

## LABOUR SYSTEMS IN THE EX-COMMUNIST EUROPEAN COUNTRIES

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SUMMARY: I. *The Combination of “Inheritance” and “Allergy”*.  
II. *The Effect of the European Accession Process*. III. *Questions  
for the Enlarged Europe*.

The labour and social laws of the post socialist countries can be described by three basic features, creating a particular composition of labour law regimes.

These three main threads, determining the fabric of labour law are: an allergic reaction to the past, together with a carried forward inheritance of the past and finally, these two controversial features mitigated and smoothed by the European accession.

Before 1989 the world has been looked upon as divided into two parts: the world of human rights and economic freedoms and the world of social protection and political lawlessness. Of course —now we know— neither the freedoms nor security were not guaranteed to the extent believed on the opposite part of the world, this fact did not change the desires of the people: while peoples of countries of freedoms wished economic security, the eastern countries of paternalistic state-care are were longing for freedom.

### I. THE COMBINATION OF “INHERITANCE” AND “ALLERGY”

The revolutions of 1989-90 were perceived as a “reversal” of communism. Everything that was opposite to the past regime was elevated to a “desirability” and values that seemed to be connected and boosted by the past regime were considered an evil as such or at least an obstacle for the political and economic transition. This allergic response to

anything that resembled the institutions of the past appeared in almost all social fields but it was particularly intense in economic, employment and labour law since these areas of the law had been at the core of the ideology and foundation of the fallen regime.

The party state eliminated civil and political rights and replaced them by over-emphasized social rights now it was thought that in order to reverse this situation, social rights had to be eliminated so that civil and political rights can be adequately guaranteed.

Liberties replaced entitlements. In the communist regime all rights were based on entitlement from the state, “civil liberties” were considered incompatible with the collectivist character of these regimes and the almighty rule of the communist party. As a “repercussion”, the previous numerous entitlements —especially protecting people at the workplace— appeared now as an intrusion or a threat to the freedom of private property. Privacy, personal freedom and property —harshly oppressed in the past, became now the celebrated concepts of the transformation—.

The lack of clear set of values and the enthusiasm for the new market freedoms lead frequently to the toleration or even celebration of unscrupulousness and misuse of economic power as long-time needed entrepreneurship. The idea of the freedom of contract in general and that of employment contract in particular was popular within the whole population in the early 1990’s: there was a hope that they will bring about good organization, efficient management and the reward of hard and good quality work replacing the domination of mediocrity and inefficiency through leveling wage policies.

However, the re-contractualization of employment relationships went far beyond the mere abolition of the impediment of central regulation of wages and benefits and had a devastating effect to working conditions. Unlimited “autonomy” and “freedom” of *de facto* dependent workers promotes exploitation everywhere, however, it has been much more difficult to reveal and unmask in countries where entrepreneurship has been glorified as victory over communist type dependence.

The ardour for increased contractual freedom —that even raised the issue of “re-integrating” labour contract and labour law into the Civil Code— has been tamed by political considerations: to maintain social peace and to create a social consensus about the new system of labour law regulation was a priority goal. Dependent on the activity and organizing-bargaining capacity of the industrial parties in the different post-so-

cialist countries, this taming effect varied in form and content. Functioning tripartism, inherited to a large extent from the past corporative regimes assisted in taming the liberalization tendencies.

As a result, the new Labour Code of Hungary (adopted in 1992) basically succeeded to bring labour legislation in line with the requirements of the private market economy and decreased the previous bureaucratic rigidities, while still maintaining a floor of rights by the Labour Code, predominantly inherited from the past. Such as the prohibition of termination of employment during sickness and other absences, strong limitation and guarantees on concluding fixed term contracts or some strong rights granted to the trade unions against employer's measures. The provisions on the individual employment relationship—following the German "*Günstigkeitsprinzip*" as a pattern—have been characterized by the so called "one sided permissivity". The norms are mandatory and no departure to the detriment of the workers is permitted, unless explicitly otherwise provided by the Labour Code itself, whereas departure in favour of the employee is possible as a rule.

The strange mixture of liberalizing tendencies and preservation of former socialist rights and guarantees created a "patchwork" regulation in Hungary as well as in the other post-socialist countries. In practice, however, there was a clear tendency of the prevalence for the domination of the employer: the imbalance in economic and bargaining power, the shrunk and weakened trade unions as well as the overall low respect of law in these countries, coupled with the overall spirit of discreditation of the protection of labour has frequently made the legislative protection illusory.

## II. THE EFFECT OF THE EUROPEAN ACCESSION PROCESS

The accession process obviously has brought about a balancing effect in the released liberalization.

Through the accession and harmonization process and familiarization with the relevant documents of the European Community (that emphasized the importance of social protection and social cohesion) it was "revealed" that labour protection, job security and decent working conditions, trade union rights and worker's participation are not just some sort of "communist eye-wash" as it was perceived by the dominant view in the

society, instead, they were part of the social traditions of Europe that the country now wanted to join.

The balancing effect of the accession can be attributed to several factors, but two of them deserve attention. One is that I call “the timing factor”, the second factor can be found in the more or less “coercive nature” of the accession process.

As to the timing factor: the enlargement process has speeded up and arrived into its final phase in tandem with the dynamic emergence of the social agenda within the European Union —as a fortunate coincidence—. Although there have been several earlier efforts by the Commission and by various expert groups linked to the Commission to bring the social agenda onto the table of the European Union earlier, the breakthrough can be connected to the 2000 Lisbon summit.

The process also had, to some extent a “voluntary coercive nature”. Notwithstanding a narrow margin for negotiations available for the candidate countries, the process was rather a unilateral dictate: the obvious and hardly negotiable legal requirements of the *acquis communautaire* were coupled with “voluntary coercion”. Namely, the desire of these countries to integrate in the West was so strong that the promise of the accession (coupled with the competition of the candidates) could work as a sort of “honed stick” increasing the willingness of the their governments to comply with the Commission’s requirements, among others to moderate extremes of privatization and liberalization in the social field. It is also a part of the picture that, leaving open the question of “small enlargement” or “big bang” up to the last minute, maintained a sort of competition among the candidates, thereby increasing their readiness to “obey” requirements coming from Brussels.

In summary the accession process proved to be helpful in saving and confirming social values in spite of the mixed messages and divergence between the accession criteria and rhetoric as well as acts of EU institutions. This confirmation was undeniably an effect of the coincidence of the acceleration of the enlargement with the intensive progress of the social policy agenda and accompanying political decisions in the EU. Upon having abandoned its own former liberal approach there was a strong interest on the side of the European Union, too, not to admit “Trojan horses” of American style capitalism into its community and not to engage into further and deeper “regulatory competition” with its new community members.

### III. QUESTIONS FOR THE ENLARGED EUROPE

The question is, if there was a correlation between the rise of social protection in the EU and the mitigation of excessive liberalization in the candidates, whether the erosion of social protection in the old member states in the early 2000's would re-energize the neoliberal tendencies in the same new member states? The result might be a synergy of the negative tendencies, a reverse "collective learning process", that could speed up the attacks on the European Social Model but also could be an assistance the other way around: the new members' experience—unknown to the Old Members to a large extent— can be mobilized in the collective learning process if adequately approached.

Furthermore, it has also become a question: upon the removal of the tight monitoring over the and by the reversal of the trend in the Old Members the adjustment practice of the New Members will enable these countries to resist to the new waves of liberalization pressures. Pressures, that are not anymore the pressures of the post-communist era rather those exerted by the so called "global competition" that lead to the decrease rather than increase of the social rights agenda in the Old Members themselves.

This is a question not anymore for the post-socialist new members, but for the whole enlarged Europe: whether the huge supranational entity will be able to resist to the global challenges of market competition and regulatory competition and to preserve what has been called the European Social Model.