

# Fundamental labour rights in the Baltic region – An overview



NFS and BASTUN Decent Work  
Conference

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# Issues

- ❑ Status of the international social rights documents(ILO, ICESCR) in the national legal systems
- ❑ Right to decent work in the Constitutions of Baltic States
- ❑ Protection of labour rights in the jurisprudence of the Constitutional Court of Latvia

## Status of the international social rights (ILO, ICESCR) documents in the national legal systems

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- 'Principle of the openness of the Constitutions to the international law'
- Article 89 of Constitution of Latvia (Satversme):  
'The State shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia.'

## Status of the international social rights (ILO, ICESCR) documents in the national legal systems

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- The Latvian Constitutional Court in *obiter dictum* has made the following statement concerning the role of international instruments:
- “From this Article [Article 89] it can be seen that the aim of the legislator has not been to oppose rules of human rights, included in the Constitution to the international human rights rules.”

## Status of the international social rights (ILO, ICESCR) documents in the national legal systems

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Quite contrary – the aim has been to achieve mutual harmony of the rules. In cases, when there exist doubts about the contents of the rules of human rights included in the Constitution, they have to be interpreted as far as possible in compliance with the practice of application of international rules of human rights.”

(Judgement of the Constitutional Court of the Republic of Latvia No.2000-03-01, 30 August 2000)

## Status of the international social rights (ILO, ICESCR) documents in the national legal systems

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- With regard to case law of national courts it is possible to identify two main forms how international social rights treaties influence domestic proceedings:
  - 1) as a tool for interpretation and application of domestic legal rules,
  - 2) as a material source of law.

## Status of the international social rights (ILO, ICESCR) documents in the national legal systems

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- ▣ Judgement No.2003-13-0106 – understanding of the concept ‘forced labour’

### Article 106 of Satversme

Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications. Forced labour is prohibited. Participation in the relief of disasters and their effects, and work pursuant to a court order shall not be deemed forced labour.

## Status of the international social rights (ILO, ICESCR) documents in the national legal systems

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“There is no reason to hold that the prohibition of forced labour, enshrined in the Satversme does not concern the private sector. It follows also from international human rights instruments, inter alia, also ILO Convention No. 29. The first part of its Article 4 determines that state public institutions **may not allow forced labour in the interests of private persons**, companies and associations.”

## Status of the international social rights (ILO, ICESCR) documents in the national legal systems

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- ▣ Judgement No.2006-31-01 - obligation to define minimum salary.

### Article 107 of Satversme

Every employed person has the right to receive, for work done, commensurate remuneration which shall not be less than the minimum wage established by the State, and has the right to weekly holidays and a paid annual vacation.

## Status of the international social rights (ILO, ICESCR) documents in the national legal systems

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“It follows from Article 107 of the Satversme, that the State must establish, by means of normative acts, a minimum wage, and employers are not allowed to pay their employees a wage that is lower than the one established by the legislator. The **responsibility to establish a minimum wage in the State is also provided by international liabilities of Latvia.**[..]

## Status of the international social rights (ILO, ICESCR) documents in the national legal systems

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“ The International Labour Organization requires, in the first part of Article 2 of the Covenant of June 22, 1970 No. 131 “Concerning Minimum Wage Fixing”, that the Member States of the Covenant establish minimum wage by means of normative acts, and it could not be lowered. Hence the amount of the minimum wage shall be determined by the law.”

# Right to decent work in the Constitutions of Baltic States

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## ▣ **Article 29 of the Constitution of Estonia**

Every citizen of Estonia is entitled to **freely choose his or her area of activity**, profession and position of employment. The law may provide conditions and procedures for the exercise of this right. [..]

**No one may be compelled to perform work or service against his or her free will**, except for [..]

# Right to decent work in the Constitutions of Baltic States

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**Working conditions are overseen by the national government. Everyone is free to belong to unions and federations of employees and employers. [..]**

**The conditions and procedure for the exercise of the right to strike are provided by law. The procedure for resolution of labour disputes is provided by law.**

## Constitution of Latvia

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- Article 106. Everyone has the right to **freely choose their employment and workplace** according to their abilities and qualifications. **Forced labour is prohibited.** Participation in the relief of disasters and their effects, and work pursuant to a court order shall not be deemed forced labour.

## Constitution of Latvia

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- **Article 107.** Every employed person has the right to receive, for work done, commensurate remuneration which shall not be less than the **minimum wage** established by the State, and has the right to **weekly holidays and a paid annual vacation.**
- **Article 108.** Employed persons have the right to a **collective labour agreement, and the right to strike.** The State shall protect the freedom of trade unions.

# Constitution of Lithuania

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## □ Article 48

Everyone may **freely choose a job or business**, and shall have the right to have **proper, safe, and healthy conditions at work**, as well as to receive **fair pay for work and social security in the event of unemployment**. [..]

**Forced labour shall be prohibited.**

Military service or alternative service performed instead of military service, as well as work performed by citizens in time of war, natural disaster, epidemics, or other extreme cases, shall not be considered forced labour. [..]

# Constitution of Lithuania

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## □ **Article 49**

Every working person shall have the **right to rest and leisure**, as well as to **annual paid leave**. The length of **working time** shall be established by law.

## □ **Article 50**

**Trade unions** shall be established freely and shall function independently. They shall defend the professional, economic, and social rights and interests of employees.

All trade unions shall have equal rights.

# Right to create labour unions and right to strike

- ▣ Judgement of the Constitutional Court of the Republic of Latvia No.2013-15-01



## Right to create labour unions and right to strike

### ▣ Judgement of the Constitutional Court of the Republic of Latvia No.2013-15-01

The wording in the second sentence of Article 108 of the Satversme “the State shall protect” imposes special responsibilities upon the State in the field of freedom of trade unions to implement such measures that would be aimed at protecting the freedom of trade unions.

When implementing such measures, it should be taken into consideration that the second sentence in Article 108 of the Satversme protects the freedom of trade union of both persons, who work in private sector, and of persons, who work in or are in service relations with the state (public) sector.

## Right to create labour unions and right to strike

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Judgement of the Constitutional Court of the Republic of Latvia No.2006-42-01



## Right to create labour unions and right to strike

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### ▣ Judgement of the Constitutional Court of the Republic of Latvia No.2006-42-01

The third part of Section 24 of the Strike Law provides: "If an application regarding the acknowledging of the declaration of a strike to be illegal has been submitted to the court by the date of the commencement of the strike specified in the declaration of the strike, the strike may not be commenced until the judgment of the court comes into effect."

## Right to create labour unions and right to strike

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- ❑ The **right to strike is a constitutional right** of employed persons, and the duty of the State is to ensure exercising of these rights.
- ❑ **The rights of employed persons to strike are not absolute.** [...] According to the scientific literature, temporary restriction of rights to strike can be justified if it is established with the aim to facilitate common welfare and is not an excessive burden for employed persons who want to strike (*see: The International Covenant on Economic, Social, and Cultural Rights. A Perspective on its Development. Matthew C.R. Craven, Oxford, Clarendon Press, 1995, p. 285.*).

## Right to create labour unions and right to strike

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“The contested provision complies with the principle of proportionality, since:

- first, a strike can be delayed only in the case if the employer has submitted an application regarding the acknowledgment of the declaration of a strike as illegal to the Court,
- second, a strike is delayed only for the time until the judgment of the court comes into effect,
- third, a court examines the case in a shortened and reasonable term.”

# Decent wages and working conditions

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Judgement of the Constitutional Court of the Republic of Latvia No.2005-03-0306



## Decent wages and working conditions

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- Judgement of the Constitutional Court of the Republic of Latvia No.2005-03-0306
- Issue: Can Cabinet of Ministers establish the minimum amount of the wage to be paid to convicted persons which is below minimum salary?

## Decent wages and working conditions

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- ❑ Article 107 of the Satversme does not *expressis verbis* determine the minimum amount of the wage, but indicates that **the minimum amount of the wage shall be established in the State.**
- ❑ The authorization of the legislator to establish the minimum amount of wage in the State is included in the Satversme. Article 107, determining that the decision on the above issue shall be taken in a legislative way, prohibits the employers to pay smaller wages than those, established by the legislator.

## Decent wages and working conditions

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Judgement of the Constitutional Court of the Republic of Latvia No.2006-31-01

▣ Aim of the minimum wage:

“One can agree to the opinion of the Ombudsman that the term “the minimum wage established by the State” included in Article 107 of the Satversme is related to the **aim to establish such minimum wage** that would be sufficient for meeting basic needs. The objective of establishment of a minimum wage is to ensure a minimum amount of incomes, by means of which a person could cover his or her dwelling, food, provision, clothing and other expenses’.”

# Decent wages and working conditions

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- ▣ Judgement of the Constitutional Court of the Republic of Latvia No.2017-15-01



## Decent wages and working conditions

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- ▣ Judgement of the Constitutional Court of the Republic of Latvia No.2017-15-01
- ▣ Issue: May Medical Treatment Law impose restrictions on the rights of medical practitioners to receive appropriate remuneration for extra working hours?

## Decent wages and working conditions

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The Constitutional Court recognises that establishing of a transitional period may be based on considerations linked to the need to ensure the stability of the state budget; however, the Court noted that such arguments *per se* were not sufficient to substantiate the legitimate aim of the differential treatment in the transitional period.

## Decent wages and working conditions

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Judgement of the Constitutional Court of the Republic of Latvia No.2008-02-01

Issue: May prison inmates be deprived of any paid vacation?



## Decent wages and working conditions

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- **The duty of the State to fix the minimum working time and minimum rest time** is provided by several international legal acts. [..]

Consequently, it follows from Article 107 of the Satversme if considered in conjunction with Article 89 of the Satversme that there must be the minimum length of working week established in the State by providing for the minimum amount of free time and paid annual vacation.

## Decent wages and working conditions

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Judgement of the Constitutional Court of the Republic of Latvia No.2010-17-01

[..] when interpreting the Satversme in conjunction with international obligations of Latvia, **the duty of the legislator to establish social security for social risks related with accidents at work and occupational disease** follow from Article 109 of the Satversme.

## Decent wages and working conditions

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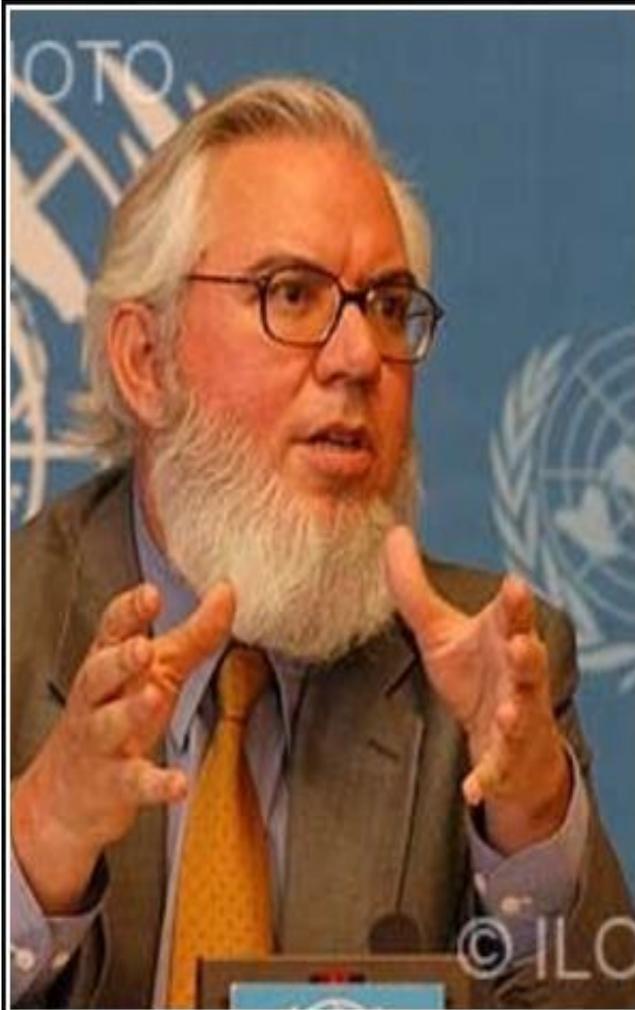
- ▣ It cannot be denied that the Satversme commits the State to certain obligations in order to exercise rights of person to safe working conditions. [...]pursuant to Article 93 of the Satversme, “the State has the duty to protect life of a person not only from actions of the State, but also those of other persons.[..]”

## Decent wages and working conditions

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- ▣ It follows from Article 111 of the Satversme that the **State also has the duty to adopt norms aimed at protection of health of a person at work**, for instance, norms establishing safety and hygiene requirements, liability for non-observance thereof, as well as norms for monitoring observance of the above mentioned norms.

# Conclusions



Decent work is at the heart of the search for dignity for the individual, stability for the family and peace in the community

— *Juan Somavia* —

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