

Contents lists available at [ScienceDirect](#)

Communist and Post-Communist Studies

journal homepage: www.elsevier.com/locate/postcomstud

Slovenia in crisis: A tale of unfinished democratization in East-Central Europe

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ARTICLE INFO

Article history:

Available online 20 October 2015

Keywords:

Slovenian model

Unfinished democratization

State capture

Informal subversion of rule of law

ABSTRACT

Slovenia, until recently a “success story” of the transition from communism to democracy and the rule of law, is experiencing its biggest constitutional and political crisis since its independence in 1991. The Slovenian constitutional model is currently facing a simultaneous economic and political crisis. The article argues that there are two principle reasons for this apparent decline of the Slovenian model. First, because of its relatively privileged position vis-a-vis other East Central European countries, Slovenia has been a reluctant reformer, doing very little to actually change its institutional setup from the communist past. Second, when Slovenia implemented reforms, it did it in a very particular way: as an uncritical model-taker of policy models from the West. This mimicry was done in a fairly top down, bureaucratic way, creating institutions without deep enough roots in society, and without necessary trial and error style usually needed for successful evaluation of proposed reforms.

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1. Introduction

Slovenia, until recently a “success story” of the transition from communism to democracy and the rule of law, is experiencing its biggest constitutional and political crisis since its independence in 1991. The Slovenian constitutional model, which is best described as a gradual and home-grown transformation from communism to a “neo-corporatist” democracy and has been hailed as the most “balanced and inclusive” form of transition (Bohle and Greskovits, 2007a, 4) is currently facing a simultaneous economic and political crisis (Guardiancich, 2012, 380–399). The capture of the state by various political and informal groups has progressed to such a dramatic extent that it is undermining the independence and credibility of almost all rule-of-law institutions in the country, with the exception of the Constitutional Court. This comes as a surprise since Slovenia has been one of the best performing East-Central European countries during the entire transition period. It has been the highest ranking country in terms of the quality of its democratic and rule of institutions so far. Also, speaking economics, it has been the richest country among all transition economies. However, after 2008, when the global financial crisis and euro-zone crisis hit Slovenia particularly hard, a rapid decline of the Slovenian model was set in motion. Our

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analysis draws from Greskovits's composite index of democratic transformation (Greskovits, 2015),¹ which clearly shows a very high level of backsliding in Slovenia. After Hungary, Latvia, and Bulgaria, Slovenia occupies the fourth place on the Greskovits' index of backsliding (Greskovits, 2015, 32). Furthermore, our analysis heavily relies on Bugaric's recent study of legal developments in the region, based mostly on comparative constitutional analysis of selected case studies in the region (Bugaric, 2015).

The article argues that there are two principal reasons for this apparent decline of the Slovenian model. First, because of its relatively privileged position vis-a-vis other East and Central European countries, Slovenia has been a reluctant reformer, doing very little to actually change its institutional setup from the communist past. Moreover, a particular Slovenian model of "neo-corporatist" social democracy has been, contrary to the mainstream view, a conscious attempt to preserve not only equality and social justice, but also as much as possible from the former communist system. There has been a strong consensus in Slovenia that Slovenia, as a part of the Yugoslav version of socialism, was doing actually quite well during the communism, which supported the view that, unlike other East and Central European countries, Slovenia does not have to change everything from the old system.

Second, when Slovenia implemented reforms, it did it in a very particular way: as an uncritical model-taker of policy models from the West. This mimicry was done in a fairly top down, bureaucratic way, creating institutions without deep enough roots in society, and without necessary trial and error style usually needed for successful evaluation of proposed reforms. More theoretically speaking, the Slovenian story illuminates two broader lessons important for the rule of law reforms around the world. The first one, particularly important for post-communist world, is that a transition from communism to democracy is not only about changing societal institutional framework but primarily requires deep changes of people's mentality of their habits of hearts. Without that, countries run risk of entrenching the old order within a superficial "Potemkin village" type, institutions. Slovenia's drift to state capture, dressed up as corporatism, after the Euro crisis, very clearly reveals the importance of this argument. And second, rule of law reforms have to be primarily designed and sustained at home.

After Section 2, which provides a brief description of the institutional crisis of the Slovenian model, Section 3 offers a more detailed analysis of the main factors contributing to the crisis. Section 4 highlights the complex nature of the crisis and shows that there are important exceptions to more general trend of backsliding, thus preventing an easy classification of the emerging Slovenian model. The article concludes with a preliminary attempt to describe the new Slovenian model as a diminished form of democracy.

2. Slovenian model in crisis

During the accession process (1998–2004) Slovenia gained the reputation of a "good pupil". Slovenia was known for its deference to suggestions of international organizations and for its largely uncritical mimicking of their reform templates. The role of the EU was the most outstanding among them, particularly during the accession period. Hundreds of pieces of legislation were introduced or changed during this period under the rubric of harmonization of Slovenian law with the "acquis". This was largely, though not exclusively, done to please the EU and the Commission, but after the accession period (2004) it significantly contributed to a shallow "Europeanization" of the EU norms. It created a Slovenian version of the "Potemkin" harmonization, which is characterized by the coexistence of Europeanized formal rules on the one hand, and informal practices on the other, which often subvert and substitute the rule of law for ad hoc informal arrangements.

This contrasts sharply with the gradualism in economic reforms and corporatism in political structures, which earned Slovenia a distinctive status during the early transition period. Unlike during the subsequent transition period, when Slovenia by and large followed the models and templates provided by international organizations (EU, IMF, OECD), the early transition period was marked by Slovenian specific path to economic and political reforms often described in the literature as gradualism. In political science accounts of the transition model, Slovenia was recognized as the only country in the region not following the neoliberal reform pattern advocated by the World Bank and IMF (Bohle and Greskovits, 2007b, 443–466). However, the gradualism and a consequent "soft" transition have had also a strong negative side-effect. The selection of soft transition or gradualism was strongly connected with the high reproduction of elites, which means that the majority of the old, partially already "modernized and "reformed," communist elites managed to retain their positions in the new social circumstances" (Adam et al., 2009, 78). Other countries, which followed the neo-liberal path, such as Lithuania, Latvia and Estonia, did make a more radical rupture with the past and replaced the old communist elites with a new ones. In most of other countries, there were simply no other elites but communists who had knowledge and necessary networks to manage the country. This in turn led to "long-term malignant effects, including the establishment of monopolies and rent-seeking behavior" (Adam et al., 2009, 78). This aspect, however, became apparent to the public only after the eruption of the economic crisis in Slovenia in 2010.

¹ The composite index is based on the Bertelsmann index of democratic transformation, Freedom House data on the freedom of the press, the World Bank's Voice and Accountability and Political Stability and Absence of Violence Indices, and data on the vote share of radical right-wing parties (Greskovits, 2015, 31). It is interesting to point out that Freedom House's Nations in Transit report does not indicate any changes in scores for Slovenia (Nations in Transit, 2015).

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