



ORIGINAL PAPER

Employment and Industrial Relations: Legal Politics in New Europe. Comparing the Cases of Bulgaria and Estonia

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Abstract

The article seeks to test concepts such as Varieties of Capitalism, constitutional political economy, comparative legal studies and others, in their application to the new Member States of the European Union in Eastern Europe. Taking the labour markets of Bulgaria and Estonia as a sample, the article proposes as findings that the Estonian labour market would more easily accommodate into the legal and political framework of the European Union, whereas the Bulgarian one presents more state supervision and thus, it could be considered as more democratic and more responsive to potential crises.

Keywords: *Varieties of Capitalism; Bulgaria; Estonia.*

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Introduction

The European integration is a set of processes that is determined by various goals such as prevention of war or further economic development, launching fields – ones being based on different economic sectors or geographical scope in which cooperation is envisaged and factors such that the Cold War and its end. All the subjects described affect the development and execution of the various levels of European integration. However, whatever the results intended by it, the Member States of the European Union face different levels of accommodation within the common European legal, institutional and common market framework given their own economic, social, political and cultural backgrounds. In that sense, any further integration is and would be the result of different multi-level interactions, in which complex socio-economic models play crucial role (Fioretos, 2001: 243-244) (Hall & Soskice, 2001: 1-68). After the so-called Eastern Accession of 2004 and 2007, that kind of coordination and cooperation was challenged by the countries that got through multifaceted transitions as their macro-economic and social models were still fragile, underdeveloped, and their accommodation into the European institutions and the common market was then an uneasy and time-consuming task. Similarly, their actual and potential influence on the decision-making process within the European Union institutions and bodies was and would be more complicated as their negotiation leverage is not well-institutionalized and not based on sound internal drive and agenda. In that line of thoughts, analysis in the field of the Eastern Accession results would be increasingly relevant for the studies of the European integration.

Such a topic calls for an interdisciplinary approach that could encircle the connections between law, politics, economics and social studies. Possible theoretical framework for such analysis could be taken from the constitutional economics programme introduced by the American scholar James M. Buchanan "[...]that directs inquiry to the working properties of rules, and institutions within which individuals interact, and the processes through which these rules and institutions are chosen and come into being" (Buchanan, 1990: 1-18). Expanding on such handling of the issue, it concentrates in the „choice amongst constraints”, but further it still acknowledges that “ordinary politics may remain conflictual {...}while participation in the inclusive political game may embody positively valued prospects for all members of the polity”(Buchanan, 1990: 1-18). Accordingly, the national legal politics would encompass all such relationships, while remaining enough place for disruptions and various realignments, representing every-day politics.

Additionally, socio-economic models could be regarded by the means of the Varieties of Capitalism framework, as it provides a system in which issues such as corporate governance, company competition and coordination, vocational training and education and industrial relations, while locating the business in the centre of such interaction (Hall & Soskice, 2001: 1-68). Hall and Soskice, the main authors of that scholarly framework, conclude that there are two clear or „perfect” types of capitalism – Liberal Market Economy and Coordinated Market Economy, represented respectively by the United States of America and the Federal Republic of Germany. The dichotomy is based, on the one side, on high legality, formality, low unionization, and on the other, on informal, social dialogue, workers` participation, unionization.

Turning back to the socio-economic analysis on the scale of the whole European Union, one of the most problematic regions would be Eastern Europe, more precisely, the countries that represented the Second World. As the political economic systems of the Member States from the Eastern Enlargement have been challenged through a major change – the overthrowing of the totalitarian socialist systems that meant that not only the legal and economic frameworks have changed, furthermore their original traditions in constitutionalism and law-making were not corresponding to a majorly developed world in terms of capitalist institutions, but also that the downturn in their industries was actually not able to provoke and develop sustainable institutional equilibrium mechanisms.

Given that such a deviation from the developed market economies is present and existing, approaching and assessing the Varieties of capitalism models in Eastern Europe is somehow unconventional and hard to initiate. Although some scholars would line these models with the established groupings of traditional coordinated and liberal market economies to some extent, others call for another type of classification (Iankova, 2010: 1-4) (Noelke & Vliegthart, 2009: 670-702) (Drahokoupil & Myant, 2010: 266-295) such as the “dependent market economy” model. However, sound critique on the general Varieties of capitalism framework, most notably the role of the state as an institutional and economic actor, has also found its way in regard to Eastern Europe (Lee 2011: 3-23), while others (Noelke & Vliegthart, 2009: 670-702) (Drahokoupil & Myant, 2010: 273) put in the multinational(transnational) companies in the centre of the model, arguing that it brings medium labour-market flexibility and company level bargaining and that monetary policy(especially the currency peg strategies) has crucial role in developing the social and economic equilibria institutions.

The analysis of the social and economic models of the Eastern Europe post-socialistic Member States of the European Union could be provided on the basis of the comparative legal politics as well. The compatibility with the constitutional economics would be eased by the high level of formality of institutions established there, largely by the form of legislation and normative acts. Setting further on the issue of employment and industrial relations would bring more focus to the analysis, as these are easily visible and assessable on the grounds of conflicts and chronological development.

The comparison of legislation could derive more insight of how the similar macroeconomic policies pursued (based on the huge reliance on direct and indirect foreign investment) could result in substantial differences in the respective politics. Furthermore, it could deliver different sets of instruments and mechanisms developed by the states, with similarities in their models of capitalism, to tackle such discrepancies – such as the relations with other legal acts or the start of adopting informal institutions such as social dialogue meetings (Colvin, 2006: 73-97).

As the adoption of legal acts is solely a state or supra-state prerogative, such a comparison, based on hard law, would reveal more information on the role of the state in the context of the Varieties of capitalism framework for the Eastern European Member States, taking into account however institutional influences set upon the legislators. Another implication searched would be in the relationship between the nation state and the other national institutions, on the one hand, and the European Union, on the other, representing the bargaining leverage of the European institutions, various direct and project funding received through the Structural funds, direct and indirect investments from Western European companies and the *acquis communautaire* of the European Union.

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Establishing a testing sample for the analysis of the legal politics in employment and industrial relations in New Europe

The taking of a sample for the needs of the analysis is based on the similarity of two cases – those of the states of Bulgaria and Estonia. They are both sharing similar historical and socio-economic development background in the socialist legal family, further they performed similar legal reforms in comparable timeframes after the dissolution of the Soviet Union, they are both engaged in many and various layers of the European integration and with basically similar economic strategies and goals, for example the setting of a currency peg in order to provide financial security for direct and indirect foreign investments. Such similarities could provide a viable sample for the examination of how similar starting points and launching fields could develop differences in legal politics.

During and after the Second World War both Estonia and Bulgaria were occupied by the Red Army of the Soviet Union and were imposed to a very distinct type of law and legal systems, sometimes regarded as Socialist law. Its most important characteristic was a clear separation between de facto and de jure set rules. In the context of employment and industrial relations, this meant that although workers enjoyed legally vast and generous rights and privileges, in fact, they were totally suppressed and neglected by the totalitarian authorities, as state control and intrusion was spreading into every kind of organizations, including trade unions and work councils (Blanchflower & Freeman, 1997: 438-459).

After the collapse and subsequent demise of the Soviet Union and the Soviet bloc, Estonia and Bulgaria regained their de facto political independence and initiated sets of reforms that changed drastically their economic, social, political and legal structure. However, the described shift in Bulgaria was somehow slower than the one in Estonia, which also was represented in some small, but symbolic differences. An example for that is the socialist Labour Record Book, documenting the employment history and disciplinary conduct of every single worker, which was scrapped in Estonia, but it is still present in Bulgaria, although drastically changed in its form and purpose. The pace in the institutional restructuring was related to the social and political regard and appreciation of the previous socialist system and was further represented by the whole timeline of the conduct of the legal reforms. A reason why is that the most of the Estonian electorate and the most of their political representatives were strongly opposing the Soviet past, while in Bulgaria positive sentiment towards the Soviet Union and the Soviet system was strong and present, moreover reforms were undertaken by the former Communist party turned Socialist after the fall of Iron Curtain (Giadzidis, 2002: 53-54). Given that popular attitude, it could be concluded that reforms in Bulgaria would be taken with more institutional reluctance, lack of popular support and thus, lack of legislative initiative for deep structural reforms.

The restructuring of the whole concept of the national industry sectors in both countries was of crucial importance. The total loss of the export markets presented by the former Socialist allies due to the destruction of the institutional infrastructure of the Council for Mutual Economic Assistance was equal to fast bankruptcy of the state-owned enterprises of Bulgaria thus resulting in a substantial rise in unemployment and cuts in social spending. The same could be stated about the exit of Estonia from the internal market of the Soviet Union. The adoption of new, convertible national currency that could be traded internationally was even more difficult because of the constant need of macroeconomic, fiscal and financial realignments. Embracing the instrument of the

currency peg was much needed in that case for the boost of the direct and indirect foreign investments. Both countries chose to fix their national currencies to the German Deutsche Mark in 1997(in the case of Bulgaria) and 1998(in the case of Estonia). The accession to the European Union in 2007 and in 2004 respectively, settled them fully into the Dependant Market Economies model described above, as the crucial financial flows, forming the economic institutions, were eased and stimulated even more due to the financial security provided.

Legal framework of the employment and industrial relations in Bulgaria and Estonia

The new macroeconomic situation and realities in Estonia and Bulgaria thus reflected the development and re-setting of the formal state institutions. That formality was based on the new laws and normative acts. The legal basis for the employment relations in Estonia was set under the Employment Contracts Act in the private sector and the Public Service Act in the public sector. The industrial relations were based on the Trade Unions Act, the Employees Representative Act, the Collective Labour Dispute Act, the Regulation Act and the Collective Agreements Act (Osila & Nurmela, 2009: 3). However, the Employment Contracts Act is de facto the overarching code that fixes the other employment and industrial relations laws.

The legal framework establishing and regulating employment and industrial relations in Bulgaria was mostly concentrated in the Labour Code, adopted during the time of the socialist regime, in 1986. The existence of working collectives or workers councils and their participation in the corporate governance was repealed in 1992 and thus providing one of the most critical and visible changes in the Labour Code, as it was the main aim of the legal agenda at that time (Kirov, 2005: 117, 135). Once more, sticking to that former legal act institution reveals the connection to the socialist legal past, not overcome amongst and by the Bulgarian legislators, thus hinting for initial reluctance to the reform of the labour market framework. Further inquiry into other political and institutional actors such as the trade unions and associations, could reveal more clues of that kind of atavism initially.

The Trade Unions in Bulgaria and Estonia

The labour organizations in Bulgaria are mainly represented by the KNSB (CITUB – Confederation of Independent Trade Unions in Bulgaria) and by Podkrepa CL(Confederation of Labour). KNSB was initially the institutional continuation of the trade unions of socialist regime with vast established connections to the main left Socialist Party of Bulgaria, whereas Podkrepa CL was founded with mainly political rather than organised labour representation motives, aimed against the dominance of the Communist Party, which effectively meant non-cooperation with the left. However, their separate paths to independence got further through their own political projects (Kirov, 2005: 117, 135). The dual trade union domination of the KNSB and Podkrepa was legally set and enforced after they warned and threatened against the governmental plans to accept in another labour organization in the National Council for Tripartite Cooperation in 2004. New amendments in the Labour Code were made raising the criterion for trade union membership in the tripartite cooperation from 50 000 to 75 000 union workers (Art. 34 Labour Code) with the option of re-applying only after a 4 years term (Art.36) (Fulton, 2019).

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There are just two prominent trade unions in Estonia as well – EAKL (Confederation of Estonian Trade Unions) and TALO (Central Organization of Salaried Employers). The first one is mostly comprised of blue-collar workers and the second one of white collar workers, whereas both are facing severe downturn in worker membership in the years 2006-2010 (Osila & Nurmela, 2009: 3). Although both unions are politically non-aligned, EAKL is well-connected to the main Estonian left party. Additionally, it originates from the Soviet time Central Council of Estonian Trade Unions as well as TALO that split from it in 1992 (Fulton, 2019).

The comparison of the trade union systems in Bulgaria and Estonia reveals that both used to be highly politicized, eventually eroding their popular legitimacy and options to cooperate with each other (respectively their overall coverage of the whole workforce dropped to 20% for the former and 10% for the latter (ETUI, 2013)). In the process of abandoning that highly party-affiliation feature, the role of the European Union influencing the trade unions is crucial. The process of accession to the European Union led to cooperation between the trade unions in Bulgaria and Estonia with those established and present in the European Union both informally, as well as formally in European official consultative structures and institutions. Such processes revived these organisations and even granted them more influence – with the European Social Model agenda and the much-needed funding of social dialogue programs (Ost, 2009: 13-33). However, such institutionalization could shift the initial purposes of the trade unions as they are endangered to become less vigilant towards the policies and politics of the European Union in regard to their national labour markets and through cooperation could become less unaware of pressing internal national issues, not shared by their counterparts from “Old Europe”, for example – on the notion of social dumping between the East and West Europe (Dolvik & Visser, 2001 as cited by (Hyman, 2005: 17-23)).

The industrial relations in Bulgaria and Estonia

The main institutional form that represents the social dialogue on national level in Bulgaria is the National Council for Tripartite Cooperation. It is constituted under the Art.3 (a) of the Labour Code. It is placed within the executive branch of the government umbrella – the Bulgarian Council of Ministers, and consists of representatives of the government, the trade unions and the associations of employers. Its functions are mainly consultative – meaning decisions are reached and set by the national administration directly and may not regard the statements or decisions of the former (Art. 3 (c) of the Labour Code), however, the National Council for Tripartite Cooperation is also responsible for coordination and implementation of increasingly important governmental and foreign (mainly ones from the European Union and the European Free Trade Agreement) programs and funding on national and local level. Thus, its agenda-setting power in real terms, although informal in the decision-making process, is actually growing. This trend is also visible by the changes in the legal framework that put together criteria for trade unions to be participants in the industrial relations on national level.

The situation in Estonia could be considered similar. The Social and Economic Council is the body that encompasses the industrial relations dialogue between the social partners. The participation of the trade unions and employers' organisations on the level of the European Union and also their involvement in various projects is actually strengthening and empowering the institutions vis-à-vis the national government and state institutions. However, a major difference to the Bulgarian system is the

Memorandum of 1999 between the trade unions and the business organization that created working conditions for the adoption of their bilateral decisions without the need of the state or its bodies intervening (Fulton, 2019). Such attempts in Bulgaria, although being based solely on governmental initiative, proved unsuccessful as there were huge differences amongst the social partners – namely the trade unions and the associations representing the major employers on state level (CITUB, 2009).

Respectively, as both countries are setting and defining a minimum wage for the workers, the role of the tripartite cooperation is differing as well. Bulgaria is a state with established fixed minimum wage applied nationwide. This is set by the Labour Code under Art.244 (1) which states that „The Council of Ministers shall fix the national minimum wage”. The legal form established is one set upon through a decree of the Council of Ministers that is the Bulgarian central government. Although the National Council for Tripartite Cooperation has a consultative role in regard to the wage-bargaining, the estimation of the poverty line and personal income, its decisions and soft law could be disregarded with the central government taking unilateral decision in that sphere.

The fixing and setting of the minimum working wage in Estonia is set under the Wages Act, more specifically, Art.2 (7) „The minimum amount of wage per specific unit of time (hour, day, week, month, etc.) established by the Government of the Republic, which may be agreed upon for full-time employment.” Corresponding in that way to the Bulgarian National Council for Tripartite Cooperation is the Estonian Economic and Social Council, whose acts are not legally binding as well. In practice, the right of the government to set a minimum working wage was shared and executed only to sanction the bipartite agreement with the EAKL and ETTK, respectively the representative organizations of the employees and the employers. From 2002 onwards, the agreement has been reached only between the social partners further proceeded and decreed by the government (Osila & Nurmela, 2009: 3-7). The process was however marked by deep friction with the Minister of Social Affairs, as, legally, it needs the approval of that Ministry. Consultations with the University of Tallin, taking into account the pre-accession reforms of the Collective Agreement Act of 2000-2002 and Cabinet changes resulted in continuation of the bipartite decision-making.

Such a discrepancy between the legal systems of industrial relations in the two states could be explained with the different levels of labour and social security costs to employers. The data acquired through Eurostat reveals that while overall increases of labour costs in Bulgaria are growing faster than those in Estonia, in 2019 employers pay less for the former and more for the latter (EUROSTAT, 2020). Additionally, various resemblances could be found in the pension and overall social systems, social security, health care. However, the changes in the Labour Code in Bulgaria of 2003 regarding the minimum social security payments, in fact decriminalized informal labour relations in the form of employers not declaring the whole amount of the worker's wage and thus avoiding paying in total for social and health care contributions, as well as state taxes.

The initial adoption of formal institutionalized framework for social dialogue in both countries presents additional level of analysis. Bulgarian legislators and officials, given the stronger political and representational position of the trade unions created the National Council for Tripartite Cooperation as early as 1993 (Tomev, Daskalova & Mihayilova, 2013: 10). This was in line with the government agenda of holding the pace of reforms during the years 1992-1996. In Estonia, the respective Economic and Social Council was created in 1999 (Fulton, 2019). Such a downplay of the social partners,

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especially trade unions, worker councils and associations, could have provided the economy of the latter with comparative better positions amongst potential and existing foreign investors, as they tend to be sceptical of high labour union enrolment of the worker force.

The protection of existent employment has the role of a crucial mechanism in the socio-economic models. Besides its settlement through collective bargaining, workplace protection is often guaranteed through national legislation. According to the Varieties of Capitalism framework, different types of social protection of existing employment are complementary to different skills equilibria in the labour market (Estevez-Abe, Iversen & Soskice, 2001: 145). Furthermore, the research frameworks of (Mortensen & Pissarides, 1999) and (Van Ours, 2007) as cited by (Brixiova & Egert, 2012: 103-120) stipulates that the economic recovery of countries that are adjusting their labour markets from ones characterised by high level of unemployment to ones based on increased high value-added activities would be drastically eased if they take action to deregulate the employment protection. Such an action was undertaken by Estonia in 2009, soon after the financial crisis hit the country. The Bulgarian policy- and decision-makers did similar changes in the Labour Code, inspired by the European soft law, however, without the proper timing, allowing the lag do disrupt further the labour market equilibrium. In contradiction to those deregulating policies, changes in the opposite direction, inspired by the European Union institutions were made in regard to mergers and acquisitions of big holdings, company insolvency and additional worker rights that could tighten the financial grip on the employers. Such further reforms were initiated only after a period of 4 years in Estonia, providing less conflict and contradiction between the two different types of measures (Brixiova & Egert, 2012: 103-120).

Direct impact of the European Union on the industrial and employment relations in Bulgaria and Estonia

The various types of European project and direct funding play crucial role in the promotion of specific legal politics in the Eastern European Member States. In one way, they promote cohesion between less and more developed regions as well as crucial physical infrastructure needed for deepening of the Single Market, but in another way, they also promote the easier implementation of European legal texts and the building of institutional capacity in the process of their execution or as prerequisite for such fund allocations (Bafoil, 2013: xxiv).

The impact of the legislation of the European Union was somehow a leitmotif of the reforms in industrial relations and employment policies in Estonia and Bulgaria. The reforms mostly intended to liberalize the normative and administrative procedures for hiring and dismissal of employees were crucial for the better macro-economic performance of those two states during the financial and sovereign debt crises. The direct effect of the Directive for Temporary Work Agency or the implementation of the text on setting European Worker Councils into the corporate life of the companies in Bulgaria and Estonia are still to be assessed given the lack of historical data of their effects and the various incremental changes that were promulgated to their implementation. The flexicurity agenda on the level of the European Union, especially during the slow economic recovery after the financial and sovereign debt crises, is predominantly finding its way through instruments supporting vocational training and youth employment.

The direct and indirect foreign investment in the former socialist countries is not entirely based on economic and legal factors. The closer geographical proximity to the industrial heartland of Europe - the BENELUX countries –Belgium, the Netherlands, Luxembourg, the North of France and the West of the Federal Republic of Germany - could explain the initial economic and social success of the Visegrad Four Countries – Poland, Hungary, the Czech Republic and Slovakia (Drahokoupil & Myant, 2010: 272). In the explanation of the transitional market economies in Central and Eastern Europe, Bafoil points out that such regionalism is an important and crucial factor. The close distances and assurance in the continuous adoption of familiar European Union rules would be strong incentives for increasing the volume and intensity of direct and indirect foreign investments (Bafoil, 2013: xxiv). In that case, the decision-makers in Estonia could feel more confident in the pace and the directions of the legal and normative reforms, as well as in their social and economic outcomes, as Member States such as Denmark and Germany, and after the so-called EFTA Accession – Sweden and Finland are their direct neighbours. On the contrary, Bulgarian economic and social actors are geographically and culturally close only to less-developed Member States such as Greece and Romania, moreover, the three of them are situated in one of the most turbulent regions of Europe.

In the case of the broadening of the *acquis communautaire* of the European Union in regard to the employment and industrial relations, proper and timely decision-making is hard to execute, given that in many cases there are more legal developments and protection in Old Europe, on the contrary, for New Europe, such a discrepancy is vital for the employers. The internal migration within the European Union and the flows of direct and indirect foreign investments is raising the question of social dumping, pressuring legislators and companies in the West, while the financial crisis is limiting funds and investment in the East, creating fragile base for coordination of minimal common legal standards and providing field for future European economic growth. Following the adoption of the Euro as its national currency, Estonia falls under art.5 (2) of the Treaty of the Functioning of the European Union that provides closer policy setting within the Eurozone. That could very well put the two similar cases of Estonia and Bulgaria into opposing camps during negotiations within the European Union institutions and bodies.

Conclusion

Following basically similar strategies of macroeconomic and social development, the comparison on the grounds of legal politics between Estonia and Bulgaria implicates that there are actual differences in the adoption of legislation in the field of industrial relations and employment. The processes and economic and social developments in both countries are uneasy, unsteady and time-consuming, however, the decision-making and legislative setting in Bulgaria is prone to experiencing more political instability with greater amounts of rent-seeking and conflicts, thus making the role of the state increasingly important, but, at the same time, more fragile, as it is unable to provide equilibria between the different social institutions and actors. Respectively, accommodation within the legal and economic framework of the European Union, could be easier for Estonia. However, adopting Buchanan's statement of policy-making as „choice amongst constrain”, it would be possible to state that the Bulgarian legislation is the second best choice to pursue the same goals, being more democratically

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representative and also possibly dealing better with major or extraordinary equilibrium disruptions such as future financial or sovereign debt crisis.

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