreement) on the manner of regulation of the industrial dispute, if the strike is declared unlawful by a court, or on the basis of a decision by the bodies authorising the strike leader.

A lockout is defined as an interruption of work on the initiative of an employer or federation of employers in order to achieve concessions from employees or a federation of employees to lawful demands in labour matters. A decision to organise a lockout is made by an employer.

The right to organise a strike or lockout to resolve an industrial dispute arises only if:

- there is no prohibition in force against disruption of work;
- conciliation procedures have been conducted, but no conciliation has been achieved;
- an agreement is not complied with;
- a court order is not executed.

Organisers of a strike or lockout are required to notify the other party, a conciliator and the local government of a planned strike or lockout in writing at least two weeks in advance. The notice shall set out the reasons, time of commencement and possible scope of the strike or lockout. An employer is required to inform the parties with whom the employer has contracts, other interested enterprises or agencies and the public of a strike or lockout through the media. In the event of a strike or lockout, the parties are required to resume negotiations in order to reach an agreement in the collective industrial dispute.

The commencement of a strike or lockout may be postponed by one month by the government on the proposal of the Public Conciliator or by two weeks by the city or county government on the proposal of a local conciliator. The government has the right to suspend a strike or lockout in the case of a natural disaster or catastrophe, in order to prevent the spread of an infectious disease or in a state of emergency.

Strikes are prohibited in government agencies and other state bodies and local governments, in the defence forces, other national defence organisations, courts, and fire fighting and rescue services. In the agencies and other organisations described above collective industrial disputes shall be resolved by negotiations, through the mediation of a conciliator or in court. In enterprises and agencies which satisfy the primary needs of the population and economy, the body which calls a strike or lockout shall ensure indispensable services or production which shall be determined by agreement of the parties. In the case of disagreements, indispensable services or production shall be determined by the Public Conciliator whose decision is binding on the parties.

The following types of strikes and lockouts are unlawful:

- strikes and lockouts for the purpose of affecting the activities of courts;
- strikes and lockouts which are not preceded by negotiations and conciliation proceedings;
- strikes and lockouts which are called or organised in violation of the procedure established by the Collective Industrial Dispute Resolution Act or in which demands are submitted, but are unregulated by labour legislation or collective agreements.

A decision to declare a strike or lockout unlawful is made by a court. The court shall communicate its decision to the parties of industrial dispute and to the public.

Participation in a strike is voluntary and it is prohibited to impede the performance of work by employees who do not participate in a strike. It is prohibited for individuals who are not employed by an enterprise, agency or other organisation where an industrial dispute arises or who do not represent the employees pursuant to procedure prescribed by law to instigate a strike. Participation in a lawful strike shall not be considered to be a breach of work discipline and shall not result in disciplinary punishment. It is prohibited to terminate the employment contracts of participants in lawful strikes on the initiative of an employer during a strike. Persons who organise or resume a strike or lockout which has been declared unlawful or has been suspended and persons who commence (resume) a strike or lockout which has been postponed, before the specified time, are held liable pursuant to procedure prescribed by law.

For the period of a strike or lockout employees are not paid any wages. According to the law, an employee who does not participate in a strike but who cannot perform his or her work for reasons of the strike shall be remunerated by the employer on the same basis as for the period of work stoppages, which are not the fault of the employee or to the extent prescribed by a collective agreement. An employee, who cannot perform his/her work because of a lockout, which has been declared unlawful, should be treated as unlawfully suspended from work and he/she should be paid average wages for the period of the lockout.

Upon full or partial satisfaction of the demands of employees or a union or federation of employees, the employer shall pay to the employees who called the strike compensation in an amount agreed upon by the parties. Expenses relating to the resolution of a collective industrial dispute are covered by the party at fault or are divided between the parties by agreement. By agreement of the parties to an industrial dispute, participants in a strike may make up for the time lost for reasons of a strike outside of working hours. Time spent making up for the time lost through a strike shall not be deemed to be overtime or work on days off or public holidays.

Employees and their unions or federations have the right to organise warning strikes with a duration of up to one hour. Support strikes are permitted in support of employees engaging in a strike, and they shall not last longer than three days. A representative, union or federation of employees is required to notify the employer, association or federation of employers and the local government of a planned warning or support strike in writing at least three days in advance.

Collective bargaining and strikes and lockouts

The freedom to conclude a collective agreement is regulated by the Collective Agreements Act (adopted in 1993). It states that a collective agreement can be bilateral or tripartite.

The issues of tripartite collective bargaining are: minimum wage and the procedure for amending it, based on a rise in the cost of living; additional measures to ensure occupational safety and health, additional employment guarantees, other

additional guarantees pertaining to employment, procedures for monitoring the performance of the collective agreement and receiving necessary information.

The issues that can be subject of a bipartite collective agreement are: wage conditions, working conditions, work and rest time conditions, conditions for suspension, amendment and termination of an employment contract, conditions and procedure for laying off employees, conditions for occupational health and safety, etc.

The law stipulates no obligation on the part of employers to initiate negotiations or to conclude a collective agreement and similarly, no right of employees to demand initiation of negotiations or conclusion of an agreement. While the procedure of negotiations on collective agreements is established in the law, it does not provide for the drawing up or signing of interim protocols, deadlines, and whether and when negotiations should be held, or their length. It establishes that the agreement must be written and be available to all it concerns.

The collective agreement applies to all those belonging to the organisations concluding the agreement, unless another scope of application is described in the agreement. In practice, most collective agreements apply to all the workers within the enterprise regardless of their trade union membership. For workers who are covered by more than one collective agreement, the most favourable contract is applied. Since June 2000, a sectoral collective agreement can be extended by decree to all enterprises and workers of the sector, even when they are not members of the organisation concluding the agreement. As this amendment is quite recent, it is not clear whether this opportunity to extend the scope of application will indeed be used by the social partners (both social partners have to agree on this). In 2003, there are only two agreements extended to non-union workers as well.

The validity of a collective agreement is one year, unless otherwise stated. Each year a new contract must be concluded, until which time the old one is valid. During validity, parties are obligated to refrain from calling a strike or lockout in order to change the provisions of the collective agreement. Upon expiry of the term of a collective agreement, the parties are required to comply with the terms and conditions of the collective agreement until a new agreement is entered into force, with the exception of the obligation to refrain from calling a strike or lockout.

The number of collective agreements concluded in Estonia is small and employers have seldom been forced by means of industrial action (strikes etc.) to conclude collective agreements, partly because of the weak organisation of workers and partly because of an inability to perceive the refusal to conclude a collective agreement as an industrial dispute. Industrial disputes that arise from the conclusion or implementation of collective agreements are resolved pursuant to the procedure prescribed in the Collective Agreements Act and in accordance with the Collective Industrial Dispute Resolution Act. Upon non-performance of the obligations prescribed in a collective agreement, the party at fault is held liable pursuant to the procedure prescribed by law and in the collective agreement.

State supervision of compliance with the Collective Agreements Act is exercised by the Labour Inspectorate. In the event of violation of the requirements of this act, a labour inspector or the head of the regional office of the Labour Inspectorate has the right to issue a precept, which shall set out among other things:

- circumstances which are the basis for the issue of the precept and a reference to the legal grounds therefore;
- conclusion of the precept which shall set out the obligations of the obligated subject arising from the precept and the terms for performance thereof;
- a reference to the possibility of application of administrative coercive measures upon failure to perform the obligations set out in the precept;
- the procedure and term for contesting the precept.

Compliance with a precept is mandatory for employers and a supervisory official has the right to monitor compliance with the precept during the specified term. Upon failure to perform an obligation, a labour inspector or the head of the regional office of the Labour Inspectorate may impose penalty payments. The maximum penalty payment is 10, 000 Estonian kroons.

If an employer does not agree with a precept issued by a labour inspector, the employer has a right to file a complaint with the head of the regional office of the Labour Inspectorate within ten calendar days of the administrative act being made public. If the precept is issued by the head of the regional office of the Labour Inspectorate, the employer has the right to file a complaint with the director general of the Labour Inspectorate within ten calendar days of the administrative act being made public. The filing of a complaint does not release the person from the obligation to comply with the precept. Heads of regional offices of the Labour Inspectorate and the General Director of the Labour Inspectorate have the right to suspend, on application of the person who filed a complaint or at their own discretion, the enforcement of a precept until a decision is made.

The process of conflict resolution

Figure 1 in annex 2 presents the process of interest disputes resolution in Estonia at different levels. The role and the process of work in different institutions have been described previously. This figure summarises the procedure, if no peaceful agreement is reached.

The final institution in the collective industrial dispute should always be the public conciliator, if an agreement at the lower level institutions is not reached. If the state conciliator is not able to find a solution that would satisfy all parties, and all legal possibilities of resolving conflict peacefully have been exhausted, the public conciliator has the authority to give the right to organise a strike or lockout. According to the Collective Industrial Dispute Resolution Act, the parties should consult the public conciliator if an agreement is not reached through negotiations and the threat of a disruption of work arises. According to the law, strikes and lockouts which are not preceded by negotiations and conciliation proceedings, are unlawful.

Figure 2 shows the process of the right disputes resolution in Estonia. According to law, there are two possibilities: either to turn to the industrial dispute commission or to the court. If there is no satisfactory solution in the industrial dispute commission, there is a possibility to turn to court. The decision made by the court is final and should be followed by parties of conflict.

Table 1 presents the SWOT analysis of conflict resolution in Estonia. The legislative background can be seen as one of the strengths, but there is still space for development. Legislation should follow the traditions of the country's conflict resolution process and help find peaceful and mutually acceptable solutions. Both the trade union organisations and employers' organisations should be more active to find more support from public. The government should not intervene the areas where the social partners should take the first action. However, the state should strengthen its control over the fulfilment of different labour laws and acts.

Table 1: *SWOT analysis of conflict resolution in Estonia.*

Strengths	Weaknesses
• legal background is in accordance with international conventions and acts; • different institutions dealing with industrial relations are established and are strengthening with time; • majority of conflicts are solved at the enterprise level; • majority of collective industrial disputes are resolved in local industrial dispute commissions or by local conciliators, who are aware of local problems and are able to solve the problems more objectively; • in the majority of cases of industrial disputes an agreement is achieved.	• low level of trade union membership (14.2% in 2002) and still relatively weak trade union organisations: unions do not have enough financial resources and therefore cannot afford to have strikes, also the administrative capacity of unions to organise strikes is low; • small number of concluded collective agreements and very low collective bargaining coverage rate, • bargaining process has many problems (hidden conflicts, lack of experiences and lack of negotiations skills, etc); • employers have seldom been forced by means of worker action (strikes etc.) to conclude collective agreement; • according to laws, the refusal to conclude a collective agreement is not interpreted as a industrial dispute; • insufficient control of the fulfilment of laws and regulations by law enforcement agencies.
Opportunities	**Threats**
• rise of unionisation levels; • strengthening both trade union and employers' organisations; • developing the process of social dialogue; • widening of the circle of employees who have the right to strike (currently strikes are prohibited in government agencies, other state bodies, local governments, also in the defence forces, courts, rescue services, etc.); • learning and sharing of experiences of conflict resolutions; • strengthening of the legal basis and supervision over the fulfilment of laws.	• strikes and lockouts which are not preceded by negotiations and conciliation proceedings are unlawful; • the legislative acts do not describe any activities, which would be related to the avoidance of industrial disputes (preventions activities); • with the increase of supervision the number of potential labour conflicts will increase; • frequent occasion of violations in the work place (workers have won majority of the cases).

In the future the number of collective agreements is very likely to go up as social partners get more active. Also the importance of branch-level social dialogue and collective agreements should increase. In the conflict resolution process the quality of the partners' knowledge and conflict prevention abilities are very important. This is especially important at the local level conflict resolution process. The role of local conciliators should change in the future. They have to be involved more as advisors and mediators. At the state level, the government should not intervene in the sphere of activities where social partners should be responsible. There is still need for developing and strengthening the social partners' organisations as well as social dialogue at all levels.

Statistics on industrial disputes 1992-2002

Tables 2 and 3 in annex 3 give an overview of strikes and other protest actions in Estonia over the period of 1992-2002. During the observed time there were no lockouts in Estonia. As can be seen from table 2, there were only rare cases of warning strikes in Estonia over the period from 1992 to 2002. In total there were 10 warning strikes over an 11-year period, and the first warning strikes took place only in 1996. The number of participants in these warning strikes has been relatively small, and with high probability these numbers are also overestimated and instead the numbers of

workers in specific enterprises are presented. As the duration of warning strikes is only one hour, the working hours lost due to warning strikes have been small and there have been no remarkable economic losses. As can be seen from table 1, the main reason for warning strikes has been the demand for pay increase in enterprises.

There has been one support strike to the demands of Confederation of Estonian Trade Unions, which took place in December 2002. The participants of this support strike were supporting positions of the Confederation of Estonian Trade Unions in the following issues: the government has to fulfil the tripartite agreements, there has to be raise in tax-free income and unemployment benefit, there is need to create options for retraining and new jobs, the government should take steps to reduce unemployment. Trade union organisations, which took part in this strike were:

- Federation of Estonian Railwaymen's Trade Union (10 participants);
- Security Workers' Trade Union (22 participants);
- Airline Pilot's Trade Union (4 participants);
- Federation of Estonian Metalworkers' Trade Union (400 participants).

There were no direct results of this support strike.

Table 3 presents the statistics about other protest actions - pickets, meetings, sending letters to prime minister, etc. - in Estonia over the period of 1992-2002.

Conflict resolution mechanisms

The only legally regulated method for conflict resolution in Estonia is conciliation. At the enterprise level also shop steward can be involved in mediation process, but usually the conflicts are solved in industrial dispute commissions.

Conciliation

Role of the conciliator

Conciliators are impartial experts who help the parties to industrial disputes reach mutually satisfactory resolutions. The institution of Public Conciliator has been operating since the second half of 1995. Beside the Public Conciliator there are also local conciliators, a total of 24 people in Estonia. The Public Conciliator is appointed to office for a term of three years by the government on the basis of a joint agreement of the Ministry of Social Affairs and central federations of employers and federations of employees. The Public Conciliator appoints local conciliators for resolution of an industrial dispute in prior coordination with the local government. The activity of conciliators is based on the Collective Industrial Dispute Resolution Act and Collective Industrial Dispute Conciliation Statute.

The duty of a conciliator is to effect conciliation of the parties. A conciliator shall identify the reasons for and circumstances of an industrial dispute and shall propose resolutions. Conciliators have the right to invite the parties to participate in conciliation proceedings, they also have a right to engage qualified persons or experts and competent officials in their work. Conciliation is effected through the mediation of a conciliator or on the basis of a proposal made by a conciliator. The parties shall reply to the proposal of a conciliator within three days. Parties are required to participate in conciliation proceedings, send their fully authorised representatives to participate in the conciliation proceedings and submit documents necessary for the substantive resolution of the matter by the date specified by the conciliator. The conciliation process is documented by a report, which should be signed by the representatives of the parties and the conciliator. A conciliation contained in a signed report is binding on the parties and enters into force upon

signature, unless a different date is agreed on. The report should be prepared also in these cases, where no agreement was reached.

Experiences of conciliation

During the eight years since establishment of the Public Conciliator's Institution there have been more than 260 cases where people applied to the Public Conciliator. Mainly the applicants have been representatives of employees and representatives of trade unions. In the last few years also the representatives of employers are more often appealing to the Public Concilator. Most of the disagreements are induced by the employees' dissatisfaction with the payment conditions (50% of the cases). In 30% of cases the source of industrial dispute has been a collective agreement, in 8% of cases the labour legislation, in 7% of cases working conditions and in 5% of cases social guarantees.

In industrial disputes over wages, in most cases workers are not agreed with the size of the wages or with the established level of minimum wage. Problematic are also the conditions of payment of extra remuneration and high share of the bonuses (extra remuneration) in total wage. In their wage demands representatives of employees present the following arguments: work is valued insufficiently, wage is too low to secure normal living conditions, inflation is too high and wages are remarkably lower than in the European Union member countries. The source of dissatisfaction with wages is also the high variability in wage levels of comparable jobs. It is usual, that in the comparable occupations in different sectors, wages may differ more than five times, differences between enterprises are even ten times. It is not surprising, as the average wages in counties differ about 1.8 times.

Also there have been cases associated with the collective agreements: the employer is not interested in concluding collective agreements and often delays negotations, there have been also problems with implementation of collective agreements, fulfilment of pay conditions or with different interpretation of the paragaraphs in the collective agreement (especially in cases when the owners of enterprises are changing). According to the collective agreement legislation, the collective agreements and wage agreements are documents negotiated in the bipartite dialogue and there is no legal responsibility to enforce both sides to conclude an agreement. It is not right when employers ignore the appeals of employees, slow down the negotation process or do not fulfil the agreements, not even explaining to employees why they cannot fulfil the previously agreed points in the collective agreement.

Taking into account the relatively low level of wages, in most cases the conciliation process has been originated from the point of view that the demands of employees to get higher wages are justified. On the other hand, there has been a need to take into account also the real possibility of employers who are not always able to fulfil the agreements completely. Therefore, the resolution in most cases has been a compromise, for which both parties made concessions. In order to reach agreement in many cases there was a need to take into account also the situation that in the cases of increasing the wages there would have been the decrease of employment, which would cause the additional social problems.

Most of the disputes about wages and collective agreements which have been in the conciliators' proceedings, have ended with positive result. According to the statistics of the Public Conciliator Office, an agreement is achieved in 80% of all cases. In 11 cases the right was given to representatives of employees to organise a strike, after which a solution with employers was found and there have been no strikes in Estonia. However, there have been several warning strikes to affect employers in the wage negotiations processes.

There have been some cases where quick solutions satisfying both parties have not been found. One extreme example is the negotiation over nurses' wages. Until the 2003 settlement, nurses had not had a pay agreement for more than six years, as all negotiations had ended in failure. In 1999, the public conciliator proposed a compromise solution, according to which nurses minimum hourly wage rate would be 18 kroons. Estonian Hospitals Association (Eesti Haiglate Liit) as

representative of employers' agreed with this solution, but the Trade Union Association of Health Officers of Estonia (Eesti Keskastme Tervishoiutöötajate Kutseliit) did not agreed with this proposal and the agreement was not signed. However, as nurses' wages at that time were only 11-14 kroons per hour, this solution would have helped to increase their monthly wages on average by 1000 kroons and would have been a better basis for further negotiations and agreements. At the end of 2001, the Estonian Medical Association (Eesti Arstide Liit) and the Federation of Estonian Health Care Professionals Unions (Eesti Tervishoiutöötajate Ametiühingute Liit) referred to the public conciliator with a collective statement for solving an industrial dispute. After five months of prolonged negotiations in March 2002 a wage contract about minimum wages for doctors and care assistants was concluded, but not for nurses. The public conciliator made a decision that the Trade Union Association of Health Officers of Estonia had a right to strike. In June 2003, after a four month prolonged conciliation process, a new contract about minimum wages in the health care sector was agreed, and this time it covered doctors, nurses and care assistants. In total this industrial dispute comprised 15,000 to17,000 people.

According to statistics from the Public Conciliator Office, in 2001, there were 24 applications presented to the public conciliator to solve industrial disputes. In total these industrial disputes covered around 18,000 people. Positive results were achieved in 18 cases and in 2 cases the right to strike was given. In 2002, 17 industrial disputes were registered and according to estimates 31,000 employees were involved in these disputes. Positive solutions were found in 12 cases. During the first five months of 2003 six industrial disputes were registered and approximately 20,000 employees were involved in these disputes. Positive solutions were found in five cases.

Conclusion

Estonia has a good legal background for harmonious industrial relations. Different laws concerning industrial relations were adopted and amended over the transition period and different institutions dealing with industrial relations were established.

The main institutions dealing with conflict resolution are the industrial dispute commissions, the public conciliator and local conciliators, and the court. Industrial disputes are generally resolved through direct negotiations between employers and employees.

Since the second half of 1995, when the institution of Public Conciliator started operating, there have been more than 260 cases of conciliation. Half of the disagreements were started off by the employees' dissatisfaction with payment conditions, followed by disagreements with collective agreements, labour legislation, working conditions and social guarantees. Most of the disputes about wages and collective agreements which have been in the conciliators' proceedings ended with positive results. In 80% of cases an agreement was achieved and only in 11 cases the right to organise a strike was given to representatives of employees. However, there have been rare cases of warning strikes and other protest actions over the period of 1992-2002. There have been no strikes and lockouts during the observed period.

The negative side of conciliation is that the Collective Industrial Dispute Resolution Act does not describe any activities related to the avoidance of industrial disputes, such as prevention activities or similar activities. Public or local conciliators intervene in industrial disputes only after the parties to the conflict have turned to a conciliator. The positive side is that there are local conciliators, who are aware of local problems and are able to solve the problem more objectively.

The main reason for relatively 'peaceful' industrial relations in Estonia has been the fact that employees are still relatively weak. Union density and collective bargaining coverage rates are very low. Due to this fact unions do not have

enough financial resources and therefore cannot afford to have strikes. Also the administrative capacity of unions to organise strikes is low.

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Annex 1: National development project

'Development of social dialogue and conflict resolution in the health care sector'

Public sector wages and working conditions have earned public attention for several years already, as the employees in these sectors are not satisfied with their relatively low wages. In a number of cases the negotiations between social partners have ended in failure, financing in these sectors has raised public debates, etc.

According to the Statistical Office of Estonia, wages in the health care sector and in education are below the average wages in Estonia (see Table 1), only wages in public administration are above the national average.

Average monthly gross wages in the public sector, compared to the national average wage, 1992-2002

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Average wages (EEK)											
Public administration	533	1103	2030	2825	3546	4226	4942	5715	6287	6958	7844
Education	459	850	1259	1900	2326	2794	3370	3964	4187	4770	5366
Health	415	818	1402	1975	2689	3089	3690	4154	4387	4768	4983
TOTAL	549	1066	1734	2375	2985	3573	4125	4440	4907	5510	6144
Average wage compared to the national average											
Public administration	0.97	1.03	1.17	1.19	1.19	1.18	1.20	1.29	1.28	1.26	1.28
Education	0.84	0.80	0.73	0.80	0.78	0.78	0.82	0.89	0.85	0.87	0.87
Health	0.76	0.77	0.81	0.83	0.90	0.86	0.89	0.94	0.89	0.87	0.81

Source: *Statistical Office of Estonia*

During the last few years wage increases in these sectors have been higher than the increase of the average wage. Yet, the wage level is still not acceptable, as workers in these sectors have a higher education level, their job obligations demand continuous training and renewing their skills, as well as having to accept more flexible working time arrangements and working conditions. If we compare the wage level in these sectors with the national average in Estonia and other EU Member States, we can see remarkable differences, as the health care and education in EU Member States belong usually to the high-paid sectors. Therefore, there is also a fear in Estonia, that since joining the EU, the employees from these sectors will with high probability migrate from Estonia and there will be shortage of doctors, nurses and other specialists in these sectors.

However, although we can see that the problems in health care and education are quite similar, the solution to these problems cannot be similar, as the financing systems as well as conflict resolution mechanisms are completely different:

- In the health care sector money is provided by the Health Insurance Fund based on earlier agreed reference prices for medical services plus the negotiated wage level. Hospital managers' ability to increase wages depends on how much money the Health Insurance Fund contributes in the particular budget year. Wage negotiations in the health care sector are held between employers' representatives (i.e. hospital managers) and representatives of employees. Representatives of the Health Insurance Fund have been rather passive.

- In education the money is reallocated to local municipalities and education institutions according to special financial schemes (based of the number of pupils, plus different coefficient systems). Employees' individual wages are decided at the level of concrete institution. Negotiations are held between the Ministry of Education and the trade union confederation - the Estonian Employees' Unions' Confederation (TALO) (see also EE0311103F and EE0108101F), while representatives of local authorities are usually not involved in the negotiations.
- Thirdly, civil servants have special wage arrangements and their ability and opportunity to strike in the case of conflicts is basically prohibited by law.

Therefore, we cannot talk about a common scheme for all public sector employees and problems should be solved according to a case by case principle. The following national plan is concentrated in the health care sector.

What?

The negotiation processes in the health care sector can be characterised as lengthy and often ending with failure. For example, in spring and summer 2003, the negotiations over the new healthcare agreement were protracted, and trade unions had been preparing for warning strikes if their demands on increasing the minimum wage rates were not met. Finally in June 2003, trade unions and employers concluded a new pay agreement for the healthcare sector, laying down minimum wage rates for doctors, nurses and care assistants (the most recent agreement, concluded in April 2002, expired on 31 March 2003). Until the 2003 settlement, nurses had not had a pay agreement for more than six years, as all negotiations had ended in failure.

The main problem is that the negotiations are held between representatives of employers (hospital mangers) and employees (different trade union organisations), but finances for fulfilling these agreements are provided by the government agency (Health Insurance Fund[4]), whose representatives have (until recently) not been involved in negotiations. Therefore there is a need to rethink the role of social partners, the involvement of other parties and the process of social dialogue in the health care sector. We can offer two types of solutions covering social dialogue for health care workers:

Short-term objectives:

- Representatives of Health Insurance Fund should actively participate in bipartite wage negotiations.
- Agreed wages should be extended to all employees working in the health care sector.

The **long-term objective** will be to change the bipartite negotiations into tripartite negotiations in the health care sector.

Why?

The last negotiation process:
In June 2003, after a lengthy negotiating process, in which the public conciliator became involved, the employers' organisation Estonian Hospitals Association (Eesti Haiglate Liit, EHL) and three trade unions - the Estonian Medical Association (Eesti Arstide Liit, EAL), the Trade Union Association of Health Officers of Estonia (Eesti Keskastme Tervishoiutöötajate Kutseliit, EKTK) and the Federation of Estonian Health Care Professionals Unions

[4] According to Estonian Law, the whole healthcare system is financed via the Health Insurance Fund, which receives its funding from social security contributions.

(Tervishoiutöötajate Ametiühingute Liit, ETTAL) - signed a pay agreement for health care workers (see also EE0307101N). The main objective of the agreement is to set minimum wage rates for the various categories of employees and to harmonise differences in minimum wages between regions and different types of hospitals. The main presumption of the fulfilment of this agreement from the employers' side is that from 1 July 2003, the reference prices for medical services increased simultaneously (it means, that to increase the reference prices, the Estonian Health Insurance Fund has to find the additional money required for the agreed wage increase).

From this we can see, that even if employers' organisations and trade unions can reach an agreement, the fulfilment of the agreement depends mainly on the party which is not actively involved in the negotiation process. The exception was the last negotiation process, in which representatives of the Health Insurance Fund took an active part, while in previous years they have been relatively passive. Although in legal terms the social partners in the healthcare sector are the trade unions and EHL, the finances come from the Health Insurance Fund, which makes it very important that the Fund should be involved in the process of negotiations.

Collective agreement coverage:
Trade unions expect the agreement signed in June 2003 to be extended to the whole healthcare sector, in line with the Collective Agreement Act. According to Katrin Rehemaa, the general secretary of EAL, there is a problem in that the previous agreement stated clearly that it would be extended to all providers of medical services. However, this point is omitted from the new agreement, as EHL claimed that it could not guarantee that all hospitals will apply the new minimum wage rates. EHL covers 19 major hospitals in Estonia, but according to Ms Rehemaa, wage problems arise mostly in small hospitals, which are not always members of EHL.

Previous experiences:
The first collective agreement for the healthcare sector was concluded in 1996 and the last one was concluded in June 2003. During most of the negotiations, the parties turned to the public conciliator to get help from conciliation and mediation activities. These negotiation processes have shown that the representatives have a different understanding of the negotiation process, and their level of preparation, knowledge and negotiation experiences are very different.

When?
The new type of social dialogue and conflict resolution systems should be tried during the next negotiation round, which will start in January 2004.

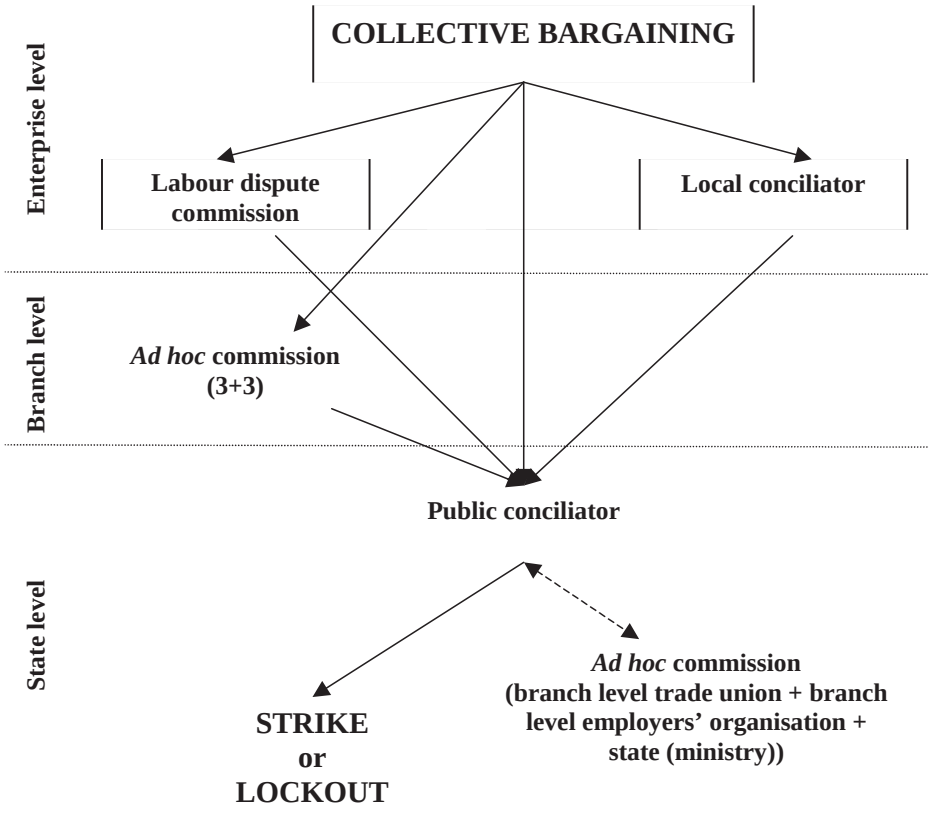
Where?
The health care sector should start the new social dialogue system and positive experience could later be exploited in order to improve the social dialogue in other sectors.

Who?
All groups of employees in health care sector, as well as the representatives of employers' organisation and Health Insurance Fund, also representatives of the public conciliator and Ministry of Social Affairs should be involved in the process of developing the social dialogue in the health care sector.

Which resources?
The main resources needed for the development of a new type of social dialogue needs human resources, which are already available in the public sector hospitals. Better cooperation is needed between the groups and learning from previous experiences and learning from other EU countries. Experiences should be analysed and used in the following negotiations rounds.

Annex 2: Road map for conflict resolution

1. The process of interest conflict resolution in Estonia



2. The process of rights dispute resolution in Estonia

Annex 3: Strikes and other protest action

Table 1: *Warning strikes in Estonia, 1996-2002*

Date	Trade union	Employer/ enterprise	Number of participants	Demands	Results
22.02.96	Estonian Cultural Personnel Professional Union	Cultural enterprises under municipal administration	3000	To gain a pay rise according to the rise in cost of living	The salaries of employees working for institutions financed by state budget were increased by 30%, additional 50 million EEK was appropriated for raising the salaries of cultural personalities
07.06.96	Estonian Transport and Road Workers Trade Union	Municipal enterprise Narva Bussipark	130	To gain a pay rise, employer has to fulfil the collective agreement	Wages were raised retroactively from 01.03.1996; subsidy for public transport was added to Narva city budget in 1997
12.05.97	Education Personnel Union of Tartu and Pärnu	Schools of general education of Tartu and Pärnu*	1400 (Tartu) 1200 (Pärnu)	To re-establish seniority pay; to distribute the reserve of payroll fund to payments; appropriate money for in-service training of teachers	Seniority pay was not re-established; extra money was appropriated for salaries from the county reserve; sums for in-service training were increased
27.11.97	Estonian Employees' Unions' Confederation	595 institutions (including 548 educational institutions)	16178	To gain a pay rise of 40% for teachers (the government offered 14%), and 25% for other members; to work out separate scale of salaries for educational workers; to improve working conditions; to establish effective in-service training system	Parliament added additional resources to the state budget, but not enough to fulfil the demands (teachers gained a pay rise of 30%); negotiations turned perspectiveless and were ended 02.04.1998 with the help of public conciliator
10.12.99	Federation of Estonian Metalworkers' Trade Union	Viljandi ETT Talleks	11	To conclude a collective agreement, to gain a pay rise	The collective agreement was concluded by the end of 2000
16.10.00	Trade Union Association of Health Officers of Estonia (+ some members of Federation of Estonian Health Care Professionals Union)	Estonian Hospitals Association (67 health care institutions)	8700	To conclude a salary agreement – minimum pay 25 EEK/h (instead of 11 EEK/h)	The agreement was not concluded
30.01.01	Estonian Locomotive Driver's Trade Union; Federation of Estonian Railwaymen's Trade Union	Edelaraudtee AS (Southwest Railways)	40	To secure jobs; to preserve the transport capacity in south-eastern Estonia and on the lines of Tallinn-Tartu and Tallinn-Narva	The transport capacity was preserved on diminished volume; 270 workers were made redundant (instead of 350)
27.02.02	Federation of Estonian Railwaymen's Trade Union	Eesti Raudtee AS (Estonian Railways)	247	Employer has to fulfil the collective agreement; to secure jobs in the depot of reparation in Tapa	The social program was concluded 13.05.2002; the enormity of jobs were secured
02.09.02	Estonian Transport and Road Workers' Trade Union	Connex Tartu AS	52	To gain a pay rise of 8,5%	On an average a pay rise of 10 % was gained from 01.10.2002

* in the case of Pärnu Russian secondary schools were not involved.

Table 2: *Other protest actions in Estonia, 1995-2003*

Date	Action	Trade union	Employer/ enterprise	Duration	Number of participants	Demands	Results
Nov-Dec.02	Personal letters to Prime Minister	Estonian Cultural Personnel Professional Union	The Government of Estonia		700	To gain a pay rise (to continue bargaining)	The answer from the Prime Minister to all senders on the address of Estonian Cultural Personalities Professional Union did not offer any practical solutions
29.02.96	Picket in front of the seat of the Government	Estonian Railwaymen's Trade Union	The Government of Estonia	1 hour	300	To secure jobs and entirety of Eesti Raudtee (Estonian Railways)	There were no results. Eesti Raudtee was privatised, 50% of workers were made redundant
22.02.96	Picket in front of the seat of the Government	Estonian Cultural Personalities Professional Union	The Government of Estonia	1 hour	800	To gain a pay rise according to the rise of cost of living	The salaries of employees working for institutions financed by the state budget were increased by 30%, additional 50 million EEK was appropriated for raising the salaries of cultural personalities
18-22.11.96	Hunger-strike	Federation of Textile Workers' Trade Unions	Kreenholm	5 days	1 (shop steward)	To gain a pay rise of 17,6% or at least 10% + additional days off	Wages of workers who were less rewarded were increased on the next year
7-9.10.99	Picket in front of the main building of Eesti Energia	Federation of Power Engineers' Trade Unions	Eesti Energia (Estonian Energy)	3 days		Employer has to fulfil the collective agreement; to secure existent wage level	
15.03.00	Meeting in front of the seat of the Government	Estonian Employees' Unions' Confederation and Confederation of Estonian Trade Unions	The Government of Estonia	1 hour	1000 (mainly Russian-speaking population)	Not to begin to regulate employment relationships based on employment contracts under the law of obligations but under a separate law of employment contracts	The Government did not begin to regulate employment relationships under the law of obligations
03.06.00	Human chain from Narva to Sillamäe (~25 km)	Federation of Estonian Oil Shell Producers' Trade Unions; Federation of Power Engineers' Trade Unions; Federation of Estonian Metalworkers' Trade Unions	The Government of Estonia		5000	To ensure an harmonic development of the region and oil shell energetics; to stop the plan of reducing employment; to add social programs of Eesti Energia (Estonian Energy) and Eesti Põ-levkivi (Estonian Oil Shell) to the contract of privatisation of Narva Elektrijaamad (Power Plants of Narva); not to set a 18% VAT rate on heating from 01.07.2000, but raise the tax gradually; to implement a tax policy that favours the use of local oil; to secure additional pensions to employees who work underground or whose working conditions are unhealthy	There were no direct results because the plan of privatisation of Narva Elektrijaamad (Power Plants of Narva) failed, however a reduced 5% VAT rate was set on heating from 01.07.2001

Table 2: *Other protest actions in Estonia, 1995-2003 (cont.)*

Date	Action	Trade union	Employer/ enterprise	Duration	Number of participants	Demands	Results
30.01.01	Meeting in Tallinn-Balti Jaam (a railway station)	Estonian Railwaymen's Trade Union	The Government of Estonia	1 hour	100	To secure jobs; to preserve the transport capacity in south-eastern Estonia and on lines of Tallinn-Tartu and Tallinn-Narva	The transport capacity was preserved on diminished volume; 270 workers were made redundant (instead of 350)
21.05.01	Meeting	Federation of Estonian Oil Shell Producers' Trade Unions			2500	To stop redundancies of workers in Eesti Põlevkivi (Estonian Oil Shell); to gain additional benefit for training for redundant workers in the amount of 12 monthly pay; to receive an additional pension from the company during 5 years; to pass immediately the social program of Eesti Põlevkivi	Under 53 years old miners who were made redundant due to the shutdown of two mines (Kohtla and Ahtme) got during one year a retraining and an additional income of 36000 EEK
27.02.02	Meeting in Tapa	Estonian Railwaymen's Trade Union	Eesti Raudtee AS (Estonian Railways)		300	Employer has to fulfil the collective agreement; to secure jobs in the depot of reparation in Tapa	The social program was concluded 13.05.2002; the enormity of jobs were secured
06.12.02	Meeting to support demands of Confederation of Estonian Trade Unions	Federation of Textile Workers' Trade Unions; Federation of Estonian Post and Telecommuni-cation Workers' Trade Union	Baltex 2000, Eesti Post (Estonian Post) and some others	1 hour	1000	The Government has to fulfil the tripartite agreements; to raise tax-free income and unemployment benefit; to create new jobs and options for retraining; to reduce unemployment	There was no direct results
09.12.02	Meeting to support demands of Confederation of Estonian Trade Unions	Federation of Textile Workers' Trade Unions	Kreenholm	1 hour	1000		
11.12.02	Meeting in front of the seat of the Government	Confederation of Estonian Trade Unions	The Government of Estonia	1 hour	1000		
Jan.-Feb. 03	Sending letters of protest to the parliament and the government	Estonian Employees' Unions' Confederation's member unions	The Government of Estonia			The Government has to fulfil the agreements; to conclude a salary agreement for 2003; to improve salary conditions for teachers	Replies from Ministry of Education and Research and from the Parliament's Committee of Finance stated that problems were noted