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I - ECONOMIC CRISIS AND THE STATE INTERVENTION AS A TOOL FOR THE COLLECTIVE LABOR RELATIONS GOVERNANCE

Most wages bargaining during the first semester, 2018, was carried out throughout an increasing inflation and currency devaluation.

These two factors influenced the pace of the collective bargaining and made the labor conflict grow.

In the second semester, inflation forecast augurs a loss of salaries over inflation. It might be above 30% and salaries could get, in the most auspicious situation, the same percentage.

In this economic and political context, the General Work Confederation (CGT), the least important Union Confederation (CTA 1 y CTA2), as well as social associations, (called popular economy associations), carried out a general strike against the economic situation. Nonetheless, the majority of their leaders would rather have a contemplate view on the policies of the National Administration and deepen social dialogue. On the contrary, a minority of them think the CGT should strongly confront a government that they view as conservative.

In that context, the Labor Ministry enacted Decree 508/18 which contemplates a *Simplified Voluntary Regime Of Adequacy Of The Wage Collective Bargaining Year 2018*. It rules that, during the current year, the collective parties will be able to adjust the salaries already negotiated up to 5% more than what was agreed in the previous quarter. This governmental decision is consistent with interventionist logic in the field of collective labor relations, characteristic of the Argentinean system. This decree has no legal framework to justify it. Moreover, the purpose to set a cap to the future wages increase by collective bargaining could be read as a violation of the principle of collective autonomy and union freedom.

In the same interventionist line, the Labor Ministry enacted Decree 633/18 which sets forth the prohibition to give course, homologate or register, in the framework of the collective bargaining procedure provided by Law 14.250 (2004), those collective labor agreements and / or agreements with similar effects that contain sums or concepts of a salary nature on which the parties agree to grant a non-remunerative nature, with the exception of those cases contemplated in the Labor Contract Law (n°20,744 - arts. 103 bis, 106 and 223 bis). The reiterated state intervention on collective bargaining, although in this case avoiding salary sums that do not pay social security, has no practical meaning because these sums are prohibited by the entire labor law beyond what unions and employers agree.

The Providence n°26051140 of the Labor Ministry prohibited banks from making automatic debits on the salary account in favor of the least representative unions (but not for the most representative unions), preventing them from collecting membership fees through automatic debits. It was a decision enclosed in the metro workers conflict but strengthening the measurement, the Central Bank announced in July that no entity can debit membership fees or any other contribution to union organizations. In Argentina, the most representative unions ("personería gremial" legal status) have the maximum recognition provided in the legislation and that enables them to represent workers in collective disputes, negotiate agreements and wages, grant privileges to their delegates and collect membership fees, and many others with simple registration. Those of lower rank, less representative ("simple registration" legal status) although they have obtained greater powers in recent years at the request of rulings in that sense of the Supreme Court in line with the recommendations of the International Labor Organization (ILO), are still precluded from signing paritarism. Any other faculty, not expressly forbidden to them, can be assumed on an equal basis as those that have legal status. However, the Government intervention was a signal for those less representative unions and is a tool to press them in an eventual increasing conflictive situation.

Finally, the government has opted to resort to a legally foreseen mechanism: imposing fines on trade unions that violate procedural rules in cases of collective conflicts. Several unions have accused persecution for their reactive position before some state institutions. The government responded that those are instruments provided by law in situations of abuse or breach by unions during a collective dispute.

The teachers' union of the Province of Buenos Aires constituted a particular case. That union of the most populated area in the country carried out a very strong negotiation with their new Governor. So far, the wage negotiation has not ended.

II - FLUCTUATING STATE POLICIES IN AN ARGENTINE WITH ECONOMIC COMPLEX PROBLEMS

The economic crisis, because of the increase of the interest rate in the United States and the inconsistency of the Argentinian economy system, has been so far a hard match for the government. In a context of fiscal deficit, trade balance deficit and difficulties to get international funding, the government signed an agreement with the International Monetary Fund. That agreement implies advancing the aim to reduce the fiscal deficit. In that context, there were some reforms on social security to overcome the economic crisis.

The National Government Decree 702/18 set forth a cut in family allowances that the workers of several provinces receive (Chubut, Santa Cruz, Tierra del Fuego, La Pampa, Río Negro, Neuquén, and part of Salta, Jujuy, Catamarca, Formosa and Mendoza). The size of the cut depends on the level of income and the geographical area.

In Argentina, there are three tools through which the State transfers money to families: Universal Child Allowance, Family Allowances and a special deduction on the Income Tax. Through Decree 702/18, the government modified Family Allowances and the deduction on Income Tax. The modifications on child deductions on Income Tax could have positive implications in terms of equity, due to the possibility of a double deduction per family for the same child and the double perception of a Family Allowance and the Tax Deduction. The current benefit leads to an inequitable scenario. Changes in the Family Allowances Regime, meanwhile, with the elimination of “differential areas”, accentuate the current heterogeneity of criteria on the different types of benefits.

In a historical moment, the strength of the feminist movement generated a strong awareness of the problems of women in all aspects. The legal and free abortion bill, although rejected by the Nation Senate after strong pressure from the Catholic Church, strengthened gender awareness and the organizational capacity of pro-rights movements. In view of this social context, the government sent a bill to the parliament concerning the Equity of Gender and Equality of Opportunities at Work. The project foresees strict salary equality, a recommendation for employers and unions to adapt their codes of conduct and statutes as well as to promote gender discussion in collective bargaining, in addition to a title regarding the “conciliation of work with the private and family life” (provisions for women after motherhood, reduced journeys for childcare, leaves).

The project does not have full agreement and it is perfectible; although the extension of rights in times of economic recession and crisis can be highlighted as a positive action.

Finally, as a juridical policy, it is important to point out a recent ruling of The Supreme Court in a case regarding a neurosurgeon who sued the hospital where he worked, alleging that the link that bound him to the institution was one of employment nature. The Supreme Court emphasized that the mere rendering of services for a company does not imply that the relationship is dependent and remarked the indisputable validity of the figure of location of services in Argentinean law.

The Supreme Court disqualified the lower court ruling because it failed to assess evidence that the relationship did not have any of the typical features of the employment relationship. The doctor was a member of an association which participated in making decisions on which professionals could be admitted to the hospital, how medical practices should be carried out and fees distributed. In addition, this medical doctor only charged if he performed medical practices.

The Court emphasized, in additional circumstances indicative of the absence of employment relationship (the plaintiff was registered in simplified law tax and issued invoices, had not filed any claim for seven years and did not invoke or prove to have enjoyed leaves or paid holidays).

Although the decision of the Highest Court is circumscribed to this particular case, which in turn finds limits in medical activity, from various sectors has been read as a sign of withdrawal of the right to work and an advance of common law as a juridical policy of flexibilization of labor.