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Economic and Social Rights Lost in Transition

Summary

All European constitutions after World War II expressed their commitment to economic and social rights. Those countries that began building socialist social order after the war specially emphasized those rights. After the break-up of the “socialist paradigm” and the establishment of “new democracies”, constitutional leaders have taken a new stance towards the socio-economic group. This is the process that did not bypassed countries formed by dissolution of Yugoslavia. We will analyse specially what is left of the constitutional experiment of self-management. Nowadays, there is no workers’ participation in place in any of the countries that emerged after the breakup of the former Yugoslavia, neither as a system nor as a practice of having consultations within companies with the aim to address specific technological, organisational and social problems. There are several reasons for this, but the basic reason is that politicians still believe that workers’ participation was created as part of the ideological apparatus of the former socialist system. By way of property rights and small shareholding, the laws opened the way to participation, and the legal framework could continue to develop.

Keywords: economic rights, social rights, constitution.

Introductory remarks

In socialist country, social politics was not a special area of deciding. It was an integral part of the production process which was necessary for generating of productive and loyal work force. Company, operated by state was the *Locus* of social norms. Most of the monetary payments went through companies. Continuous and life-time employment was a part of collective protection. Unemployed did not had a part in transfers and services that were connected with work place. This connection of work process and social politics was a regime of wellbeing of

socialist state that was different from the world of *welfare* capitalism. In most socialist countries system of social protection was wide and universal, guaranteeing relatively low life standard. Covering of basic social programmes was near 100%. In reality benefits and services, as *welfare* rights belong to those who did not fulfil certain conditions: or they participated in work relation, or they did not have appropriate means for life... Form, content and level of benefits at the end was determined by a state-party, which had given them character of “present”, not of “right”¹.

In Yugoslav literature, until 1990, problem of social-economic rights was analysed like in most socialist countries, taking in account the fact that the process of social self-management showed a lot of specifics. Social-economic rights were the result of widened role of state. Rights and duties of citizens expended through time on new social areas. Broad catalogue of social-economic rights was limited with real material possibilities of state, but constitutional norms obliged those who were in position to manage and dispose with social means and social-political communities, taking caring of more favourable conditions for implementation of these rights, especially right to work.

1. Social and economic rights in post-socialist constitutions

Constitutions of new democracies adopted from 1990–2000 contain an extensive catalogue of all kinds of human rights. Among first, *positive rights* were constitutionalised, and with them *institutional guarantees* in sense of existing of state to protect, care and serve special social domain and the whole network of social relations. Among positive rights in constitutions of new democracies are right on work, help in case of unemployment, right on education, right on health insurance, right on healthy work conditions, social help in case of emergency, pensions to older people, right on equal pay for equal work, etc. Comparative studies of post-communist constitutions already had the evaluation how the limits of traditional negative rights and their trans-liberal offset, institutional guarantees and positive rights were actually mixed up.² Most of these countries had a *principle of social state as a guarantee of social rights* in their constitutions. In that sense, *Constitution of Republic of Croatia* has defined Republic of Croatia as social state. But, constitution-maker did not determine the content of the concept of social state (art 1) nor the principle of social justice (art 3). Concretisation of these principles is left to the legislative authority, and that branch of authority is limited by a principle of social state and social justice whose limits are determined by Constitutional court.

¹ J. Elster et al., *Institutional design in post-communist societies-rebuilding the ship at sea*, Cambridge University Press, Cambridge 1998, pp. 203–230.

² *Ibidem*, p. 86.

2. Introduction to constitutional experiment of self-management in Yugoslavia

Democracy is a form of political regime. It cannot be complete if political democracy is not complemented by economic democracy. An individual is not an abstract citizen, and the subjectivity of an individual in the society does not depend only on the political aspects of the individual's relationship with the state. Since an employed person spends most of the time during the work week at work, restricting the democracy only to the political component would create a one-dimensional person. Workers' self-management is a form of economic democracy³; its ultimate goal is to manage the economy through self-organised workers. It is different from the workers' participation and workers' control only in that it is established in socialism⁴, in which capitalist relationships and the class division of society are abolished. This concept was provided for in the constitutional law of the Former Yugoslavia. The aim of this essay is to present the image of constitutional and normative solutions in terms of workers' rights to manage and decide in companies in the countries of the former Yugoslavia by applying the dogmatic method as the primary method, but also the sociological and political method as the auxiliary method.

3. The notion of workers' self-management

Workers' self-management (French: *Autogestion*) is a form of workers' decision-making in companies, in which workers, instead of the owners, make choices and decide for themselves⁵. Workers' self-management is a very common model of decision-making used in those parts of the economic system in which there is a common property such as workers' unions, workers' councils and employee shares, where business is conducted without an owner. Decision making does not include making consultations with all employees with regard to any minor issue because it is inefficient. So far, all employees have decided only on important matters at the meetings of the Workers' Council, whereas the employees authorised by them have decided on minor matters and have implemented and coordinated activities with other stakeholders, and have complied with set principles.

³ D. Schweickhart, *After Capitalism*, Rowman & Littlefield 2012, pp. 47–48.

⁴ D. Steele, *From Marx to Mises: Post-Capitalist Society and the Challenge of Economic Calculation*, Open Court Publishing Company 1992, p. 323.

⁵ *Ibidem*, p. 323.

4. The origin and historical development of the idea of workers' self-management

The idea of self-management is as old as wage labour. John Stuart Mill was its proponent in the *Principles of Political Economy* (1848)⁶. In the first half of the nineteenth century, Pierre Joseph Proudhon, French philosopher and the “father” of anarchism, makes equality and dependence the ultimate goal. This thinker was the first one who theoretically fully elaborated the idea of workers' self-management.⁷ Workers' self-management later became the main aim of trade union organisations (particularly the revolutionary trade union organisations at the end of the nineteenth century in France and guild socialism in the United Kingdom in the early twentieth century). Since it was established in 1905, the American Trade Union called the *Industrial Workers of the World* (IWW) has been promoting the philosophy of worker's self-management.

In practice, this idea first appeared during the Spanish Civil War (from 1936 to 1939). It was divided into two segments: participating in the territorial management (Eng. *self-government*) and managing the economy (Eng. *self-management*). Italian fascists were the first to formalise the idea of self-management by of adopting the Legislative Decree of 12 February 1944 of the Fascist Republic of Salo, according to which each production unit in Italy no longer had a master or servants but belonged to all the workers in equal proportion. This regulation was valid for a period of 18 months only, and it was aimed at attracting workers to the side of Mussolini's newly founded republic in Northern Italy. Historic development shows that all political concepts, ranging from liberalism through communism to fascism, accepted it in practice. Examples of workers' self-management appeared even in Tito's Yugoslavia and in Argentina in the form of “cured factories” (Spanish: *Fabrica recuperada*), the *LIP* factories in France in the 1970s, the *Mondragón* cooperative, the largest corporation in the Basque Country, and the *AK Press* in the United States.

5. Characteristics of Yugoslav self-management

a) Introductory Remarks

The forerunners of worker's self-management in Yugoslavia took part in the revolution, in the struggle against the Nazis. Slogans of the Communists, who led the Partisan Army, were: „Give land to the peasants“, and „Give factories to the workers“. In Yugoslavia, it was Edvard Kardelj who introduced the theoretical

⁶ J. Stuart Mill, *Principles of Political Economy With Some of Their Applications to Social Philosophy*, W. J. Ashley ed. Longmans, Green & Co. 9th ed. 1915, p. 752.

⁷ P.J. Proudhon, *Oeuvres Complètes*, Paris: Lacroix, vol. 17, pp. 188–89.

assumptions for the introduction of workers' self-management based on his cooperation with the Scandinavian social democrats, especially with Tage Fritjof Erlander, Prime Minister of Sweden (1949-1969) and creator of the Swedish economic miracle, which persuaded Kardelj to shape Yugoslavia in accordance with the principles of self-management after the break-up with Russia took place. The "Economy Governance Act"⁸ in 1950 affirmed self-management as a management method, and in 1953 it was made obligatory by the Constitution. The system, therefore, was not static; it changed over time. It was introduced in 1950, it had a new form in early 1960, and then it changed again in 1970s.

b) Normative Solutions in the Constitution

Self-management was not mentioned in the 1946 Constitution of SFRY. It asserted the principle of popular sovereignty⁹ and state ownership of the means of production. Workers' self-management is the first form of diffusing the sovereignty to the means of production and management of the economy. This was executed through the Constitutional Act of 1953. According to this Act, all power emanates from the working people. Workers' councils and other self-management bodies were set up as representative bodies. In addition, the second principle laid down by the Constitutional Act was self-management for the producers in the economy, and the right of the producers to elect and be elected to the houses of representative bodies was derived thereof (the so-called socio-economic bicameralism was established); thus, the house of the producers in the economy was equal to the political house. Free association of working people began to be established in politics, economy, education and culture. The municipality was declared as the basic territorial organisation of workers' self-management.

The right to self-management was laid down in the SFRY Constitution of 1963. Other socialist constitutions do not recognise this right. According to this Constitution, self-management is a political reflection of the socialist system, and people are free and equal producers¹⁰. The Constitution defines the country as a socialist democratic community founded on the authority of the working people and self-management¹¹. Working people are the bearers of inalienable sovereignty and workers' self-management. This principle did not allow the holders of sovereignty to be separated from society and citizens.

The Constitution of 1974 no longer used the prefix „workers” in the terms used for this concept; it was simply called, the “self-management”. Under this Constitution, self-management was the basic principle of self-management and it represents self-

⁸ The Basic Law on the Management of State Economic Enterprises and Higher Economic Associations by Work Collectives of 27 June 1950.

⁹ Article 6 of the SFRY Constitution of 1946.

¹⁰ Basic principles, Section III and IV of the SFRY Constitution of 1963.

¹¹ Chapter I., Article 1 of the SFRY Constitution of 1963. See detailed: Chapter IV of the SFRY Constitution of 1963.

-management of the working people in the basic associated labour organisations and municipalities, and self-management was expressed by means of a referendum and other forms of direct democracy. Associated work was presented in special houses of the assemblies, through the so-called delegate system. These assemblies were not only the authorities of the parliamentary type, but working bodies as well. The delegate system was created with the aim to institutionalise self-management and management through workers' councils, municipalities and assemblies. The principles of (workers') self-management were elaborated in the Associated Labour Act of 1976.

Provisions of the Constitution of 1963 stipulated that this right was an inviolable right, and provisions of the Constitution of 1974 stipulated that this right was an inalienable right. The right to self-management, according to the Constitution of SFRY of 1974 included:

1. the right to make decisions;
2. deciding on the individual and the common interest;
3. deciding in all self-managing organisations and communities provided for by the Constitution and in socio-political communities;
4. equal right of other forms of self-management decision-making and mutual associating, provided for by the Constitution or to be created in practice, in accordance with its principles.

This right was a general right and was not granted to everyone – it was an instrumental right that was manifested in the institutions of self-management as a complex social interaction. Community work was a precondition for the right to self-management.

The Constitution of 1974 transformed former work organisations into Complex Associated Labour Organisations (CALOs), and split up into smaller units on the level of factory departments – Associated Labour Organisations (ALOs)¹². All the workers employed in one of ALO had the right to participate in the Workers' Assembly¹³ and the right to elect and be elected to the highest body of the ALO: Workers' Assembly. These bodies were mandatory, but there were other executive bodies which were optional. There were also management bodies – Director, and collective bodies¹⁴. In practice, directors had a great influence on the work and decision making of the workers' councils, the appointment of which was, indirectly, through their organisation, influenced by the League of Communists of Yugoslavia. Normatively, the system was democratic because it allowed for personal direct voting and some forms of participatory democracy, such as revocation.

c) Inter-balance

Even though it had certain negative effects, the system was effective compared to what we now have in the countries that used to make up Yugoslavia. In

¹² Article 99. 1 of the SFRY Constitution of 1974.

¹³ Of f the SFRY Constitution of 1974.

¹⁴ Article 103 of the SFRY Constitution of 1974.

the period from 1956 to 1965, the average growth rate stood at 9.4%. Such a long-term growth rate was recorded only in PRC half a century later. According to the data the Institute of Statistics and the American side agreed on, financial assistance from abroad amounted to 1.6 billion dollars. In the years before the breakup of Yugoslavia, Yugoslavia's external debt was between 20 and 25 billion dollars. In 2015, the total external debt of the former Yugoslav republics amounted to 146 billion dollars. Before the breakup, Yugoslavia ranked 24th in the World, and today its former republics rank from 75th to 151st.

Michael A. Lebowitz noted a few positive and a few negative sides of the socialist self-management system in Yugoslavia¹⁵. In addition to economic growth, the positive ones are: workers' management, an increasing work discipline and high investment rates. On the other hand, the negative sides include: the rise of unemployment, a tendency toward inequality, indebtedness of enterprises and a lack of insight.

Yugoslav self-management had a significant echo in the world, since it gave rise to an alternative to the Soviet planned economy and the capitalism as a system of exploitation. A wave of worker participation in the management of companies started to spread over the the Western European countries, and in Argentina it resulted in "Fabrica recuperada" – workers occupying the factories facing bankruptcy.

The problem with the Yugoslav self-management, which included the social ownership of the means of production and workers' councils (which is not the same as the workers' management), was that the system was orientated on individual interests in the workplace and to maximisation income per worker. This had certain consequences. There was solidarity in the workplace; if, for example, sales dropped, workers were members of the collective, and as such, they did not get fired – they continued to work. However, there was no solidarity among companies; there was competition. The real problem was the lack of solidarity in the society. Having worked an eight-hour shift, the workers were too tired to think about the issues related to managing the companies; thus, they entrusted the managers with matters such as placing new products on the market or making associations with other companies. Workers' councils mostly dealt with workers' salaries and their annual leave entitlement.

6. There is no worker's participation today

Transition erased all the traces of the former self-management. Post-Yugoslavian writers of the Constitution and the legislation did not differentiate the socialist self-management, as a general political and normative framework, from of

¹⁵ M.A. Lebowitz, *Lecciones de la Autogestion Yugoslavia*, La Barbuja Editorial 2005.

the institute of economic democracy which manifests itself in various forms and various parts of the world. Workers' self-management was deemed somewhat inefficient. However, it should not be viewed only as a matter of efficiency but also as a matter of democracy, because it is important that people who spend most of their day at work have a democratic atmosphere in place and that they can make a difference in the company they work for. In terms of workers' property rights, the Yugoslav self-management model remained incomplete. In reality, it was a set of formalised rituals, behind which the real power of Directors and paritocracy was hidden. Still, the weakening of workers by way of complex bureaucratic procedures exists even today. For example, legal procedures regarding strikes are so complicated that it is practically impossible to organise a strike and not have a court rule that it was unlawful.

After the first multiparty elections, the experience of workers' self-management was completely eliminated. It was transferred into a labour law, but subsequent versions of the labour law attempted to correct those mistakes. In the current for legislation of certain republics of the former Yugoslavia, workers' participation, as a capitalist version of self-government, is in a sense consistent with the *acquis communautaire*, but also in those countries the practice is not much. For example, in Croatia, which has been a member of the EU since 2013, workers' participation is implemented through trade unions or workers' councils which should participate in the management of companies. This model was taken over from Germany; Croatia's labour laws are generally mainly modelled on German legislation. However, workers' councils mainly exist only in those companies which do not have trade unions. On the other hand, there are not many unions, especially in the private sector. Trade unions are more common in the public sector, large companies and state monopolies, and are much less common in the new sector of small and medium-sized private companies. However, trade unions on the geopolitical territory of the former Yugoslavia cannot be expected to make progress, because they have shown that they are incompetent to do so. They have failed to expand their membership, due to both its inertia and the resistance of the employers. There is not enough of labour inspectors that would prevent employers from unlawfully denying the employees the right to form unions.

Nowadays, there is no workers' participation in place in any of the countries that emerged after the breakup of the former Yugoslavia, neither as a system nor as a practice of having consultations within companies with the aim to address specific technological, organisational and social problems. There are several reasons for this, but the basic reason is that politicians still believe that workers' participation was created as part of the ideological apparatus of the former socialist system. By way of property rights and small shareholding, the laws opened the way to participation, and the legal framework could continue to develop.

The participation of workers is a social relationship which cannot be developed if there is no legal framework which gives the social relationship the char-

acter of a legal relationship. After regulating the social relationship by law, it can be directed towards socially oriented goals. In the legal system of the former Yugoslavia, such a legal framework, with the exception of Slovenia and Croatia, does not exist for the most part. There are only declarative, general provisions in labour laws¹⁶, and legal instruments for their implementation do not exist.

The most important basis for workers' participation should be in the Constitution. None of the constitutions of the countries of the former Yugoslavia include provisions regarding workers' participation, not even indirect workers' participation. As opposed to the socialist writers of the constitution, the writers of the Constitution obviously thought that it is not a matter which deserves to be included in the Constitution.

7. Conclusions

Without any justification, ideological properties were attributed to workers' shareholding and participation and this led to their exclusion from the legal system of the ex-Yugoslav countries. The truth is, within a short period of transition, workers' shareholding and participation were associated with the process of social ownership transformation. They completely ignored the positive consequences of workers' self-management, reducing this institute to political implications while ignoring the economic and democratic ones.

In conditions of high unemployment and poverty in the countries that emerged from the dissolution of former Yugoslavia, the issues related to workers' participation in company management has been removed from the agenda, even though they are associated with existential issues. Expert discussions on the expansion of workers' participation in the legal systems of these countries should be advocated and implemented. This role should be given both to scientific institutions and trade unions. Unfortunately, for now, there is no such initiative.

In the legal systems of these countries there is no legal framework for the establishment of a form of participation in decision-making. Normative solutions, with the exception of Slovenia and Croatia (partially), are inconsistent with the *acquis communautaire* but also with comparative legal provisions of its member states. In order to establish the forms of workers' participation in company management, it is necessary to provide for legal grounds in the existing legal systems. The Constitution should be the starting point and its general provisions should assert workers' participation (just as the workers' self-management was legally grounded in constitutional provisions). Apart from being defined as a legal and democratic states, these states should primarily be constitutionally defined as so-

¹⁶ See for example: Article 13 of the Labour Law of Republic of Serbia ("Official Gazette of RS", no. 24/05, 61/05, 54/09, 32/13 i 75/14).

cial as well. Socio-economic rights were also “forgotten” in the constitutions of the states which emerged after the breakup of the former Yugoslavia; therefore, changes and amendments to the constitution should be made accordingly and specific rights defined (the right to work; the right to limited working hours, daily and weekly rest, paid annual leave and leave of absence; the right to occupational protection, the right to compensation in case of temporary unemployment; the right of workers to vocational and additional training, the right of employees and members of their families to social security and social insurance (the workers’ right to health care and other rights in case of illness, maternity rights, rights in the event of reduced or lost working ability, rights in the event of unemployment and old age and the right to other forms of social security, and for members of the workers’ families – the right to health care, the right to a family pension, as well as other rights on grounds of social security); the right to strike, freedom of association in unions and freedom to take actions; the right of workers to, in accordance with the law, have at least one third of their representatives in the management bodies of companies and institutions, and to be involved in corporate governance through their special and mandatory bodies). In societies undergoing transition, economic and social rights are violated in practice; therefore, their legal protection would be more efficient if they were included in the constitution.

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Prawa gospodarcze i społeczne utracone po transformacji państwa

Streszczenie

Wszystkie konstytucje europejskie po II wojnie światowej wyrażały swoje zaangażowanie w prawie gospodarczym i społecznym. Kraje, które po wojnie zaczęły budować socjalistyczny porządek społeczny, szczególnie podkreślały te prawa. Po rozpadzie „paradygmatu socjalistycznego” i ustanowieniu „nowych demokracji” przywódcy konstytucyjni zajęli nowe stanowisko wobec grupy społeczno-gospodarczej. Jest to proces, który nie ominął krajów powstałych w wyniku rozpadu Jugosławii. W artykule zostanie przeanalizowane w szczególności to, co zostało z konstytucyjnego eksperymentu samorządności. Obecnie w żadnym z krajów, który pojawił się po rozpadzie byłej Jugosławii, nie istnieje partycypacja pracowników, ani jako system, ani praktyka konsultacji w przedsiębiorstwach w celu rozwiązania konkretnych problemów technologicznych, organizacyjnych i społecznych. Jest ku temu kilka powodów, ale podstawowy jest taki, że politycy nadal uważają, że partycypacja robotnicza została stworzona jako część aparatu ideologicznego poprzedniego ustroju socjalistycznego. Dzięki prawom własności i niewielkim udziałom, przepisy otworzyły drogę do udziału przedsiębiorstw w tworzeniu prawa, a ramy prawne mogą się dalej rozwijać.

Słowa kluczowe: prawo ekonomiczne, prawo społeczne, konstytucja.