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Summary

The report presents the results of the research on the institutions of social dialogue and of tripartite relations in Estonia. The research was conducted in summer and autumn 2005. The research focused on the role of the government and of social partners in the Social and Economic Council and the tripartite negotiations as the main institutions of social dialogue in Estonia. The role and influence of the government in the Social and Economic Council and tripartite negotiations as well as the entire social dialogue was of particular interest. In order to get the deeper insight into functioning of the Council and the roles of the social partners within it, three issues were selected as particular examples of tripartite relations in Estonia: (1) the debates over the adoption of the new Labour Code (e.g. Employment Contract Act) (1989-2005); (2) the debate concerning the negotiations over the minimum wage level in the national tripartite negotiations' rounds (1993-2005); (3) the specific of drafting the Estonian National Action Plan for Employment (2000-2005). The cases presented give a systemic rather than particular overview of the functioning of tripartite and social relations in Estonia as well as draw upon the concrete particularities of developing 'good governance' in Estonia.

The research used in-depth semi-structured interviews with major actors of tripartite arena and monitored the media debate concerning tripartite and social dialogue issues. The research was heavily supported and cross-referenced to the available academic and official analytic materials such as articles and reports concerning Estonia and Central and Eastern European countries in general.

The report begins with the presentation of the hypotheses and methodology as well as with a definition of authors' understanding of governance paradigm and, in particular, the criteria of 'good governance' as a measurement stick of social dialogue and tripartite relations. The middle part of the report analysis in-depth three basic building blocks of tripartite relations in Estonia: the formal-legal background, the state and organization of social partners and the overall structure of tripartite relations. The concluding part presents three specific cases of tripartite relations in Estonia and further analytically draws upon the issues of legitimacy, efficiency, accountability and transparency in Estonian tripartite relations.

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Introduction

Current report presents the analysis of social dialogue and, in particular, of tripartite relations between the government, the employers' and employees' organizations in Estonia in the last 15 years. The report also analyses the role and functioning of formal arenas of tripartite negotiations such as the Social and Economic Council of Estonia.

There is a number of hypotheses that guide current report and are a basis for conclusions. We presume that soviet past of transition countries in CEE has a major effect on shaping of social dialogue through mentality, administrative culture and procedures. In particular, we presume that socialist legacy conditions the superficial way that social dialogue is introduced in the political way and that this hinders the real decision-making powers of social dialogue arenas.

We presume that the results of introduction of new governance methods in transition countries will manifest themselves in a longer perspective, since there is a conflict or misunderstanding of the goals, problems, structures and processes introduced by the liberal-democratic practice as one of its varieties and the deeply rooted socialist practice and way of thinking.

We presume that mere copying of Western models would only provoke incompatibility of new and existing societal and political structures as well as bring forward the weaknesses of transition state organization such as the lack or weak decision-making transparency and other political processes, lack or insufficient accountability of political actors vis-à-vis the society, unclear competences of government and the lack of formal rules purporting to the social dialogue organization and especially obligations of actors involved in the dialogue. The exact way that new modes of governance are introduced should be country specific accounting for the circumstances, cultures, traditions, political system etc.

On the other hand, although formally the introduction of new modes of governance or in our case the establishment and design of reforms of social dialogue can be assessed as satisfactory, new modes of governance fail to solve social and political problems and effectively tackle the delivery of public policies since their goal is transposition of Western best practices and not resolution of social problems as such.

In many respect the EU and other international bodies have had a very positive effect on the introduction of new forms of governance in transition countries. However, we presume that in many instances this conditionality set by external pressure leads to merely *pro forma* introduction of the basic elements of new modes of governance. New modes of governance often have contradictory goals to other public policies' goals and find themselves in a minor position, when it comes to choosing between contradictory goals. For instance, social dialogue is a lengthy resource-dependent process. In this way introduction of social dialogue practices is contradictory to the widespread postulate of cost-effectiveness as part of administrative reform. As a result the government and parties might be interested in developing only those elements of social dialogue, which provide immediate measurable results such as electoral support of trade unions' and support of business corporation during policy-making.

Overall, many of the factors of social dialogue and new modes of governance that have been raised hint to and stem from the state of transition of CEE countries. In general, we presume that political processes and political system at large still lack a fundamental basis and suffer from radical interpretation of democratic and market values as well as from instability. For instance, in parliamentary systems the role of political parties is overemphasized and parties tend to be unwilling to share their power with social partners. Also, the rapid change from state controlled to free market and yet unclear separation of competences between the market and the government might have propelled people's unconditional belief in the absolute power

of self-regulation and neglect of market failure, which could be termed as ‘market mantra’. We presume that these exemplary problems have had a serious negative effect on the development of social dialogue in Estonia.

These hypotheses will be tested and investigated in the following report. We will attempt to see to whether and to what extent they are correct in the case of Estonian social dialogue.

Methodology and scope of research

Current section will describe in brief the method of research: first, there will be a description of factual and analytical materials as well as of the field method used in the research; second, the section will draw upon the theoretical approach used in the research, namely governance and its connection to the topic of social dialogue and tripartite relations.

Field research

The field research conducted in September-October 2005 contained seven semi-structured interviews with major actors of social dialogue in Estonia: heads of trade unions associations, chief of employers association and former and current government officials. The choice of interviewees triangulates the whole range of different and often controversial opinions and views on social dialogue. By comparing and opposing these controversial opinions it was possible to deduct common concerns as well as to recreate an objective (to a certain degree) picture of the process of dialogue. Since social dialogue is developed almost unexceptionally at the national level and since within the social partners and on the part of the government there is a very strong focus on personalities, the interviewees have been chosen among those who participated in social dialogue and headed the participating organizations.

Due to very low institutionalisation of social dialogue there are very few documents concerning the state and progress of social dialogue available. Current research relied mainly on the analyses made by Estonian and foreign experts concerning both social dialogue and employment policy issues. Among the official documents used is only national legislation on trade unions, collective agreements, labour dispute and the employment policy. The analysis also concerned tri- and bipartite agreements between trade unions, employers and the government.

Governance and social dialogue

Within the current project we look at the problems of implementation of the new modes of governance in the democracies of Central and Eastern Europe. Methodologically, before departing onto research it would be correct to set the definitions of what governance is, whether and how it is applied in Central and Eastern European countries and how do we associate it to the tripartite relations and social dialogue in general. In current section we will set the criteria, which use to evaluate social dialogue in the perspective of governance approach.

In our understanding there is hardly any definition of governance. It is rather defined negatively as a reaction to the inefficiencies of the traditional hierarchic, top-down public policy-making approach. Therefore governance was proposed to be applied where government fails:

Overall, “governance should be applied there, where unilateral, centralized and top-down government action (provision of public goods) is no longer

possible or is less efficient than broader, more involving forms of governance”¹.

What are the criteria of governance? Governance means wide involvement of societal actors in the process of policy-making. Government becomes not the leading but only one among many participants of the policy-process, who are actually shaping the policies:

“Governance refers to the formal and **factual** capability of public or private actors to define the content of public goods and to shape the social, economic and political processes by which these goods are provided”².

Social dialogue is an exemplary case of such wider involvement of societal interests into policy-making.

What guarantees the ‘factual capability’ of social actors to shape public policies? First of all, naturally the willingness of government to share some of its policy-making power with social partners. Often even if government acts ineffectively it prefers to continue regulating a field instead of involving social partners³.

Another criteria is legitimacy. Governance should also be applied there, where government approach does not any more benefit of the necessary legitimacy among the population and major social actors. To provide compliance and approval to policies, wider involvement has to be initiated. In relations between partners legitimacy means trust and willingness to cooperate, which will guarantee that organizations see each other as legitimate counterparts.

On the part of social partners one of the important elements here is their representativity:

“Membership in unions matters since (1) it gives weight to unions during bi- and tri-partite negotiations and (2) it implies the level of support of unions’ activities by their members and, to some extent, the overall image in the society of unions as democratically run institutions”⁴.

The arena of policy-making must as well represent a legitimate decision-making body. This is achieved through formal institutionalisation process of the arena and its procedures in laws either through tripartite or some wider consensus on the issue.

In terms of policy process higher legitimacy is achieved through continuity and stability of the process – people inside and outside of the arena get used to its existence and role in tackling social problems.

Accountability is the next criteria relevant for current study. Accountability is about external and internal responsibility of its participants. Inside of the arena, between partners accountability means responsibility before partners in carrying on own obligations. Externally the government is politically accountable before the legislature and employers with employees are accountable before their own members. All of the members are also accountable in a less formalized, concrete way before the general public. What is important here in particular is the instrument of monitoring over the compliance of social partners to the rules of tripartite arena and the quality of communication between partners.

¹ Knill C., *op. cit.*: 353.

² Knill C., *op. cit.*: 356.

³ Knill C., *op. cit.*

⁴ Antila J., Ylöstalo P. (2003), *op. cit.*: 2.

In terms of transparency of social dialogue, what is important is to guarantee clear procedures inside of the tripartite arena: entry and exit, decision-making procedure, veto powers of all actors etc. The more transparent the procedures the easier it is to achieve consensus. One of the widely acknowledged problems is the unwillingness of the government to ensure transparency of its actions since it demands efforts on the part of the government because of the complexity of its internal processing.

Further we shall analyse how these criteria are met in Estonia social dialogue. In the conclusive part we will come back to these criteria to sum up on the specifics of introduction of new modes of governance at the example of tripartite relations.

Part I: Tripartite relations in Estonia

Definitions and general remarks

In current section a brief description of the general structure and main procedure of social dialogue as well as of bi- and tripartite relations will be described. Social dialogue refers to relations between the state and organizations representing the interests of private businesses or general social and humanitarian interests, whereby the objective of these relations is collective formulation, planning, decision-making and implementation of public policies and of delivery of public goods. Bi- and tripartite relations refer to a concrete form of social dialogue between trade unions and/or employers associations and/or the government. An institutionalised form of tripartite relations such as the Social and Economic Committee will be referred to by its proper name.

Tripartite relations in Estonia are very weakly institutionalised. The formal institution that is supposed to be an arena of tripartite relations – the Social and Economic Council, is in fact a mere forum of discussion with no decision-making or even initiation power whatsoever. Most of bi- and tripartite pacts and decisions were taken outside of this institution in formally non-institutionalised arenas of decision-making based on a spontaneous request of either of three partners. This is why we shall not in the following sections focus on the Social and Economic Council and rather analyse in detail the less institutionalised, but more effective bi- and tripartite negotiations.

Formal-legal framework of the social dialogue

In Estonia there are about 10 or a dozen of laws that serve as a legal framework for social dialogue. None of those acts directly serves to define social dialogue or one of its forms such as bi- and tripartite negotiations. Four laws – Employment Contracts Act, Trade Unions Act, Collective Agreements Act and Collective Disputes Resolution Act – set the most important formal elements of social dialogue.

The first version of the Employment Contracts Act was adopted in 1992 and has since been minorly redrafted several dozens of times. It sets the general conditions of establishment and termination of employment relations. It is the cornerstone of labour relations in Estonia and the major reference point. The critics of the Act fairly enough indicate that the Act needs serious amendments since it embodies to a large degree a soviet-time vision of labour relations. The initial 1992 version of the Act is heavily reliant on the previous soviet Employment Act, which is witnessed by many similarities. Also, the critics emphasize an exceptional detail of the Act, which they evaluate as interference in issues, which could be self-regulated through collective agreements between employers and employees. To some extent this detail of the Act is reasonable since in the absence of developed dialogue between employers and employ-

ees it thus provides for certain level of social protection of workers (such as healthcare, working environment, vacation and leisure time regulation etc.), which also has been subject of employers attacks on the Act.

The Trade Unions Act was enacted very lately – only in 2000. Since then it has been amended only once in 2002. It contains basic provisions and definitions concerning the establishment and functioning of trade unions. Unlike Employment Contracts Act Trade Unions Act is very vague and too general. Trade unions are not defined as a specific legal category of institutions but as part of the NGO legislation (instead of paragraphs the Act uses references to NGO legislation). For eleven years since 1989 trade union activity has been regulated by the 1989 act of the Estonian Supreme Council (a soviet institution, which at the time proclaimed its autonomy from the communist party in Moscow) concerning trade unions. As with the Employment Contracts Act the similarity of the two laws is quite high.

The Collective Agreements Act has first been enacted in 1993, redrafted in 2000 and 2002. Among all the normative acts mentioned it comes most closely to treating social dialogue issues. The Act sets the notion of collective negotiations and agreements, it defines the system of collective relations and goes as far as prescribing sanctions to those partners neglecting their collective obligations. However, the Act does not consciously motivate or instigate the conclusion of collective agreements, although it is clear that the creators of the Act wanted to show their appreciation and recognition of the social significance of collective relations.

Similarly to Collective Agreements Act the Collective Disputes Resolution Act was conceived in 1993. It went through several amendment cycles in 1996, 1998 and 2002. It defines the notion, types and condition of striking in Estonia. This striking regulation is considered to be one of the major achievements of Estonian social dialogue that differentiates it from other CEE countries⁵. The Act defines in detail what kind of strikes, related to what issues, for how much time and with what kind of pre-notification time can strikes take place. This detail irritates employers, who believe it is a matter of collective agreements on branch and enterprise level and not of national legislation. However, similarly to the Employment Contracts Act this detail is to a certain degree relate to the attempt of the law-makers to protect strikers.

In sum, the analysed and other legal acts the field of labour regulation set the sufficient formal-legal framework for the functioning of social dialogue. The problem is that it does not seem sufficient for *effective* social dialogue. For instance, the acts do not instigate or motivate collective agreements and relations, although the overall trend in Estonian politics and in the acts themselves is larger reliance on collective agreements as a source of regulation. This contradiction has already lead social dialogue to a certain stalemate.

Secondly, most of the acts analysed have their roots either in the respective legislation of soviet Estonia or are drafted only several years after independence, which is a too short time for some drastic changes in legal practice and political culture and thinking. As we have noted many acts bare wide and deep similarities to respective soviet acts. What characterizes soviet labour legislation is that it existed *pro forma* – the bulk of labour relations were regulated through party control and direction.

Thirdly, the role of the government in labour relations, in particular in collective relations, is almost absent. The government seems to have drawn itself from the social dialogue and left it to self-regulation. The only role it foresees for itself is providing minimal standards of social security of workers, which does not not at all have to be beneficial to or in some sense is even blocking the social dialogue. It is safe to say that in general legislators' conception of social

⁵ Nestor, October 2005.

dialogue and of the role of the government in it is minimalist. On the other hand, where it does intervene it does so in a top-down directive manner. Such an approach is not at all justified in a transition environment with weak social partners, badly organized social relation and low level of social protection: government might play a bigger and more balanced role.

Fourthly, overall the acts are quite vague and imprecise apart from elements of social protection. Also, as in the case of Trade Unions Act social dialogue is not considered as a separate legal notion but as part of other legal frameworks. These generalizations hint to the fact that, although the legislation widely respects the requirements to social dialogue of the International Labour Organization, of the EU and other international organizations, in reality social dialogue is not considered as a separate social phenomenon and political mode of decision-making with its own underlining problematic, but as part of the already established market logic. E.g. even if these legislative acts refer to social dialogue, they do so only *pro forma* or in a very minimalist way.

Social Partners

National Trade Union Organizations

Trade unions in the Soviet period

During the Soviet period trade unions' role was restricted to technical mediation of relations between the Communist party (which regulated the field) and workers (who were mere decision-takers): trade unions were an executive or implementation agency of the Communist party in the field of employment policy and to some extent also ensured communist party control (over productivity, morale, discipline etc.) in enterprises. In addition, trade unions were entrusted the distribution and management of social security and welfare funds provided by the state. At the end of 1980s the disturbances in the Soviet regime touched the trade unions as well, which aimed to achieve autonomy from the state and restrict their social function to worker representation only. The first major step was leaving the central association of trade unions controlled by the Communist party⁶.

In the early 1990 trade unions have set three major functions for their own operations:

- To represent the interests of member-workers within tripartite negotiations and collective talks with the government and employers;
- To actively participate in decision-making concerning the employment policy;
- To consult, assist and train workers in the field of labour movement, labour law and policy⁷.

The evolution of trade unions in Estonia away from the socialist model has begun in the late 1980s. At the time trade unions have decided to reduce their realm of responsibility by renouncing the task of distribution of social benefits (thereby leaving the system of social security) and ceased to play their role as government executive agency. The separation of trade unions from the government was the main motivation of these reforms. Further the trade unions have also separated from the Soviet-based central trade unions' organization and have created one of their own based on voluntary membership. From now on the role of auton-

⁶ Eamets P., Philips K. (2000) *Eesti tööturu areng üleminekuperioodil* (Tartu: Elmatar): 62; Antila J., Ylöstalo P. (2003) *op.cit.*: 4.

⁷ Eamets P., Philips K., *op. cit.*: 62.

mous trade unions was representation of workers' interests before the government, entrepreneurs and in collective negotiations and tripartite talks⁸.

In sum, the anti-communist revolution in trade unionism has formally been quite successful: unions are autonomous, voluntary, democratic etc. organizations. However, as we have seen some of the heads of trade unions associations in Estonia (TALO (Estonian Professional Employees' Unions Association) and Trade Union of Education Employees, but not leaders of EAKL (Estonian Trade Unions)) have been active in trade union movement already during soviet-times and/or represent an older, soviet-time generation. Therefore, at least in principle, these people are bearers of quite different values, if not at all different views on how a trade union is ought to function.

Second, during the interviews these same people (but once again not the leader of EAKL, who shows a lot more of understanding of democratic and market logic) manifested open pro-stato-centrism in tripartite relations and open hostility towards employers organizations. This serves as an indirect indication that their conception of labour relations at least comes close to, if not at all striving toward the soviet trade union model with active direction of trade unions from the state.

Evolution of trade unions during transition

Trade union movement in Estonia is quite weak. First, it is poorly representative since most of workers are not members of trade unions⁹. Not only representation of trade unions is low it is also rapidly decreasing in the last years: since 1996 to 2000 the proportion of labour force involved in trade unions has decreased from 30% to 20%, whereby it was almost 100% during the Soviet period¹⁰. Some alternative studies¹¹ suggest that the level of membership in 1996 was 21% and in 1998 it dropped to 12%. Overall, the average measure could be evaluated on the level of about 15% of the entire labour force, which is still very low (see Table 1).

Table 1. The shape of trade union members among salaried workers 1998-2001 (%)

	1996	1998	1999	2000	2001
According to labour force survey		16.9	14.8	13.4	13.9
According to Antila et al. 1999, 2003	21	12			14
According to the estimation of central organizations of unions (EAKL)		19.1	20.0	18.9	16.6

Source: Eamets R., Philips K., Annus T. (2000) *Eesti tööturg ja tööpoliitika* (Tartu: Tartu University Press): 109; Kallaste E., *op. cit.*: 6; Antila J., Ylöstalo P. (1999) 'Working life barometer in the Baltic countries 1999' (Helsinki: Finnish Ministry of Labour); Antila J., Ylöstalo P. (2003) 'Working life barometer in the Baltic countries 2002' (Helsinki: Finnish Ministry of Labour).

Secondly, since the membership is quite low, financial resources available to trade unions and also the amount of expertise – experts capable of effectively participating in the policy-

⁸ Eamets R., Philips K., Annus T., *op. cit.*: 108-109.

⁹ Kallaste E., *op. cit.*: 6.

¹⁰ Eamets R., Philips K., Annus T., *op. cit.*: 109.

¹¹ Antila J., Ylöstalo P. (1999) *op.cit.*

making or negotiations – is limited. Thus, the government, which disposes of much more information and human resources, is in a privileged position in comparison to trade unions¹².

This decreasing trend is seen to be caused, first of all, by the radical change of regime and, thus, mentalities, which were moving away from everything soviet-like at the beginning of 1990s. Since trade unions were one of the executive agencies of the Soviet power, their image was quite negative at the beginning of transition in the early 1990s¹³. This negative image also has had an impact on business culture, which sees trade unions as an obstacle to the development of market opportunities and of their businesses. Second, trade unions are much more likely to emerge and be more active on bigger enterprises – factories, production centres – which were declining in numbers due to the growth of small and medium enterprises and to the decomposition of Soviet industrial market and, thus, of industrial sector. However, the emergence of trade unions in small and medium size enterprises is much less likely, since it demands more infrastructural investments.

During 1990s and till today there are two central trade unions' associations in Estonia – Association of Estonian Trade Unions (EAKL) and Estonian Professional Employees' Unions Association (TALO). EAKL as a single central association was created in 1990, but since then in 1992 TALO, which represents people working in education, research and academic teaching, and culture has split from EAKL to represent workers on its own. Broadly speaking, EAKL represents the blue-collars, while TALO represents the white-collars¹⁴.

In 1999 TALO had 50 000 members in 10 different sectors, among which the biggest are those representing teachers (Trade Union of Education Employees), engineers (Trade Union of Engineers) and workers in the field of culture (Trade Union of Culture Employees)¹⁵. By 2003 TALO counted already as much as 37 000 members from 12 branches and by the 1 January 2005 – 30 000 members. Currently the biggest representation in TALO holds the Teachers union, which accounts for about 80% of its members¹⁶.

EAKL, on the other hand, counted about 70 000 members from 25 different trade unions and the number did not change till 2003, except that EAKL now represented only 23 trade unions. Among the trade unions that EAKL represents currently the most known and influential are trade unions representing metal, transport, forestry and energy sectors¹⁷. EAKL has 6 regional representations located in the main territorial, urban or industrial centres. Their main objective is to promote the ongoing work of EAKL, to relate to its member unions and to support the creation of new unions¹⁸.

One of the interviewees has proposed a very pessimistic picture of membership of trade unions: TALO estimates were 3-4% and EAKL represents about 8-10%¹⁹.

There are also trade unions not represented in any of the central bodies such as the doctors' union. Banking and construction sectors, where foreign capital is highly represented, almost do not have any trade unions²⁰. Trade unions in Estonia are too few to also be split according to some ideological cleavages: they are, so to speak, catch-all trade unions. Among EAKL

¹² Kallaste E., *op. cit.*: 6, 17.

¹³ Eamets R., Philips K., Annus T., *op. cit.*: 110.

¹⁴ Kallaste E., *op. cit.*: 6.

¹⁵ Eamets R., Philips K., Annus T., *op. cit.*: 110.

¹⁶ Kallaste E., *op. cit.*: 6; www.talo.ee.

¹⁷ Eamets R., Philips K., Annus T., *op. cit.*: 110; Kallaste E., *op. cit.*: 6; www.eakl.ee.

¹⁸ www.eakl.ee.

¹⁹ Roosimaa, October 2005.

²⁰ Kallaste E., *op. cit.*: 7.

and TALO members many different ideologies are believed in, but organizations as whole have not subscribed to any particular of them. The mission of these unions is to represent the interests of their members unconditioned by the ideological colouring of these interests²¹.

Unlike trade unions of the Western European continental tradition, Estonian trade unions are not differentiated based on ideological grounds: the same trade union represents members who are supporters of the left- and of the right-wing parties. There are different assessments of the involvement of trade unions with political parties. For instance, judging from the fact that the former head of EAKL Mrs. Kadi Pärnist has joined the Social-Democratic party of Estonia, we could suggest that EAKL is closely tied at least with this party through its former representatives²². However, firstly, another trade unions association TALO has no such connection and, secondly, these three separate cases and connection to only one party hardly reflect the situation in the system.

Partly because trade unions *per se* are seen as a soviet-time institution and partly because trade union movement is seen as a leftist phenomenon, trade unions and government relation is strained also on ideological grounds.

In sum, trade unions in Estonia are weak in terms of low representativity, insufficient analytical and financial resources, in terms of their capacity to mobilize workers etc. This weakness among other things is explained by the crisis in trade unionism brought about by transition manifesting in trade unions low image (socialist legacy) and demise of trade unionism in small- and medium-size enterprises. Trade unions are ideologically neutral organizations and have very weak contacts to parties, which is also one of their weaknesses. Trade unions and their associations almost have very few and small regional representations and are underdeveloped at branch level due to their weak mobilization capacity. On the level of trade union associations the structure is quite centralized – there are only two associations, which represent clearly divided target groups. On the one hand, this allows for more effectiveness in negotiations (one negotiates only with the government, another mostly with employers' association). On the other hand, this might pose problems in terms of pluralist interest representation, e.g. some trade unions, who wish to enter the negotiations arenas, but can't. however, so far there are no trade unions marginalized in this way.

National Employers Organizations

In Estonia there is a clear separation between employers and business organizations. Business is represented by the Chamber of Commerce and Industry, which often leads negotiations with the government concerning corporate and economic policy. The clear separation between employers' organizations and business organization stresses the fact that these two issues are not connected, e.g. that employment problems are not part of business agenda. The explanation might be that, while social dialogue demands a long-run agenda and attention, business is not yet ready for that and considers these issues only in the short-run perspective²³.

In 1997 the Estonian Association of Employers and Industry (ETTK) has been created to promote the interests of employees and entrepreneurs in tripartite negotiations, collective talks and coordination of the labour market to achieve better competitiveness and social stability.

²¹ Kallaste E., *op. cit.*: 7.

²² Antila J., Ylöstalo P. (2003) 'Unionisation in the Baltic countries', <http://www.sase.org/conf2003/papers/antila-ylostalo.pdf>: 6.

²³ Rychly L., Pritzer R. (2003) 'Social Dialogue at national level in the EU accession countries', *Working paper 12, InFocus Programme on Social Dialogue, Labour Law and Labour Administration* (Geneva: International Labour Office): 6.

Two separate representative organs were at the source of this association: the Estonian Association of Employees and Industry (created in 1991 under the name of the Estonian Association of Industry (ETKEL) and renamed in 1995) and Estonian Association of Employees' Unions (ETÜKL) (created in 1995). Since 1992 until the creation of ETTK the role of employers' representative in Estonian tripartite relations was played by ETKEL. ETÜKL appeared only latter based on the need to separately represent employers of the tertiary sphere – services. In 1997 ETKEL and ETÜKL merged to create ETTK.

ETTK is an NGO gathering entrepreneurs and employees from the secondary and tertiary sectors. At the end of 1999 ETTK united about 36 employees' unions and 22 separate enterprises, which in total made about 6000 enterprises with 200 000 workers²⁴. Current estimations of membership depend on source. ETTK itself states that it represents 29 branch associations and 34 separate enterprises accounting for about 35% of the labour force (150 000 people). Another estimation is less optimistic: 20% of the labour force (i.e. 125 000 people) with 30 branches and 33 enterprises²⁵. On the regional level ETTK has a representation only in the North-Eastern heavily industrialized region of Ida-Virumaa. Other business associations, which also have a stake in the labour market and policy and, certainly, have influence on the ETTK, but which do not participate in the bi- or trilateral negotiations are the Estonian Chamber of Commerce and Industry (which deals with vocational education), Estonian Association of Small and Medium size Enterprises and Estonian Business Association²⁶.

In sum, employers' organizations are weakly representative, but apparently dispose of more financial and expert resources than trade unions. Their regional representation is underdeveloped and branch-based unions are almost absent. The separation of business' and employers' interest representation leads to low interest of firms in participation in employers' association activities. E.g. although business interests are reasonably well organized, employers interests are considered to be secondary, since they are treated as something inevitable, but not business-related. One of the interviewees said that businesses started to think as employers only when trade unions made first beneficial deals with the government without employers participation²⁷. Therefore, based on this assumption we could state that the more active trade unions, the more active will employers be and the more social dialogue will progress.

Overall structure of tripartite relations in Estonia

Tripartite relations consist of several layers: first and most important, the tripartite negotiations; second, the tripartite boards and councils within or related to public agencies. Regional tripartite relations are a separate issue since there is a strong exogenous motivation to develop them (as part of EU regionalization framework), but endogenously the motivation and capacity of social partners on regional level are very limited.

Section 1: Tripartite negotiations

Tripartite negotiations are the basic form of relations between the government, employees' and employers associations. On the national level they take place regularly and can be summoned *ad hoc* on the request of one of the partners. Participation in meetings is voluntary,

²⁴ Kallaste E., *op. cit.*: 7.

²⁵ Kallaste E., *op. cit.*: 7.

²⁶ Kallaste E., *op. cit.*: 7.

²⁷ Nestor, October 2005.

most of them are initiated by trade unions. In 1999 the government made one of its few initiatives to discuss the establishment of regional tripartite employment councils²⁸.

The number of people taking part in tripartite negotiations is not re. The only condition is that delegations be modified on parity basis. On the employees' side both EAKL and TALO are present. TALO is much less active in the negotiations since its members are in most cases public sector-related, thus leaving more scope for bilateral negotiations with the government. The government is represented by an inter-ministerial government commission run by the Ministry of Social Affairs (MSA), which holds the portfolio of employment policy²⁹. The government commission consists of representatives of ministries concerned: e.g. Social, Finance, Economy, Interior, and the Public Employment Office, which is the main implementing body of employment policy. Although the significance that tripartite negotiations play for all three parties is recognized, the commission does not hold a decision-making right and all agreements have to be voted in the Council of Ministers³⁰.

The first trilateral agreement was signed on 7th April 1992 and concerned the foundations of social guarantees in employment. The beginning of 1990s was marked by deep economic crisis and the 1992 agreement was called to resolve problems of devaluating salaries, arrange social guarantees for workers, provide for minimum wage etc. Since the inflation, desegregation of the industrial sector and other negativisms of the early years of transition have only speed up bringing more distortion to the employment market, the 1993 agreement was mostly about measures and procedures of arriving to an agreement. Expert commissions were formed, analysis ordered, intentions declared and legislation planned.

In both agreements the aim was also to introduce the basic values, standards and procedures to the employment market (such as health and social security, 40-hour workweek, adaptation of salaries according to inflation and setting the minimum wage. It is worth noting that all three partners from the beginning of tripartite relations were actively using notions of social dialogue, social peace, social agreement and involvement. This indicates that between 1990 and 1992 an abrupt and definitive disruption was introduced between socialist-type trade unions and democratic trade unions movements. For instance, as early as in 1993, when for the first time serious controversies arose between three partners, an agreement has been signed between EAKL and the government concerning the procedures and rules of tripartite negotiations based on the ILO 144 convention, which sets the framework for trilateral cooperation in employment field³¹. At the same time, as we shall see later in the analysis of socialist legacies in the tripartite relations, it does not mean that current setting managed to totally avoid the influence of socialist mentalities and remnants of its institutional structure

In 1994 there was no tripartite agreement since negotiations were on hold since the end of 1993. The issue at stake concerned the minimum wage and of the poverty limit. The government was reluctant to increase these indicators, partly because of promises made to IMF not to increase these indicators³² and EAKL saw no alternative but to cease negotiations between delegations. At the same time, negotiations continued between three partners experts and by the end of 1994 delegations continued with negotiations due as well to the arrival of the new government coalition³³. In the same year the minimum wage level was set by a bilateral

²⁸ Kallaste E., *op. cit.*: 9.

²⁹ Kallaste E., *op. cit.*: 8.

³⁰ Kallaste E., *op. cit.*: 8.

³¹ Vare T., Taliga H. (2002) *Kümme aastad sotsiaaldialoogi Eestis* (Tallinn: EAKL): 17.

³² Vare T., Taliga H., *op. cit.*: 24.

³³ Vare T., Taliga H., *op. cit.*

agreement between EAKL and ETTK³⁴. This fact is quite significant since it implies institutional relations on the labour market can be practices without the involvement of the state.

Since then the major topic of tripartite negotiations was the minimum wage. Moreover, partners discussed such issues as unemployment benefits, tax-free income, social insurance.

The watershed year was 1996, when trilateral agreement did not only include such issues as the minimum wage, but also focused on the promotion of values and practice or participative democracy both in business organizations and, at large, in government policy-making open to participation of social partners.

Overall, *'in the last years of the decade the dialogue has been more balanced and productive, agreements with wider and renewed content have been born'*³⁵.

Since 1996 the list of topics covered by tripartite agreements have focused more on arranging the system of social dialogue in addition to traditional agreements on minimum wage and level of earnings with tax exemption. This could serve as a proof of certain progress towards better social dialogue. On the other hand, although the topics are quite optimistic showing progress, the text of agreements often is too vague and rather resembling a gathering of slogans than concrete obligations or action plan. A typical answer of all interviewees when asked to explain these slogan-like agreements is that one of the partners was simply not ready to go further. All partners realize the need for progress in social dialogue, but the government and especially employers are often unwilling to take concrete steps towards this progress.

In the 1996 tripartite agreement for the first time partners spoke of institutionalising tripartite negotiations. Instead the Social and Economic Council has been created, which is far weaker in its decision-making powers than 'unorganised' tripartite negotiations.

In the beginning of 2000s another important theme has increasingly drawn attention of tripartite arena: reform of social security and reform of vocational training. In the case of the social reform there were some substantial achievements. The reform mostly consisted in the introduction of three-level pension system, which would decentralize the management of pension fund to private sphere. Although the base level of social tax remained the same the system from 2003 was devised into three 'steps': first, the basic pension provided by employers, second – the individual pension dependent on the amount of earning and paid in common by employer and the worker, third – alternative and voluntary pension scheme. The entire fund is held in banks' investment portfolios and secured by the government.

In January 2002 the tripartite agreement was concluded concerning employment policy. It was a comprehensive plan of development of employment measures aimed at developing training and education facilities in the employment market and raising the competitiveness of Estonian businesses. In all projects social partners were given a significant role and most of projects were covered by substantial resources from state budget. This agreement was the first in its kind because, first, it focused on the broad development of the employment market; second, it specified a number of concrete measure and planned financial resources behind these measures; and, finally, it was the first strategic framework with concrete action plan and financial schemes of broad cooperation between social partners and the government.

In both cases – of pension reform and of vocational training reform – the involvement of social partners was very significant and these are the most outstanding cases for the practice of

³⁴ Eamets P., Philips K., *op. cit.*: 64

³⁵ Vare T., Taliga H., *op. cit.*: 6.

social dialogue³⁶. Also, based on these cases we can suggest that by the beginning of 2000s the progress in social dialogue has reached such a level, where social partners are capable of jointly undertaking large-scale reforms and also, where government in general values consultation with social partners in major issues such as reforms.

Although during negotiations only fifth of all employees and employers are represented by EAKL, TALO and ETTK, many agreements are widened to the entire labour market. On the other hand, agreements, which are not so much sensitive or have a too broad and time-dispersed impact are not always very effective. The problem is that the tripartite forum is not binding. It is based on free will of each partner to participate, negotiate, achieve agreement and implement the agreement. Situation, where one partner was perceived as not meeting the conditions of an agreement have taken place at least twice in the last 15 years. In 1994 EAKL accused the government of not meeting its financial obligations in respect of plans to provide a certain level of social guarantees. It withdrew from all tripartite forums and concluded a bilateral agreement concerning minimum wage level with the employers' association (Estonian Employers' and Industry Association)³⁷. In 2002 a tripartite agreement on general employment policy has been concluded implying extensive financial obligations mainly for the government. Some time later EAKL raised the voice that the government did not fulfil its obligations and drew out of all tripartite forums. The significance of this act is, in principle, high, since the law prohibits the conduct of labour disputes and conclusion of collective agreements without the presence of at least one of the side (employees or employers). However, since TALO also representing trade unions did not leave the tripartite arena, nothing formally changed³⁸. The fact that trade unions eventually have no strong tools of pressure on the government leads to a much more favourable position of the government holds in comparison to social partners: the government is the primary and most powerful actor in the arena.

On the other hand, if trade unions associations are also supported by employers associations, the government usually has to give to a too strong and wide pressure on all fronts. In 2001 EAKL and ETTK agreed without the participation of the state on the level of minimum wage for the following year. The government enforced a different regime through normative acts and after the intervention of a court decision it accepted the demands of social partners to accept their agreement and register it in the register of collective agreements, which effectively means widening the bilateral agreement on the entire labour market³⁹. Such bilateral agreements have been concluded earlier and also had a strong pressure effect on the government.

Section 2: Tripartite public councils and boards

Apart from tripartite negotiations, which are the primary channel of tripartite relations, especially in the policy formulation phase, there are also tripartite boards and councils. These are attached or reside within the formal structure of public agencies and are formed mostly on sector basis. Thus, one can find social partners' representatives in the Board of Estonian Health Insurance Fund, Board of Unemployment Fund, Board of Estonian Qualification Authority and Board of Foundation of Vocational Training. Among the non-sector based bodies the most significant is the Social and Economic Council and the ILO council.

³⁶ Vare T., Taliga H., *op. cit.*: 29-50.

³⁷ Eamets R., Philips K., Annus T., *op. cit.*: 111.

³⁸ Kallaste E., *op. cit.*: 11.

³⁹ Kallaste E., *op. cit.*: 11.

The Social and Economic Council of Estonia

In 1999 another consultative body was created: the Social and Economic Council. The mission of the Council was to analyse social and employment policy developments isolated from particular interests of each parts and tripartite negotiations and to consult the government as well as social partners in tripartite and employment issues⁴⁰. It was meant to be an expert network, which could provide objective analysis and evaluation of social and employment policy to the government. The management of the Council was entrusted to a senior official of the Ministry of Social Affairs: the vice-chancellor Mrs. Piret Lilleväli and currently to Mr. Janno Järve. It is difficult to suggest this without a comparative study of the respective positions in other countries, but in Estonia the nomination of a public official to the position of the head of the Social and Economic Council seems to be reflecting the fact of relative insignificance of the Council to politicians, since “the ones who have the responsibility [coalition parties], are the ones having the power”⁴¹. In comparison to tripartite negotiations arena, which is headed by the Minister of Social Affairs, who at least has some influence on the Cabinet, the leader of the Social and Economic Council lacks any instrument of decision-making.

Structurally, similarly to some other new EU member states’ institutions Estonian Social and Economic Council does not have any permanent sub-structures: currently it has several *ad hoc* sub-committees. This implies that rather than having an expert staff at its disposal capable to form policies, the sub-committees are just additional discussion fora, not decision-making bodies. Estonia was one of only two countries among the 13 EU candidate countries of the last and current rounds of enlargement that have less than 2-4 meetings a year of their Social and Economic Councils⁴²: in Estonia the minimum amount of annual meetings is four⁴³, which apparently is also the actual number of meetings per year. This regularity neither strengthens the capacity of the Council to seriously influence tripartite relations in Estonia.

One of the aims of the Council was the analysis of Estonian social model integration with the European one, whereby the adaptation of European social values of welfare, solidarity, partnership was set as the main priority⁴⁴. The reason that current report focuses on tripartite negotiations outside of the Social and Economic Council is that this institution, according to our data, has not been able to produce a single sizable result not even within the goal of adopting the European social model⁴⁵: “the Council does not have sufficient expert capacity, its functions and role in social dialogue are not precisely enough defined, formally it has been conceived as a consultative organ to the government and not a decision-making organ of social dialogue”⁴⁶. All bi- and tripartite agreements have been concluded outside of the council. Additionally, “the main [Council’s] problem is that it is too dependent on the government’s will”⁴⁷. In the media it does not have a very high appreciation of the Council’s role neither.

This is not to say that the Council had no role in tripartite relations. It allowed to lower tensions between partners through dialogue and raise new issues or at least discuss some issues,

⁴⁰ Minister of Social Affairs, regulation nr. 25, *Establishment of the working order of the Social and Economic Council*, 6th of April 1999.

⁴¹ Käärats, October 2005.

⁴² Rychly L., Pritzer R., *op. cit.*: 34.

⁴³ Minister of Social Affairs, regulation nr. 25, *Establishment of the working order of the Social and Economic Council*, 6th of April 1999.

⁴⁴ Minister of Social Affairs, regulation nr. 25, *Establishment of the working order of the Social and Economic Council*, 6th of April 1999; Eamets R., Philips K., Annus T., *op. cit.*; Eamets P., Philips K., *op. cit.*

⁴⁵ Roosimaa, October 2005; Nestor, October 2005.

⁴⁶ Taliga, October 2005.

⁴⁷ Lilleväli, October 2005.

which did not find recognition in tripartite negotiations. Neither trade unions, nor employers associations wanted to get rid of the Council. On the other hand, none of them did really appreciate the work that it did⁴⁸. It is still unclear, which are the functions of the Social and Economic Council not letting social partners to put a final end to this institution. One of the factors could definitely be that Social and Economic Councils' mode is at the core of European model of social dialogue. Another, because, they let to lower tensions between partners.

Other tripartite councils and boards

In May 1992 the first tripartite council was created – the 'ILO Council'. It was related to the membership of Estonia in the International Labour Organization (ILO) (since January 1992) and the need to fulfil country responsibilities before ILO. Social partners were involved on the rights of consultants emphasized by the fact that the Council did not have any decision-making or negotiating mandate and was functioning as a purely consultative body⁴⁹. None of the interviewees have even briefly mentioned this institution.

Other council are less significant and have more specialized fields of application. The Council of Working Environment allows social partners to manifest initiative in the field of working environment policy, which treats in a broadest way issues concerning working conditions. The Vocational Training Council coordinates the process of reform in vocational training undertaken by the 2002 tripartite agreement and whereby the role of social partners is quite significant, but the overall character of the council quite insignificant in progressing the social dialogue as a whole. Adult Education Council does not have even as much significant margin of action and merely mediates the point of view of social partners in this field to the government⁵⁰. Overall, all of these councils have quite a limited scope of powers and mostly serve for opinion exchange between the three partners⁵¹ or decision-making in very narrow fields.

Unlike councils, boards have relatively wide decision-making potential and usually are connected to decision-making concerning the distribution of public money. Boards are without exclusion related to a certain sector or even a single organization. The most prominent of all tripartite boards are the Board of the Health Insurance Fund, the Board of Unemployment Insurance Fund and the Board of Foundation of Vocational Education and Training Reform. As a rule boards are rather focused on the implementation segment of policy-making and do not take active part in shaping the employment or other policies. However, unlike Councils tripartite boards of public bodies have become a centre of political struggle for power over these money distributing institutions. For political parties places on the Health Insurance Fund are both individually and institutionally lucrative: the former because being a manager of a board can provide additional quite good income; the latter because while having fiscal difficulties in the field of health, unemployment and social insurance political parties and government would prefer top-down reforms and reorganization of these funds, whereby social partners as members of boards are a great obstacle to such reforms.

Despite strong political tensions around places on public boards, the overall system has been designed so that politicians couldn't easily reorder the system or nominate their 'own people'⁵². To a large extent most of these boards have been designed under the Minister of Social Affairs Eiki Nestor. He himself easily takes the credit for this achievement, but some other

⁴⁸ Roosimaa, October 2005; Taliga, October 2005; Rondik, October 2005; Nestor, October 2005.

⁴⁹ Eamets R., Philips K., Annus T., *op. cit.*; Eamets P., Philips K., *op. cit.*

⁵⁰ NAPE 2004, *op. cit.*: 46-47.

⁵¹ Kallaste E., *op. cit.*

⁵² Nestor, October 2005; Lilleväli, October 2005.

interviewees also confirmed this⁵³. Since 1999 up to 2002 the minister managed to design three main public boards of Estonia – the boards of the Unemployment Insurance Fund, Foundation of Vocational Education and Training, and to some extent also of the Health Insurance Fund – together with social partners firmly setting it on the concept of tripartite leadership and of parity representation of all three social partners in each of the boards. In addition, the Unemployment Insurance Fund, which has been entirely designed in the current form during minister Nestor, had a decentralized structure of tax collection: the unemployment tax shared between employees and employers is transferred directly to the Fund. In result of these common interests, when in 2003 the newly nominated Minister of Social Affairs wanted to ‘break’ the system by changing the rule of parity representation, social partners managed to gather such a strong opposition that the minister had to back up.

Such design of wider, involving decision-making structures is not unique in the public sector of Estonia. In the forestry sector the state enterprise managing state wood production was also conceived isolated from politicians intervention⁵⁴. Using these examples we can quite certainly state that one of the remedies for better involvement and “factual ability of private [social] partners to influence policy”⁵⁵ is relative isolation from the political actors, at least on the stages of policy planning, conception. This allows to mobilize social partners around the idea of a common interest and to develop common vision of the problem without creating serious conflicts about distribution and redistribution issues⁵⁶ at the planning stage. At latter stages, if need arises, social partners will themselves defend what they have jointly built. This has been the case with forestry, this has repeated with the Health and Unemployment Insurance Funds: social partners have become the bearers of veto points in these organizations.

Section 3: Employment councils, pacts and labour disputes’ committees

On the regional level we find very few tripartite arenas. The main reason is the lack of employers’ and employees’ representative organizations on the local level. In 2001 a tripartite employment pact was signed in Ida-Viru region. This has been the first major tripartite agreement on regional level. However, the document was rather declarative and provided relatively few constructive options.

Employment Service has a network of tripartite employment councils on the regional level created in 2002-2003. They are focused on design of employment measures and allocation of structural funds. Anew, there is narrow room for manoeuvre since major decisions have been made in detail on the national or European level. In each county the Service has a tripartite employment council, which is ought to *advise* the Service in issue of developing employment on the regional level. However, since social partners regional representations are only few in number there has been so far no progress in this tripartite arena and it all depends very much on the willingness of employers and employees to communicate and actively participate⁵⁷.

On the national level regional councils are centrally coordinated by the tripartite Employment Council, which steers the introduction of regional councils and forms on the national level approach to issues treated. The date of creation of employment councils and the fact that it is a top-down initiative, suggest that they are bound to EU pressures on regionalization and de-

⁵³ Taliga, October 2005.

⁵⁴ Sootla G., Sootla E., ‘Variables of sustainable policy: the case of elaboration and implementation of the Estonian Forestry policy in 1995 – 2004, based on policy networks approach’, NISPAcee, annual conference, 13-15 May 2004, Vilnius (Lithuania).

⁵⁵ Knill C., *op. cit.*:

⁵⁶ Lowi T. (1972) ‘Four systems of policy, politics, and choice’, *Public Administration Review* July/August.

⁵⁷ Nestor, October 2005.

velopment of social dialogue as a new governance method. Hence, the effects of regional councils should be awaited far in the distant future, when actual need for such structure arises.

In order to solve employment conflict the Employment Inspection (a government body monitoring and controlling the application of labour legislation) in each region has established an employment disputes' committee. These are also tripartite. Their main task is to provide acceptable and legitimate solution to employment conflicts that occur in enterprises (including public) on the territory of a region-county. These committees are purely implementation bodies and have no policy-making role, apart, may be, from their social peacekeeping efforts.

Local governments are among the fourth possible partners in the social dialogue. However, on the local governments side there is no motivation or competence to undertake tripartite negotiations, since most of them are small, overburdened and not very independent administrations with few proper fiscal income sources. Recently, the central government has decentralized the procedure of setting salaries for teachers in local government schools. Local Government Union has rejected the proposition of Education Workers Union for opening negotiations concerning teachers' salaries on the grounds of the lack of legal competence in this area⁵⁸. Even in legal terms this is not correct since the Collective Agreements Act entitles local government or their representatives to conduct such negotiations – the problem was rather incapacity of the LG Union to make its members comply and to mobilize expert and other resources.

Cases of tripartite relations in Estonia

Current part present two cases of tripartite relations in Estonia. The logic of the choice of cases focuses on the most typical, most representative cases characterizing the entire system as a whole and/or raising the main problematic issues in the system. In addition, these cases represent the most prominent, significant issues and events that took place in Estonian tripartite relations. These cases demonstrate well enough the obstacles and deficiencies of state and social dialogue that the application of governance practices raises to surface. The two cases show how different elements of governance, e.g. legitimacy, transparency, accountability, raise different problems of social dialogue and weakness of state and social partners.

Debates on the Labour Code Draft

Employment Contracts Act is the largest and most significant among all legal acts concerning labour and employment relations. The first version of the Act dates back to 1992. Since then it has been redrafted 29 times, including 6 serious, wide-ranging drafts between 1999-2002.

Since the first day *Employment Contracts Act* was surrounded by a debate on the necessity to reform it and respective draft proposition. However, it is only in 1999 that the first substantive, constructive reform-amendment has been undertaken. Then, the position of the Minister of Social Affairs was taken by Eiki Nestor, a member of Social-Democratic party (at the time of the Moderates' party) and former head of the Transport enterprises trade union (1988-1992), who in general has and has had at the time a more positive relation to trade unions and social dialogue. His nomination to the position *coincided* with the drastic increase in the policy-making and legislative activity of the government in the field of employment, labour and social dialogue. Under his supervision the first package amendments to the *Employment Contracts Act* were born and other labour legislation (notably, in 2000). Second, under his supervision the *Employment Contracts Act* was technically and more significantly redrafted as a result of adopting new laws, notably concerning the *Employment Service Act*, *The Working*

⁵⁸ Rychly L., Vylitova M., *op. cit.*: 17.

and Rest Time Act, Trade Unions Act, Healthcare and Work Safety Act, Employees' Representatives Act, Social Protection of the Unemployed Act.

The major changes introduced under his leadership of the Ministry were related to employment termination based on corruption allegations, workers' health and safety, employment contract's termination conditions (especially collective termination of contracts) and its validity under a new employer. It is safe to say that partly the philosophy of the new Employment Contracts Act in 2001, which promoted the creation of collective agreements at the enterprise and branch level, was conceived to a large extent by Mr. Nestor.

After the fall of Mart Laar's government, where Eiki Nestor was the Minister of Social Affairs, several amendments have been introduced to the Employment Contracts Act, but most of them were technical amendments save for one amendments' package introduced in April 2004. The amendments' package introduced in 2004 contains a coherent set of changes in many different paragraphs of the Act, but most of them come from the latter, 2003 version of the draft law of the Employment Contracts Act. The 2004 amendments seriously alter the 2002 version of the Act, and it is difficult to judge of the involvement of Mr. Nestor in drafting these amendments. However, we can definitely state that these amendments were not the initiative of the government of the day. Also, the adoption of these amendments not as a coherent change, redrafting an entire law, but as introduction of separate, partial changes shows the inability of the government, political parties and social partners to agree on a larger scale. What this shows is that developments in tripartite relations are in most cases individual quests of activists of the field such as Mr. Nestor or Mrs. Lilleväli. Second, it also shows how vulnerable social dialogue is to the changes in government and different political parties attitudes towards social sphere and dialogue.

Since the first public mentioning of this problem in 1997 and until 2005, Employment Contracts Act has been the object of ideological struggle between two camps: libertarian, who wants to simplify employment relations rendering them more business-like, and their opponents, who do not represent a coherent political force, but who are definitely against the 'privatisation' of the Contracts Act. The libertarian camp is centred around the Reform party, a libertarian, young, successful professionals' party and is supported by most of employers and their association (ETTK). In the opposing, 'social' camp the Social-Democratic party draws most of attention. Supporters and activists of this camp are represented by all trade unions and their associations, by social groups such as the Pensioners Union, NGO's Union etc., but also by the officials of the Ministry of Social Affairs. Inside of the government this debate has resulted in regular clashes between the Minister of Justice and the Minister of Social Affairs, notwithstanding their party membership⁵⁹.

Circumstances of the debate are focused on the will of the Ministry of Justice to transpose the Employment Contracts Act into the Law on Obligations, which sets the basic ideas of market relations: this would mean, in the words of Raivo Paavo, the Public Conciliator and former chief of EAKL, that employment relations would no longer be a separate legal notion, but employment contracts would change into traditional "buyer-seller" contracts⁶⁰. These changes have been identified by observers as not simply favouring conditions for businesses, but ex-

⁵⁹ Käärats, October 2005; Eva Luts, 'Kas Eesti töötaja jääb õigusliku kaitseta? Võlaõigusseadus kahjustab töövõtja huve', *Postimees*, 27.11.1997.

⁶⁰ Paavo R., *op. cit.*

licitly lobbied by employers and businessmen⁶¹. We have already mentioned that there is a separation between business and employers organizations and that social dialogue notion legally is rather part of other legal constructions such as the market logic. These observations inscribe into the perspective of this debate, which could have a longer history and maybe even was in the root of drafting these laws since Reform party and its electorate are one of the earliest and most stable political forces in an independent Estonia. This issue has become the ‘Adam’s apple’ of the process of adoption of the new Employment Contracts Act.

In May 2005 the current government, led by the chief of the Reform party, has recalled the new draft of the Employment Contracts Act from the second reading procedure in the Parliament. In the debate between trade union and employers associations’ representatives and in the Explanatory Note to the draft law⁶² it was cleared out that at the bottom of the recall is the same issue between the Employment Contracts Act and the Law on Obligations, although the official reason was the arrival of the new coalition, which used the right to withdraw all amendments and drafts proposed by the previous government⁶³. This version of the Act was sent to the Parliament in January 2004 and was meant, on the one hand, to protect the employees’ side by increasing the opportunities of trade unions to conclude collective agreements⁶⁴, but, on the other hand, to increase their responsibility before the employer⁶⁵. The first attempt to pass this draft law was undertaken in June 2001 by pro-trade unionist then minister of Social Affairs Mr. Eiki Nestor and at the time head of the Social and Economic Council Mrs. Piret Lilleväli. It was recalled from the first reading in the Parliament in February 2003⁶⁶. At the time the position of the Prime Minister was conferred upon the leader of the Reform party, which together with a presumed centre-left Centre party, formed the coalition. Hence, again we can trace the failure to adopt the draft law of the Employment Contracts Act to the libertarian politicians lead by the Reform party.

It should be noted that social partners were consulted and made their amendments to most of government drafts and proposals in employment and labour issues. In most of cases, where there was a bipartite agreement between employees’ and employers’ representatives, the government had to accept it. Therefore, at least in the issue of access and involvement in the consultation round of policy-making social partners have few things to reproach to the government. However, in real terms “if our [trade unions] propositions are of technical character, then the rate of success is higher; if our proposals touch upon a sensitive political issue, then they are quietly voted down in the Riigikogu [the Parliament]”⁶⁷.

Another major issues that surfaced with this recall, was, in the words of the head of Estonian Social and Economic Council, Mrs. Piret Lilleväli, that the recalled version of this act was based on eight different directives of European Commission, which needed transposition⁶⁸. Also, before the draft law was passed on to the readings in Parliament, social partners together with the government concluded a tripartite agreement including common amendments

⁶¹ Aktiva: ettevõtja infovärv, ‘Nestor: Töötajate koondamishüvitised peavad kindalsti säilima’, 04.12.2001, <http://www.aktiva.ee/y/z0zNEWSy234885.html?PHPSESSID=1ec0a82ae205a9bd81074366421b8641> (19.09.2005).

⁶² Ministry of Social Affairs, Explanatory note to the Draft Law of Employment Contracts Act, 26.11.2003, http://eoigus.just.ee/?act=dok&subact=1&DOK_W=30697 (31.10.2005).

⁶³ Kristel Kossar, ‘Töölepinguseaduse eelnõu sai stopptule’, *Postimees*, 10.05.2005.

⁶⁴ Ministry of Social Affairs, Explanatory note..., *op. cit.*: 18.

⁶⁵ Aktiva: ettevõtja infovärv..., *op. cit.*

⁶⁶ Ministry of Social Affairs, Explanatory note, *op. cit.*: 1.

⁶⁷ Taliga, October 2005.

⁶⁸ Alo Lõhmus, ‘Juristid laitsid maha ELi soovitud seaduseelnõu’, *Postimees*, 11.02.2004.

of social partners to the draft law. Many of these amendments have been accepted, save for one, which concerned state's financial obligation concerning the implementation of the new draft law⁶⁹. Therefore, not only did the current government in May 2005 act against the need to transpose EU norms into Estonian legislation (delaying the transposition process has not been fully justified), the government unilaterally acted against the bilateral agreement of social partners and the will of the legislature to pass the law. This incident is typical for tripartite relations in Estonia: based on ideological grounds, political parties may at any moment neglecting social partners' interests unilaterally impose new or reject some agreed decisions.

In sum, it is safe to conclude that the adaptation of the new version of the Labour Code, e.g. Employment Contracts Act, in Estonia is slowed down by two factors: (1) although trade unions and employers were able to achieve a 2003 agreement concerning their common position on the draft law of the Employment Contracts Act, their weakness and late involvement in the drafting process rendered their overall limited influence on the process. Here the major factor was weakness of these organizations as pressure groups; (2) Estonian political parties are yet taking social dialogue obligations for granted and not as a matter of principle. Here we can feel the legacy of socialism: it is safe to say that at least one reason why major parties block some significant initiatives in social dialogue is because they view it as a remnant of socialist era and because Estonian politics and society have internalised some European models (including social dialogue model) only *pro forma*, without the need for constructive consultations with social partners; (3) Progress in social dialogue and tripartite relations and legislation depend too much on the type of coalition and parties represented in the government. This hinders continuity of the process, makes it unstable and raises tensions between partners.

Debates on Increasing the Minimal Monthly Wage

After almost 15 years of regular tri- and bipartite agreements concerning the national minimum wage level, the 'Adam's apple' is still the concept of minimum wage negotiations. Trade Unions are strongly in favour of minimum wage negotiations and agreements, since these provide them with better legitimacy in the eyes of the members of trade unions and better image in the eyes of general public⁷⁰. Employers, on the other hand, are continuously opposed to the idea of a minimum wage arguing that minimum wage regulation by a state and on a state level is not common to European practice⁷¹. The government and political parties (including Social-Democrats) rather agrees to the position of employers and also argues in favour of decentralization of these functions to the level of social partners bipartite dialogue or (in case of public sector wage earners) to the level of local government.

Trade unions' position concerning minimum wages is based on the ILO concept of minimum wages, which states that the task of introducing obligatory minimum wage level in the form of a law is "providing protection for wage earners against unduly low wages"⁷². The implicit logic behind minimum wage negotiations is that of increasing overall level of salaries. Trade unions associations and branch trade unions have been relatively successful in enabling yearly minimum wage agreement with the government and employers or only with employers.

⁶⁹ Taliga, October 2005; ETTK, Bipartite agreement concerning the draft law of the Employment Contracts Act, <http://www.ettk.ee/et/kokkulepped/2003/09/item18360> (31.10.2005).

⁷⁰ Taliga, October 2005; Roosimaa, October 2005.

⁷¹ Sigrid Talo, 'Tööandjad: riikliku miinimumpalka pole vaja', *Postimees*, 26.09.2005; Äripäev Online, 'Alampalgast on Eestil õigem loobuda', *Äripäev*, 07.11.2000.

⁷² International Labour Organization, *Convention 131: Minimum Wage Fixing Convention*, 1970.

Negotiations on minimum wage issues have been more successful in public sector: TALOs member union, Estonian Education Workers Union, have managed to raise the minimum wage for public schools teachers to the level, which is at least twice as the overall national minimum wage. In the recent years, when overall minimum wage agreements were bipartite, without the government participation mainly due to its unwillingness Education Workers Union managed to conclude relatively beneficial agreements with the government⁷³. EAKL is enclosing in its position on minimum wage to the standpoint of employers: because of the government unwillingness to conclude tripartite negotiations in three last years, EAKL was forced to partly reject the tripartite model of minimum wage negotiations and modestly argues in favour of a bipartite model under the condition of cooperative relations with the ETTK⁷⁴. TALO is in a less flexible position: its employer is the state. But it has more favourable conditions in terms of the pressure that it can exercise on the employer. In 2003 TALO and Education Workers Union with support of EAKL have conducted the first nation-wide strike of education and culture workers. The official justification concerned the non-compliance of the government to the minimum wage agreements of the previous years. Public education is a very strike sensitive sector, since it is immediately visible to most of the electorate.

Concerning the deficiencies of tripartite dialogue on minimum wage, the trade unions can be criticised for not bringing clearly enough in their concept a separation between their demands for minimum wage with their wish for increase of average salary issues. For business minimizing wage costs is a normal market logic, although it definitely sees the higher wages/ welfare and higher productivity relation. In this sense, demands of trade unions, especially it concerns the Education Workers Union, which seem to resemble demands for overall salaries increase have to be dully supported by arguments. Therefore, employers perceive it as an attempt to increase individual and collective welfare at the expense of success of businesses⁷⁵.

The position of employers is simpler. They argue in favour of (1) decrease of the wage costs through associating minimum wage negotiations to the rise of workers productivity⁷⁶, which *strictu sensu* has no rationality behind since productivity is raised at the expense of additions to average (not minimum) wages; (2) state deregulation of the filed and avoiding setting the official level of minimum wage, which is to be an anachronism and argue that it does not allow businesses to be flexible; (3) abandonment of the nation-wide minimum wage agreements and focus on bipartite agreements on branch or enterprise level, which would allow more flexibility to separate businesses depending on the success and resources of an enterprise⁷⁷.

What makes negotiations strained because of the position of employers in respect of minimum wages is (1) their open wish to minimize personnel costs without due argumentation and (2) their weakly conceptualise position concerning the necessity of minimum wage level. Employers' association ETTK and many government officials argue that minimum wage agreements are not part of European practice⁷⁸. In fact, in many European government the minimum wage is set by tripartite negotiations following the principles of ILO. In Estonia the investments of employers in the workforce are one of the lowest in EU. According to the analysis of Mercer Human Resources Consultancy Estonian employers' voluntary spending

⁷³ Rondik, October 2005.

⁷⁴ Taliga, October 2005.

⁷⁵ Kalev Kukk, 'Tööturg: alampalga viletsus', *Reformierakond: meie arvame*, 03.11.2000, http://vana.reform.ee/meiearvame_artikel.php3?katid=26&id0123 (31.10.2005).

⁷⁶ Postimees Online, 'Tööandjad peavad alampalga tõusu liiga kiireks', *Postimees*, 01.07.2004, http://www.postimees.ee/010704/online_uudised/138303_print.php (31.10.2005).

⁷⁷ Tarmo Kiis, 'Tööandjad: riikliku minimumpalka pole vaja', *Postimees*, 26.09.2005.

⁷⁸ Kriis T., *op. cit.*; Nestor, October 2005; Käärats, October 2005.

on workers in Estonia is 0,7%, while in Lithuania it is 1,5% and in Poland 5% of total spending on workers⁷⁹. It is a truly ‘liberal’ environment, which wants to become even more liberal.

In sum, minimum wage negotiations have been one of the most productive in the history of tri- and bipartite national negotiations. As many as 15 or more different agreements have been concluded each year since 1992. The functioning of tripartite arena on this issue is relatively satisfactory as is the level of cooperation between partners. The productivity in this field is mostly guaranteed by a strong pressure that trade unions exercise in the issue. This shows that trade unions already have the potential to push through some issues. The problem is apparently that there are no forces left or no unity among trade unions to push through other issues.

Tripartite relation in Estonia: conclusions

From our analysis we can deduce several major conclusions concerning the organization of social dialogue and tripartite arenas in particular. These conclusions are as follows.

- (1) Employers and employees organizations, including employees and employers associations, are still very weak organizationally and as pressure groups:
 - a. The trade unions weakness depends on its negative image among the public left from the soviet-type trade unions and in part also generated by the actions of some of the older leaders who used to be soviet-time trade union activists. Among other things is their conviction that the correct way of doing trade union business is first of all exercising pressure on the government, instead of trying to mobilize trade union activity;
 - b. The trade unions weakness depends on low membership; especially very few trade unions that unions associations unite. Low membership, especially at branch and enterprise levels, is caused by a trade unions ‘soviet’ stigma among the public; also to poor resources that could have been used to mobilize more people to become members.
 - c. Trade unions have bad connections to political parties, which might be one of the reasons why unions (associations) are considered to be bad pressure groups⁸⁰.
 - d. Indirectly, the weakness of both employers associations and trade unions (associations) might be caused by the low institutionalisation of tripartite negotiations arena: in some other CEE countries, in order to get access to tripartite arenas social partners have to fulfil certain representativity and organizational criteria, which stimulate them to progress⁸¹. In Estonia these are absent.
 - e. Employers association and organizations are also quite weak, but dispose of more financial and expert resources, therefore having more capacity to tackle policy problems in a professional way.
 - f. However, the separation that business enterprises have introduced in the structure of their representative organizations – e.g. between business and employers organizations – shows that social dialogue is not considered as a way to success in business, but rather as an inevitable game, where private firms have to be involved because they do not want trade unions to decide face to face with the government issues that might affect them. In this sense, their strategy is rather reactive or even defensive: to withhold certain developments rather than promoting them.

⁷⁹ Kaire Uusen, ‘Eesti tööandja hoiab ELis kõige rohkem töötajate pealt kokku’, *Postimees*, 16.05.2005.

⁸⁰ ‘Juhtikiri: Investeering pole raiskamine’, *Postimees*, 16.05.2005.

⁸¹ Rychly L., Pritzer R., *op. cit.*: 28.

- g. Unlike trade unions employers and their representative organizations dispose of much better channels of communication to political parties.
 - h. One of the embodiments of the problem of weak representativity of social partners is the centralized structure of representation – there is only one association of employers and two strictly sector-differentiated associations of employees. Of course, there are other reasons for such centralized structure, which are far from being negative such as the effectiveness of negotiations ensured by this way.
- (2) Another major conclusion is that tripartite negotiations' arena is badly institutionalised:
- a. Legally there are no acts, which would set the obligations and rights of partners, the procedure of decision-making, except for the Collective Agreements Act, which gives a very broad definition to tripartite negotiations such as the parity conditions and general procedure of initiation of negotiations on ad hoc basis.
 - b. A too big proportion of legal texts concerning labour legislation are either socialist legacy (e.g. based on soviet-time or developed in the first years of transition) or enacted as a result of international (EU) conditionality. In many respects these acts are not working and only pro forma regulate social dialogue issues.
 - c. One of the manifestations of this problem is that everything depends on trust, even the fulfilment of obligations put into agreements. And there is a lack of trust as some cases of non-compliance to obligation of agreement by different parties show:

“Legally those [tripartite] agreements can be incorrect, but everything anyway depends on trust, on common interest”⁸².
 - d. Tripartite arenas lack coherent, long-term development strategy, which only emphasized the deficiencies of its ad hoc character and relations between social partners and the government: each time an issue is raised negotiations confront the unwillingness of one of the partners to go further than symbolic declarations; a coherent strategy could make tripartite relations more stable, at least in the fulfilment of obligations.
 - e. The government commission, which represents the state in negotiations, has no or very weak (depending on the government) decision-making mandate. This further weakens compliance to obligations by the government and narrows down the scope of issues that can effectively dealt with in tripartite negotiations.
- (3) There is a need for stronger cooperation between employees and employers associations and branch/enterprise organizations:
- a. Judging from the history of bipartite agreements between employers and employees organizations, jointly these two groups have a relative (to an issue, to a sector, to circumstances) veto power over the government actions, which results in more effective, swift and sustainable tripartite solutions.
 - b. Judging on the cases of Health and Unemployment Insurance Funds, veto powers within social dialogue are more likely to appear, if developed at the stage of planning. Also based on this cases veto powers of social partners might be interpreted as relative isolation at the reform/policy/agreement planning stage from the influence of political parties (not necessarily from the influence of ministers).

⁸² Roosimaa, October 2005.

- (4) There is a need for more government activism (not intervention) in the regulation of the system of social dialogue:
 - a. Our observations about weak institutionalisation of tripartite arenas and about the social partners weakness show that the government in a transition country should have, in principle, allow more efforts to develop these deficient sides of social dialogue.
 - b. However, even within the labour legislation we have seen that the state/government role in social dialogue is minimal (not even as a referee) except for some over-regulated areas, where minimum standards of social protection of employees are guaranteed on a national level instead of collective agreements.
 - c. Therefore, we could suggest that the tools used to regulate social dialogue so far have not been sufficiently effective to provide fast development of social dialogue and adaptation of the European model of social dialogue. A more proactive, motivating and mediating role of the government – a government as a referee and as a norm entrepreneur – is still to be developed in Estonian social dialogue.
- (5) There is lack or weakness of social partners representation at regional and local level, although certain institutions involving social partners at local level already function, for which credit has be given to the government.
- (6) Social and Economic Council of Estonia is not an effective arena of social dialogue, since it lacks any decision-making or pressure capacities. There is a need for reform of the Council, in particular clearer formal definition of functions association with really available resources at the disposition of the Council.
- (7) The case of minimum wage negotiations show that
 - a. Although we have concluded earlier that social partners are relatively weak, through cooperation between themselves and through focusing their efforts on one particular issue, they can achieve some stable results. The problem is that it seems unlikely that social partners can focus on other issues as well, in particular, because other issues demand much more complex agreement between employers and employees.
 - b. Trade unions sometimes themselves are unwilling to go beyond minimum wage negotiations, which bring clear and guaranteed support from trade union members, and prefer not to spend too much efforts on other, more complicated and less beneficial issues. This could be accounted as one of the weaknesses of trade unionism in Estonia.
- (8) The Employment Contracts Act case shows that
 - a. Political parties tend to have too much influence over inclusion of social partners, which raises the need for stronger veto powers of partners. EU requirements neither act as a veto power, since they are widely adopted *pro forma*;
 - b. As we have earlier noted, there is too much dispersion and instability in the governments position on social dialogue because of often government changes, lack of consensus among political forces on social dialogue strategy and, ultimately, adversarial relationship between and pragmatic approach (logrolling, pork barrelling) of parties
- (9) Overall, social dialogue in Estonia is slowly but steadily progressing. Although during the last two years all interviewees without exception have indicated a certain crisis of social dialogue mainly because of excessive influence of political parties of the new coalitions, we can observe that by 2000s tripartite agenda was reached by such systemic issues as vocational training, social dialogue regalement, pension reform, tax reform etc.

Part II: governance and tripartite relations in Estonia

Accountability and Transparency issues in tripartite relations in Estonia

In this part we presume that governance may bring to light some negative features of the transition state, such as the lack of transparency and accountability. The main criteria here are the institutionalisation of channels of communication between social partners, the institutionalisation of the social dialogue as such and of decision-making procedures in general and of each partner in particular.

For instance, some observers of social dialogue in Estonia point out to the weak or absent procedures of accountability and control over implementation of tripartite agreements. The Finnish Minister of Foreign Affairs during his meeting with Estonian and Finnish Metalworkers trade unions recognized that the level of development of labour conditions on Finnish capital-based firms in Estonia is much worse than on the same enterprises in Finland. The first thing to achieve, he noted, was “signing and monitoring of collective agreements on enterprises”⁸³. Even “[g]overnment representatives reported “very weak” monitoring and evaluation process [of tripartite agreements]. Representatives of social partners agreed that there were no monitoring and evaluation mechanisms”⁸⁴. Since 2003 striking has become very widely recognized as the only measure available to trade unions and workers to either call the government/employers to resolve certain social problems or demand the implementation of tripartite agreements: “... street protests... Governments generally take action after protests [...]”⁸⁵. The biggest nation-wide strike that ever happened took place in Tallinn in December 2003⁸⁶: it gathered about 19 000 people, out of which 14 000 were teachers; the organizing committee belonged to TALO and major issue of concern was TALOs accusation of government of non-compliance to the 2002 bipartite agreement with the government. In 2003 more than a dozen of strike threats have been reported by different trade unions and trade unions associations. Therefore, there is one could expect the government to take some action to render the rules and procedures ensuring compliance with tripartite agreements more formal and stricter.

Channels of Communication

There are both more formal and informal channels of communication between partners. The formal procedure in tripartite negotiations foresees the following. According to the brief description given in the Collective Agreements Act (Part III) the negotiations should be started at the written request of one of the partners and with a written draft proposal within seven days of the arrival of the request to social partners. Social partners nominate their representatives in the negotiations – each year since 2001 the government adopts a special regulation concerning the nomination of its representatives in the government commission on tripartite negotiations. A similar procedure in the Social and Economic Council, but the participants list is also approved in the government⁸⁷, which can be, but never has been, used as an issue, where government can show its power.

⁸³ ‘Ametiühingud:...’, *op. cit.*

⁸⁴ Rychly L., Vylitova M. (2005) *National Social Dialogue on employment policies in Europe* (Geneva: International Labour Office): 25.

⁸⁵ Korkut U., *op. cit.*: 309.

⁸⁶ ‘Streikijaid kogunes ligi 19 000’, *Postimees*, 05.12.2005.

⁸⁷ Minister of Social Affairs, regulation nr. 25, *Establishment of the working order of the Social and Economic Council*, 6th of April 1999.

The tripartite agreements between trade unions and employers associations, e.g. EAKL, TALO and ETTK, and the government implicitly derive the power of a law from the Collective Agreements Act, which states the obligation of signature parts to fulfil the postulates of the agreement. However, the 2001 minimum wage agreement's annex, which has become one of the reasons of the 2003 December strike of TALO, has been too vague and could not legally be considered as an obligation. Therefore, in many instances, when agreements are focused on non-quantitative obligations or when the criteria of obligations are vague, informal communication and trust between partners are crucial for the fulfilment of agreements.

As has already mentioned all trade unions associations report an excellent, comparing to social partners access in other CEE countries, access to politicians. They can easily reach ministers and even the Prime minister⁸⁸. Therefore, the channels of formal communication are in place. In what concerns the results of communication all social partners, in particular trade unions association, noted that these are not ensure even though communication constantly takes place.

Concerning the provision of information through formal channels, trade unions noted the unwillingness of government officials and, in particular, of political actors to provide information even concerning social partners' amendments to drafts of normative acts. Trade unions are, thus, forced to use their informal connection to gather the required information. More could be done in enhancing the responsiveness of the government and the legislature in this respect. On the other hand, it is written in the law and is more and more becoming a good tradition to provide partners with all relevant info in case their consultation is necessary to labour legislation. Problems arise mainly in giving feedback to these consultations.

Barriers of entry for new members?

Formally, there is only one barrier to participation in social dialogue: according to the Trade Unions Act trade unions can be founded with a minimal membership of 5 persons. Participation in collective agreements is open to all social partners and trade union non-members based solely on nomination of a common representative. Access to tripartite negotiations is not limited, but as a rule it is open only to associations uniting employers and employees. In the past years there have not being any attempts at accessing the tripartite negotiations' arena by alternative partners, therefore, it is difficult to judge of the barriers of entry to the highest level tripartite negotiations.

Clear / not clear procedures?

The area of application of national tripartite agreements, of collective branch agreements and of other bi- and tripartite agreements is not formally set. The Collective Agreements Act states that each agreement has to determine its area of application, but in general it applies to members of organizations participating in the agreement. Since the Employment Contracts Act prohibits treating trade unions differently from other workers based on trade union membership, for example, branch agreements would mean that the conditions of agreement apply to all workers of the branch. This in fact is stipulated as a possibility in the Collective Agreements Act, e.g. a possibility of widening collective agreements to entire professional or sector branches. This mechanism allows wider public (even trade unions' members) not be in course and not to need clear and precise information about the functioning of tripartite negotiations and agreements since anyway they are going to be negotiated by professionals. On the other hand, this has a negative effect on social partners strength: general public does not feel inter-

⁸⁸ Roosimaa, October 2005; Taliga, October 2005, Rondik, October 2005.

ested in becoming an active member of trade unions or employers organizations – they are free riders. According to one of the interviewees the law will be changed next year, which will apparently increase the need for more transparent and more in-depth formal procedures, since it is expected that simple rank members of social partners' organizations and general public will realize its interest in participating in tripartite arena.

Monitoring and control over the implementation of tripartite and other collective agreements

Monitoring procedures are either very weak or absent, especially, on the national level, where issues tend to be connected to politics. Strikes and strike threats have been used, especially in two last years, mostly under the pressure of absence of such mechanisms that would ensure the obligation of all partners to stick to the agreements.

On the sector, branch and enterprise level monitoring and control as well as resolution of disputes is much more effective and clear. First, there are local conflict resolution committees, which account as the first instance for resolution of conflicts concerning employment contracts. On the branch level the clarity and simplicity of agreements as well as more explicit willingness on the part of employers to conclude such agreements makes their monitoring and control over them more effective.

In order to increase the accountability of government concerning social dialogue the government could make more efforts in disseminating information on the overall state of social dialogue and, in particular, state of tripartite agreements and negotiations in the country. The annual NAPE reports, although touching upon the topic of agreements and negotiations, have no such goal and overall are too formal and too brief to attract a common reader.

Legitimacy issues in tripartite relations in Estonia

Tripartite arena in Estonia is widely recognized as a decision-making body in employment and labour issues. To a large extent this is the merit of the existing legal framework of labour and employment legislation. Although legal acts in their majority do not directly regulate tripartite relations, the fact that employment and other labour issues are regulated and not abandoned for self-regulation, sets the need to develop these issues further in particular through tripartite negotiations.

On the other hand, the fact that there are no acts directly and strictly relating to tripartite negotiations leaves a margin of interpretation in the question of whether tripartite negotiations are at all necessary. Social partners, especially trade unions, have to prove each year that attention should be given to issues raised by them through strikes and other pressure. Also, because of the particularity of political culture in Estonia, i.e. the fact that each new government abolishes major projects started by the previous government, there is no strategic continuity in the tripartite process. Thus, with each new coalition cycle the issue of recognition of tripartite negotiations is raised again and again. Definitely, this does not add to the legitimacy of the arena among social partners and the general public.

Among social partners tripartite negotiations also have a very unstable legitimacy as a decision-making body. The main issue here is the government's role, which itself widely believes (whatever the parties in coalition) that its role is already fulfilled through creation of minimum legal framework for employment and labour issues. Employees and employers also have different position on the question: employers believe that the state is not necessary. Among the trade unions there also is no unity: EAKL believes that government could retreat while TALO, which negotiates mainly with central government, believes that it is not an option

even in a wider context, e.g. of tripartite relations. This obscurity of the role of the government is among the major explanations, why tripartite negotiations have not so far been institutionalised into a permanent arena of decision-making and still function on *ad hoc* basis.

The unwillingness of the government to take active part in tripartite relations partly is a product of low representativity of social partners. With membership coverage not more than 20% for trade unions and employers associations the government could easily neglect these organizations without having any major political repercussions. But credit must be given to the different governments for their recognition, even if to a minimum extent, of employees and employers organizations as full partners in negotiations. As relations become more stabilized the factor of membership becomes less and less decisive.

Since the competences of the tripartite arena are weakly defined there is a problem of relationship with political parties. Formally parties hold the mandate for ultimate decision-making. In case, when tripartite discussions concern the ‘turf’ of political parties, the latter use the unclarity in competences of the tripartite arena to block social partners initiatives.

Another issue altering the legitimacy of tripartite arena is the lack of coherent political strategy concerning tripartite relations, which would be a product of consensus of opposition and coalition parties and would in broad terms be equally implemented by any government in power. With each new government the agenda, procedures, mandates etc. of tripartite negotiations must be set anew. Agreements concluded with previous government often have low recognition by the new government coalition.

One of the certain indicators of legitimacy of tripartite arena in Estonia is the media and the way it perceives the tripartite negotiations. Estonian newspapers and TV report mainly on the minimum wage agreements and strikes. Based on the picture that the media presents of tripartite negotiations it could seem that there are no other issues in the agenda. This indicates that the recognition of the tripartite arena as a decision-making body in issues other than minimum wage, strikes, tax-exempt level of earnings is much lower. However, what we have previously said about the different extents of effectiveness of the tripartite arena depending on issues discussed, perfectly fits into current perspective. E.g. the media highlights only those processes where real decision-making powers are conferred upon employees and employers association and where they can in fact influence the policy-making.

Conclusions

One of the major issues of accountability, transparency and legitimacy of tripartite arena is its level of institutionalisation and the lack of strategy of tripartite relations.

The *ad hoc* nature of tripartite arena weakens accountability between partners – many agreements are signed based on trust and legally are not very correct. The change of government then formally annihilates the effects of these agreements. Partners as institutions ought to have more responsibility towards even trust agreements, if there would be a better institutionalised tripartite arena with its own institutional memory.

Provision of information through formal channels is weak – partners do not feel the obligation to be active in disseminating relevant info to the other side. Although the government provides an enormous amount of info to its partners while preparing legislation, at the stage of feedback from consultations the intensity of info exchange is falling dramatically. More active feedback between partners and especially from the government could substantially raise the accountability between partners. Definitely, the lack of feedback procedure within the socialist state has its part in why active feedback and communication functions are not part of government officials vocabulary.

Some formal procedures regulating tripartite relations – e.g. non-discrimination based on trade union membership clause – stimulate free-riding among general public, which benefits from tripartite agreements, but does not feel the need to become a member or merely have an interest in these relations. In the nearest future this clause will be changed, which will force many free-riders to become aware of tripartite relations. In result, this should substantially strengthen the demand for more transparent tripartite procedures and decision-making.

Tripartite arena lacks a tripartite monitoring body, which would ensure and control the implementation of tripartite agreements. As a result conflict between partners are made explicit only on latter stages, when it is already much more difficult to find consensus.

One of the possible accountability channels is the National Action Plan for Employment, which is the only official employment policy document and which could at the same time become the strategy paper of tripartite relations. Currently NAPE is merely a report to the EU and has no role or influence whatsoever on tripartite relations. The government could use this document to transmit its vision and plans for tripartite relations for the coming year.

Channels of communication between partners are defined as *ad hoc* even legally. In reality communication between partners, especially between employers and employees is much more developed outside of tripartite arena. However, on the national level of tripartite relations there is a need for more regular institutionalised communication channels, which could serve as a basis to incrementally develop the tripartite decision-making institution, e.g. institutions born through common procedures, values, norms etc. – currently the ad hoc nature of tripartite communication prevents that.

Conclusions

Overall, we can conclude that social dialogue is functioning in Estonia, although with only minimum requirements. The example of minimum wage negotiations demonstrates a more or less effective dialogue between the three sides, whereby cooperation between employers and employees can have a strong pressure on the government. The legal framework of employment and labour is set, but its actual achievements are as effective as one might expect. One of the major problems, at least in the part on tripartite relations, is the lack of formal framework of tripartite arena or at least it could be more in depth, wider. The institutionalisation of tripartite negotiations is weak – mostly negotiations and communication between partners is *ad hoc*. The low institutionalisation of the arena weakens the recognition of the arena as a decision-making body in employment and labour issues. Concerning partners, employers and employees associations are still relatively weak organizations and weak pressure groups, which seriously hinders their legitimacy. The government is relatively unwilling to take more active part in social dialogue. Also, there lacks a clear strategy of tripartite relations.

In terms of our hypotheses the conclusions are as follows. Tripartite relations in Estonia are indirectly affected by soviet-time legacies. In particular, this manifests in the bad image of trade unions and some specific traditions, approaches among government officials (such as passive feedback and communication to social partners) and employees (overall view of the need to ‘privatise’ employment and tripartite relations, which steams from their post-soviet mistrust of any kind of state intervention). Also, tripartite relations are considered to be rather a relic of soviet times for political parties and thus there is no connectivity between the implementation of EU requirements and current progress in social dialogue.

Mere copying is not helpful: weaknesses of transition state: lack or weak transparency, lack or insufficient accountability, not clear enough competences of government actors, lack of formal rules and especially obligations

Mere copying of Western models has rather been unsuccessful. Although ILO and EU standards of social dialogue have been encoded into the legislation, their application has to large extent been compromised. In many respects this is the effect of weak transparency and accountability of the tripartite process, both inside and outside of the arena. Rules transparency of tripartite negotiations and agreements is weak. Government must provide information to social partners in wide range of issues, but in particular the feedback on consultations with social actors are only passive and sometimes very formal, which is not sufficient for them. The *ad hoc* style of tripartite relations seriously hinders the trust between parties and serves as a disincentive to keep the obligations, since so many things change during so little time.

Many international standards and models of social dialogue and tripartite relations have been implemented, but it seems that most of them are only *pro forma*. For instance, the Social and Economic Council does exist, but its role is very small – it does not even act as an institution for lowering social tensions. Here the major problem is unclear factual (not formal) competences of the Council, which ought to act as an advisory body, but the government rarely listens to its advice. In many respects Western models have goals and logic, which are yet controversial, contradictory to national policy and political goals. One of the major elements of ILO social dialogue model is the role of government as a referee and as a norm entrepreneur. In Estonia the priority of the government and position of political parties is reverse (at least according to interviewees and the survey of national media). The government involves itself mostly in processes and at stages, where political benefit can be achieved or political crisis avoided. What is definite is that development of social dialogue as a new mode of governing rather is not among governments’ goals.

Overall, the bulk of factors influencing tripartite relations can be traced back to the problems of transition state. One element here is in the state of transition itself – social dialogue is a long-term project and demands time, which for transition states has been too small, only 15 years. With due time party spectrums will stabilize, market failures will be repaired, the roles of the government and models of state in state-society relations defined, tripartite relations better institutionalised.

Another element is that transition is a moving away from socialism towards democracy and market. The radical transition away from socialism has had two implications. First, soviet socialism and socialist ideology have become mistakenly considered as one phenomenon. For social dialogue this meant bad image of trade unions, rather negative image of social partners involvement, low value among the general public of civic activity. Second, because of an extremely bad image of socialism transition was very radical and disintegrated large part of remaining soviet structures. Thus, all civic organizations and processes had to be rebuilt anew, which resulted in their weakness. Fourth, democracy and market were considered as an ultimate solution against communism and their implementation was very formal and idealistic. For instance, the policy process was entirely built based on constitutional powers of formal institutions, which excluded from the policy-making process any other participants than political parties. Finally, social dialogue's success is very much affected by the idealized image of the market: "people believe that it will resolve all their problems"⁸⁹. Therefore, social dialogue in principle is widely considered as unnecessary and sometimes as blocking the way to the development of market.

⁸⁹ Lilleväli, October 2005.

Annexes

Case 3: Development of the National Employment Action Plan

One of the interviewees stated that “Estonia lacks labour market and employment political strategy” referring to the absence of strategic vision in labour and employment policy fields⁹⁰. To a certain extent this is correct.

Estonian employment policy is going through substantial changes since 2000 and especially since 2003. In July 2003 the European Council has adopted the European Employment Strategy (EES). With this document the EU summarized and communitarised (not in the legal sense, of course) general common values for European employment policy. Following the guidelines of EES Estonia started to issue the annual National Action Plan for Employment (NAPE). NAPE is a strategy document, which, first, gives a broad overview of problems, development and prospects of the employment market and, second, analyses the demand and results of implementation of good governance in the sphere of employment. This second part consist mostly of state of the art of social dialogue, which presents interest for current paper⁹¹. In broad terms NAPE is the basis of national employment policy⁹²:

“NAPE was identified in all 13 [EU candidate] countries as the main instrument for the implementation of employment strategy”⁹³.

At the same time, as is stated by NAPE 2004 report, “the report is prepared based on guidelines and directions from the European Commission and does not fully respect the logic of a national employment strategy”⁹⁴. Before the beginning of accession process, Estonia employment policy was highly dependent on the party-political and on the tripartite process. Currently, it is difficult to say, where exactly lies the border between national and EU ‘logics’. And since NAPE has become the strategy paper for employment, it can be considered as a national employment plan. This is important in determining the role of social partners in employment-related policy-making.

NAPE is drafted annually by the Ministry of Social Affairs following the EES guidelines. Since this is a quite new exercise, the content might vary from one year to another. The draft of the NAPE is sent to social partners for consultation. Nevertheless, social partners involvement is minimal since there is no way of telling how and to what extent exactly did social partners manage to alter the strategy on a regular basis:

“NAPE has to be created through constructive dialogue and full involvement of social partners in the processes of shaping, decision-making and implementation of the strategy. However, according to the report in Estonia, Spain and Holland responses concerning the consensus about the development of the NEAP were negative”⁹⁵.

Also, the part of the strategy describing social dialogue is rather stating what has happened, than planning what should or could be refined in the field, thus playing quite a reactive role in

⁹⁰ Roosimaa, October 2005.

⁹¹ NAPE 2004, *op. cit.*

⁹² Kallaste E., *op. cit.*: 15.

⁹³ Rychly L., Vylitova M., *op. cit.*: 17.

⁹⁴ NAPE 2004, *op. cit.*: 4.

⁹⁵ Rychly L., Vylitova M., *op. cit.*: 18.

the field. To make things perfectly clear it should be noted that in general social partners themselves have no will or wish to participate in the drafting process⁹⁶.

“The involvement of Estonian social partners in NEAP [NAPE] formulation is reported to be low. They comment on the NEAP prepared by the labour ministry, which later decides on the relevance of the comments, Indirectly, they can influence policy creation via their representation in various tripartite councils. A bigger role is ascribed to Estonian social partners in negotiating wages and formulating employment legislation”⁹⁷.

If to consider the NAPE in a broader sense, one can ascertain a bigger role of social partners. This is due to the fact that NAPE includes among others things also major tripartite agreements reached in the reported year. Although, the exact effect of this action is dependent on concrete text, it is clear that these agreements play the role of one of the cornerstones of employment policy. So, indirectly social partners have effect on employment policy formulation.

In what concerns other legal drafts pertaining to employment market social partners are similarly consulted (provide feedback on the draft law), but the extent to which they actually shape the draft is insignificant. The reasons are always the same: low interest of social partners and certain rigidity of the policy-making system. On the other hand, certain provisions of drafts of employment legislation that are sensitive to social partners might be discussed within the tripartite negotiations round⁹⁸. The chances of social partners of actually influencing the draft in a desired way are quite elevated. However, due to low level of institutionalisation of tripartite negotiations it is quite difficult for them to make their way through more regularly.

One of the major explanations for most of problems in all three stages is that, first, employment policy was not considered a priority by Estonian government until only recently – which clearly indicates on the ‘European’ nature of these efforts, and, secondly, social partners considered NAPE as a secondary and tripartite negotiations as their primary channel for influencing employment policy in Estonia⁹⁹:

“The Estonian tripartite agreement on employment policy was concluded in 2002. The role of social partners is envisaged theoretically in employment councils and in the design of employment policy. In fact however, employment policy is designed and decided mainly by the Government. The Estonian report points out that the NEAP is merely a formal document which has not been accepted by social partners whose involvement was restricted to providing comments on the document”¹⁰⁰.

Overall, one can observe that:

- NAPE is not an action plan, but a report to the EU.
- The way of formulation and implementation of the document shows low involvement of social partners on all stages, even when NAPE text might have serious repercussions on the state of the art of social dialogue. The government does not realize the potential of involving social partners apart for securing another electoral cycle success.

⁹⁶ Kallaste E., *op. cit.*: 15.

⁹⁷ Rychly L., Vylitova M., *op. cit.*: 40.

⁹⁸ Kallaste E., *op. cit.*: 10.

⁹⁹ Kallaste E., *op. cit.*: 17.

¹⁰⁰ Rychly L., Vylitova M., *op. cit.*: 16.

- There is a wide gap between the official strategy, policy paper on employment and the actual employment relations embodied in tripartite negotiations.
- This gap stipulates another suggestion that NAPE is a *pro forma* realization of obligations before the EU, since NAPE does not actually present any strategy, action plan for social dialogue and employment relations.
- The insignificance of the NAPE in terms of policy-making, politics and decision-making lowers social partners interest towards this document, which in turn lowers the motivation of government to attract social partners towards consultation on real, actual action plan. E.g. NAPE could become, but not yet is a social dialogue strategy paper, if there would be will of all major partners. This could provide continuity, stability and more understanding between partners in tripartite relations.

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