

# DEFENDING AND STRENGTHENING TRADE UNION RIGHTS IN PUBLIC SERVICES

# RESEARCH TEAM

- First step: creation of a team (collaboration between UGent, University of Amsterdam and University Carlos III Madrid)
- Experienced researchers with regard EU-projects and comparative research
- Background of legal analysis in the different countries aiming to get a certain conceptualization

# RESEARCH NATIONAL LEVEL

- Focus shall be on the limitations with regard to officials (working term including military staff, police staff and civil servants) in different European countries:

Denmark, Finland, Sweden, Latvia, Lithuania, Estonia and Poland

Division of tasks between the researcher has been made although the aim obviously is to provide information as one research group. The UvA shall write the report on France and Portugal while UCIIM shall take care of the report on Spain and Italy. The UGhent has dealt with these group of countries.

**For this presentation: the EPSU-ETUI country reports are of major importance (thank you for all the good work).**

## **Denmark:**

Subsidiarity of the legislator with regard to labour law

Major role for collective bargaining and negotiations between social partners

Collective agreements play an important role in public and private sector since 1969

# RESEARCH AT NATIONAL LEVEL - DENMARK

Civil Servants are submitted to a Civil Service Act which was enacted in 2010

Civil servants have good a specific (public law governed) status

Those civil servants do not enjoy a right to strike (this includes a group regulated by the Circular of 11 december 2000: police officers, Public Ministry Officers, judicial officers, military staff, prison officers and taks officers)

# RESEARCH AT NATIONAL LEVEL - DENMARK

- Problems with the right to strike with regard to article 6.4. ESC and article 11 ECHR (not yet resolved)
- Small group of civil servants remaining
- Problems in 2013 with regard to a lock out used on the Danish teachers by the Danish State

# RESEARCH AT NATIONAL LEVEL - DENMARK

Collective bargaining agreements are taking place in the public sector:

- CBA are signed at two levels: national, municipal level

Collective bargaining agreements are concluded in Denmark for the civil servants since 1969 with regard to working time, wages etc.

Collective bargaining takes place at the same level for the large and emerging group of employees employed with contracts of employment in the public sector.

# RESEARCH AT NATIONAL LEVEL – FINLAND

- No real definition of the right to strike under Finnish law
- Established in case law where it is considered to be a means of pressure within the framework of collective agreements



# RESEARCH AT NATIONAL LEVEL - FINLAND

Public servants have the right to take strike action as laid down in the Act on Collective Agreements for State Civil Servants (664/1970).

– Exceptions:

High-ranked civil servants or other servants employed in personnel departments throughout the various ministries and government agencies, e.g. some civil servants working for the secretariat of the Finnish Parliament. Members of the police and armed forces are also not permitted to strike.

# RESEARCH AT NATIONAL LEVEL – FINLAND

- Negotiations do take place and lead to binding collective agreements at national level with regard to pay, working hours, leave, absence, occupational health care
- Collective bargaining agreements can taken place for civil servants and for employees

# RESEARCH AT NATIONAL LEVEL – SWEDEN

- Chapter 2 Section 14 of the Instrument of Government(one of the four constitutional acts) guarantees the right to strike and to undertake collective action on the labour market
- Staff in the public sector are employed with contracts of employment and enjoy the right to strike
- Exceptions: Basic Agreement for the public sector and **include high-ranking officials** in the Government Offices, in the **judiciary**, in **penitentiary structures** and **other administrative agencies** (right to strike excluded)

# RESEARCH AT NATIONAL LEVEL - SWEDEN

- Right to strike: exceptions are foreseen in the Swedish Public Employment Act (articles 23 till 28):
- *An employee may participate in industrial action only following a decision of the employees' organisation that has ordered the industrial action.*
- *An employees' organisation may not order or in any other way cause industrial action that is not allowed given the necessity of official power in certain sectors. Nor may such organisation by giving support or in any other way participate in industrial action that is not allowed.*
- *If an employee who belongs to an employees' organisation plans to initiate or has initiated industrial action that is not allowed, the organisation is liable to endeavour to prevent the action or work to ensure that it ceases.*

**Major role** to the trade unions

# RESEARCH AT NATIONAL LEVEL - SWEDEN

- In the Basic Agreement for the Public Sector, the social partners agreed that, in certain sectors, strikes and collective action are to be undertaken with extreme caution.
- These sectors are broadly identified as those relating to the **security of the State**, the maintenance of **law and order**, **healthcare** and the **care of persons in need**, and **individual financial security**.
- The social partners also agreed to avoid any collective action that might cause a serious disturbance to the economy and hamper the effective functioning of public supply chains. In addition, the parties agreed to avoid any collective action that would be offensive for humanitarian reasons, such as in the case of schools for disabled persons.
- Minimal services negotiated between the social partners
- Peace obligation

# RESEARCH AT NATIONAL LEVEL SWEDEN

- Collective bargaining Agreements are set out between social partners in the public sector
- The specific character of collective bargaining in Sweden can be deduced for the Public Employment Act which allows on several occasions to derive from legislation by CBA

# RESEARCH AT NATIONAL LEVEL – LATVIA

- Article 108 of Constitutional Act provides a legal fundament for the right to strike: *“Employed persons have the right to a collective labour agreement, and the right to strike. The State shall protect the freedom of trade unions”*
- However, article 116 provides that Parliament can limit its content: *“The rights of persons set out in Articles ninety-six, ninety-seven, ninety-eight, one hundred, one hundred and two, one hundred and three, one hundred and six, and **one hundred and eight** of the Constitution may be subject to **restrictions** in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals. On the basis of the conditions set forth in this Article, restrictions may also be imposed on the expression of religious beliefs”.*

# RESEARCH AT NATIONAL LEVEL – LATVIA

- Article 3 of the Strike Act recognises the right to strike for professional and economic interests (no political strikes nor strikes when an agreement exists – limitations to sympathy strikes)
- Constitutional Court decided in 2006 that the right to strike should be used as a last resort



# RESEARCH AT NATIONAL LEVEL – LATVIA

- Article 16 of the Strike Act provides that judges, prosecutors, members of the police force, fireprotection, firefighting and rescue service employees, border guards, members of the state security service, warders and persons who serve in the National Armed Forces are prohibited from striking
- Specifically: police officers, firefighters have the right to join a trade union but the TU has no right to organise a strike

# RESEARCH AT NATIONAL LEVEL – LATVIA

- Border guards: no right to strike nor to join a trade union  
Constitutional Court considered it disproportionate in 2014 disproportionate but still remaining
- Persons serving in the National Army are excluded from the right to strike and from organising strikes – case before Constitutional Court adjudicated on 14 december 2021

# RESEARCH AT NATIONAL LEVEL – LATVIA

- Long list of essentials services: (i) medical treatment and first aid services; (ii) public transport services; (iii) drinking water supplies services; (iv) electricity and gas production and supplies services; (v) communications services; (vi) air traffic control services and the services which provide air traffic control services with meteorological information; (vii) services related to the safety of movement of all forms of transport; (viii) waste and waste water collection and treatment services; (ix) radioactive substances and waste storage, utilisation and control services; and (x) civil defence services
- All needed to be guaranteed in continuity

# RESEARCH AT NATIONAL LEVEL - LATVIA

- Specifically with regard to collective bargaining issues, the status of the public servants (civil servants, special servants e.g. police officers, military officers). Besides also exist employees

Civil servants (and armed services) are not employed on the basis of work contract and therefore are not subordinated to the Labour Law that regulates collective bargaining (practically are not eligible for collective bargaining not only for this reason, but also based on the morality and loyalty considerations),

Others (e.g. employees) have rights to participate in collective bargaining, but there is not large space for negotiations, since all main issues concerning employment in the central government institutions are prescribed by laws and regulations.

In organisations (ministries) where bargaining exist, the topics of negotiation are some aspects of working time, work organisation, job security and employment protections.

However: collective bargaining plays an important role in the health and education sector.

# RESEARCH AT NATIONAL LEVEL - LITHUANIA

Article 51 of the Constitution of the Republic of Lithuania provides that employees have the right to strike in order to protect their economic and social interests.

The Act on Civil Service is the main legislative act regulating the right to strike for public-sector workers and officials.

# RESEARCH AT NATIONAL LEVEL - LITHUANIA

- The Labour Code provides limitations for a.o. persons working in internal affairs, national defence and state security.
- Long list of essential services: health care, electricity, water, gas and heating supply services, waste disposal and sewerage services, civil aviation services, including flight management, telecommunications, and railway and public transport services.

# RESEARCH AT NATIONAL LEVEL - LITHUANIA

- Civil Service Law guarantees the right to strike to civil servants 'except head of division
- Civil Service Law allows to become member of a trade union
- 2. Collective bargaining and conclusion of collective agreements in the civil service shall be subject to provisions of the Labour Code of the Republic of Lithuania.
- 3. A national collective agreement shall be a written agreement between the trade union organisations (association, federation, centre, etc.) representing civil servants and the Government stipulating the conditions of remuneration of civil servants, service (working) and rest time and other social and economic conditions.
- 4. An agency's collective agreement shall be a written agreement concluded between the head of a state or municipal institution or agency or a person authorised by him and a trade union of civil servants which represents civil servants and functions in the state or municipal institution or agency and stipulating the conditions of the service (work) of civil servants of the state or municipal institution or agency and other social and economic conditions.



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# RESEARCH AT NATIONAL LEVEL - LITHUANIA

- Some major collective bargaining achievements have been reached:
  - Increase of pay in the health sector (2021)
  - Increase of pay in social and public services (2020)

# RESEARCH AT NATIONAL LEVEL - ESTONIA

- The CLDRA defines a strike as an interruption of work on the initiative of employees or an association or a federation of employees in order to achieve concessions from an employer or an association or a federation of employers to lawful demands in labour matters (Article 2 of the CLDRA)
- Article 29 of the Constitution provides the freedom to join a trade union

# RESEARCH AT NATIONAL LEVEL - ESTONIA

The right to strike is denied to officials (who exercise public authority):

The exercise of official authority means the performance of the following functions:

- 1. the directing of an authority;
- 2. the exercise of state and administrative supervision, as well as the conduct of internal audit;
- 3. the ensuring of the security and constitutional order of the State;
- 4. the permanent military defence of the State and preparation therefor;
- 5. the proceeding of offences;
- 6. the diplomatic representation of the Republic of Estonia in foreign relations;
- 7. the taking of decisions necessary for the performance of the principal functions of the Parliament of Estonia (Riigikogu), the President of the Republic, the National Audit Office, the Chancellor of Justice and the courts, the substantive preparation or implementation thereof;
- 8. the substantive preparation or implementation of the policy-making decisions within the competence of the Government of the Republic, local government council, municipal or city government and authority;
- 9. the activities which, in the interests of strengthening and developing the official authority, cannot be given to the competence of a person who is only in the relationships governed by private law with the authority

# RESEARCH AT NATIONAL LEVEL - ESTONIA

The following services are considered to be essential services:

- electricity supply;
- natural gas supply;
- liquid fuel supply;
- ensuring the operability of national roads;
- phone service;
- mobile phone service;
- data transmission service;
- digital identification and digital signing.
- payment services;
- cash circulation.
- district heating;
- ensuring the operability of local roads;
- water supply and sewerage.

# RESEARCH AT NATIONAL LEVEL - ESTONIA

- The right to strike is denied to civil servants working for governmental authorities and other state bodies and local government, as well as for the **Defence League** (the unified armed forces of the Republic of Estonia), courts and rescue service agencies.
- Also rescue workers employed under an employment contract in a rescue service agency and persons employed under an employment contract in the Ministry of Defence, the Defence Resources Agency, the Defence Forces or the Defence League are denied the right to strike.

# RESEARCH AT NATIONAL LEVEL - ESTONIA

- The process of collective bargaining is regulated by the [Collective Agreements Act](#)
- no differences in regulation between public and private sector collective bargaining
- information and consultation, the process is somewhat different depending on the employment status.

The process of information and consultation for employees whose employment relationship is regulated by the Employment Contracts Act is stipulated in the [Employees' Trustee Act](#), however it does not apply to the public servants working under Civil Service Act. Informing of civil servants is regulated through Civil Service Act. According to the act, the head of authority has to notify officials and may ask opinion before enacting some service-related acts (such as the general guidelines for occupational health and safety), however officials' opinion is not binding to the employer, but can be counted as recommendations for the employer.

# RESEARCH AT NATIONAL LEVEL – POLAND

- Article 59, third paragraph of the Polish Constitution provides: “*Trade unions shall have the right to organize workers' strikes or other forms of protest subject to limitations specified by statute. For protection of the public interest, statutes may limit or forbid the conduct of strikes by specified categories of employees or in specific fields*”.
- Article 31 of the Polish Constitution provides: “*Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights*”.



# RESEARCH AT NATIONAL LEVEL – POLAND

- Article 19(2): “Strikes are prohibited at the Agency of Internal Security, the Intelligence Agency, in units of the **Police, Armed Forces of the Republic of Poland**, Prison Service, Frontier Guard, Custom Service as well as units of the fire brigades”
- Article 19 (1) the Collective Labour Dispute Resolution Act prohibits the right to strike in the strike affects positions, equipment and installations where the interruption of work constitutes a hazard to human lives or health or to the security of the State
- Article 19 (3) prohibition for persons employed in state authorities, government and self-government administration, courts and public prosecutors’ offices
- Considered to be too large by CEACR of the ILO.



# RESEARCH AT NATIONAL LEVEL - POLAND

- Civil Servants have a specific status
- Large group of contractual employees
- Nothing is provided with regard to collective bargaining in the Polish Civil Service Act

# RESEARCH AT NATIONAL - POLAND

- Major issues are pending:
  - Difficulties with regard to wages and collective bargaining on this topic (October 2021)
  - Covid 19 regulations passed quickly through both chambers
  - Freezing the wages of public servants

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