The social rule of law versus the fonamentalism of the market: the politics of the memorandums and the labour law in Greece of 2013.

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Foreword

The labour law is the more characteristic example of implementation of the policies of the memorandums and the field of turnover of the greek social rule of law. These politics undertake a violent readjustment of the socioeconomic system. They not only failed to save the country from the crisis and drew its economy to a spiral of slow death, but they undermine the fonds of the individual and collective labour law and even the principle of the social rule of law itself. The enforcement of this policy is pursued with legislative measures, which constitute a new "shadow constitution" , as its implementation requires the supersession of many fundamental regulations of the Constitution.

1. The reformation of the economic Constitution to a neoliberal direction

All the executive laws of the successional memorandums are based on the theory that the problem of the low competitiveness of the Hellenic economy will successfully be encountered by the "internal devaluation"; namely the deduction of the labor cost, mainly by the reduction of the workers' salaries of the public and private sector and the restriction of the labor rights.

The recent measures nullify many social conquests, on the base of this reasoning of the internal devaluation, aiming the farther compression of the labor cost through new elastic labor relations (e.g. facilitation of dismissal, imposition of "turn out of turn" occupation and employment renting, deduction of overtime compensation etc). In this way, the memorandums aim to a radical overturn of the economic Constitution in a neoliberal direction, without constitutional amendment and without the will of the constituency. The principle of the social rule of law is embodied to the Constitution in order to bind every public authority to the direction of the implementation of the best social protection, in the context of the capitalistic system.

2. Modifications of the collective labor law.

2.a. Mining of the collective autonomy.

By dint of the stipulation of the article 22 of the Greek Constitution the collective negotiation consists the main regulative agent of the labor relations. From this results the principle of subsidiary, by which the legislator is not allowed to interfere where the collective negotiation is functioning. This principle has been many times infringed by the memorandums policies. By them the salaries were deducted over and over. In addition the collective agreements were suspended to their part which prescribed automatic increase of salaries. This legislative intervention consists an unconstitutional substitution to the self-governed collective regulations. The new system is neither exceptional nor provisional. In the contrary it overbalances the traditional system of definition of the minimal wage, which was leaning on the autonomic normative pertinence of the syndical organizations. This system infringes the stipulation of the article 152 of the Lisbon Convention by which the EU is obliged to respect the autonomy of the social partners and facilitate their dialogue. In the same time it violates the art. 8 of the International Labour Convention, the art. 28 of the Charter of Fundamental Rights of the European Union, the art. 11 of the European Convention on Human Rights and the art. 6 of the European Social Charter.

2.b. Abolition of the principle of favor.

The principle of favor is safeguarded by the stipulation of the art. 22 par. 1 of the (Greek) Constitution concerning the protection of the social right of work. It aims at the settlement of the imparity of the economic and social power which characterizes the parts of the labour relation. By this principle, in case of application of more than one collective agreement, was standing the optimal regulation for the worker.

By law it is prescribed that the collective agreements between the enterprises and the workers can diversify to the national collective agreement, even worsening the position of the workers. Over and above, the limit of 50 workers to be engaged in an enterprise, in order for a collective agreement to be possible at the level of the enterprise, is abolished. In this way unions small in numbers, without negotiatory power are obliged to negotiate with the employers.

In this way, all general collective negotiations will gradually disappear, being substituted by the collective conventions at the level of the enterprise, in which the workers have much less negotiatory power.

2.c. Diminution of the role of arbitrage.

The arbitrage used to support the collective negotiations, is safeguarded by the art 22 par. 2 of the (Greek) Constitution. Its decision has regulatory function and is one of the sources of the Labor Law. By the previous status the recourse to the arbitrage was possible for any part, when the collective negotiations failed.

Now, the way to the arbitrator is opened only after the common agreement of both parts. In addition, the arbitrator is competent just for the basic wage and no more for the benefits and any other condition of labour. Thus, the regulations of labor will be designated by the employers alone. Besides by the law any arbitration award,

which designates incomes of the employees overstepping the limits fixed by the legislator, is abolished.

Those measures are unconstitutional, as they breach the above stipulation of the Constitution, which forbids the legislator to interfere in the mission of the arbitrage. By the same stipulation of the Constitution, the collective disputes should not remain not regulated. Far from it the abolition of the arbitrage disrupts intentionally the whole system of the collective mediation, by prescribing additionally that the clauses of the collective contracts which are not renewed cease to stand three months after their expiration or denounciation.

Consequently, the employers will be able to degrade the contractual clauses up to the point of the national collective contract, just by denying the recourse to the arbitrage.

3. Violation upon the safeguards of the individual labor law.

The article 22 of the (Greek) Constitution not only functions as a guideline, but it provides for a genuine subjective right of guarantee of fair, safe and healthy conditions of work. Fair are the conditions that safeguard the respect of the human value and the development of the personality. It contains the claim to a decent wage and rational working hours.

3.a. Deduction of the salaries.

The deduction of the effective value of the wage is dramatic, in view of the increase of taxes, the continuous conversion of the labor relations from complete to partial or turn out of turn employment. In this way, the minimum wage is not accomplishing any more its basic function, namely the safeguard of a decent level of livelihood. To date the day labor of a skill-less worker is in gross 26 euros. Accordingly, these measures which confined the worker's income so much are infringing the art. 22 par. 1 of the (greek) Constitution and the art. 1 al. a' of the First Additional Protocol of the European Convention on Human Rights, which provides for the respect of the fortune of the person.

3.b. Reinforcement of elastic forms of labor.

By the law, the implementation of provisionary employment is facilitated and the testing period of employment is increased. In those instances the employer can dismiss the employee without any compensation. After a unilateral decision of the employer: the partially working employee is obliged to work more than what was agreed; the employees can be enforced to work turn out of turn. At the same time the law encourages the dismissal of the young people, considering their first 12 months of service as trial employment, which gives the right to the employer to dismiss them without compensation. In addition, many protective for the worker limits increased. For example: the time of employment of the worker to the indirect employer (in case of renting); the threshold through which the dismissals are considered as massive (from 2% to 5%); the testing period during which the employee can be dismissed without compensation (from 2 months to 12 months). Farther more, the compensation for dismissal can be paid in doses, whose amount decreased (from the income of 6 months to that of 2 months); the remuneration for overtime employment decreased.

What should be underlined is the new status for young people: The memorandums prescribe that for people under 25 years old their wages would decrease to the 84% of the minimum wage and in case of testing employment to the 80%. For those who are younger than 18 years old to the 70%. Those measures are unconstitutional infringing the art. 22 par. 1 of the (greek) Constitution, which demands equal wage for equal labor. They are infringing as well the European Directives 2000/43/EC and 2000/78/EC, and the art. 1 par. 2 of the European Social Charter, which forbid any unfavorable distinction because of the age of the worker.

3.c. The working reserve.

The working reserve is considered a dismissal in suspension. The worker ceases to execute his/her tasks and stops to progress in wage and grades, being paid by the 60% of his/her basic wage. It is underlined that the main income of the workers in Greece is formed by different bonus and allowances.

These measures were regarding in the beginning only the workers of the broad public sector, but afterwards they were expanded to the core of the public administration as well. Even if the justification report of the law provided that by this measure financial benefits would occur, members of the government officially admitted that it was implemented in order to accomplish demands of the troika for the uptake of symbolic measures. Those measures, known as "game changers", were required regardless of their financial repercussion, in order to break some taboos. One of those taboos was supposed to be that a public servant is secured in his position. Apart from that, reversely to what is propagated, the Hellenic public sector is not suffering from hypertrophy, as its number of servants and wage cost are approximately at the average of the European Union, by the conclusions of the Organization for the Economic Cooperation and Development. Consequently, the working reserve measures are not proportional, and thereby unconstitutional, taking in account the magnitude of misdeed for the workers who were enforced to it, who are obliged to survive with the 1/3 of their income. Moreover, as chosen for the reserve are the elders without any other standards been taken into account, the working reserve is infringing the European law by placing unequal treatment because of the age of the worker, without any other justification.

Those measures are declared unconstitutional by the administrative courts.

4. Efforts of implementation of constant condition of necessity.

From the above analysis it is clear that the new legislative measures that are implemented in the field of the labor law are violating a number of rights recognized by the constitution and the international law. Their implementation is tried to be excused by their lawmakers by their necessity, their onerous character not being denied, in view of the salvation of the national economy, as a matter of paramount public interest. This position tacitly admits their unconstitutionality, but it invokes a peculiar condition of necessity which justifies them. This opinion is absolutely inadmissible. The public interest cannot be conceived as a general reservation of all the fundamental rights. Otherwise, the constitutional values would be degraded in means of exercise of specific policies.

Moreover, the appeal to the public interest is not sufficient to found the imperative and the appropriate of the imposed measures. For this purpose it is demanded to provide specific elements in order to prove that there is no other

solution. In this case, that there are no other alternative possibilities to pay the public debt.

Anyway, even if the appeal to the public interest was considered as constitutionally tolerable, those measures should be considered as exceptional and, thereby, temporarily limited. In this case additional guarantees should have been undertaken, mainly concerning the touched by them.

Conclusion

The legislative measures for the implementation of the memorandums are not only infringing the (hellenic) Constitution and the international law but they are hitting the core of the fundamental principle of the social rule of law, as a main attributive element of the constitutional identity of the Hellenic State. The policies of the memorandums are intentionally pursuing the general degradation of the national social vested rights, in the context of the object of the internal degradation.

The neoliberal reformations, disguised in necessary changes, are not presented as political choices (as they are) which are in favor of the employers, but as unavoidable indispensabilities supported by objective data. That is because it was impossible for them to be prevailed socially. Therefore they were presented as inevitable implementation of the financial sobriety and the memorandums as one – way path. Those changes are supposed to come from necessities that slip of the audit of the democratic dialogue.

Even the constitutional stipulations ought to adapt to this new neo-liberal sobriety. This way we pass to a neo – constitutionalism, which represents in its essence a denial of the constitutionalism. The financial policy is placed over any other constitutional value. In this context of neo – liberal sobriety there is no place for the social rule of law, as its nature consists in redistributing goods, which is intolerable by the new Reasoning.

It is obvious that under this deceptive argument of sobriety is hidden an imperious enforcement of the establishment of the, uncontrollable by the democracy, dominance of the market. The defense of the constitutional order presupposes the understanding that those measures that are presented as one way path are originating from very specific ideological directions. They are the political program of specific interests, which are contradictious to those of the country and the people.

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