

Global effects for employees' rights in Albania, from the perspective of corporate governance

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Abstract

Economic globalization is responsible for the difficult situation of many of the world's workers. Production, owned by multinational corporations, should lead to improvements in labor rights, but actually, it is associated with deteriorations in labor rights. The central aim of this study is the identification of the way in which violations of workers rights are related to recent increases in international economic integration. Many authors link the globalization of the production process with the mistreatment of workers, as corporations and their subcontractors in different countries seek to minimize labor costs and as governments aim to attract foreign businesses through lower standards.

The study main theoretical claim is based on proponents of Corporate Social Responsibility, who argue that multinational firms have material incentives to promote the protection of labor rights, (through co-determination practices, such as the German case) not only in their home countries but also in their various host locations. Given that these firms want to avoid the negative effects it can have on shareholder and consumer perceptions, they may be inclined to pressure adherence to internationally recognized labor rights.

So there are many arguments which lead to both positive and negative consequences for workers, especially in developing or transition countries, such as Albania. The first assumption is that developing nations which, have a lack of capital, great desire for economic growth and lack of voice in intergovernmental economic institutions, are totally influenced by global economic forces.

So, the empirical analyses is focused on the ability of employees/ workers to act collectively, for example, the right to organize, bargain collectively and strike. These rights are seen in the perspective of human rights and their involvement into the decision-taking of corporations.

The final analyses concludes, not only perceptions of concepts on labor legal relations in Albanian context and their implementation but also, the way regional integration (as part of globalism), such as EU integration, could affect the whole employment issue.

Key words: Corporate governance, Stakeholders, Labour rights, Corporate social responsibility, Co-determination procedures

1. INTRODUCTION TO CORPORATE GOVERNANCE

The concept of ownership and "profit" in a commercial society has undergone radical changes in relation to traditional concepts. Today, are seen new definitions dealing with the fragmentation of capital or management issues, which are related to principles, such as the obligation of loyalty, executive compensation, social responsibility of business, etc., all subject to our analysis.

Corporate governance is a topic studied by multiple disciplines, be they economic, sociological, legal and political. Other approaches about corporate governance are based on the nature of the employment relationship. So we bring further the prism of representation by looking at human capital and elaboration of the concept of human

assets of a corporation productivity and involvement of employees in decision making.

Codes of Corporate Governance are an important legal tool, but there is more need for binding legislation. The main objective would be to increase transparency in the relationship between ownership and management structures, but also between the administrators and the dominant owner-especially with regard to the manner of compensation.

The Corporate Social Responsibility Theory, A Solution or Utopia?

The term corporate social responsibility is mainly implemented by companies or large corporations, although

such practices exist in all types of public and private enterprises, including small and medium enterprises. In specifying the purpose of the stakeholder theory, Edward Freeman poses very interesting idea, dismissing rumors of a paradox about this topic, which is built on the basis of the so-called Separation Thesis. It is based on the arguments Kenneth GoodPaster, which analyzes the theory of interest groups in two perspectives. The first interpretation is the Strategic and says that stakeholder management is a simple tool to the primary purpose of gaining maximum executives or owners. On the other hand, Multiplex Loyalty interpretation stipulates that directors or managers have fiduciary obligations towards stakeholders, including shareholders and the management of these relationships is not optional but morally obligatory. Summarized in simple terms, the theory of Freeman can be seen in two versions, the first of which aims to serve all stakeholders, while the second version is balancing their interests, which must be acceptable. M. Friedman, the biggest opponent of the theory, states that discussions about "corporate social responsibility" or "protecting the interest groups" are significantly characterized by the lack of analysis and logic. What does it mean that "corporate" responsibility?-Begg the question. Only people can have responsibilities. A corporation is an artificial person and in this sense may have artificial responsibilities, but it remains unclear. If there is truly "social responsibility" it belongs to individuals, not corporations. Considers the theory of "corporate social responsibility" as a socialist doctrine and represents the element of leadership, which, according to him should not have to do with this responsibility, but only with the task of increasing the benefits of society.

The structure of a corporation can be imagined in the shape of a pyramid where the owners or shareholders are yeast, but, where the bases are interest groups and between the Board of Directors, which has a fundamental mediating role.

Most recent experiments in Germany indicate re-conceptualization of the employee as a shareholder in a company, the so-called Employee-shareholder activists who have created employees unions as shareholders, called Employee shareholder associations, are well institutionalized practices currently known in this countries ordinary. Zwan,¹ provides three models of active participation of employees in German corporations providing all modern concept of ownership, or as she calls the "dis" ownership.

³ *Globalization Effects on Employee's Rights Legal Frame*

In our description of the evolution that has gradually undergone corporate governance in modern developed

societies, will rely primarily on extensive detailed analysis of the author John Cioffi, who has written about reforms in this area, and the foundations of regulatory policy financial capitalism, in two columns reference the U.S. Germany, representing two basic systems, common law and civil law.

According to Cioffi, regulatory policies defined by different systems of government set up the foundations of modern financial capitalism. The right corporate governance is an essential regulatory function: definition of power relations, the flow of information, decision-making processes and the economic initiatives; within an important economic institution of modern capitalism that is a corporation.

Perspectives of legal families are characterized by elements that differ from one system to another, which has led to ongoing studies during the period 1970-2005; protection of shareholders, creditors and employees. Studies reveal that two of legal families sharing common law and the civil law, does not explain the features that "wear and change" occasionally different countries, the protection of minority shareholders or the protection of employees.

To illustrate the above conclusion they based in the argument that the center-left parties have historically been supportive of the working class and unfriendly to the interests of financial capital, which are pro-shareholder reform. Thus, the center-left in the U.S. and Germany, under conditions of economic crisis, followed very different way. American neo-liberal policies post Enron were fast but short-lived, as in the German context they had the form of coordinated measures, in harmonization with the European Union market. Consequently, the German reforms were consensual, and long-term transformation, for more than a decade. These paradoxical challenges provide two main theoretical approaches to corporate governance.

3.1 Germany's Stereotype

Germany, since the mid-19th century began to be characterized by: the existence of a two-tier structure, Assembly Supervision and Administrative Board, created to protect minority shareholders, and to the obligation of loyalty towards to shareholder and towards stakeholders, provided for the first time in 1936 in Germany.² According to analysis of Cioffi's up to 1990s, the legal framework of commercial law and securities in Germany, was the reverse image of American Structures. Germany had a uniform federal law to commercial law and a fragmented arrangement securities distributed among to Lander or states.

¹ Three models called "Front door strategy"; Back door strategy" dhe "Peeking through the window";Natascha van der Zwan (2012): (Dis-)Owning the Corporation: Three Models of Employee-Shareholder Activism, *New Political Economy*, DOI:10.1080/13563467.2012.658767

² John W. Cioffi, "Corporate Governance Reform, Regulatory Politics, and the Foundations of Finance Capitalism in the United States and Germany" *CLPE Research Paper* 6/2005Vol. 01 No. 01 (2005),,fq 5

Corporate governance Germany relied on the power of the big banks, monitor the managers, by defining a set of stable relations with concentrated ownership and long term relations between banks and corporate investors. So, banks in Germany were very important creditors to shareholders companies with public offering. Banks' representation the Board or Supervisory Council combined voting power with long-term relationships with borrowers shareholders.

Even today, according to commercial law in Germany, public offering companies have a two-level structure where the supervisory board (analog with the American Board) is completely separated from the board of directors (the version of collegial executive directors "CEO" in American corporations), with no overlap in their membership. Supervisory Board appoints and supervises the Board and formulates basic corporate strategies.

Assembly of Shareholders entitled to receive information for each step and vote on a range of issues that include, changes in capital transactions and set about major changes in corporate strategies. Thus, to limit the power of the executive, corporate German law is based on internal corporate institutions rather than in regulation of the securities market (U.S. case).

These institutional provisions were created to protect the interests of creditor banks and employees as important interest group in society. Co-decision³, that the involvement of employees in government institutions working correctly reflect society relations in the context of German companies. This was achieved through strong Councils and absorption by the Supervisory Board of activation view of interest groups within a corporation. Created structures facilitate negotiation, compromise, cooperation and consensus on corporate governance. This policy became an essential symbol of the country's economic policy and allow employees, through rights to information, consultation, co-determination and their authority, to seek compensation for the damage that may be caused to them by the wrong decisions of executives.

3.2 Albania's challenges toward EU

When in Germany, jumped the first steps towards rebuilding structures of companies through corporate governance principles, in Albania is questionable the concept of company and private property, enshrined later in the 1990s.

Features of Central and Eastern European⁴ countries, due to historical context are similar, so often, authors of grouping them for ease of analysis. Institutional indicators, and legal environment of the non-compliance rates are typical and such places, where Albania is part, still have difficulty, for example, in eliminating fraud in a company's governance structures. So shareholders as owners exercise complete control and other parties spaces are quite narrow. Also, the author Katharina Pistor, referring to the study on the characteristics of legal change in countries with transitional economies, realizes a categorization, which is also located in Albania. The first, according to her, are Germanic countries legal heritage of Austro-German or German, the period between the two world wars. The second category, wherein is Albania and other countries in Eastern Europe and Central Europe, consisting of the countries which had been under Ottoman rule and inherited French law. While, the third category includes the countries of the former Soviet Union, with legal inhomogeneous features. According to his study, all transition countries have a low level of protection of the interest groups. Other authors who deal with the analysis of East European region, where Albania is, are numerous, though never touched the Albanian context specifically. It is clear that they remain an accurate background, which provides roughly the line on which to rely.

After we slightly touched the context in which circulates this issue, we need to focus on the current situation. European provisions on employees and their role in commercial companies, have recently evolved, characterized by a high degree of protection towards this category. According to Council Directive 2001/86/EC with regard to the involvement of employees is established a Statute for a European company (SE). That Regulation aims at creating a uniform legal framework within which companies from different Member States should be able to plan and carry out the reorganization of their business on a Community scale; notably in the field of employee involvement. The object is to establish a set of rules on employee involvement applicable to the SE, and can therefore, by reason of the scale and impact of the proposed action, be better achieved at Community level. Information and consultation procedures at transnational level should nevertheless be ensured in all cases of creation of an SE.

The term "involvement of employees" means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company; It means for example the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives. It means the influence of the body representative of the employees and/or the employees'

³ *Coodetermination Act that allows the active participation of the employees in a German corporation is the most characteristic of German corporate law. For corporations with over 2000 employees appointed a number of representatives equal to the number of shareholders in the Supervisory Board. While corporations with 500-2000 employees, the number of their representatives is at least 1/3 of the members of the Supervisory Board, At Cioffi, 2005 and Gorezi 2011.*

⁴*Emerging Owners, Eclipsing Markets? Corporate Governance in Central and Eastern Europe ERIK BERGLÖF* and ANETE PAJUSTE SITE: Stockholm School of Economics. # Corresponding author. E-mail to: anete.pajuste@hhs.se. This version: 15 August, 2003*

representatives in the affairs of a company by way of: the right to elect or appoint some of the members of the company's supervisory or administrative organ, or the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ.

In general, WTO member countries, as also the International Labour Organization, where takes part also Albania, are dedicated towards observance of internationally recognized principles such : prohibition of forced labor, prohibition of minors, prohibition of discrimination, freedom of association - freedom of association. But trade often place more easily in countries with low wages, low job protection. Its development has the potential to affect the growth of labor protection standards.

As for the nature of the management structure of a company, we consider the distinction between one level system and a two-level system level. At this point we have a comparison of the balance of powers between the respective structures, Shareholders Assembly, Administrator, supervisory councils, but questions arise: In the context of the management of the company, the most important position belongs to which structure? In the context of shareholder relationship - "representatives" - in which form of election is seen the growing influence of the shareholders?

Co-administration and activity parameters that have to do with the avoidance of conflicts of interest, the obligation to act in the best interests of society, the exercise of competitive activity and loyalty towards the company.

Supervisory Council specifications related to the fact that individuals may be foreign shareholding, employee as well, with these rules: members have term of 3 years with the right of reelection; where the nr is 3-21 under 9901 law "On Entrepreneurs and Companies ". We have the right to appoint a member of a minority shareholder who owns 5%, but we need to not exceed 21.

The positioning of employees in a corporation, as the German model stereotype and tradition mentioned above Co-determination Act 1976. Regarding this, the Albanian model defines of modalities of choice or level of participation in this event. questions arise: Can be open to participation option at parity with the shareholders? Barriers to the implementation of this option? Simple: Those who we need to approve changes to the shareholders, who are presumed to not allow the delegation of powers to the employee until the parity level. Legal prohibitions exist in the law for the "Entrepreneurs and companies" in force. Unlike the previous law, 7638, which allowed of participation of up

to 1/3 of of members of the Supervisory Board by the employees.

4 Conclusion and recommendations

The globalization of markets is a modern phenomenon, with positive or negative consequences, but what is worth noting is the broad and unlimited terrain encountered by commercial companies. Therefore, corporate governance has emerged as a key point in the debate on reform and new policies anywhere in the world, by redefining academic concepts, but regardless of theoretical perspectives and diversity of corporate governance practices at the global level, to define clearly and correctly "corporate governance" remains a challenging task. Existing definitions are closely related to the paradigm, or different ways of conceptualizing the organization of a society.

European Corporate Governance Institute provides corporate governance codes for all EU member states. While the OECD Principles, provide 5 sections for the following issues: protection of shareholders; rights and obligations of the administrator; rights interest groups; transparency of financial data; way of implementing the above four issues, which can be voluntary, compulsory or according to the "Apply or Explain". Depending on the existing gap, is given more importance in one of the sections.

As presented here a brief summary of the theoretical-philosophical aspect of corporate governance, expressing some of the concepts that "disturb" more in this area, will shed light on some new opportunities, even in theoretical point of view, which provides the international academic literature.

The main conclusion about Labour and Trade legislation in Albania is that, they give some clearly, accurately and fairly international principles, being contemporary in their entirety. They provide and protect employee rights and guarantee the information of employees on the activity and status of the company. On the other side, the most important provisions are not punitive, but just facultative. For example, they provide recommendations or suggestion forms, such as the right to establish workers' council, but the coverage of funds is made from the funds of the company; The right to have representatives in the organs oversight of the company, or the right to obtain free shares from the capital increase, All optional; The provisions suggest to create mechanisms to enable employees and their representatives, confidentiality concerns and protect those who provide such information.

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