

The Workers' Participation in the Czech Republic in 1990-2001

Workers' participation has been deeply rooted in the Czech lands since the pre-world-war times. In the pre-war Czechoslovakia, the elements of workers' participation and self-management were widely applied in the BATA company, then one of the world's largest and most dynamic shoe producers. A widely developed and later even Government-supported cooperatives movement existed there, too. Workers' participation became an urgent issue in connection with launching the economic privatisation after 1989.

Two alternative approaches to the privatization strategy were submitted to the Government in the early '90s:

1. **A-version:** After the firms had been de-etatized via their transformation in shareholding companies, a variety of standard privatization methods were to be applied with the addition of a specific voucher privatization method accessible to every Czechoslovak citizen at a very low price, and
2. **B-version**, stating that "**the entrepreneurial form of a shareholding company offers a variety of opportunities for establishing the employees' share ownership**, facilitating thus their participation in the decision-making and management procedures, depending of the number of the shares under their control. Apart of this form, other possibilities of the firms' transformation will be applied, too: conversion in trading companies, cooperatives, self-managed firms and individually owned firms: employees owned firms, cooperatives, private trading companies etc" (*Government economic programme, 1st draft, April 1990*).

The B-version was elaborated in the form of a Government scenario of the economic reform dated August 10th, 1990. In this scenario, the first privatization principle is defined as "preferential sales of the capital shares among the employees and their families utilizing price rebates, loan supports and other state aid forms (tax rebates, e.g.), initiating the evolution of employees owners participation utilizing the ESOP system" and ".. leasing the firms or some of their organic divisions to the employees at favourable terms or to domestic and/or foreign investors at market prices".

The discussion of both respective privatization strategies turned into a sharp dispute. In essence, it was a reflection of the conflicts between the two contradictory transformation concepts, in general. The first concept was based on radical liberal approaches, later called as "shock therapy". In the second one, based on social-economic strategy, a gradualist, more contemplated development, more respecting the international experience, was preferred.

After all, the radically liberal concept of the reform won, including the voucher privatization programme elaborated by the finance minister V. Klaus and his working group. The proposals to incorporate the workers' participation into the privatization programme, as it had been proposed by the vice-primeminister V. Valeš, was mentioned as well in the final text of the privatization scenario (adopted by the Government of the CSFR), but in a very **reduced version** as:

- "preferential sales of the shares among the employees and the municipalities' property funds, respectively" and

- "leasing parts or the entire firms to the employees' collectives or to the private investors".

Neither of them was applied in the praxis.

In the **subsequent Major Privatization Act (on the terms of transferring the property of the state to other subjects, February 26th 1991), both above mentioned points have been omitted at all.** Contrary, the Art. 13 provides that any sales of the state property at preferential or more advantageous terms are prohibited (with some exemptions provided by the Shareholding Companies Act).

Further discussions on the relevance of the workers' participation were cancelled after V.Klaus' statement that the critics of his reform strategy were persons "not fully trusting the advantages of the market economy". Moreover, on his Australian trip in 1991, the employees' shares were marked as "socialist". The decisive privatization acts were already in force and the ideologically hostile attitude of the Government to the workers' participation played a decisive role. Consequently, the employees' participation was left to become just a topic for discussions among the academics.

The political parties and movements supporting the employees' participation either came to nothing or lost their political influence and any capability to support the participation. When, in 1996, the 8th Conference of the International Association for the Economics of Participation was held in Prague, it was ignored both by the official Czech Government representatives and by the Czech mass media.

Employees' participation and self-government have become a non-coordinated, individual issue attracting some individuals and some ad-hoc set-up working groups. Only the Club for Self-governing Popular Entrepreneurship (KSLP), a civic organization located in Praha, established in January, 1990, was systematically engaged in this issue and actively participated in drafting the original participation bills. After adoption of the privatization acts, the Club focused predominantly on monitoring the evolution of workers' participation abroad and on assessing the possibilities of application of some participation elements in the Czech economy.

The subsequent economic development in the Czech Republic gave a clear proof of the low viability of the shock approach in general. This holds, in particular, for the voucher privatization, which made some 6 mil. Czech citizens shareholders of the companies (representing a CKR 330 bil. nominal value of the assets), but they became just formal and short-term co-owners. They acquired the shares almost free, but the bulk of the shares were quickly transferred into the portfolios of investment funds and the remainder was sold very shortly. The shareholders lacked any links to "their" companies and the companies (privatized via voucher action) themselves (forming some 1/4 of the manufacturing sector by sales volumes) acquired neither capital, nor know-how, nor responsible representative owners. Their performance, when compared with the firms privatized by other methods, is, still, the worst.

In the Government's report "The State of the Czech Society" from 1999, the **"miscarried privatization" is mentioned as one of the main factors causing the economic difficulties in the second half of the '90s.** At present, the legislative measures have terminated the "vouchers era" even in the formal sense.

At present, the chances for a further evolution of employees' participation are rather unfavourable. The negative liberal attitude towards autonomous employee's activities is still

living, the business sector is not stabilized yet. The employees themselves, as a rule, lack confidence to their employers and, moreover, don't dispose of sufficient means that would enable their financial participation in the firm. There does not exist any legislation supporting participation.

However, some signs of positive changes can be detected. Some of them have been initiated "from above" resulting from the necessity **to adjust the Czech legislation to the EU standards**, which are "participation-friendlier". The new Labor Code is one of the positive, although isolated steps in this direction.

The second stream of initiatives promoting the participation is coming "from below" resulting from the firm's own needs. This is the case of multi-national corporations operating in Czechia. The principles, which have already proved their viability in the mother company, are applied in the daughter companies, as well. In this sense, the multi-nationals have become bearers of the participation ideology.

The impulses are coming from the domestic firms, too. Some of them use the intra firm management concepts utilizing some autonomy principles known from the past and are attempting to circumvent limits imposed by the current legislation to the participation ideas. Problems arising from it (e.g. taxing the incomes received in the form of securities, insufficient legislative definition of the firm's banks position, legal substitution of the employees' shares by unspecified ones, et cet.) result in a pressure which - sooner or later - will lead to a legislation promoting the participation principles.

The current situation (2001) in more detail

A **public discussion** on the possible forms of employees' participation in ownership, investment or management has not been opened in the CR yet. The term "participation" is used in other meanings: as part of regional autonomy and democracy, as students' and/or patients' participation in covering the cost of education and medical care, respectively. The principles and essence of employees' participation are almost unknown among the social partners, in some cases it is even unknown that the term participation can be related to the organizational set-up in the firms, too.

The participation is supported neither financially nor by taxation. Many firms applying participation in their own interest, reject any publicity and participation issues are ignored by the press. Milos Zeman, prime-minister of the minority social-democratic government, a consequent opponent of the voucher privatization from its very start, supported the participation idea in some of his public statements, but the mass media didn't react and - in some cases - didn't report them at all. It is difficult to assess the causes of such a situation - to what extent is it a reflection of the missing general public interest and to what extent is it a result of intentional activities of some political groups attempting to plant a general distrust to the participation ideas.

The legal framework forming the participation and self-government is minimal, based on the subsequent regulations:

COMMERCIAL CODE

(Act 513/1991, amended by other regulations)

Until 2000, Art. 158 facilitated the issuance of employees' shares, the firms were authorized to support their sales financially up to the level of 5% of the firms' equity. The shares were inscribed, transferable among the present or retired employees only, the firm was obliged to buy them out.

In the new act from 2000, **the employees' shares as a specific category have been abolished**, but the new version of the Art.158 authorizes the company statute or the shareholders' general meeting to facilitate the acquisitions of the primary shares by the current or retired employees at preferential terms, i.e. with the firm's financial support up to 5% of the firm's equity. The provisions authorizing the company statute to specify the acquisition, transfer, buy-out and return procedures have been cancelled in this act.

In the firms with more than 50 employees, the employees elect (Art. 200 of the Commercial Code) one third of the **supervising council members**. In the company statute, this number may rise up to 50% and the above mentioned principle may be applied in the companies with less than 50 employees, too. In the state-owned firms (their number - as a consequence of rapid privatization - is negligible, less than in some EU Member States), a similar provision on employees' representatives follows from the Art. 13, Act 77/1997 on state firms. In case of the state-owned firms, a special regulation is valid providing that in case of any organizational measure (merger, split) the employees must be informed three months in advance. Other forms of participation are not expected in these firms.

The Commercial Code makes also the establishment of **co-operatives** possible. With regard to Art. 221 - 260, the co-operatives may be established in the form of communities whose aim is either entrepreneurship or satisfaction the members' economic, social or other needs. In the Commercial Code, the co-operatives are not classified as trading companies and are subject to specific rules.

LABOUR CODE

(Act 65/1965, with subsequent amendments)

Until 2000, Art. 18-22 specified the role of trade unions and some aspects of collective bargaining, but they did not cover the working conditions agenda in the firms where the unions were absent (and, alas, there are plenty of them in the CR). Further, Art 23 provides the obligation to negotiate the labour legislation with the unions' headquarters and Art. 20 specifies the procedure of firms' and high-level collective contract preparation (Act 2/1991 on collective bargaining). The relation between more trade unions operating in one firm was originally specified by the Act 120/1997 on some relations between the trade unions and employers only.

In the amended Labor Code from 2000, the above mentioned provisions have been retained, but the employees' right on **information and negotiation** on enumerative topics (Art. 18) and a possibility (not obligation) to establish an **employees' council** (Art. 25 - 25c) in the firms, where the unions are absent, have been added.

The Code provides that "the employees' council **can** be elected in a firm employing more than 25 employees" (Art.25). A general distrust of the legislators to the participation is illustrated by the careful and misleading formulations (it is not clear, whether the council "can not" be set up in the firms with less than 25 employees). The election of the council is declared by the employer based on the petition signed by at least one third of the staff. Then, the

members elected are protected against discrimination, which might result from their position in the council (Art. 25c).

In the Art. 25/d - 25/l the "access to the supranational information and negotiations" is based on the "agreed procedure" or mediated by the **European employee's council** in the enterprises operating on the territory of the EU (firms with more than 1000 employees and more than 150 employees working in at least two EU Member States). This provision will be valid since the day when the agreement on the accession of the CR in the EU is ratified.

There is an indirect information that the Government or some ministries are studying the possibility of other legislative measures, e.g. the support of employees' participation system ESOP or facilitating the establishment of firms' pension funds. A more detailed information is not available.

PARTICIPATION PRACTICALLY APPLIED

As for the employees' participation **in the praxis**, the assessment can rely on sporadic news about individual firms published in the press, only. The employees' participation in the firm ownership - as we have already emphasized - lacks any tax or other support and is not statistically recorded, except co-operatives. Their number is officially recorded and there are unofficial statistical data on co-operatives available from the statistical records published by the NGO Co-operatives Association.

In the CR, numerous **co-operatives** are still operating. Their structures (both organizational and proprietorial) are very differentiated, some of them resembling **shareholding companies**. There even exist enterprises owned by the managers' co-operatives. Agricultural and industrial co-operatives prevail (apart of them, there are housing co-operatives, retail traders and some others, e.g. co-operative saving banks or investment funds). The number of sales cooperatives is negligible. Some agricultural co-operatives were transformed into shareholding companies; it is supposed that they are predominantly owned by the workers with a work contract. The agricultural and industrial co-operatives as well as agricultural shareholding companies are - predominantly - performing rather well, inspite of a very unfavourable institutional environment (e.g., the agricultural subsidies are just a fraction of the EU standards).

It is also supposed that the employers' ownership (participation) exists - like in other countries - in case of consulting, advising and computing firms or some other **small sized firms employing highly skilled specialists**. On the other hand, there exists one firm in the CR whose assets are counted in billions crowns with 98% owned by the employees. There are other enlightened **large and successful firms** (including multi-nationals) attempting to facilitate the sales of preferential primary shares to the employees in order to overcome the abolition of employees' shares by the new Commercial Code.

On the other hand, there exist, of course, many firms (the foreign ones included) hostile to the participation and even to the presence of trade unions. Aiming to improve such an unfavourable climate the **trade unions** are inclined to re-consider their support to employees' participation and its eventual application in the firms in difficulties.

Although there does not exist a direct support for participation, the Act 299/1992 on the state support of small and medium-sized enterprises can be applied (under specific conditions, e.g. to contribute to the solution of the firm's difficulties) as a indirect tool paving the way towards the emergence of participative firms. Of course, it will be necessary to contemplate a

specific participative strategy for every individual case (respecting the state aid regulations) and to elaborate standard procedures, e.g. of firm's decentralization or of its split in smaller units. In case of the SME-s, the government programme CO-OPERATION supporting the mutual co-operation between the SME-s (e.g. common marketing, sales, purchasing, computerization and establishing **enterprises-nets**) and other programmes can be utilized. Some municipalities - in order to solve the employment problems - attempt to support the SME-s in difficulties: they submit proposals for financial participation of owners, employees and municipalities provided that the difficulties are assessed as temporary and that there exist a good perspective for a revitalization of the firms concerned.

The firms' saving banks are operating in many enterprises inspite of the fact that due to the insufficient legal basis the employees' deposits are exposed to a high risk in this case. For similar reasons, the deposits in the co-operative saving banks, despite huge advertising in their favour in the past years, were to be reimbursed, to a large extent, by the state as a consequence of insufficient financial supervision and legislation. This is a consequence of the formerly prevailing official philosophy emphasizing the necessity to minimize the size of legislative regulation in favour of a "spontaneous evolution of the market rules" and purely contractual agreements. Such a dogmatic concept has led to dramatic consequences: it is then difficult to enforce the law and - as a secondary effect, the spirit of an honest entrepreneurship has been compromised and the employees are reluctant to support and/or participate in such activities. An insufficient legal basis in the related areas has survived until to-day.

CONTACTS

Co-operative Association of the Czech Republic – www.dacr.cz, member of the International Co-operative Alliance and member of the Confederation of Employers' and Entrepreneurial Unions of the Czech Republic

CECOP-EST – www.cecop-est.cz, Prague representation of European Confederation of Workers Co-operatives, Social Co-operatives and Participative Enterprises (CECOP)

Czech-Moravian Confederation of Trade Unions – www.cmkos.cz, member of the International Confederation of Free Trade Unions (ICFTU) etc.; a social partner in tripartite negotiations in the framework of the Council of Economic and Social Agreement of the Czech Republic

Association of Independent Trade Unions – www.odbory-aso.cz, second largest trade union association in the Czech Republic, a social partner in tripartite negotiations in the framework of the Council of Economic and Social Agreement of the Czech Republic

Council of Economic and Social Agreement of the Czech Republic (see Office of the Government of CR – www.vlada.cz)

Ministry of Labour and Social Affairs of the CR – www.mpsv.cz

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